

# DIAC TO CHANGE ITS DEFAULT SEAT OF ARBITRATION



**The Dubai International Arbitration Centre (DIAC) is proposing to change the default of seat of arbitrations conducted under its rules of arbitration to the Dubai International Financial Centre (DIFC). The move is intended to take advantage of the pro-arbitration approach adopted by the DIFC courts and the DIFC’s international-standard arbitration law. It is a further step by DIAC to position itself as the arbitral institution of choice in the region and cement Dubai’s reputation as a Middle East arbitration hub.**

## What is happening?

Last year, DIAC announced that it was looking to revise its existing rules of arbitration to bring them more into line with international best practice. The initiative mirrors steps taken by other arbitration institutions, notably the DIFC-LCIA Arbitration Centre, to revise and improve their own rules to meet the needs of their end-users.

The proposed revisions were issued for consultation in 2016 to a generally positive reception amongst practitioners in the region.

That consultation has completed and the updated rules are expected to be released shortly. In the meantime, at the recent International Arbitration Conference in Dubai, hosted by the Chartered Institute of Arbitrators, conference attendees were given some insight into what the revised rules might hold in store.

Dr Habib Al Mulla, Chairman of the DIAC Board of Trustees, addressed the conference on the initiatives being implemented by DIAC to meet the requirements of a growing and ever more sophisticated arbitration community in the Middle East. Of particular interest was Dr Al Mulla’s confirmation of an important shift in policy for DIAC - changing the default seat under the arbitration rules from “onshore” Dubai to the “offshore” jurisdiction of the DIFC – a change that was not included in the draft rules issued for consultation.

## Why is this important?

The seat of an arbitration is important as it determines not only the procedural laws applicable to the arbitration, but also the



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identity of the courts with supervisory jurisdiction over the proceedings. Traditionally, the DIAC rules of arbitration have provided that, where the parties have failed to specify the seat of arbitration in their contract, or are otherwise unable to agree on the seat, the default seat of arbitration will be onshore Dubai. As a result, those proceedings would take place in accordance with onshore legislation – primarily the UAE Civil Procedure Code, Federal Law No. (11) of 1992 (as amended) – and fall under the supervision of the onshore Dubai courts.

The proposed move by DIAC means that, by default, an arbitration would be seated in the arbitration-friendly jurisdiction of the DIFC. Proceedings would therefore be subject to the DIFC Arbitration Law (Law No. 1 of 2008, as amended) an international-standard arbitration law based upon the best-practice model law prepared by the United Nations Commission on International Trade Law (UNCITRAL). Importantly, the DIFC courts, noted for their pro-arbitration approach, would have overall supervision of the proceedings.

DIAC's initiative, if confirmed in the final revised rules, will be a welcome development to UAE-based practitioners and clients alike for two main reasons:

- The DIFC courts have shown themselves to be unwilling to entertain spurious challenges to arbitral awards. Indeed, the DIFC courts have recently taken steps to discourage such challenges through the implementation of powers to require payment of the award amount into court prior to any challenge and to award costs on an indemnity basis against unsuccessful challengers.
- An award rendered in a DIFC-seated arbitration can, for now, be “converted” into a DIFC court judgment and enforced directly onshore in Dubai (and the wider UAE), with limited scope for challenge in the onshore courts.

Both factors afford greater certainty and security to successful parties seeking to enforce their awards.

### What does this mean in practice?

The proposed move by DIAC, arguably the most well-known and used of the Middle East arbitration institutions, is both a recognition of the concerns of commercial parties regarding enforcement of awards and an attempt to provide further confidence to those parties considering arbitration under the DIAC rules. More broadly, it is an important further step in securing Dubai's reputation as the leading regional hub for commercial arbitration.

Of course, the change to the DIAC arbitration rules is not a total solution; the reality is that the majority of parties wishing to arbitrate their disputes are likely to agree on the seat of arbitration in their contracts. This remains our recommended best practice and means that, in most cases, the default seat will not be in issue.

In addition, it remains to be seen whether recent decisions of the Judicial Tribunal, established to resolve conflicts of jurisdiction between the DIFC and onshore Dubai courts, are indicative of a curbing of parties' ability to take advantage of the pro-arbitration



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nature of the DIFC when ultimately looking to enforce awards onshore. While these latter developments should not, in our view, impact the enforcement onshore of awards rendered in DIFC-seated arbitrations, the position remains untested before the Judicial Tribunal.

Finally, we expect the revised rules to allow the parties to make submissions as to which seat is most appropriate, regardless of the default provision. Even where a contract is silent as to the seat, a DIFC seat is therefore not necessarily assured and there may be some delay and additional cost if the issue is left open to debate between the parties.

#### What you should you be doing

For existing contracts, check your arbitration clause to see if you have agreed a seat of arbitration and if your clause specifies a particular version of DIAC's rules. Where your contract is silent on these points, you may be able to take advantage of the change in default seat in proceedings commencing after the publication of the new rules.

For parties looking to enter into new contracts, it remains our recommendation that you specify the seat of arbitration in your contract to avoid challenges and delays when commencing proceedings. For advice on which seat is most appropriate for your contract, please contact the authors.

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