

# UAE: A Complete Arbitration Framework in the Eyes of the New DIAC Rules

## In brief

The recently issued Rules of the Dubai International Arbitration Centre (the “**New DIAC Rules**”) have come into effect on 21 March 2022. Following the [joint press release](#) of the DIAC and the London Court of International Arbitration (LCIA), all arbitrations, mediations and alternative dispute resolution proceedings submitted to the DIAC after this date will be governed by the New DIAC Rules.

The New DIAC Rules also align with the procedural developments entrenched in the UAE Federal Arbitration Law No. 6 of 2018, which has been designed to ensure the efficient conduct of arbitrations in the UAE during the arbitration process and the ratification and enforcement of awards. We outline below some of the notable developments in the New Rules.

## DIFC as default seat

The New DIAC Rules designate the Dubai International Financial Centre (“**DIFC**”) as the default seat.<sup>[1]</sup>

This means that if the parties failed to specify the seat of the arbitration, the seat of arbitration shall be the DIFC and the DIFC Arbitration Law shall apply and the DIFC courts shall act as the supervisory courts. This should alleviate the confusion whether the Dubai Courts or DIFC Courts should act as the supervisory courts, irrespective of where the award debtor’s assets are located.

With this new development, even if the award debtor’s assets are located in mainland Dubai, **award creditors can, in DIFC-seated arbitrations, resort to the DIFC Courts for the enforcement of their arbitration awards. The creditor may thereafter benefit from the onward enforcement of those awards in mainland Dubai, where the award debtor’s assets are located.**

## Venue of the arbitration

The New DIAC Rules also clarify that the parties are at liberty to conduct hearings in another venue other than the seat of arbitration and such action would have no impact on the choice of their seat.<sup>[2]</sup> This also aligns with the provisions of the UAE Federal Arbitration Law, which allows parties to hold physical hearings in a venue other than the seat. This clarification is helpful as parties usually confuse the venue with the seat of arbitration, often arguing that hearings should only be held in the same jurisdiction of the seat of arbitration, which is evidently not the case. This development allows parties to conduct hearings in a venue that is most convenient to all parties involved from a time and cost perspective. Parties are also entitled to have their hearings conducted virtually which has become increasingly common following the Covid-19 pandemic.

## Issuance of the award

The New DIAC Rules confirm that the arbitration award will be deemed to have been issued in the seat of the arbitration even if it was signed by the Tribunal outside of the seat of arbitration.<sup>[3]</sup> This resolves one of the most common difficulties that existed under the old

## Contact information

**Dr. Habib Al Mulla**  
Executive Chairman  
habib.almulla  
@bakermckenzie.com

**Sally Kotb**  
Counsel  
Sally.Kotb  
@bakermckenzie.com

**Marlize Dumas**  
Associate  
Marlize.Dumas  
@bakermckenzie.com

**Youssef Nassar**  
Associate  
Youssef.Nassar  
@bakermckenzie.com

arbitration regime whereby tribunal members were compelled to sign the award in the UAE as the seat of arbitration in order to prevent their award from being set aside as a result of being issued in a foreign jurisdiction other than the seat of arbitration.

This procedural difficulty existed as a result of the provisions of the old UAE Arbitration Law, which provided that an award would be treated as a domestic award if it was “*issued*” in the UAE. The term “*issued*” was undefined so it was unclear whether the Tribunal had to be physically present in the UAE only for the signature of the final award or it would have been sufficient for the deliberation to take place in the UAE in order for the award to be treated as a domestic award.

Given the ambiguity that existed under the old arbitration framework, tribunals usually took the cautious approach of traveling to the UAE in order to satisfy this procedural formality. This development indeed resolves one of the imminent issues that was usually encountered by practitioners and tribunals in UAE seated arbitrations and aims to ensure a time and cost-efficient conduct of the arbitration.

### **Consolidation and Joinder**

The New DIAC Rules introduced new features which allow parties to have their claims arising out of more than one contract heard in a single arbitration through consolidation.<sup>[4]</sup>

Joinder of third parties is now also allowed in circumstances where it can be demonstrated that the parties have consented in writing to the joinder.<sup>[5]</sup> In practice, this typically applies in circumstances where a party deals with a group of companies in relation to the same transaction. In order to avoid unnecessary costs by filing separate arbitration proceedings against each entity of the same group of companies, a party may consider commencing one arbitration process against more than one party in one arbitration proceeding.

When drafting their arbitration clause, parties should consider if joinder or consolidation would likely come into play in the context of a dispute arising from their contractual relationship. This would save significant time and costs at the start of the arbitration as the parties would be deemed to have mutually agreed to either consolidation or joinder beforehand as part of their arbitration agreement.

