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DIAC Issues New Arbitration Rules

On 25 February 2022, the board of directors of the Dubai International Arbitration Centre (“**DIAC**”) approved the new DIAC Arbitration Rules (the “**2022 Rules**”). The DIAC Rules, which were published on 2 March 2022, will come into effect on 21 March 2022 and replace the existing DIAC Arbitration Rules 2007 (the “**2007 Rules**”). The DIAC Rules 2022 will govern all requests for arbitration submitted after 21 March 2022, irrespective of the date of the underlying agreement to arbitrate, unless the parties agree otherwise.

The 2022 Rules are designed to streamline existing DIAC arbitration procedures and to position DIAC as a competitive alternative to other arbitral institutions. This move comes after the closure of the Dubai International Financial Centre – London Court of International Arbitration (the “**DIFC-LCIA**”) on 20 September 2021.

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, and there is to be a branch office opening in the DIFC. Over the years, DIAC has developed a pool of experienced arbitrators from different nationalities and legal backgrounds.

2022 RULES – WHAT HAS CHANGED?

Seat

As before, the parties can agree in writing on the seat of arbitration under the 2022 Rules. However, in the absence of such an agreement, the default seat of the arbitration shall be the DIFC (article 20). This is a departure from the 2007 Rules, which specified “Dubai” as the default seat of arbitration. The change to the DIFC was likely made to provide comfort to potential parties to international arbitration, as the DIFC is a common law jurisdiction based in large part on the laws of England and Wales, which will be more familiar to contracting parties than the laws of the United Arab Emirates.



Tribunal powers

The 2022 Rules expressly provide that DIAC tribunals (“**Tribunals**”) will have the power to rule on their own jurisdiction, including on any objections made with respect to the validity the agreement to arbitrate (article 6.1).

Electronic filings

The 2022 Rules enable Tribunals to choose whether to conduct proceedings in person or virtually (Article 26.1). The parties are also no longer required to submit pleadings and notifications in hard copy: article 3.1 provides that all notifications and communications “*shall be made in writing by email or in accordance with the terms of use of any electronic case management system implemented by [DIAC]*”. DIAC may request a party to provide documents in hard copy format, but only if it deems necessary. The reference to the “*electronic case management system*” suggests that DIAC is in the process of implementing the system; it is, however, not currently live.

Replacement of legal representatives

Article 7.5 of the 2022 Rules provides that a party’s right to change its legal representatives is subject to the Tribunal’s approval of the proposed replacement. The Tribunal must have regard to the potential for conflicts of interest resulting from the proposed change, when determining whether to approve the change or not. This is a relatively controversial addition to the 2022 Rules; there is no equivalent provision in the arbitration rules of other institutions. It remains to be seen how article 7.5 will work in practice.

Consolidation

A claimant can now submit a single request for arbitration in respect of multiple claims arising out of more than one agreement to arbitrate. DIAC may also consolidate two or more arbitrations into a single proceeding if the parties agree to consolidate, or if one of the following conditions is satisfied: (i) the claims are made under the same agreement to arbitrate; or (ii) the arbitrations involve the same parties and the agreements to arbitrate are compatible (article 8.2). Tribunals are also empowered to consolidate proceedings once they have been appointed (article 8.5). The 2007 Rules contained no consolidation provisions.

Joinder

Article 9 of the 2022 Rules permits joinder of new parties (claimants or respondents) to proceedings, if all parties have consented to the joinder, or if the DIAC or the Tribunal are satisfied that the party to be joined is a party to the arbitration agreement. DIAC is empowered to determine joinder applications prior to the appointment of the Tribunal; once constituted, the Tribunal determines the joinder applications. The 2007 Rules contained no joinder provisions.

Expedited proceedings

Unlike the 2007 Rules, the 2022 Rules contain provisions on expedited proceedings. Expedited proceedings provisions will apply to agreements to arbitrate entered into after 21 March 2022 (article 2.4), where: (i) the sum of the claims and counterclaims does not exceed AED 1,000,000 (approximately USD 272,000) (unless otherwise agreed); (ii) the parties agree to expedite the proceedings; or (iii) DIAC determines the case to be “*of exceptional urgency*” (article 32). The DIAC threshold of USD 272,000 is significantly lower than the threshold prescribed by Appendix VI to the 2021 ICC Rules of USD 3,000,000.

