

Dubai Enacts Sweeping Decree Reforming and Modernizing the Framework for Arbitration in the Emirate

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On 14 September 2021, the Government of Dubai issued Decree No. 34 of 2021 regarding the Dubai International Arbitration Centre (“DIAC”) with an accompanying Statute of the DIAC (respectively the “Decree” and the “Statute”). The Decree, which entered into force on 20 September 2021, overhauls the framework for arbitration in the Emirate and endeavors to position Dubai as a leading hub for international arbitration.

In particular, the Decree and its accompanying Statute bring about two primary changes. First, the Decree centralizes the conduct of all arbitration proceedings occurring in Dubai by creating a one-stop shop for arbitration: the DIAC. Second, the Decree abolishes, with immediate effect, the Emirates Maritime Arbitration Centre (“EMAC”) as well as the Arbitration Institution of the Dubai International Financial Centre (“DIFC”) – which, in 2008, together with the London Court of International Arbitration (“LCIA”), established the DIFC-LCIA arbitration center.

While the Government of Dubai is hopeful that this new Decree will bring about positive changes regarding the conduct of arbitrations in Dubai, it remains to be seen how proceedings conducted under the former regime will now be managed in order to avoid minimal disruptions for ongoing disputes.

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Background

The Decree entered into force on 20 September 2021 following its publication in the Dubai Official Gazette together with its accompanying Statute.¹

Among its most notable provisions, Article 4 of the Decree provides that “*the following centres are abolished: (1) the Emirates Maritime Arbitration Centre [...]; and (2) the Dubai International Financial Centre Arbitration Institution [...]*”² (collectively referred to as the “**Abolished Centres**”). As a consequence, the totality of the Abolished Centres’ assets – including any real property, movables, assets, equipment, employees as well as financial appropriations and lists of arbitrators, conciliators and experts registered with the Abolished Centres – “*will be transferred to the DIAC.*”³

In addition, the Decree provides that the DIAC’s headquarters shall be in the Emirate of Dubai, with the concurrent establishment of a branch within the DIFC.⁴

For the first time, the Decree has established the autonomous status of the DIAC as a non-governmental and non-profit institution.⁵ The DIAC was originally established by the Dubai Chamber of Commerce and Industry as the

Centre for Commercial Conciliation and Arbitration.⁶ With the new regime, however, the DIAC has a distinct legal personality and enjoys both financial and administrative independence.⁷

Pursuant to Article 9 of the Decree, the DIAC must comply with the provisions of the Decree and the Statute “*within no later than six (6) months from*” the date of its entry into force.⁸ During this six-month transitional period, operations of the Abolished Centres are expected to fully merge with a yet to be reformed DIAC. This transition will undoubtedly necessitate provisional arrangements that are yet to be clarified.

Overall, the new Decree and Statute introduce major and fundamental amendments to the arbitration framework in the Emirate of Dubai. As Article 2 of the Statute stipulates, their main objective is to promote the Emirate of Dubai as a reliable international hub for arbitration.⁹

A New Streamlined Role For The DIAC And Introduction Of The DIAC Arbitration Court

According to the reformed rules, the DIAC is expected to substitute the EMAC and the DIFC Arbitration Centre in “*all [their] rights and obligations,*”¹⁰ and replace them as the unique institution administering arbitrations under their rules.¹¹

¹ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 10.

² Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 4.

³ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 5(a).

⁴ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 2.

⁵ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 1.

⁶ Dubai International Financial Centre, *About us*, available at: <http://www.diac.ae/idias/aboutus/>.

⁷ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 1.

⁸ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 9.

⁹ Statute of the Dubai International Arbitration Centre, Art. 2 (“The DIAC aims to achieve the following objectives: (1) to consolidate the position of the Emirate as a reliable international centre for Dispute resolution through ADR Methods; (2) to enhance the position of the DIAC as one of the best options available to parties to Disputes for efficient and effective Dispute resolution, through adoption the international best practices in ADR Methods management; and (3) to promote recourse to ADR Methods with a view to serving the best interest of the finance and business community in the Emirate.”)

¹⁰ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 5(b).

¹¹ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 5.

Pursuant to Article 5 of the Statute, the DIAC shall be composed of three main bodies: (1) a Board of Directors; (2) a Court of Arbitration; and (3) an Administrative Body.

(1) The Board of Directors (“**BoD**”) will be comprised of a chair, a vice-chair and nine (9) members to be appointed by Dubai’s Government¹² for an initial four-year renewable term.¹³ The BoD will conduct meetings on a quarterly basis.¹⁴ The Statute entrusts the BoD with extensive powers including approval of the DIAC’s rules and procedures, governance and financial management, and establishment of rules for third party funders.¹⁵

(2) The DIAC Court of Arbitration will be comprised of a president, vice-president and thirteen (13) members nominated for a four-year non-renewable period. The Court is expected to hold meetings every 60 days¹⁶ and is tasked with the general supervision of the alternative dispute resolution procedures provided by the DIAC.¹⁷ In this regard, the Court’s role is similar to the LCIA Court and ICC Court.¹⁸

