



## Introduction

The Dubai International Arbitration Centre (“DIAC”) has issued the new [DIAC Arbitration Rules 2022](#) (the “2022 Rules”). The 2022 Rules were approved by the DIAC Board of Directors and took effect from 21 March 2022. The aim of the new rules is to cement DIAC’s position as the *“pre-eminent arbitral institution for disputes in the Middle East.”*<sup>1</sup>

The 2022 Rules represent a significant advancement on Dubai’s previous default “onshore” arbitral regime as governed by [DIAC’s Arbitration Rules 2007](#) (the “2007 Rules”). Arguably, the 2007 Rules were outdated and failed to align with leading arbitral institutions such as the International Chamber of Commerce (the “ICC”) and the London Court of International Arbitration (the “LCIA”). In addition, the previous rules did not incorporate the necessary changes arising from the COVID-19 pandemic or other notable geopolitical and macroeconomic events. Accordingly, the updates to the rules are largely predicated on the ICC’s and LCIA’s arbitral regimes, thereby replicating global market practice and incorporating the key developments within international arbitration. That said, it remains uncertain how effective the rules will be in practice, and such rules now override those of the other arbitral institutions which previously existed in Dubai.

In this Arbitration Update, Orrick’s International Arbitration team describes the key developments in Dubai’s arbitral regime. The updates in the 2022 Rules, as discussed below, emanate from the implementation of [Decree No. 34 of 2021](#) (the “Decree”) and primarily relate to default provisions, multi-party disputes, alternative arbitrator appointment procedures, digitisation and costs.

## Decree No. 34 of 2021

### Introduction

On 14 September 2021, prior to the implementation of the 2022 Rules, Dubai issued the Decree.

Although there was little warning of the Decree, its arrival was unsurprising, given the outdated nature of the previous arbitral regime. The Decree established a unified ‘one-stop shop’ for arbitration in Dubai, effectively abolishing the previous arbitral regimes and amalgamating them into the DIAC. The previous regimes were comprised of the Emirates Maritime Arbitration Centre,<sup>2</sup> and the Dubai International Finance Centre (commonly known as the DIFC-LCIA) – including its joint venture with the LCIA: the DIFC-LCIA Arbitration Centre.

1. The 2022 Rules.

2. The trouble with this relatively new arbitral institution was its sheer lack of any cases.



The 2022 Rules govern all new requests for arbitration submitted to DIAC from 21 March 2022, although the LCIA will continue to administer cases commenced and registered by DIFC-LCIA under a designated case number on or before 20 March 2022. Other disputes referring to DIFC-LCIA, commenced on or after 21 March 2022 (or commenced before 21 March 2022 but not registered under a designated case number), shall be registered and administered by DIAC, unless otherwise agreed by the parties. Notably, clarification is still therefore required as to the conduct of ongoing disputes previously subject to Dubai's other now-defunct arbitral regime(s).

### The Arbitration Court

The Decree also established the Arbitration Court to replace the pre-existing Executive Committee. The Arbitration Court is an administrative committee comprised of up to 13 members which supervises all cases administered by DIAC.<sup>3</sup> Amongst other functions, the Arbitration Court has the duties and powers to:

- propose arbitration and consolidation rules and procedures, and the bylaws regulating alternative dispute resolution methods;
- assist parties with applications prior to the constitution of the tribunal;
- appoint arbitral tribunals; and
- settle and administer the financial arrangements of an arbitration.<sup>4</sup>

The current members of the Arbitration Court are Dr. Ahmed Bin Hazeem Al Suwaidi (President), Ahmed Mohamed Al Rasheed, Jehad Abdulrazzaq Kazim, Graham Lovett, H.E. Justice Shamlan Al Sawalehi, Mohammad Rashid Al Suwaidi, Dr. Mansoor Al Osaimi, Dr. Yousef Al Suwaidi and Gemma Nemer.<sup>5</sup> For an arbitral institution with an international aspiration, it may seem surprising that, unlike the previous Executive Committee, the Arbitration Court's members are all local practitioners.

### Practitioners' views in relation to the Decree

The Decree has received a mixed reception from arbitration practitioners.<sup>6</sup> Some have raised concerns over the way in which it came into force, emphasising there was no consultation process with the arbitration community. In addition, reservations have been expressed as to how the Decree will impact ongoing arbitrations and challenges in relation to arbitral costs.