The 2022 Rules do not prescribe the expedited procedure, opting instead to empower the Tribunal to determine the appropriate procedure to be adopted for each individual case after consulting with the parties. The provisions however do impose a time limit of three months in which the Tribunal must issue the final award.

Alternative process for appointing arbitrators



The 2022 Rules have introduced an alternative process for appointing a sole arbitrator (article 13). The process applies if the parties: (i) failed to nominate a sole arbitrator, (ii) have not stipulated any mechanism of appointment; and (iii) notified DIAC of their agreement to the alternative appointment process. Under the alternative process, DIAC will communicate a list of three candidates for the sole arbitrator position. The parties may each add three additional candidates to the list. Within seven days of receiving the list from DIAC, each party must rank the candidates in order of preference. The candidates will be invited to serve as arbitrator in the order that reflects the parties' mutual preference.

The same process applies to the appointment of a chairperson, where the co-arbitrators fail to nominate a chairperson within the specified time limit.

The 2007 Rules did not provide an alternative appointment process.

Legal costs

The 2022 Rules expressly provide that the costs of the arbitration include “*the fees of the legal representatives and any expenses incurred by those representatives*”, as well as registration fees, DIAC administrative fees and the fees of the Tribunal (article 36.1). The 2022 Rules also contain an appendix (Appendix I) that expands on DIAC's powers to fix: (i) advances on the costs of the arbitration; and (ii) the Tribunal fees.

The 2022 Rules empower the Tribunal to make decisions on the costs of the arbitration, including issuing an award solely on costs (article 36.2).

Exceptional procedures

Appendix II of the 2022 Rules contains provisions on interim measures and the appointment of the emergency arbitrator. Article 1 of Appendix II provides that the Tribunal may “*upon an application by a party, order interim measures on terms that it considers appropriate in the circumstances*”, including, but not limited to measures that (i) maintain or restore the status quo; (ii) take action that would prevent current / imminent harm or prejudice the arbitral process itself; or (iii) provide a means of preventing the dissipation of assets out of which a subsequent award may be satisfied.

This list of interim measures largely reflects Article 21 of the UAE Federal Arbitration Law. Article 1 of Appendix II is a departure from Article 31 of the 2007 Rules, which empowered a tribunal to issue any provisional orders or take interim measures that it deemed necessary.

Article 2 of Appendix II sets out the procedure for appointing emergency arbitrators. The 2007 Rules contained no such provisions.

Article 3 of Appendix II contains provisions that enable a party to commence a conciliation by submitting an application to DIAC. The conciliation provision gives the conciliator absolute discretion to determine the procedure of the conciliation process; however, Article 3.11 requires the conciliator to conclude the conciliation proceedings within two months from the date of the transmission of the case file by DIAC to the conciliator. The 2022 Rules expressly require the conciliator to facilitate the preparation of a formal settlement agreement in the event that the parties agree to settle the dispute. If the conciliation fails, the conciliation proceeds will terminate without prejudice to the merits of the case.

Third-party funding

The 2022 Rules expressly recognise the use of third-party funding in DIAC arbitrations; article 22 requires a party that has entered into a third-party funding arrangement to promptly disclose the fact to the other parties and to DIAC. That party must identify the third-party funder and disclose whether or not the funder has committed to an adverse costs



liability; the existence of any third-party adverse costs liability may be taken into account by the Tribunal when apportioning costs. The 2007 Rules did not contain any provision pertaining to third-party funding.

CONCLUSION

The 2022 Rules are a significant step taken in the direction of aligning DIAC with other arbitral institutions, making DIAC a competitive alternative hub for arbitration in the region. The 2022 Rules also lessen the uncertainty caused by the sudden abolition of the DIFC-LCIA in September 2021.

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