

## The new DIAC Arbitration Rules

The DIAC has revised and improved its Arbitration Rules. The draft of the new DIAC Arbitration Rules awaits approval before they will have sovereign effect.

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Following in the footsteps of other arbitral institutions such as the DIFC-LCIA Arbitration Centre, the Dubai International Arbitration Centre (DIAC) is amending its current Arbitration Rules (Current DIAC Rules) to bring them in line with international arbitration best practice.

Whilst these new DIAC Arbitration Rules (New DIAC Rules) are still a proposed draft, we understand that they are only awaiting approval in the form of the issuance of a Decree by H.H. the Ruler of Dubai to give them sovereign effect. We have however seen a draft copy of the New DIAC Rules, from which it is clear that DIAC has revised and improved its rules to meet the needs of its end users.

The key provisions of the New DIAC Rules are explored further in the remainder of this article.

### Default arbitral seat

The Current DIAC Rules provide that where the parties have not specified the seat of the arbitration in their contract, or are otherwise unable to agree on the seat, the default seat of the arbitration will be “Dubai”. This effectively means mainland Dubai, as opposed to a free zone jurisdiction in Dubai, such as the Dubai International Financial Centre (DIFC). Accordingly, the arbitral proceedings take place in accordance with mainland Dubai legislation - primarily the UAE Civil Procedure Code, and would fall under the supervision of the onshore Dubai courts.

One of the most notable changes in the New DIAC Rules is that unless the parties agree otherwise, the default seat of DIAC arbitrations will be the DIFC.

This proposed change to the arbitration friendly jurisdiction of the DIFC means that such proceedings would be subject to DIFC Law No. 1 of 2008 (as amended). This is a welcome development for parties wishing to have disputes resolved in the UAE, not least because the DIFC courts will usually simply uphold and will not look behind the merits of an arbitral award, resulting in a more straightforward and certain ratification process than often experienced in the Dubai Court system.

### Signature of awards

The current position regarding the signature of arbitral awards is contained within Article 212(4) of the Civil Procedure Code. This has been widely interpreted as requiring all of the arbitrators to physically sign the award in the UAE; a failure to do this has led to a number of successful challenges to arbitral awards in the UAE.

The New DIAC Rules however expressly permits arbitrators to sign awards outside of the UAE. This is an important development for reasons of practicality as it will avoid the incurrence of unnecessary travel costs and time. However, only time will tell (once the New DIAC Rules are implemented), whether this will prevent such challenges being made before the Dubai Courts notwithstanding the introduction of such changes.

## **Power of tribunal to sanction counsel**

The Current DIAC Rules do not contain provisions which give the arbitral tribunal express sanctioning powers for parties or counsel who use 'guerrilla tactics' during the arbitration. Whilst a tribunal could always arguably sanction a recalcitrant party using its powers as a judicial body (for example by drawing adverse inferences, making costs awards or rendering evidence obtained through improper means as inadmissible), the New DIAC Rules now expressly give the tribunal power to impose sanctions where parties or counsel:

- attempt to unfairly obstruct the arbitration or jeopardise the award
- knowingly make any false statements
- procure or assist in the preparation of, or rely upon any false evidence, or
- conceal or assist in the concealment of any document.

This is an important change although it will be interesting to observe how willing arbitrators are to enforce these provisions in light of Article 257 of the UAE Penal Code (as amended) which imposes criminal liability on arbitrators (amongst others) who issue decisions and opinions contrary to the duties of impartiality and neutrality (see below).

## **Express exclusion of the tribunal's liability**

Article 257 of the UAE Penal code was amended in October 2016 to state:

“Anyone who issues a decision, expresses an opinion, submits a report, presents a case or proves an incident in favour of or against a person, in contravention of the requirements of duty of neutrality and integrity, while acting in his capacity as an arbitrator, expert, translator or fact finder appointed by an administrative or judicial authority or selected by the parties, shall be punished by temporary imprisonment.”

This amendment has caused apprehension amongst practitioners in the region and led to some arbitrators no longer accepting appointments in the UAE for fear of being prosecuted. There has been much recent discussion in the market about a review of this legislation and during a presentation about the New DIAC Rules at Arbitration Week last month, DIAC specifically highlighted Article 47 of the New DIAC Rules which provides an express exclusion of liability for tribunal members (or any person appointed by it), DIAC and the Executive Committee.

## **Legal fees and third party funding**

Under the Current DIAC Rules the fees of lawyers and experts are considered to be irrecoverable costs on the basis of the Dubai Court of Cassation's judgment in Case No. 282/2012 where the Court found against the recoverability of such fees in DIAC arbitrations, absent an express agreement by the parties.

The New DIAC Rules have now clarified this issue; Article 53 makes it clear that such fees will be recoverable. In

addition, the tribunal has been expressly granted the power to take into account any third party funding arrangements when apportioning the costs of the arbitration.

## Consolidation of multiple contracts

The Current DIAC Rules do not contain any provision for the consolidation of multiple disputes under multiple contracts and make very limited provisions for the appointment of a tribunal in a multi-party context. Under the New DIAC Rules, claims arising out of or in connection with more than one contract can be made in a single arbitration provided that certain conditions are met. These are set out in the new Article 8 and state:

- all parties consent to consolidation,
- all claims are made under the same arbitration agreement, or
- the arbitration agreements are compatible, and:
  - the disputes arise out of the same legal relationship(s)
  - the contracts consist of a principal contract and its ancillary contract(s), or
  - the disputes arise out of the same transaction or series of related transactions.

This change to the rules will be welcomed by practitioners in the region as it will allow a smoother arbitral process, reduce the need for multiple parallel proceedings to take place and thereby reduce the costs involved.

## Expedited procedure

Under the New DIAC Rules a party will be able to request that proceedings be dealt with on an expedited basis where:

- the amount in dispute is less than AED \$2m
- the parties expressly agree
- the case is one of exceptional circumstances, or
- if it is considered appropriate by the Executive Committee.

Such expedited proceedings would be decided by a sole arbitrator on the basis of a documents only process and with the final award being issued within three months of the transfer of the file.

This differs from the Current DIAC Rules which do not set any guidelines as to when a party can apply for expedited proceedings to take place. This guidance helps to clarify when DIAC are likely to consider allowing proceedings on an expedited basis, which should bring certainty to local practitioners, although there is no guidance as yet as to what constitutes "exceptional circumstances".

## Conclusion

The changes in the New DIAC Rules appear to be heading in the right direction and show clear thought and progression from the DIAC Executive Committee and Board of Trustees and are an important further step in securing Dubai's reputation as the leading regional hub for commercial arbitration. These changes will no doubt be welcomed by the international arbitration community and, along with the much discussed amendment to the Penal Code and the imminent launch of the new UAE arbitration law, will help to re-establish Dubai's status as a "go-to" seat for arbitral proceedings.

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