The Dubai International Arbitration Centre (DIAC) has launched the DIAC Arbitration Rules 2022

On 2 March 2022, the Dubai International Arbitration Centre ("**DIAC**") published its highly anticipated new arbitration rules (the "**2022 Rules**"). These rules came into effect on 21 March 2022 and apply to arbitrations commenced on or after that date. The 2022 Rules were published approximately six months following the controversial Decree No. 34 of 2021 (the "**Decree**") which abolished the Emirates Maritime Arbitration Centre and the DIFC Arbitration Institute, the legal entity which had operated the DIFC-LCIA Arbitration Centre, and transferred the caseloads of the two institutions to a revamped DIAC.

The 2022 Rules are expected to modernise DIAC's arbitral procedures in view of new developments and changes in the industry. The previous iteration of the DIAC Rules was introduced in 2007 (the "**2007 Rules**") (with no substantive changes to the rules in place prior to 2007).

In this Client Alert, Curtis dives into the **top eight changes** introduced in the 2022 Rules of particular interest to parties to arbitral proceedings.

1. What does the introduction of the Arbitration Court mean for your DIAC disputes?

During the recent overhaul, DIAC replaced its Executive Committee with an Arbitration Court. The Arbitration Court was established in accordance with the DIAC Statute and assumes **oversight for all cases administered by DIAC**. Among other matters, the Arbitration Court will assist parties with applications prior to the constitution of the tribunal, the constitution of the arbitral tribunal, and setting and administering the financial arrangements for the arbitration. The Arbitration Court will also **review the form of final awards** (however, it will not have the same award scrutiny powers as the ICC Court).

While the DIAC Statute provides for a maximum of 13 members to be part of the Arbitration Court, DIAC's 2 March 2022 press release named nine members who have been confirmed by DIAC's Board of Directors. The President of the Arbitration Court is Dr. Ahmed Bin Hazeem Al Suwaidi, and the remaining members are 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. H.E. Justice Shamlan Al Sawalehi is also a judge of the DIFC Court, and is the head of its arbitration bench. It remains to be seen if and when DIAC will fill the remaining four vacancies on the Arbitration Court and, if so, whether it will diversify its membership.

2. How will DIAC assist in appointing your tribunal?

Subject to any agreement by the parties for the nomination and appointment of the arbitral tribunal, Article 13 of the 2022 Rules introduces an **alternative procedure** if the parties fail to jointly nominate a sole arbitrator, or alternatively if the co-arbitrators fail to nominate the chairperson of the tribunal. In accordance with Article 13.1(c), parties must agree to the use of the alternative procedure.

While previously DIAC's Executive Committee would select the sole arbitrator or chairperson in such circumstances, under the 2022 Rules, DIAC will follow what is commonly referred to as the "list procedure". Pursuant to Article 13.2, DIAC will simultaneously provide the parties with an identical list of three potential arbitrator candidates. Each party may add up to three candidates to this list and will then have seven days to revert to DIAC with its order of preference. DIAC will then proceed to appoint the candidates based on each party's preference and the mutuality of choices.

This method has gained popularity in recent years as it gives parties **additional control over the selection of sole and presiding arbitrators**. The 2022 Rules are therefore in line with modern practices. It remains to be seen whether the process will cause delay to the appointment of the tribunal. This may materialise if each of the arbitrator candidates will be required to have cleared conflicts before inclusion on DIAC's list.

3. What happens in multi-party or multi-contract disputes?

The 2022 Rules modernise DIAC arbitrations by providing specific joinder and consolidation procedures to allow for multi-contract and/or multi-party disputes. Such provisions were absent in the 2007 Rules.

Pursuant to Articles 8.1 and 8.2 of the 2022 Rules, parties may commence arbitration proceedings pursuing **claims under several underlying contracts** in a single request for arbitration, provided that the arbitrations involve the same parties and arise out of the same or compatible arbitration agreements, as well as satisfy certain other conditions with respect to the parties' legal relationship. It was unclear whether the 2007 Rules allowed for this scenario and as a result, cautious parties typically chose to commence several arbitrations to avoid later jurisdictional battles.

If disputes have been commenced via separate requests for arbitration, the Arbitration Court has the **power to consolidate arbitrations** pursuant to Article 8.2 of the 2022 Rules. Once the tribunal is constituted in one of the arbitrations sought to be consolidated, it is also able to order consolidation (provided no arbitrators have been appointed in the other arbitrations). However, Article 8.9 specifically entitles the parties to opt out of consolidation in their arbitration agreement.

