

Legal Alert



Do you have an on-going DIFC-LCIA arbitration? If so, you should tread carefully Dubai Decree No. 34 of 2021 Concerning the Dubai International Arbitration Centre (“Decree”)

By Mevan Bandara | 23 September 2021

The Decree, which came into force on 20th September 2021, has abolished the Emirates Maritime Arbitration Centre (EMAC) and the DIFC Arbitration Institute (DAI). The Decree has taken the local legal and business community by surprise, and has given rise to legitimate concerns as to its impact on arbitration proceedings presently underway.

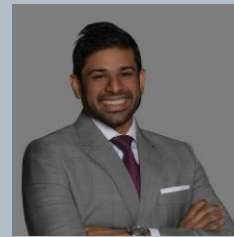
The Decree abolishes EMAC and the DAI with immediate effect and transfers all their assets, rights and obligations to the Dubai International Arbitration Centre (DIAC), which will in effect, replace EMAC and DAI. To this end, the DIAC has been granted a period of not more than six months to effectively replace EMAC and the DAI. The DIFC-LCIA Arbitration Centre was established consequent to an agreement entered into between the DAI and the LCIA; meaning that, the abolishment of the DAI (at the very least) calls to question the continuation of DIFC-LCIA Arbitration Centre.

This alert very briefly highlights some of the questions that arise, by reference in particular to proceedings being undertaken under DIFC-LCIA Arbitration Rules (**Rules**), and considers the steps that might be required to mitigate potential challenges to the integrity of arbitration proceedings and any arbitration award that is issued under the Rules.

While each case will need to be examined on its own particular circumstances, some of the more immediate concerns that arise are as follows:

First, although the Decree appears to contemplate that ongoing DIFC-LCIA arbitration proceedings will continue without interruption, the language of the Decree also appears to make this

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conditional on the DIAC and its administrative body taking over supervision of any such proceedings. Article 6(b) states as follows:

The arbitral tribunals and committees formed as at the date of entry into force of this Decree at the Canceled Arbitration Centers and the Dubai International Arbitration Centre shall continue to hear and resolve all arbitration cases before them without interruption and in accordance with the rules and procedures adopted by them in this regard, unless the arbitration parties agree to otherwise, provided that the Dubai International Arbitration Centre and its Administrative Body shall undertake supervision over these cases. [LexisNexis translation]

Therefore, a question arises as to how the proceedings would continue without interruption pending the replacement of the DIFC-LCIA Arbitration Centre with the DIAC. Parties to an arbitration and their arbitrators will need to consider what steps might need to be adopted in order to cover the interim period, otherwise potential challenges to a final award can conceivably be made on the basis, for example, that the arbitration procedure adopted was not in accordance with the agreement of the parties, or was otherwise defective.

Secondly, the role of the DIFC-LCIA Arbitration Centre and the LCIA Court is an integral part of the Rules and, therefore, in circumstances where the effect of the Decree calls into question the very existence of the DIFC-LCIA Arbitration Centre, tribunals and parties will need to consider how the arbitration can in fact continue under the Rules if the DIFC-LCIA Arbitration Centre is removed from maintaining its traditional function which is embedded under the very same Rules. One such example is that Article 26.7 of the Rules requires the DIFC-LCIA Registrar to transmit the final award to the parties “*authenticated by the Registrar as an DIFC-LCIA Arbitration Centre Award*”. This may no longer be possible.

Although the DIFC-LCIA Arbitration Centre has very recently published an update assuring parties that it continues to deal with the day-to-day management of cases under the Rules, it is unclear by what authority it continues to do so, given that the DAI stands abolished as of 20th September 2021. This too could potentially translate into challenges to awards (or a refusal by a Court to recognize awards).

Thirdly, an important practical consideration for tribunal members will be the status of the tribunal fees and disbursements that might need to be incurred to attend hearings, particularly where arbitrators based outside of the UAE plan to incur travel and accommodation costs to attend hearings in person. Given that all functions concerning payments of fees are to be taken over by the DIAC, arbitrators will need to account for potential delays in the reimbursement of expenses and payment of fees.

Parties and arbitrators will need to give careful consideration to these factors and, notwithstanding the apparent intention under Article 6(b) of the Decree that proceedings should continue uninterrupted, parties and arbitrators will need to consider whether it might be prudent to stay or suspend proceedings until such time as the DIAC formally steps in, or until the parties and tribunal enter into an agreement that comprehensively covers some of the concerns highlighted above. A delay to proceedings would in such circumstances be inevitable, but the inconvenience will need to be balanced with the possible disastrous outcome if an award is set aside because of a failure to properly address the ramifications of the Decree.

No doubt this development will eventually settle into a new norm, but until then, both arbitrators and parties should tread carefully. ■

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