

Recent Decree Abolishes the Emirates Maritime Arbitration Centre and the DIFC Arbitration Institute

<i>Type</i>	E-journal
<i>Date</i>	23 Sep 2021
<i>Jurisdiction</i>	United Arab Emirates
<i>Relevant company</i>	Wasel & Wasel
<i>Legal reference</i>	Dubai Decree No. 34/2021

Document link: https://www.lexismiddleeast.com/eJournal/2021-09-24_51



Analysis

On 14 September 2021, H.E. Sheikh Mohammed bin Rashid Al Maktoum – the Ruler of Dubai – issued Dubai Decree No. 34 /2021 (the Decree), which ameliorates and enhances the position of the Dubai International Arbitration Centre (DIAC) in the global industry and completely redefines the arbitration ecosystem in Dubai.

What was the reason for the decision to close?

The Emirates Maritime Arbitration Centre (EMAC) was established in 2016 to provide the region's maritime industry with alternative specialised dispute resolution services in the Middle East. On the other hand, the Dubai International Financial Centre Arbitration Institute (DAI) was established in 2004 under the umbrella of the DIFC Dispute Resolution Authority with the vision of promoting the study and practice of arbitration. As part of DAI's initiatives, the Institute entered into an agreement with the London Court of International Arbitration (LCIA) for the establishment of the DIFC-LCIA arbitration centre in 2008. With the implementation of the Decree, it is understood that the DIFC-LCIA centre will cease to exist.

The Decree dissolves EMAC and the DAI, and merges their operations and assets into DIAC, producing an autonomous non-profit institution that provides regional and international business communities with world-class arbitration services. The objective behind the Decree is to strengthen the position of Dubai as a reliable global centre for the settlement of disputes through alternative dispute resolution, including arbitration and mediation.

Although the Decree does have somewhat of a shock-factor, the actions of the LCIA come as no surprise to those who have been vigilant over the last few years. The LCIA have done something similar a few times in the past. In 2016, the LCIA's supported arbitration centres in India were concluded; in 2018, the centre in Mauritius followed suit shortly after.

Despite the conclusion of the LCIA's support, the LCIA continued to administer ongoing arbitration cases. They also accepted the role of administrating new arbitration cases arising out of agreements that had been concluded before the change was affected and hence, referencing the rules of the terminated arbitration centres.

One could argue that the ultimate mission of the LCIA, is to transfer knowledge to arbitration centres around the world. If this is the case, they have more than accomplished their mission when it comes to the DIAC. DIAC has quickly become the hub of arbitration in the Emirates and is gaining speed on other centres around the world.

Is there a timescale and a transitional period?

While the Decree is effective as of its publication date – 14 September 2021 – DIAC has been granted a grace period of no more than six months to effectively replace the EMAC and the DAI. A court of arbitration will be established within DIAC to undertake overall supervision of DIAC arbitrations with authority to supervise the application of the Decree and arbitration rules and procedures, appoint tribunals and fix the costs and expenses of arbitrations.

The Decree provides that if the parties select the DIFC as the seat of an arbitration, the DIFC Arbitration Law (as amended or replaced) shall apply and the DIFC Courts shall have jurisdiction to determine any case, application or challenge concerning arbitral procedures or the arbitral award issued in an arbitration administered by DIAC. If no seat is agreed between the parties, the DIFC will be the default seat.

Are there any pending cases – if so what transitional arrangements will there be for those?

With respect to pending cases, the DIFC-LCIA have stated that:

'Consultation is taking place between the London Court of International Arbitration and the government of Dubai to seek to ensure the good management of existing and future cases where parties have agreed to arbitration and mediation under the DIFC-LCIA Rules.

In the meantime, the casework team continues to deal with the day-to-day management of cases under the DIFC-LCIA Rules'.

Article 6(A) of Dubai Decree No. 34/2021 stipulates that all agreements which were concluded by 20 September 2021, which provide for arbitration under the rules of one of the abolished centres shall be considered as valid and effective. However, the Article goes on to state that the new DIAC will substitute the abolished centres in the administration of disputes under such agreements unless the parties agree otherwise.

With regard to the ongoing cases which are governed by the rules of one of the abolished centres, Article 6(B) of Dubai Decree No. 34/2021 dictates that tribunals constituted by 20 September 2021 will continue to hear and determine all arbitration cases before them without interruption and under the same arbitration rules which currently apply to said arbitrations, under the supervision of DIAC.

Pursuant to the Decree, the ownership of real estate, assets, funds, staff, financial allocations and membership base of the two dissolved arbitration centres will be transferred to the DIAC. Dubai Courts and DIFC Courts will continue to hear claims, applications and appeals related to any arbitration proceedings conducted in tribunals of the dissolved arbitration centres. Additionally, DIAC will establish a new arbitration court consisting of 13 members, including its President and Vice President. The new court's members, who will have locally and internationally accredited arbitration expertise, will be appointed by decisions of the Centre's Board of Directors for a non-renewable term of four years.

What should be the position for those who have EMAC as an arbitration seat in their contracts?

Any party with EMAC as an arbitration seat in their active contracts will have to renegotiate the contracts and use an alternate centre.

Written by:

Abdulla A. Wasel, ACI Arb, Managing Associate

Mahmoud Abuwaseel, Managing Partner