Article 9.1 allows for a **third party to be joined** to ongoing proceedings upon an application by an existing party or such third party. If written consent of all parties (including the party to be joined) is not forthcoming, the Arbitration Court may order joinder if it is *prima facie* satisfied that any such third party to be joined "may" be a party to the arbitration agreement referred in the request for arbitration. This provision is broader than comparable provisions in other institutional rules. It remains to be seen how the Arbitration Court will interpret arbitration agreements when considering whether a third party may be a party to such agreements.

4. How quickly would your small-value disputes be resolved in DIAC arbitrations?

By virtue of Article 32, the 2022 Rules introduced expedited proceedings which apply to disputes with a total **amount in dispute** (both claimed and counterclaimed) **below or equal to AED 1,000,000 (around USD 272,100)** (exclusive of interest and legal representation costs) as well as in other circumstances as considered appropriate by the Arbitration Court. The expedited procedures are radical in two respects:

First, they provide for a speedy constitution of the tribunal. A claimant may apply for the arbitration to be subject to the expedited arbitration procedures following the submission of the answer by the respondent (or the expiry of the relevant time period). The respondent then only has seven days to oppose the application, following which it shall be determined by the Arbitration Court. Subject to the advance on costs having been paid, if the Arbitration Court agrees that the arbitration is amenable to expedited proceedings, it will then seek to appoint the tribunal within five days of its decision.

Second, the time limit within which the tribunal must issue the final award in expedited proceedings is three months from the date of the transmission of the file to the tribunal by the DIAC, unless such time period is extended on exceptional grounds.

These provisions put DIAC at the forefront of institutions which allow for expedited proceedings (although the AED 1,000,000 limit is smaller than permitted by other institutions). Subject to the speed of the Arbitration Court's decision-making, as well as its willingness (or otherwise) to extend the time period for issue of final awards in expedited proceedings, the rules theoretically allow for the **resolution of small-value disputes within approximately five months** from the filing of the request for arbitration.

Due to their radical nature, the expedited proceedings provisions only apply to disputes arising out of an arbitration agreement which is concluded after 21 March 2022. Parties retain the freedom to opt in or out of expedited proceedings.

5. How can DIAC assist if you need urgent relief?

Article 2 of Appendix II (Exceptional Procedures) of the 2022 Rules provides for interim relief as well as the **appointment of emergency arbitrators**. While interim relief has been available under the 2007 Rules, emergency arbitration is a more recent construct which to date has only been available under other arbitral rules. The introduction of emergency provisions therefore modernises DIAC's offering in line with other institutions.

A party in need of urgent interim relief may, concurrently with or following the filing of a request for arbitration, but prior to the constitution of the tribunal, apply for emergency interim relief. Appendix II of the 2022 Rules provides short time periods to ensure a speedy determination of an emergency interim relief application. As such, if the Arbitration Court is satisfied that it is reasonable to allow emergency proceedings, DIAC will aim to appoint an Emergency Arbitrator within one day of receipt of the application. Once the proceedings commence, the Emergency Arbitrator must establish a timetable to decide the application for emergency interim relief no later than two business days from the date of transmission of the file. Once all the parties have been provided a reasonable opportunity to be heard, the Emergency Arbitrator must issue any preliminary order in support of such measures as soon as reasonably practicable. The Emergency Arbitrator may also decide to grant the relief sought on an *ex tempore* basis with detailed reasoning to follow.

In theory, this means that the Emergency Arbitrator may be ready to consider an application within five business days following the application. The 2022 Rules do not provide an upper limit for the rendering of the requested relief, which will depend on the particular facts as well as the arbitrator appointed to conduct the proceedings. It therefore remains to be seen how quickly the process will operate in practice. Moreover, it also remains unclear whether any such emergency relief may be enforced in on-shore UAE courts (considering that Federal Law No. 6/2018 on Arbitration (the "**Federal Arbitration Law**") does not include specific provisions with respect to emergency interim relief).

6. To which extent can your DIAC arbitration be conducted virtually?

The 2022 Rules reflect modern practices adopted by the arbitral community in response to the COVID-19 pandemic. The new rules specifically cater for **electronic filings**, which have already been DIAC's practice since the early days of the pandemic. DIAC now envisages the implementation and use of an electronic case management system for communications, notifications and filings to be issued electronically, starting with the request for arbitration. At the time of writing, the envisioned case management system has not been introduced yet.

The 2022 Rules also provide for **virtual hearings**, giving the tribunal discretion to decide whether any hearing should take place in person, virtually or by telephone. Importantly, Article 27.6 resolves any lingering uncertainly with respect to taking oaths either virtually or by telephone, thus removing another ground previously used by recalcitrant respondents in annulment proceedings.

