

inBrief

**Yes, its groundbreaking, but what does it mean for you?
A rough guide to the implications of Decree 34 for
parties in arbitration in Dubai**

By Chatura Randeniya | 26 September 2021

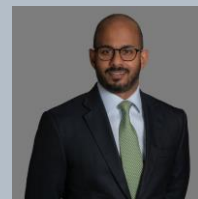
Parties in the process of arbitrating disputes, thinking of commencing arbitration, or even thinking of including arbitration provisions in a contract have been given a lot to think about, thanks to the changes introduced by Decree 34 of 2021. It is early days yet, and we need to see how matters develop. With that caveat out of the way, here is a rough guide of what Decree 34 could mean for parties in arbitration in the UAE.

You are party to an ongoing arbitration under the DIAC Rules

Carry on, you're the least affected by the Decree.

You are party to an ongoing arbitration under the DIFC-LCIA or EMAC Rules

Unfortunately, you are at the opposite end of the spectrum. Although the Decree appears to contemplate that ongoing DIFC-LCIA and EMAC arbitration proceedings will continue without interruption, the language of the Decree also appears to make this conditional on the DIAC and its administrative body taking over supervision of any such proceedings. Afridi & Angell's [Legal Alert of 23 September 2021](#) addresses this scenario. Article 8(c) of the Decree provides that the DIFC-LCIA and EMAC Rules will continue to be applied to the extent they do not conflict with the Decree and the Statute, until the approval of the arbitration and conciliation rules of the DIAC by the DIAC Board of Directors. This seems to suggest that the DIFC-LCIA Rules and EMAC Rules will be disapplied once a new set of DIAC Rules are approved. Parties and arbitrators will need to tread carefully in order to avoid potential challenges to final awards.

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Chatura's practice focuses primarily on dispute resolution. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, ICC and *ad hoc* arbitrations. In addition to representing clients in arbitration, he sits as an arbitrator. Chatura also works with local advocates on matters before the UAE Federal courts. Chatura regularly advises clients in high value construction, and maritime and shipping disputes. He is admitted as Attorney-at-Law of the Supreme Court of Sri Lanka. He is a recommended practitioner by Chambers and Partners and Legal 500.

You have ongoing litigation (either before the Dubai Court or the DIFC Court) in relation to arbitration

These matters will carry on. Article 7 of the Decree provides that the two courts will continue to hear all cases, petitions and appeals related to arbitration awards/procedures issued by tribunals appointed by the DIAC, DIFC-LCIA and EMAC.

You have a contract which provides for arbitration under the DIAC Rules

If you have made provision for the seat of the arbitration (e.g. Dubai, or the DIFC), that provision will be upheld and applied. However, if you have not made provision, the default seat will be the DIFC. Prior to the Decree, onshore Dubai would have been the default seat. Keep an eye out for revisions to the DIAC Rules – the version of the rules that will apply if a dispute goes to arbitration will depend on the language used in your dispute resolution clause.

You have a contract which provides for arbitration under the DIFC-LCIA or EMAC Rules

Although Article 6(A) of the Decree provides that all agreements which have been concluded by 20 September 2021 providing for arbitration under the DIFC-LCIA or EMAC Rules shall be considered as valid and effective, assuming that you do not run the risk of your claim being time-barred, you should consider waiting to see how matters develop before taking any steps. Article 6(A) goes on to provide that the DIAC will replace the DIFC-LCIA and EMAC *in hearing and resolving disputes arising from these agreements*. The DIAC has six months to effectively replace the EMAC and the DIFC Arbitration Institute, and a lot of the uncertainties should be resolved during this time. It may be necessary to consider amending your dispute resolution clause, depending how matters develop.

You are drafting a contract, and wondering what to put in as a dispute resolution clause

For the time being, and until the prevailing uncertainties are clarified, avoid opting for DIFC-LCIA or EMAC arbitration clauses. You can still opt for other institutional rules and have the DIFC as the seat of arbitration. The DIAC Rules, despite being possibly one of the oldest sets of institutional rules in the UAE, are suitable for most disputes. It is anticipated that the DIAC Rules will be overhauled very soon, and the recent amendments provide that the DIAC Court of Arbitration and the Board of Directors are empowered to issue and amend the DIAC Rules. ■

Regardless of which category you find yourself in, do not panic. Dubai is very nimble and proactive, and should soon iron out any issues that need to be addressed. Afridi & Angell's dispute resolution team has extensive experience in advising on and representing clients in arbitrations. Should you have any questions, please contact the author or your usual Afridi & Angell contact.

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