The DIAC Publishes Its 2022 Arbitration Rules

Article By

Jonathan H. Sutcliffe
Nazanin Aleyaseen
Jennifer Paterson

K&L Gates
K&L Gates HUB

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BACKGROUND

On 20 September 2021, Decree No. 34 of 2021 concerning the Dubai International Arbitration Centre (DIAC) (the Decree) came into force and made significant changes to the arbitral institutions in Dubai. Notably, the Decree abolished the Emirates Maritime Arbitration Centre and Dubai International Financial Centre (DIFC) Arbitration Institute (the body previously responsible, in joint venture with the London Court of International Arbitration (LCIA), for administering arbitrations subject to the DIFC-LCIA Arbitration Rules under the auspices of the DIFC-LCIA Arbitration Centre) and transferred all rights and obligations of the abolished centers to DIAC.
The Decree specified that DIAC would be regulated and managed in accordance with the statute attached thereto (the Statute). The Statute sets forth the objectives of DIAC, namely, to consolidate Dubai’s position as a reliable international center for dispute resolution, to enhance the position of DIAC as one of the best options available to parties for efficient and effective dispute resolution, and to promote alternative dispute resolution methods with a view to serving the financial and business community in Dubai.

In line with those objectives, on 25 February 2022, DIAC’s Board of Directors (Board of Directors) approved its long-awaited new arbitration rules (the New Rules). The New Rules will come into effect on 21 March 2022 and, unless the parties agree otherwise, will govern all new requests for arbitration and exceptional procedures (such as appointment of an emergency arbitrator or application for conciliation) submitted after this date.

The New Rules have made significant changes to the previous 2007 DIAC rules, including introducing provisions dealing with consolidation, joinder of parties, expedited proceedings, and an alternative process for appointing arbitrators, as well as exceptional proceedings, such as the appointment of an emergency arbitrator and conciliation proceedings. In addition, the default seat of arbitration is now the DIFC, rather than onshore Dubai, and the fees and expenses of a party’s legal representatives are expressly stated to be part of the costs of the arbitration, thereby enabling parties to seek recovery of legal costs.

This article sets forth some of the key changes introduced by the New Rules.

**ORGANIZATION OF DIAC**

One of the changes introduced by the Statute was the organization of DIAC into three levels: the Board of Directors, a newly formed arbitration court (Arbitration Court), and the administrative body.

The Board of Directors has general supervisory authority over DIAC and the right to exercise any duties or powers required to achieve DIAC’s objectives.

The Arbitration Court, which replaces the DIAC Executive Committee, will undertake the general supervision of the alternative dispute resolution services offered by DIAC and the management of all cases administered by DIAC, including appointing arbitral tribunals and conciliation panels, and determining challenges to arbitrators or conciliators. The Arbitration Court, chaired by its president, shall convene at least every 60 days. Under the New Rules, the Arbitration Court has the responsibility to review draft awards for the purposes of reviewing the form of the final draft in order to ensure, insofar as possible, that the formalities required by the New Rules have been complied with and to fix the final fees and expenses of the tribunal.

The administrative body of DIAC, led by the executive director, shall undertake the management and day-to-day work of DIAC.

**CONCILIATION PROCEEDINGS**
The New Rules introduce a mechanism for parties to agree to engage in conciliation with a view to amicably settling the dispute and for that conciliation proceeding to be managed by DIAC.

Pursuant to Article 3 of Appendix II (Exceptional Procedures) of the New Rules, the conciliation proceeding shall be conducted by a single conciliator appointed by the Arbitration Court (or, if the parties agree, a panel of three conciliators). The conciliator(s) have absolute discretion to determine the procedure of the conciliation process, while giving each party a reasonable opportunity to present their respective positions and having due regard to the circumstances. With the consent of the parties, the conciliator(s) may at any stage make proposals for a settlement of the dispute.

The conciliation shall last for two months from the transmission of the file to the conciliator(s) unless the time limit is extended by agreement of the parties. In the event of a settlement, the conciliator(s) shall facilitate the preparation of a formal settlement agreement. If no settlement is reached, the conciliation proceedings shall be terminated without prejudice to the merits of the dispute.