Other such practitioners regard the Decree – as supplemented by DIAC's improved arbitral rules – as a necessary change. They further argue, in the long term, the unification of Dubai's various arbitral regimes under the umbrella of DIAC will improve the seat's overall attractiveness.

Notwithstanding, practitioners alike are wary of the Decree's impact in the short to medium term, particularly in relation to the transparency and stability of Dubai's arbitral regime. Nevertheless, a cautious optimism is rippling throughout the arbitration community.

3. The Decree, Article 10.

4. The Decree, Article 11.

5. <http://www.diac.ae/idias/aboutus/Court%20of%20Arbitration/>.

6. Kluwer Arbitration Blog: <http://arbitrationblog.kluwerarbitration.com/2022/05/09/lidw-2022-london-as-an-international-disputes-hub-for-dubai-uae-and-region-disputes-is-it-still-safe-to-arbitrate-in-dubai-and-other-hot-topics/>.



## The 2022 Rules: Key Developments

### Default arbitral seat

Under the 2007 Rules, “onshore” Dubai was the default seat of relevant arbitrations (i.e., the seat of arbitration would be in the UAE and subject to Dubai’s law and the federal laws of the UAE) when the parties had not expressly selected a seat. Conversely, the 2022 Rules anticipate a selection of DIFC (a free zone within Dubai with laws not dissimilar to those of England) as the default seat of arbitration.<sup>7</sup> As a result, the arbitration agreements and the arbitrations will be governed by [DIFC Arbitration Law](#) and DIFC Courts will have supervisory jurisdiction. Parties will therefore benefit from an English language common law court.

Notwithstanding, the tribunal, once constituted, shall have the power to finally determine the seat of arbitration, having due regard to any observations from the parties and any other relevant circumstances. Parties may – in theory – find themselves in a situation where the tribunal acts in contravention to the parties’ intentions with regard to the seat of the arbitration. However, the way in which tribunals will apply this power in practice remains to be seen.

### Consolidation

Under the 2007 Rules, multiple claims derived from separate but related contracts could only be pursued independently. The 2022 Rules, however, expressly permit multiple claims to be consolidated into a single arbitration.<sup>8</sup>

Consolidation may be effected by: (a) the claimant submitting a single request for arbitration in respect of multiple claims arising from multiple agreements, or

(b) any party submitting an application to consolidate multiple arbitrations. Consolidation is only permissible where:

- (i) the claims are made pursuant to the same arbitration agreement; or
- (ii) the arbitrations involve the same parties, compatible arbitration agreements, and:
  - a. the disputes arise out of the same legal relationship(s); or
  - b. the underlying contracts consist of a principal contract and its ancillary contract(s); or
  - c. the claims arise out the same transaction or series of transactions.

Notably, parties may opt out of the consolidation provisions in the relevant arbitration agreement.

### Joinder

Unlike the 2007 Rules, the 2022 Rules stipulate the tribunal or Arbitration Court may permit third parties to join an arbitration when requested by a party to the arbitration or non-party on application.<sup>9</sup> An application for joinder may only be permitted where (a) all the parties consent in writing, or (b) the tribunal or Arbitration Court are *prima facie* satisfied the joining party is a party to the arbitration agreement from which the dispute is derived.

Joinder is a useful tool for a respondent to introduce another party they allege to be liable in a dispute. In addition, it prevents the need for multiple arbitrations relating to the same or similar matters, thereby enhancing time and cost efficiencies. This is a useful addition, as there was no joinder provision in the 2007 Rules.

7. The 2022 Rules, Article 20.

8. The 2022 Rules, Article 8.

9. The 2022 Rules, Article 9.



## “Exceptional Procedures”: Emergency Arbitrator

In contrast to the 2007 Rules, the 2022 Rules provide a mechanism for appointing an emergency arbitrator. DIAC will aim to appoint an emergency arbitrator within one day of receiving an application, provided it is *prima facie* satisfied such proceedings are reasonable in light of the relevant circumstances.<sup>10</sup> A timetable to determine the emergency relief sought will then be established within two days of transmission of the file to the appointed emergency arbitrator.

