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DIFC-LCIA Abolished

DIAC is the Designated Replacement

On 14 September 2021, Dubai's Ruler Sheikh Mohammed bin Rashid Al Maktoum issued Decree No. 34 of 2021 (the "**Decree**"). The Decree, which took effect on 20 September 2021 and has taken many commentators by surprise, abolishes the Dubai International Financial Centre – London Court of International Arbitration (the "**DIFC-LCIA**"). In its place, cases will now be administered by the Dubai International Arbitration Centre ("**DIAC**"), which is now likely to open offices in the Dubai International Financial Centre (the "**DIFC**").

DIAC

DIAC was established in 1994 by the Dubai Chamber of Commerce and Industry as a Centre for Commercial Conciliation and Arbitration. Its headquarters are located in Dubai, close to Dubai Creek. Over the years, DIAC has developed a pool of experienced arbitrators from different nationalities and legal backgrounds. DIAC arbitrations are conducted pursuant to the DIAC Arbitration Rules 2007 (the "**DIAC Rules**").

DIFC-LCIA

The DIFC-LCIA was a joint venture between the DIFC and the London Court of International Arbitration (the "**LCIA**"), commenced in 2008, which in effect combined LCIA arbitration with a DIFC seat. DIFC-LCIA arbitrations operated under the centre's own rules, most recently updated on 1 January 2021 (the "**DIFC-LCIA Rules**").

THE IMPORTANCE OF THE ARBITRAL SEAT

In practice, generally DIAC arbitrations were seated in onshore Dubai and DIFC-LCIA arbitrations were seated in the DIFC. The distinction was critical, because it meant that DIAC arbitrations and awards were subject to the supervision of the onshore Dubai courts, operating in Arabic and applying UAE civil law, whereas DIFC-LCIA arbitrations and awards were supervised by the DIFC courts, operating in English and applying DIFC statutory and common law.



In recent years, however, reforms were made to the arbitration laws and rules in the UAE. In 2018, the UAE enacted a new Federal arbitration law based on the UNCITRAL Model Law, similar to the arbitration law already enacted in the DIFC in 2008 (also based on the UNCITRAL Model Law). The Decree is seen by many as further modernisation of Dubai’s arbitration offering. As a result of the new Decree, arbitrations in Dubai will be under DIAC, with the option of either an onshore Dubai or DIFC seat (with the latter being the default if the parties do not designate a seat).

PRACTICAL CONSIDERATIONS

The most important point for parties and practitioners going forward is to stop including DIFC-LCIA arbitration in dispute resolution clauses. It may also be advisable temporarily to avoid drafting arbitration clauses under the DIAC Rules with a DIFC seat, since the Decree provides DIAC with six months to implement certain changes to its internal structure and rules. Until these changes have bed in, it is difficult to predict how the centre will function.

The Decree also provides that existing arbitration agreements referring to DIFC-LCIA arbitration will be deemed valid and effective, but with DIAC automatically replacing the DIFC-LCIA as the arbitration centre and the DIAC Rules automatically replacing the DIFC-LCIA Rules, unless the parties agree otherwise. With respect to DIFC-LCIA cases already underway, these will continue under the DIFC-LCIA Rules, albeit now supervised by DIAC, unless the parties agree otherwise. Parties and practitioners are therefore well advised also to consider whether replacement arbitration agreements are required for these situations.

In the meantime, and while the transition settles, one alternative option for those drafting dispute resolution clauses referring disputes to arbitration in the UAE, is the Abu Dhabi General Market (the “**ADGM**”). This centre provides a flexible platform where parties can select their arbitration institution (e.g., ICC, LCIA) and arbitration rules (e.g. ICC, LCIA, UNCITRAL), with an ADGM seat (meaning that arbitrations and awards are supervised by the English speaking Courts of the ADGM, applying the ADGM Arbitration Regulations modelled on the UNCITRAL Model Law). Similarly, the more established international seats of arbitration (e.g. London, Paris) remain a viable option for parties in the region. In common with onshore Dubai, the DIFC and the ADGM, these international seats are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, meaning cross-border enforcement of awards is widely available.

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