

## Dubai

### **A warning for contracts specifying arbitration under the DIFC-LCIA Rules**

On 20 September 2021, Decree 34 of 2021 was enacted in Dubai, which abolished the DIFC-LCIA Arbitration Centre's administering body, the DIFC Arbitration Institute ("DAI"), and in effect made the DIFC-LCIA arbitral body redundant ("the Decree"). The Decree sought to consolidate Dubai's arbitration offering into a single institution – a new Dubai International Arbitration Centre ("DIAC"). Accordingly, all DIFC-LCIA arbitrations, which have not yet commenced, or are commenced after 21 March 2022 are now to be administered by DIAC and conducted in accordance with the DIAC Rules, unless parties agree otherwise.

The Decree was followed, on 2 March 2022, by the new DIAC Rules 2022, which more closely align with the rules of other international arbitration institutes, such as the ICC and LCIA. The new DIAC Rules represent a modernisation of the arbitration environment of Dubai. They seek to strengthen Dubai's position as a global hub for commercial arbitration by increasing the efficiency and flexibility of arbitration proceedings conducted under the DIAC Rules. At the heart of the modernisation of DIAC Rules lies Dubai's vision for DIAC to be one of the world's top five arbitration centres in the next three years:

"Our priority in the coming years is to strengthen the DIAC's position as a leading centre for settling disputes locally, regionally, and globally, by enhancing arbitration practices and standards, which will, in turn, improve the ease of doing business in Dubai".

A particular feature of the new DIAC Rules is that they have largely settled a previously fractious issue of jurisdiction in Dubai. DIAC arbitrations now have the DIFC (Dubai International Financial Centre, an 'off-shore' freezone located in Dubai) as their default juridical seat. This has a considerable number of advantages. The DIFC Courts are generally seen as pro-enforcement, with procedures based on English common law principles and are conducted in English.

Despite the Decree having been issued two years ago, it continues to impact parties' contracts and disputes. Many commercial parties remain unaware of the Decree and its effects, including the substitution of the DIFC-LCIA and its rules for the DIAC and the DIAC Rules.

This is potentially problematic. First, the parties had not intended to have their disputes arbitrated under the DIAC Rules, let alone to have their arbitrations administered by DIAC.

Second, and more importantly, whilst the Decree appears to be relatively settled and accepted domestically, its effect in terms of amending the parties' arbitration clauses has yet to be fully tested internationally, for instance in foreign enforcement proceedings.

Arbitration is a creature of contract, built upon the parties' consensus and agreed-upon procedures. Where a contract provides for arbitration under the DIFC-LCIA Rules, but it is subsequently conducted under the new DIAC Rules, it is not beyond the realms of possibility that an award debtor may seek to challenge enforcement on the basis that the proceedings did not comply with the parties' agreement. Even if such a challenge is unsuccessful, it is at least likely to increase time and costs prior to obtaining final enforcement of the award.

As with any risk, it is better for parties to account for this in their contracts, rather than leave any residual uncertainty that could be exploited by an award debtor.

To the extent this has not been already undertaken, businesses should carry out an audit of their existing contracts and take stock of their arbitration agreements. If the latter designate the DIFC-LCIA as arbitral institution, they should be amended expressly as to provide for another specific institution which the parties wish to designate as a replacement.

Such amendment should take place as soon as practicable (ideally, before any dispute arises and while the parties are cooperative in the pursuit of their business relationship).

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