Most notably, consistent with international best practices as developed by the ICC in Paris, the DIAC Court of Arbitration’s mandate is extended

to award scrutiny¹⁹ in order to safeguard the quality and enforceability of awards before they are issued. However, the Court is allowed to review the award solely “*in terms of form*”,²⁰ in contrast, for example, to the ICC Court which might also draw the arbitral tribunal’s attention “*to points of substance*”.²¹

Furthermore, the Court’s duties include the administration of arbitration proceedings, appointment of arbitrators and conciliators, consideration of arbitrator challenges, supervision of emergency arbitrations, fixing of costs and fees, proposal of revisions to the DIAC Rules of Arbitration as well as the introduction of a code of ethics governing the conduct of DIAC arbitrators.²² Following a decision of the BoD, sub-committees may be formed among the Court Members to assist the Court in the performance of its duties.²³

(3) The Administrative Body will be led by an executive director,²⁴ and is principally tasked with case management and management of DIAC funds.²⁵ The administrative body itself will provide administrative support to the court and

¹² Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 6(a).

¹³ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 7(a).

¹⁴ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 9(a).

¹⁵ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 8.

¹⁶ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 10(a).

¹⁷ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 11.

¹⁸ London Court of International Arbitration, LCIA Arbitration Rules of 2021, Art. 3; International Chamber of Commerce, 2021 Arbitration Rules of Jan. 1, 2021, Art. 1.

¹⁹ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 11(8).

²⁰ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 11(7).

²¹ International Chamber of Commerce, 2021 Arbitration Rules of Jan. 1, 2021, Art. 34.

²² Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 11(1) – (7).

²³ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 13.

²⁴ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 15.

²⁵ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 15.

arbitral tribunals, including with the maintenance of arbitration case files.²⁶

Removing Uncertainty Regarding The Seat Of The Arbitration And The Relevant Supervisory Court

Article 4(a) of the Statute provides for the mechanism by which the seat of the arbitration is determined, which, in turn, triggers the competence of the supervisory court. This provision resolves the everlasting issue of supervisory jurisdiction in Dubai. Historically, there has been tension as to which of the local onshore Dubai court or offshore DIFC court is considered the competent supervisory court in arbitrations seated in the Emirate of Dubai, including in cases of annulment and/or enforcement.²⁷ Users of arbitration in Dubai have likewise sought recourse in the DIFC courts for enforcement of arbitration awards in circumstances where the assets of the debtor were not actually located in the DIFC.²⁸

Article 4 of the Statute clarifies that the party choice of the Emirate as the seat of arbitration will trigger the application of Federal Law No. 6-2018, and empower Dubai courts to “*consider any claim, application, or appeal relating to any award issued or arbitration measure taken by the DIAC arbitration tribunals*” as supervisory courts. In contrast, the choice of DIFC as the arbitration seat will trigger the application of the DIFC Arbitral Law 1-2008 and the competence of the DIFC Courts. Hence, designating the

DIFC as the default seat resolves the aforementioned tension.

Upcoming New DIAC Arbitration Rules

As previously explained, with the adoption of the Decree, the new DIAC is expected to come into compliance with this reformed system within six months from the date of entry into force of the Decree by issuing a revised set of DIAC Rules of Arbitration reflecting the role and operational changes of the new DIAC.²⁹ Until the adoption of this set of rules, the current DIAC Rules and the rules of the Abolished Centres “*will continue in force to the extent that they do not contradict the provisions of this Decree and the Statute attached hereto, until the new DIAC rules of arbitration and conciliation are approved by the Board of Directors of the DIAC.*”³⁰ In this regard, the Decree is somewhat contradictory. On the one hand, the Decree abolishes the EMAC and the DIFC. On the other, it preserves – though temporarily – the rules of said Abolished Centers. It is therefore unclear, at this stage, how this contradiction will come into play in practice and what concrete consequences it will have on the DIAC’s management of disputes.

The Statute sets out a flexible method for the adoption of the new DIAC Rules: the Court is authorized to propose a set of rules, and the BoD should approve the Court’s proposal provided that the rules are set in accordance with best international practices and take into account the

²⁶ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 15(6).

²⁷ See, e.g., Petition No. 2 of 2015, ruling of the UAE Federal Supreme Court of 23rd December 2015 and Commercial Case No. 1619/2016, ruling of the Dubai Court of First Instance of 15 February 2017, cited in Gordon Blanke, *Dubai courts v DIFC courts: just a jurisdictional stand-off or an outright declaration of war?*, Practical Law Arbitration Blog, 12 June 2017.

²⁸ See, e.g. *Daman Real Capital Partners Co LLC v Oger Dubai LLC* (Cassation No. 1/2016 (JT)) cited in Henry Quinlan and Sam Stevens, *Dubai Judicial Committee hands down its first decision on conflict of jurisdiction between DIFC and Onshore Dubai courts*, UK Practical Law, 10 February 2017.

²⁹ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 9.