**EXPEDITED PROCEEDINGS**

The New Rules introduce provisions for the resolution of certain disputes on an expedited basis. Article 32 of the New Rules provides that expedited proceedings shall take place:

- Unless the parties agree otherwise in writing, where the total of the sums claimed and counterclaimed is less than or equal to AED1,000,000 (approximately US$272,250) exclusive of interest and legal representation costs;
- All parties agree in writing; or
- In cases of exceptional urgency as determined by the Arbitration Court following application by a party.

If the Arbitration Court is satisfied that the criteria for expedited proceedings have been met and provided that the advance on costs has been paid in full, DIAC shall seek to appoint a tribunal consisting of a sole arbitrator within five days of the Arbitration Court’s decision.

The time limit for rendering a final award in expedited proceedings is three months from the date of the transmission of the file to the sole arbitrator, unless extended by the Arbitration Court on exceptional grounds.

The sole arbitrator may, upon application by a party or on its own initiative, seek approval from the Arbitration Court to continue to conduct the arbitration on a nonexpedited basis.

**THE PROCESS FOR THE APPOINTMENT OF ARBITRATORS**

Article 12 of the New Rules contains the standard rules on the nomination and
appointment of the tribunal. As is customary, parties may nominate arbitrators, who are then formally appointed by the Arbitration Court. Where the tribunal is comprised of a sole arbitrator, the parties may agree jointly to nominate an arbitrator, failing which the sole arbitrator shall be appointed by the Arbitration Court. In case of a three-member tribunal, each party shall nominate a co-arbitrator and may agree on a mechanism for selecting the chairperson. In the absence of an agreed mechanism, the co-arbitrators shall jointly select the chairperson, failing which the Arbitration Court shall appoint the chairperson.

Where there are multiple claimants or respondents, the multiple claimants acting jointly, or the multiple respondents acting jointly, shall nominate an arbitrator. In the absence of such a joint nomination by the multiple claimants or respondents, or where the parties are unable to agree upon a method for the constitution of the tribunal, the Arbitration Court shall appoint the respective arbitrator(s).

The New Rules also introduce an alternative appointment process, under Article 13, which the parties can agree to follow in the event that they (a) fail to jointly nominate a sole arbitrator and have not stipulated any mechanism for such nomination, or (b) the co-arbitrators fail to nominate a chairperson and the parties have not stipulated a mechanism for such nomination.

The alternative appointment process involves DIAC providing the parties (or co-arbitrators) with a shortlist of three suitable candidates, to which each party may add up to three candidate names. The parties (or co-arbitrators) shall have seven days in which to approve, rank in order of preference, and return the list to DIAC, without copying the other party. If a party fails to return the list within the specified time, all candidates on the list shall be deemed to be equally acceptable to that party. From the list of approved, or nominated, candidates on both parties’ lists and taking into consideration the indicated order of mutual preference, DIAC shall invite the candidates in turn to serve as arbitrator until one accepts. If the parties fail to mutually approve any candidate or any of the persons named are unable to act, the Arbitration Court shall decide whether to repeat the process or make a direct appointment.

**APPOINTMENT OF AN EMERGENCY ARBITRATOR**

Pursuant to Article 2 of Appendix II (Exceptional Procedures) of the New Rules, a party in need of emergency interim relief may, concurrently with or following filing a request for arbitration, submit an application for emergency interim relief, along with the requisite nonrefundable filing fee. The applying party must send a copy of the application to all other parties, unless, in doing so, it reasonably believes that such notice may jeopardize the efficacy of the application and the procedural rules of the seat permit such applications to be made without notice, in which case the application shall be determined on an ex parte basis.

The application for emergency interim relief must specify, together with all relevant documentation, the grounds for requiring the appointment of an emergency arbitrator, the nature of the relief sought, and the reasons why the applying party considers that it is entitled to such relief. If the Arbitration Court is prima facie satisfied that it is reasonable to allow such proceeding, DIAC shall seek to appoint
the emergency arbitrator within one day of receipt of the application. Again, the default requirement to notify all parties of the appointment of the emergency arbitrator does not apply if the application is submitted without notice. Any challenge to the emergency arbitrator must be made within two business days from the notification by DIAC of his or her appointment.

Unless the emergency arbitrator is appointed without notice to the other party or parties, the emergency arbitrator shall, as soon as possible but in any event within two business days from transmission of the file, establish a timetable to decide the application for emergency relief. Such timetable shall provide a reasonable opportunity to all parties to be heard, but may provide for written submissions or verbal submissions by virtual communication, such as videoconferencing.

