

New era, new rules

In its first update since 2007, DIAC has unveiled a new set of arbitration rules this year. Patrick Gearon and Peter Smith of Charles Russell Speechlys analyse the context of the changes to the rules and the key differences in them.

The Dubai International Arbitration Centre (“DIAC”) is an independent, non-profit arbitration institution that was set up in 1994 by the Dubai Chamber of Commerce. It is a well-established and popular body for the administration of disputes not only in Dubai but around the Arabian Gulf.

DIAC has recently published its new 2022 Rules, its first update to its rules since 2007. The 2022 Rules come into force on March 21, 2022, and cover all arbitrations commenced from that date. The new rules have been announced following Decree No. 34 of 2021 which, on September 14, 2021, abolished the DIFC-LCIA Arbitration Centre - an institution widely seen as an alternative to DIAC - and the Emirates Maritime Arbitration Centre and consolidated their operations into a beefed-up DIAC.

In addition to the new rules DIAC has also published the members of its Court of Arbitration, established in accordance with Dubai Decree No. 34 of 2021. The Court of Arbitration replaces the former Executive Committee, and its scope of duties includes supervising all of DIAC’s services.

A particularly welcome innovation is the obligation on the Court of Arbitration to supervise and review the draft arbitral awards and orders before issue, to check their validity and enforceability.

This article considers the context of the changes to the rules and explains the key differences in them.

BACKGROUND TO THE 2022 RULES

In 2016, DIAC published draft rules for public consultation which were intended to update the 2007 Rules. The 2016 consultation took place following innovations to the rules in a number of jurisdictions designed to make arbitration more efficient, for example in a greater use of technology such as telephone and video conferencing.

Since 2016, much has changed. The

COVID-19 pandemic has supercharged the use of technology in arbitrations, and disputes arising from the consequential global disruptions to trade have increased the numbers of arbitrations and particularly disputes involving parties seeking emergency measures from tribunals and who wish to have their disputes dealt with expeditiously.

Following the publication of Decree 34 of 2021 in September 2021 the DIFC-LCIA Arbitration Centre immediately stopped accepting requests for arbitration made under the 2016 DIFC-LCIA Rules, and a degree of uncertainty crept in as DIAC suspended all new arbitration referrals, including those made under the 2007 Rules, pending consultation between it and the DIFC-LCIA over the way forward.

KEY ASPECTS OF THE NEW RULES

The new rules are the route out of the impasse created by Decree 34. Approved by DIAC’s Board of Directors on 25 February 2022, the new rules contain provisions not found in the 2007 Rules, the highlights of which are summarised below.

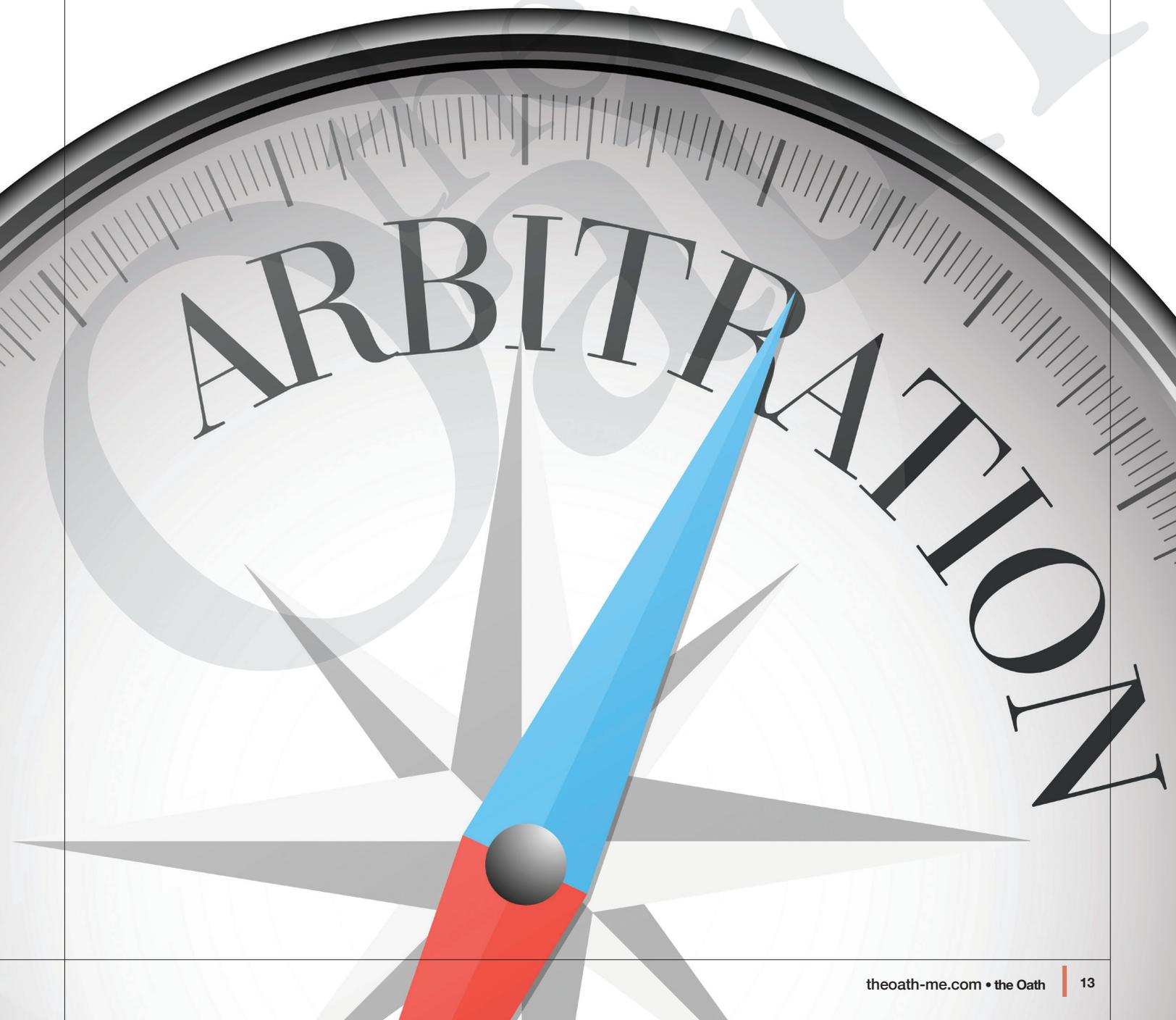
Consolidation of claims (article 8). A claimant may now submit a single request for arbitration covering more than one claim and arising out of more than one arbitration agreement. The Court of Arbitration has the power to allow proceedings arising from more than one agreement to arbitrate to continue if (a) all claims in the arbitrations are made under the same agreement to arbitrate; or (b) the arbitrations involve the same parties, the agreements to arbitrate are compatible; and: (i) the disputes arise out of the same legal relationship(s); or (ii) the underlying contracts consist of a principal contract and its ancillary contract(s); or (iii) the claims arise out of the same transaction or series of related transactions. Furthermore, tribunals now have the power to consolidate arbitrations after their formation.