³⁰ Decree No. (34) of 20 September 2021, Dubai Government’s Official Gazette, Art. 8(c).

cultural and legal diversity of the relevant parties.³¹

Other Relevant Provisions Of The Decree And The Statute

The Statute emphasizes the importance of privacy, confidentiality and arbitrators' independence and impartiality in discharging their duties.³²

In a welcome change from the current regime,³³ the Decree and the Statute stipulate that the DIAC will be accountable for civil liability arising from inadvertent mistakes committed by "*the Chairman, any member of the Board, the Court, the sub-committees, the arbitral tribunals, the executive director or any employee of the administrative body of DIAC, when performing their duties at DIAC*".³⁴ This provides reassurance that potential challenges raised by parties in DIAC arbitrations will be addressed by the DIAC.

Uncertainty Regarding Ongoing Disputes Administered Under The DIFC-LCIA Rules

While Dubai's swift introduction of a reformed system regulating the conduct of arbitrations in the Emirate will hopefully result in a more effective system which provides a more streamlined and centralized dispute resolution regime, it remains to be seen whether ongoing

disputes administered under the old institutions will continue undisturbed.

Pursuant to Article 6(a) of the Decree, "[a]ll agreements to resort to arbitration at the Abolished Arbitration Centres, concluded by the effective date of [the] Decree, are [...] deemed valid."³⁵ While still deemed valid under the Decree, arbitration agreements referring to dispute resolution under the aegis of the Abolished Centers will now *de facto* be administered by the DIAC, unless the parties agree otherwise.³⁶

On 7 October 2021, the DIFC issued a Press Release confirming that existing cases will continue to be administered by the DIFC-LCIA casework team and the LCIA.³⁷ Yet, the LCIA in its statement of the same date communicated that "*all arbitrations, mediations and other ADR proceedings arising out of agreements referencing the DIFC-LCIA referred for resolution after the date of the enactment of the Decree will be administered by DIAC in accordance with the DIAC Rules, unless the parties thereto agree otherwise.*"³⁸ In this regard, as the DIFC Press Release stipulates, from the date of the Decree's enactment, parties to contracts should not include arbitration agreements providing for the arbitrations administered by the DIFC-LCIA.³⁹

³¹ Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government's Official Gazette, Art. 8(a)(2).

³² Statute of the Dubai International Centre, Decree No. (34) of 20 September 2021, Dubai Government's Official Gazette, Arts. 14, 16(10), 22.

³³ According to the current regime, the Centre is solely liable for the arbitrators' acts and omissions even if they were a result of inadvertent mistakes. See Decree No. (17) of 2019, Dubai Government's Official Gazette, Art. 24.

³⁴ Decree No. (34) of 20 September 2021, Dubai Government's Official Gazette, Art. 23(b).

³⁵ Decree No. (34) of 20 September 2021, Dubai Government's Official Gazette, Art. 6(a).

³⁶ Decree No. (34) of 20 September 2021, Dubai Government's Official Gazette, Art. 6(a).

³⁷ Dubai International Financial Centre, *Dubai's Position as a Global Hub for Alternative Dispute Resolution Reconfirmed through Unifying Arbitration Centres*, Oct. 7, 2021, available at <https://www.difc.ae/newsroom/news/dubais-position-global-hub-alternative-dispute-resolution-reconfirmed-through-unifying-arbitration-centres/>.

³⁸ London Court of International Arbitration, *Update: DIFC-LCIA*, Oct. 7, 2021, available at <https://www.lcia.org/News/update-difc-lcia.aspx>.

³⁹ Dubai International Financial Centre, *Dubai's Position as a Global Hub for Alternative Dispute Resolution Reconfirmed through Unifying Arbitration Centres*, Oct. 7, 2021, available at

It is therefore likely that disputes arising under such agreements will undergo a change of circumstances and parties should be mindful, to the extent possible, to envisage a mutual renegotiation of their arbitration agreement before a dispute arises, in the event that they do not wish to have their disputes administered by the DIAC.

The current state of confusion could likely have been avoided had the Decree entered into force only upon the maturation of the new DIAC Rules. The Emirate's efforts to promote arbitration could indeed prompt parties to amend their existing agreements, shying away from Dubai, in order to avoid any uncertainty. For now, and in order to avoid further unpredictability, the DIAC could gain from accelerating its adoption of a new set of rules that would introduce clarity and ensure its compliance with the Decree and the Statute. Indeed, ensuring clarity and transparency in the process of transitioning to this new regime would reduce the risk of having arbitration users amending their existing agreements in favor of other, perhaps more established, arbitral institutions.

Conclusion

The Decree and accompanying Statute constitute an important development with regard to the future of arbitration in Dubai. While transitional arrangements remain to be clarified in order to ensure a smooth adaptation to the new reformed system that minimizes unwarranted disruptions of ongoing disputes, the re-launch of the DIAC endeavors to position the Emirate of Dubai as a leading global arbitration center, an ambition that is reflected in the text of the Decree itself.

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<https://www.difc.ae/newsroom/news/dubais-position-global-hub-alternative-dispute-resolution-reconfirmed-through-unifying-arbitration-centres/>.