The emergency arbitrator shall issue any preliminary order in support of such measures as soon as reasonably practicable, following which the DIAC shall communicate it to all parties. The emergency arbitrator may also grant the relief sought on an extemporary basis, with detailed reasons to follow.

The appointment of the emergency arbitrator shall cease following constitution of the tribunal, and the temporary order shall cease to be binding if: (a) the tribunal discharges the order, (b) the underlying arbitration is terminated prior to the final award, or (c) the final award issued by the tribunal does not give permanent effect to such order.

By agreeing to the DIAC rules, the parties are deemed to have expressly agreed to the appointment and powers of the emergency arbitrator. However, these provisions shall not apply in the event of a contrary agreement by the parties in writing.

**CONSOLIDATION OF PROCEEDINGS**

Consistent with DIAC’s aim to facilitate efficient and effective dispute resolution, the New Rules introduce provisions to facilitate consolidation of proceedings, which apply in all cases unless the parties have expressly opted out in their arbitration agreement.

Under Article 8.1 of the New Rules, a party wishing to commence an arbitration may submit a single request for arbitration in respect to multiple claims arising out of or in connection with more than one agreement to arbitrate, provided that the requirements of Article 8.2 are or may be satisfied.

Pursuant to Article 8.2, prior to the appointment of any arbitrators in any of the arbitrations sought to be consolidated, the Arbitration Court may consolidate one or more arbitrations where all parties agree or the Arbitration Court is satisfied prima facie that:

- All claims are made under the same arbitration agreement; or
- The arbitrations involve the same parties, the arbitration agreements are compatible, and
  - The disputes arise out of the same legal relationship(s); or
The contracts consist of a principal contract and its ancillary contract(s); or

The disputes arise out of the same transaction or series of related transactions.

The decision of the Arbitration Court is without prejudice to the tribunal’s power to rule on its own jurisdiction or a party’s right to apply for consolidation.

Where a tribunal has been constituted in one proceeding and provided that no arbitrators have been appointed in any other arbitration, upon application by a party and after having invited all parties to comment, the tribunal may, after considering the impact of the proposed consolidation on the arbitration and its efficient and expeditious progress and any other relevant factors, consolidate two or more arbitrations where all parties agree or the conditions in Article 8.2(a) or (b) (detailed above) have been met.

If tribunals have already been constituted in more than one arbitration, the tribunals must comprise the same members for consolidation to occur.

JOINDER OF PARTIES

The New Rules also introduce provisions facilitating the joinder of parties to existing proceedings, including where a party is not a party to the arbitration agreement referred to in the request for arbitration but who consents to such joinder.

Under Article 9.1 of the New Rules, prior to the appointment of any of the arbitrators, a party may apply to the Arbitration Court (whether or not such party is a party to the arbitration) to allow one or more additional parties to be joined in the arbitration, provided that:

- All parties (inclusive of any party to be joined and whether or not such party is a party to the agreement to arbitrate referred to in the request for arbitration) have consented in writing to the joinder; or
- It is prima facie satisfied that any such party to be joined may be a party to the agreement to arbitrate referred to in the request for arbitration.

The decision of the Arbitration Court is without prejudice to the tribunal’s powers to rule on its own jurisdiction or a party’s right to apply for joinder.

A similar regime applies under Article 9.4 of the New Rules to joinder of parties after constitution of the tribunal, including either: (a) a requirement for consent of all parties, and consent by the party being joined to the arbitration to the appointment and the powers of the tribunal and the application of the DIAC rules; or (b) a finding by the tribunal that the party to be joined is a party to the arbitration agreement at issue.

A party who is joined after the constitution of the tribunal is deemed to be have waived its right, if any, to nominate an arbitrator under the DIAC rules or the
CONCLUSION

On their face, the New Rules have made some fundamental changes that appear to address some of the gaps in the 2007 DIAC rules and bring DIAC more in line with other institutions, such as the International Chamber of Commerce (ICC) and LCIA, whose rules already provide, for example, for the appointment of emergency arbitrators, joinder of parties and consolidation, and who offer mediation as an alternative means for parties seeking to amicably resolve their disputes. These changes appear to be a positive development, which should make DIAC a more attractive proposition for contracting parties. It remains to be seen how the New Rules will operate in practice and whether this modernization of the DIAC rules will encourage local and regional parties to select DIAC over other international arbitral institutions.

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