

Changes in Dubai arbitration

STUART JORDAN* provides an insight into the abolishment of the DIFC-LCIA partnership and changes in the Dubai International Arbitration Centre (DIAC) rules to align them with those of the other global arbitration centres.

THE landscape has changed for contracting parties seeking to have their disputes resolved by arbitration – which means the vast majority of parties to construction contracts in the Gulf region.

As many will know, the Dubai International Financial Centre (DIFC) formed a joint venture with the London Court of International Arbitration (LCIA) in 2015 through the Dubai Arbitration Institute (DAI) to create a new commercial arbitration centre. This partnership (similar to others entered into by LCIA globally) was successful in terms of its popularity among users, judging by its increasing caseload.

The DIFC-LCIA partnership was effectively abolished (along with the Emirates Maritime Arbitration Centre) by Dubai Decree No.34 of 2021 which took effect on September 20, 2021, having been published six days earlier. Under the decree, all DIFC-LCIA ongoing cases, staff, assets, arbitrator lists and parties' held funds were to be transferred to the Dubai International Arbitration Centre (DIAC).

As an interim measure, the decree provided that ongoing cases in DIFC-LCIA would continue to be presided over by the same arbitrator tribunals and under the same rules as before, but would be administered by DIAC. Although DIFC-LCIA's initial press release mentioned that they had not had notice of this move pre-publication, they and DIAC appear to have come to a good and workable arrangement on the handover. There had been some initial uncertainty in relation to eligibility of arbitrators and management of funds, however the bodies jointly announced on March 28, 2022 their agreement that all cases commenced and registered by DIFC-LCIA, with an assigned case number, on or before March 20, 2022 would be administered by

LCIA in London. In relation to held funds, they have "agreed a mechanism for the orderly management of funds paid by parties into bank accounts previously held on behalf of DIFC-LCIA and now owned by DIAC."

In parallel with this, the DIAC rules have been substantially amended, bringing them much closer to those of the other global arbitration centres. These very welcome changes include new provisions for emergency applications for interim relief, for the appointment of arbitrators where the parties cannot agree, for remote hearings, rules for consolidation of two or more existing proceedings and joinder of third parties – subjects we have looked at before.

Why has this happened? It was noted that DIFC-LCIA was tending to be the choice of contracting parties in cross-border disputes, whereas DIAC has increasingly been seen as the choice for UAE domestic contracts. My own experience has been that the DIFC-LCIA option became a popular choice for disputes resolution among international parties working in Gulf projects.

The decree contains a statute setting out DIAC's future objectives, being:

1. to consolidate the position of the Emirate as a reliable international centre for Dispute resolution through ADR Methods;
2. to enhance the position of the DIAC as one of the best options available to parties to Disputes for efficient and effective Dispute resolution, through adopting the international best practices in ADR Methods management; and
3. to promote recourse to ADR Methods with a view to serving the best interest of the



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finance and business community in the Emirate.

If the intention was to rationalise the options available within Dubai, that is understood but it isn't obvious that the existence of both DIFC-LCIA and DIAC was confusing to users or their advisors. If the intention was to increase the attractiveness of Dubai per se as a location for disputes resolution, to rival the other global centres such as London and Singapore, the future will tell.

In our industry, choices on dispute resolution are not just an afterthought for a seldom-to-never eventuality. Disputes are a mathematical probability on any large project, so we have to expect to be enacting these contract provisions, maybe years down the line from execution of the contract. So yes, of course users and their advisors look for good, clear and comprehensive arbitration rules, reasonable fees and efficient administration, ideally set in

a place with good surrounding commercial and legal infrastructure. And maybe also a nice place to visit! Dubai/DIAC have all of these things, especially with the modernisation of the DIAC arbitration rules which came into effect in March 2022.

We do have to note also that the market does value long-term consistency and predictability, especially in our industry, with projects and disputes spanning years. This move will naturally have been unsettling to the market but there are upsides with what looks like a much improved DIAC option.

Parties with existing contracts nominating DIFC-LCIA should now be considering whether DIAC meets their requirements, or whether they should change it. Parties now and in the future looking to choose a centre have one less choice. This may all turn out well, with the stated objectives for DIAC fulfilled. The market will decide. ■

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