Again, parties may opt out of the emergency arbitrator provisions in the relevant arbitration agreement.

## Expedited proceedings

In line with other major arbitral rules, the 2022 Rules introduced a provision to allow either party to apply for expedited proceedings.<sup>11</sup> Such application must be made by the deadline for, or submission of, the Answer. Expedited proceedings shall take place where:

- (i) the total value of the sum(s) claimed and counterclaimed is no more than AED 1,000,000 (approximately USD 275,000) exclusive of legal costs and interest (unless the parties agree otherwise in writing); or
- (ii) the parties agree in writing; or
- (iii) the case is one of exceptional urgency as determined by the Arbitration Court upon an application by a party.

Upon a successful application for expedited proceedings, the Arbitration Court will appoint a sole arbitrator within five days of its decision. The tribunal will then have three months upon receiving the transmission of the file to issue the final award, however, the Arbitration Court may grant an extension under exceptional circumstances. Again, notably, there was no expedited procedure in the 2007 Rules.

## Time limit for issuing the final award

Subject to the provisions of the 2022 Rules, the tribunal must issue the final award within six months from the date of the transmission of the file to them.<sup>12</sup> However, at any time during the arbitration, the time limit for issuing the final award may be extended by the written agreement of all parties. In addition, an extension may be granted by the Arbitration Court, upon a reasoned request from the tribunal or of its own volition, if it determines an extension is necessary for the tribunal to comply with its responsibilities under the 2022 Rules.

Conversely, under the 2007 Rules, the tribunal had a sole discretion to extend the time limit for issuing an award from six to twelve months from transmission of the file. In addition, the Executive Committee had a discretion to further extend the deadline.

## Electronic signature of the award

Subject to the procedural law applicable to the seat of arbitration and consultation with the parties, the 2022 Rules permit the tribunal to sign an award via electronic means.<sup>13</sup> Although DIAC’s approach to

10. The 2022 Rules, Appendix II Article 2.  
11. The 2022 Rules, Article 32.  
12. The 2022 Rules, Article 35.  
13. The 2022 Rules, Article 20.3.



electronic signatures accords with the [LCIA Arbitration Rules 2020](#) (the "LCIA Rules"),<sup>14</sup> it may give rise to uncertainty and potential enforceability issues of an award. For example, the [New York Convention](#) (the "NYC"), specifies that a party applying for the recognition and enforcement of an arbitral award must supply the court with the "*duly authenticated original award or a duly certified copy thereof*"<sup>15</sup> — 'authentication' is the formality by which the applied signature is attested to be genuine.<sup>16</sup> Moreover, the NYC does not provide express provision regarding awards executed by electronic means. Consequently, there may be circumstances where a party finds it challenging (and potentially impossible) to duly authenticate an original arbitral award executed electronically or provide a certified copy, thereby preventing the recognition and enforcement of such an award via the NYC.

That said, the 2022 Rules state electronic signing software must provide for the "*digital verification of the signatory's identity and their intent to sign the document*", and when coupled with the pro-enforcement bias of the NYC, it seems likely that in practice e-signatures will be accepted by foreign courts applying the NYC. In certain jurisdictions, awards executed electronically will carry the same credence as those executed with wet ink.

### Decisions of the Arbitration Court

Pursuant to the 2022 Rules, the reasoning behind the Arbitration Court's decisions shall not be communicated to the parties, save for those decisions that pertain to an arbitrator's continued appointment.<sup>17</sup>

By comparison, the ICC elected to adopt a more transparent approach from 8 October 2015 following criticism of a lack of transparency and a growing demand from parties. Following 8 October 2015, under the [ICC Arbitration Rules 2021](#) (the "ICC Rules") and upon receiving an application from any party, the ICC's International Court of Arbitration may elect to communicate the reasons behind its decisions to:

- determine whether and to what extent an arbitration shall proceed;
- consolidate arbitrations;
- constitute a tribunal;
- challenge the impartiality or independence of a tribunal member; and
- replace an arbitrator where it has determined that arbitrator is not fulfilling their functions.

The ICC's move towards greater transparency was prompted by growing criticism from parties and practitioners. It is likely that DIAC's Arbitration Court will face similar criticism advocating towards greater transparency, therefore this may be an area of development and further modernisation for parties to watch.

