



DUBAI INTERNATIONAL ARBITRATION CENTRE – 2018 ARBITRATION RULES: OUT WITH THE OLD AND IN WITH THE NEW

In November 2017, the Dubai International Arbitration Centre (DIAC) took the opportunity to share with the wider legal community the latest revisions to its current 2007 arbitration rules (the 2007 Rules).

DIAC's 2018 Arbitration Rules (the New Rules) are awaiting final approval before being enacted by Decree of the Ruler of Dubai. In this briefing we take a look at some of the key changes which were addressed during the annual Dubai Arbitration Week.

“There will no longer be any need for arbitrators in DIAC arbitrations to travel to Dubai to sign an award in-country. DIAC awards shall be deemed to have been rendered in Dubai without the need for the tribunal physically to attend a signing within the jurisdiction.”

Headline Act

The biggest change to the existing 2007 Rules is that the default seat of arbitration in the New Rules has been confirmed as the Dubai International Financial Centre (the DIFC), a common law jurisdiction situated in civil law Dubai.

The move by DIAC, arguably the most well-known and used of the Middle East arbitration institutions, is both:

- recognition of the concerns of commercial parties regarding enforcement of awards and seeks to take advantage of the pro-arbitration approach of the DIFC courts; and
- an attempt to provide further confidence to those parties considering arbitration under DIAC rules.

More broadly, it is an important further step in securing Dubai's reputation as the leading regional hub for commercial arbitration.

Parties wishing to subject their disputes to the UAE's existing on-shore arbitration law will need to ensure that they specify the seat in their arbitration agreements.

On your marks, get set, go!

It is understood that the New Rules will apply to all DIAC arbitration cases commenced after their enactment by

the Ruler. The default position will be that the rules in force at the time that a request for arbitration is filed will be the rules that will apply – unless the parties expressly elect otherwise. Some of the key changes include:

- When it comes to assessing claims at the outset of a case, where a party seeks the right of set-off the sums to be set-off shall be classified as a counterclaim for the purposes of calculating the advance on costs – previously a contentious subject between parties.
- The 2007 Rules require that the tribunal notify the parties of the date and venue for the preliminary meeting within 30 days from the date of transmission of the file to the tribunal. In contrast, the New Rules require only that the tribunal contact the parties within 30 days with a view to scheduling the date for the preliminary meeting. This gives the tribunal and parties greater flexibility to schedule the preliminary meeting at a mutually convenient time and place.

Come together, right now

The New Rules have also introduced measures to streamline arbitrations as well as offer the parties alternative means of resolving their dispute:

- The New Rules will cater to multiple-contract arbitrations. In

particular, the New Rules afford the Executive Committee the power to constitute a tribunal on behalf of the parties in a multi-party arbitration where the parties are unable or unwilling to do so.

- Case consolidation (merging two or more separate arbitrations into a single arbitration, thus potentially saving time and costs) is also provided for under the New Rules, as is joinder of one or more additional parties to an existing arbitration, subject to satisfaction of certain stipulated requirements.
- The opportunity to refer a dispute to conciliation has been reinstated in the New Rules.
- In a move that shadows steps taken by the ICC, the New Rules also include the power to sanction the legal representatives of the parties if their conduct is deemed unbecoming by the tribunal. Whether or not a tribunal has the authority to sanction a party's counsel is open to debate. However, we expect any exercise of such power to be a rare occurrence.

Money, Money, Money

In a move to assist arbitrators, DIAC has provided clarity on its calculation of arbitrators' fees. By default, these are to be shared on a 40:30:30 basis between the chair and two co-

arbitrators, respectively. The recent implementation of VAT in the UAE has of course also been catered for in the Appendix on Costs to the New Rules.

The scope for misinterpretation as to whether a tribunal may make an award of costs – a challenge previously raised in the Dubai courts – has also been removed in the drafting of the New Rules. These now grant the tribunal express authority to address and award costs incurred by the parties in the course of the proceedings.

Higher Powers

The Executive Committee has been granted wider powers. Under the New Rules it will be permitted to extend the time for rendering the final award on behalf of the parties, should this be necessary. Whilst there is no default time limit imposed by the DIFC Arbitration Law for the rendering of a final award, the Federal Civil Procedure Law (the CPL) stipulates a default of six months from the date of “the first arbitration session” which (to paraphrase) may be extended explicitly or implicitly by agreement or by law. Presumably, DIAC’s intention is that, by adopting the New Rules, parties are deemed to have agreed to an extension of time for rendering the award by the Executive Committee.

Signed, sealed, delivered

There will no longer be any need for arbitrators in DIAC arbitrations to travel to Dubai to sign an award in-country. DIAC awards shall be deemed to have been rendered in Dubai without the need for the tribunal physically to attend a signing within the jurisdiction. Previously this has been grounds for challenging enforcement of awards in the local courts (as opposed to the position under DIFC law, which does not require physical presence in the Emirate). Whether this provision of the New Rules will be sufficient to avoid or overcome such challenges remains to be seen.

Separately, following in the footsteps of the ICC, a process of ‘soft scrutiny’ will be implemented upon release of awards, to ensure that awards rendered under the New Rules are satisfactory.

You want it, you got it

DIAC has clearly given careful thought to its users’ requirements and should be applauded for its efforts to meet them. For example, the New Rules also extend to providing a Shari’a compliant procedure and include an expedited procedure for cases involving claims of AED 2million or less. The New Rules also recognise the increasing use of third party funding in proceedings and include provisions that permit the tribunal to ask for disclosure of such arrangements from the parties in the proceedings.

DIAC also intends to publish, in redacted form, awards rendered pursuant to DIAC proceedings. The purpose of publication is to share knowledge within the legal community as to the decisions being made behind closed doors, whilst protecting the identity of the parties. The hope is that these decisions will be a useful roadmap for parties looking to arbitrate their disputes, potentially avoiding proceedings altogether.

Summary

In conclusion, it is anticipated that the New Rules will encourage businesses to continue both to turn to arbitration as their means of resolving disputes and, when doing so, to choose DIAC’s New Rules.

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