

New DIAC Rules 'very welcome'

STUART JORDAN* outlines some of the changes that have been made in the revised DIAC Rules and says that these will go a long way in determining the success of Dubai International Arbitration Centre (DIAC) as the preferred choice for arbitration in construction disputes.

THIS month we are completing some unfinished business. I wrote last year about Dubai Decree No.34 of 2021 which abolished the DIFC-LCIA Arbitration Centre and transferred its business to the Dubai International Arbitration Centre (DIAC). I mentioned also that the DIAC Rules had been updated with the aim of bringing them into line with other major international disputes centres.

The previous DIAC Rules had been in place since 2007, and these revisions have proven to be a good move. They have made DIAC a better option in its own right and the market consensus seems to be very positive. Let's look at some of those changes.

There are, as expected, similarities between these new rules and those of other global arbitration centres, notably the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA).

The new rules, unsurprisingly, take account of technological advances, such as:

- Instead of requiring all applications and submissions in hard copy, parties may now file and exchange requests for arbitration and other documents, including pleadings, electronically;
- Arbitration awards can be signed either in hard copy or electronically;
- Hearings can be held by videoconference or by telephone, and witnesses can appear virtually, from other locations.

There are useful new rules to allow the consolidation of actions and joinder of parties, for which the 2007 rules had no provision.

We have looked before at the LCIA and ICC Rules on consolidation and joinder because they are of particular importance in construction disputes, where the same, or closely related, issues can be the subject of dispute between several parties in the contractual set-up: main contractors, subcontractors, suppliers, engineers and managers. Without the means to manage this situation in a coordinated way, there

is the potential for costly multiple bilateral arbitrations, creating the risk of conflicting decisions on the same issue.

Now, DIAC Article 8 allows for multiple actions to be consolidated into one arbitration if a party has applied for this to happen before any arbitration panel has been constituted and if either:

- All parties agree to the consolidation, or
- The actions all arise from the same arbitration agreement.

If neither of the above applies, the actions may also be consolidated if:

1. The actions arise from the same legal relationship or from a series of related contracts; or
2. The actions arise from a principal contract and other contract/s ancillary to it.

In reality, this second set of criteria are the most likely to apply to construction disputes, as they can encompass (in 1) the web of contracts in any project, or (in 2) a framework contract and the call-off contracts entered into pursuant to the framework.

Article 9 allows for third parties to be joined into an existing action. This can happen either before or after the tribunal is constituted if:

- The third party and existing parties all consent; or
- The tribunal (if the tribunal has been constituted) or (before the tribunal is constituted) the Arbitration Court (the new DIAC administrative decision-making panel) is satisfied that the third party is (on a prima facie basis) party to the arbitration agreement between the existing parties.

In another welcome development, the new rules allow for the award of legal and other arbitration costs between the parties. Third party funding is also accommodated, subject to certain conditions on disclosure of the funding arrangements.

Lower value and simple matters can now be dealt with on an expedited basis – that is, by a sole arbitrator considering the submitted documents only, and rendering the award within three months of the hearing. This process looks a lot like adjudication and, in the same way, it might assist contractors and subcontractors trying to get paid quickly.

The expedited process is available if the sum in dispute (claim and any counterclaim) is not above AED1 million (\$272,260) and if the parties agree to that procedure – or if

they don't agree but the DIAC Arbitration Court considers it appropriate. That is an important potential factor, as some paying parties still make tactical use of the high cost and long timetable in a full arbitration, to delay and avoid paying.

The default seat of a DIAC arbitration (that is, unless the parties agree otherwise) is now DIFC, instead of onshore Dubai. DIFC laws, therefore, govern the arbitration process, which is an encouragement to international parties to choose DIAC.

For several reasons, including enforceability and access to specialist expert decision-makers, arbitration remains the preferred option for resolution of construction disputes in the Middle East, as elsewhere. In selecting the arbitration centre to be written into their contracts, parties look for efficient administration, clear rules and reasonable cost.

These new rules are very welcome and they will go a long way in determining the success of DIAC as the preferred choice. ■



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