### Digital communications

Under the 2022 Rules, a hearing may be conducted virtually and the default method for communication between parties is email or an alternative electronic case management system.<sup>18</sup> Such innovations are increasingly necessary for international disputes following the COVID-19 pandemic and represent a real departure from prior practice in the UAE which

14. The LCIA Rules, Article 26.2.

15. The NYC, Article IV(1)(a).

16. <https://www.newyorkconvention.org/publications/nyac+i>.

17. The 2022 Rules, Article 40.2.

18. The 2022 Rules, Article 3.



placed a premium on in person hearings and certified copies of minutes of the hearing and other such documents.

### Alternative appointment process

Where the parties have not provided a mechanism for the appointment of a sole arbitrator and fail to agree upon said arbitrator, they may elect to use the alternative appointment procedure in Article 13 of the 2022 Rules. In such cases, DIAC will provide the parties with a list of three candidates, which they will then rank in numerical order. Prior to the ranking process, each party may submit a further three candidates for the parties' consideration. A chairperson may be appointed by using a similar mechanism *mutatis mutandis*.

### Costs of the arbitration

The procedural costs of conducting the arbitration have not changed with the introduction of the 2022 Rules.<sup>19</sup> The registration fees, the tribunal's fees and administrative fees of the centre of arbitration are determined by the 'Table of Fees and Costs' by reference to the total of the sum(s) claimed and/or counterclaimed.

In addition, DIAC may, at any time during the arbitration, fix the arbitrator fees at a level higher or lower than that anticipated by the application of the Table of Fees and Costs. Although DIAC's arbitrator fees are typically much less than the ICC's arbitrator fees, it will be interesting to see how DIAC will set the fees in due course.

### Third-party funding

The 2022 Rules generally permit third-party funding akin to the ICC Rules.<sup>20</sup>

The party being funded must promptly disclose to all parties (i) that it is being funded, (ii) the identity of the funder and (iii) whether that funder has committed to cover an adverse costs order. The timing for the funding is of particular importance because Article 22.2 provides that a third-party funding arrangement may not be permitted after the tribunal is constituted where such arrangement would create a conflict of interest between a tribunal member and the funder.

A third-party funder's adverse costs may be considered by the tribunal when apportioning the arbitration costs. The 2007 Rules did not contain express provision regarding third-party funding.

### Legal costs

The 2007 Rules did not contain express provisions for the apportionment of the parties' legal costs and, therefore, there was inherent uncertainty as to their recoverability (not least under the prior arbitration law). In the absence of express agreement, the 2007 Rules limited cost orders to the tribunal's and DIAC's expenses. Consequently, successful parties were prevented from recouping their own costs (e.g., those associated with legal representatives, experts and other participants). The 2022 Rules, however, expressly provide the tribunal with a discretion to order a party to pay the other parties' costs, including fees of legal representatives, party-appointed experts and other costs arising from the arbitration.<sup>21</sup>

19. The 2022 Rules, Appendix I.

20. The 2022 Rules, Article 22.

21. The 2022 Rules, Article 36.



The legal costs provisions will be a welcome addition to parties contemplating arbitration in Dubai, as such costs can be significant. In addition, the recoverability of legal costs has become a standard feature of international arbitrations (at least outside of the United States).

### Conclusion

The 2022 Rules include key developments in line with international market practice, illustrating DIAC's commitment to the fair, efficient and expeditious conduct of arbitrations. The decision to make DIFC the default seat, in the absence of the parties' express choice, is also an important step towards certainty and ensuring that DIAC arbitrations function in line with international expectations and will ultimately be supervised by a body of judges with expertise in the relevant area.

Furthermore, the updated rules represent a crucial step in modernising the existing arbitral regime and go a long way to support DIAC's aspiration to be the pre-eminent arbitral institution for disputes in the Middle East. Time will tell whether DIAC's sphere of influence will extend to challenge the ICC and LCIA on the international stage, but the 2022 Rules are certainly a step forward and a welcome development for Dubai seated arbitrations. Whether the innovations will be enough to overcome the uncertainty caused by overriding the parties' past agreements under DIFC-LCIA arbitrations and the lack of public consultation and warning as to such changes remains to be seen.

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