Moreover, Article 34.6 empowers the arbitral tribunal to **sign awards electronically** (subject to any mandatory legal provisions at the seat). This may speed up the finalisation of awards and will be a relief to many arbitrators used to signing thousands of hard-copy pages. However, if the award is signed in ink, the arbitrators are still required to sign each page of several copies of the award.

These are welcome developments which are in line with various provisions of the Federal Arbitration Law introduced in 2018,[1] as well as the Greener Arbitration Campaign which is an initiative to **reduce the environmental impact of international arbitrations**.[2]

7. Which courts will supervise your DIAC arbitrations?

The seat of the arbitration has particular significance to the arbitral proceedings as it determines which courts will supervise the arbitration, including with respect to interim measures prior to commencement of arbitral proceedings and assistance with obtaining evidence during arbitral proceedings, as well as recognition or annulment of any awards.

Under Article 20.1, where the parties have not agreed to a seat of arbitration but have agreed on a location/venue for the arbitration, such location/venue shall be deemed as the 'initial' seat of arbitration. It therefore appears that the presumption under the 2022 Rules is that any indication of the location or venue shall be considered as the seat of the arbitration.

In the absence of an agreement on the seat and location/venue for arbitration, **by default, the 'initial' seat will be the DIFC** (rather than Dubai, as provided under the 2007 Rules). The DIFC courts have developed an arbitration-friendly reputation and operate subject to DIFC Law No. 1 of 2008 on Arbitration which is based on the UNCITRAL Model Law.

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[1] Antonia Birt and Matei Purice, *New Technologies and the UAE Federal Arbitration Law,* Kluwer Arbitration Blog, 24 May 2021, http://arbitrationblog.kluwerarbitration.com/2021/05/24/new-technologies-and-the-uae-federal-arbitration-law/ (last accessed 21 March 2022).

[2] The Campaign for Greener Arbitrations, https://www.greenerarbitrations.com/.

The 2022 Rules may be unique in providing that only the 'initial' seat will be either the location/venue, or by default the DIFC. Upon its constitution, the tribunal is empowered to determine the seat. It remains to be seen under what circumstances tribunals would re-consider such 'initial' seat, and whether this remaining uncertainty regarding the seat will lead to potential grounds in annulment proceedings. Time will tell whether the unusual concept of an 'initial' seat solves more problems than it creates.

8. What are the modernisations regarding parties' costs?

First, parties will be emboldened by the introduction of Article 36 which specifically provides that the **costs of the arbitration shall include legal costs**, that is costs of legal representatives (as well as DIAC's registration and administrative fees, the fees and expenses of the tribunal, expert fees, and any expenses incurred). Previously, the 2007 Rules did not make any provision for recoverability of legal costs, which are also not addressed under the Federal Arbitration Law. Subject to specific party agreement or other exceptions, this lacuna therefore posed a hurdle to the recoverability of legal costs. The removal of this hurdle again brings the DIAC Rules closer to rules of other arbitral institutions which typically empower tribunals to make orders as to legal costs.

Second, Article 22 introduces the concept of **third-party funding** to the DIAC. Third-party funding has been growing in significance in the region, with several funders now having established a permanent base in the region. Article 22 is aligned with international norms and largely mirrors similar provisions in rules of other leading arbitral institutions. As such, a party which has entered into a third-party funding arrangement must promptly disclose that fact to all other parties, the tribunal and DIAC, together with details of the identity of the funder, and whether or not the funder has committed to an adverse costs liability. Once the tribunal has been constituted, third-party funding arrangements are barred if the consequence of that arrangement will or may give rise to a conflict of interest between the third-party funder and any member of the tribunal.

Conclusion

The 2022 Rules modernise DIAC's approach to arbitration. The adoption of novel approaches to enhance efficiency bring the 2022 Rules closer to other leading institutional rules such as the ICC Rules and the LCIA Rules. It remains to be seen how the 2022 Rules are interpreted, administered and eventually considered in judicial rulings.

The most **appropriate approach to choosing arbitral rules** will depend on a variety of factors including the governing law of the contract, the parties' preferred seat of arbitration, the location of the parties and their assets, as well as the place of contractual performance, among others. It is therefore prudent to seek bespoke legal advice to ensure

that the arbitral rules chosen, and the arbitration agreement as a whole, will meet your requirements.

Most recently, DIAC announced on 21 March 2022 that it now accepts arbitrations commenced pursuant to **legacy DIFC-LCIA arbitration agreements**. Following the Decree, parties with new DIFC-LCIA disputes were unable to pursue their claims since neither the (effectively) abolished DIFC-LCIA, nor DIAC, would register such disputes. The details regarding the arrangement between the DIAC and LCIA with respect to these disputes have not been released yet. It therefore remains to be seen how various implications of the Decree will be resolved in practice.

About Curtis

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