### **Expedited proceedings**

Another new feature of the New DIAC Rules is that they address the urgent demands of businesses and aim to have disputes resolved within a very short period of time as opposed to an ordinary arbitration action.

The New DIAC Rules allow a party, prior to the constitution of the Tribunal, to file an application for the arbitral proceedings to be conducted on an expedited basis.<sup>[6]</sup> The tribunal will then be formed on an expedited basis and the award will be made within three months from the transfer of the file to the Tribunal unless extended by the Arbitration Court on exceptional grounds.

It is always best practice for the parties to consider whether an expedited arbitration procedure would be relevant for their transaction and consider incorporating it in their arbitration clause. In this case, there would unlikely be any debate between the parties at the time of dispute on whether the arbitration should proceed on an expedited basis.

Yet an expedited arbitration is only possible if the value of the dispute does not exceed AED 1 million <sup>[7]</sup> (exclusive of interest and legal costs).

### **Exclusion of liability**

The New DIAC Rules contain clear provisions illustrating that no member of the Tribunal or person appointed by the Tribunal, the Arbitration Court and its members shall be liable to any person or party for any act or omission in connection with the arbitration.<sup>[8]</sup> This is a crucial development particularly in light of the debate that existed in recent years around a party’s ability to commence criminal proceedings against a member of the Tribunal on the basis of the purported violation of their duty to act with fairness and impartiality. This confirmation certainly reinforces their trust in the legal system.

### **Recoverability of legal fees**

The UAE Court of Cassation in Case No. 282 of 2012 has ruled that legal fees are not recoverable under the existing DIAC Rules unless the Tribunal is vested by the parties (e.g under the terms of reference or arbitration agreement) with such power. This caused concerns particularly for award creditors who following such ruling have not been entitled to claim their legal fees in the arbitration.

The New DIAC Rules have dealt with this issue and now contain clear provisions dealing with recoverability of costs, including legal representation fees and other party costs to the extent reasonably incurred.<sup>[9]</sup> This amendment will hence defeat any challenges regarding the Tribunal's power to award legal costs in DIAC arbitrations.

### **Interim measures**

The New DIAC Rules include detailed provisions regulating the Tribunals' power to issue interim measure in support of a party's case in the arbitration.<sup>[10]</sup> Although Tribunals under the old DIAC Rules were also empowered to issue interim measures, Tribunals were reluctant to do so considering the difficulties associated with the enforcement of interim awards before the Dubai Courts. As such, the standard practice was for parties to apply directly to the UAE courts for issuance of interim measures such as attachment orders, which is the most common type of interim measure often sought by creditors to preserve the debtor's assets pending the issuance of the final award.

Tribunals are now empowered to issue interim measures upon an application made by one of the parties and such measures are readily enforceable and recognized before the UAE courts in accordance with the clear provisions of the UAE Federal Arbitration Law.

In addition, the New DIAC Rules and the UAE Federal Arbitration Law both allow a party to apply for an interim measure before the relevant court and confirm that such an action will not constitute a waiver of the arbitration agreement. This is an important confirmation and would limit any potential frustration of the arbitration process in situations where a party applies for an interim measure before the UAE courts as the other party will no longer be able to argue that the party seeking the interim measure had waived its right to arbitration. This is a common challenge that often existed under the old arbitration regime and was one of the major causes of disruption of arbitration proceedings at the time. With this new development, parties can safeguard their position in the arbitration process by applying for a suitable interim measure either before the Tribunal or the relevant courts without facing the risk of losing their right to arbitration.

### **Conclusion**

The New DIAC Rules cope with international arbitration standards and address common pitfalls that are usually encountered in UAE seated arbitrations. The New DIAC Rules align with the provisions of the UAE Federal Arbitration Law and reflects the efforts of the UAE government to promote the UAE as an international arbitration hub.

[1] Article 20.1.

[2] Article 20.2.

[3] Article 20.3.

[4] Article 8.

[5] Article 9.1.

[6] Article 32.

[7] Around USD 272,249.59 (April, 2022).

[8] Article 41.1.

[9] Article 36.

[10] Appendix II – Article (1).

---

To speak to us with respect to the New DIAC Rules, any disputes or arbitration related matters, or issues generally, please reach out to one of the contacts above or your usual Baker McKenzie contact.

For future updates, you can visit and subscribe to our Middle East Insights blog: [me-insights.bakermckenzie.com/](https://me-insights.bakermckenzie.com/)

© 2022 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of the this Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.