Joinder of third-parties (article 9). Third parties may be joined to the arbitration as either claimants or respondents, upon the permission of the Court of Arbitration or the tribunal.

Alternative means of appointing arbitrators (article 13). The new rules introduce an alternative process for appointing arbitrators. Broadly, if (a) the parties fail to nominate a sole arbitrator jointly or (b) co-arbitrators fail to nominate a chair, and in either case the parties have not agreed a process for the required nomination, then DIAC will provide the

parties or co-arbitrators with a shortlist of three potential appointees that the parties can supplement with up to three additions, following which the parties or co-arbitrators have up to seven days to rank the list. DIAC will then invite the candidates to serve as arbitrator until one accepts

Third-party funding (article 22). The new rules expressly provide for and allow third-party funding of arbitrations. Funded parties must disclose the existence and certain details of their funding agreement and whether the funder has agreed any adverse costs liability. The tribunal is





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now permitted to take into account the existence of any third-party adverse costs liability when determining the costs of the arbitration and in relation to issues such as security for costs.

Expedited Procedures (article 32).

Expedited or accelerated proceedings will mandatorily apply (a) when the total sums claimed and counterclaimed are equal to or less than AED 1 million unless otherwise agreed, (b) where the parties have expressly agreed to accelerated proceedings, and/ or (c) in cases of exceptional urgency. Final awards in accelerated proceedings must be rendered within 3 months of the tribunal being transmitted the arbitration file by DIAC’s staff, unless extended by the Court of Arbitration on exceptional grounds. However, the expedition provisions only apply to agreements to arbitrate formed after March 21, 2022, when the new rules come into force unless the parties agree (article 2.4).

Interim measures (Appendix II, article 1).

The new rules specifically set out the tribunal’s powers to order interim measures during arbitral proceedings. They are extensive and are in line with the powers set out in the UAE Arbitration Law (Federal Law No. 6 of 2018).

Emergency arbitration (Appendix II, article 2).

The new rules allow parties seeking emergency relief to apply, either ex parte or on notice to the other parties, to the Court of Arbitration which, if satisfied by the reasonable need for relief, will appoint an emergency arbitrator within one day of receipt of the application.

Default seat of the arbitration (article 20).

The new rules switch the default seat of arbitration from the Dubai Courts to the Courts of the Dubai International Financial Centre. This development means that arbitrations under the new rules will be governed by the DIFC Arbitration Law (Law No. 1 of 2008) by default. Parties retain the choice to opt out of the default seat and to choose a different seat of the arbitration, however.

Legal fees (article 36).

There was uncertainty under the 2007 Rules as to whether tribunals in DIAC arbitrations had the power to award parties their legal fees. Indeed, the prevailing view was that the 2007 Rules did not give tribunals that power. That uncertainty has now been addressed by Rule 36.1 of the new rules which expressly gives the tribunal the

power to award legal costs. This brings the DIAC Rules much more in line with other leading institutional arbitrations rules such as the LCIA and ICC rules.

THE FUTURE OF ARBITRATION IN DUBAI

Whereas the abolition of the DIFC-LCIA Arbitration Centre caused a degree of concern, not least among commercial parties who deliberately chose the DIFC-LCIA Rules rather than the 2007 DIAC Rules, the 2022 Rules have been very widely welcomed by legal practitioners, in part because they give almost all of the same powers to a DIAC-constituted tribunal as to one constituted under the DIFC-LCIA Rules.

They also upgrade and align the 2007 Rules to the standards set in the UAE Federal Arbitration Law and international norms and best practice.

Undoubtedly there will be snagging issues as the new rules become embedded, not least with DIAC now due to accept requests for arbitration arising out of agreements that expressly opted for arbitrations under the DIFC-LCIA Rules.

Nonetheless, the 2022 Rules are a very positive step and commercial parties should have confidence that, if disputes arise between them, they can access a fair, effective and proportionate arbitral dispute resolution service if they choose a DIAC arbitration and the default seat of the DIFC Courts. 🇦🇪



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