

## The Dubai International Arbitration Centre: How Does It Compare?

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With Dubai Arbitration Week approaching, the Dubai International Arbitration Centre (“**DIAC**”) will again return to the fore of discussion amongst the arbitration community. As a contribution to the debate around whether DIAC will become a leading international arbitral centre, this article sets out and compares the material provisions of the relatively new DIAC rules (“**Rules**”) against the rules of competitor institutions such as the ICC, LCIA, SIAC, HKIAC, CIETAC, ADCCAC, BCDR, QICCA and SCCA.

Provided with this article are two easy reference comparison tables which juxtapose the rules of various centres on everything from the centre’s location, to the commencement of proceedings, to cost allocation. These tables will be especially helpful to legal teams that are grappling with the perennial question from commercial colleagues of “*which arbitral institution should we use on this matter*”, or indeed to commercial colleagues looking to understand or pre-empt their legal team’s advice on the choice and/or key differences between competing options.

For ease of comprehension and printing, the comparison is in two parts with the DIAC Rules appearing in each. Part 1 juxtaposes the DIAC Rules with the “Top 5” arbitration centres (ICC, LCIA, SIAC, HKIAC and CIETAC) and can be viewed [here](#). Part 2 covers the other key arbitration rules (ADGM, ADCCAC, BCDR, QICCA, SCCA, SCC, JCAA, ICDR, JAMS and UNCITRAL) and can be viewed [here](#). The tables can of course be joined to enable comparison between any combination of the aforementioned rules.

### 1. Background to Arbitration in Dubai

Decree No. 34 of 2021 (“**Decree No. 34**”) abolished the DIFC-LCIA and consolidated Dubai’s arbitral institutions, making DIAC the sole arbitration centre in Dubai. This was followed on 2 March 2022 by the much anticipated update of DIAC’s arbitration rules. The Arbitration Rules 2022 (as above, “**Rules**”) apply to all arbitrations referred to DIAC after 21 March 2022.<sup>1</sup> The new Rules reflect international best practice and in some respects go further. Particularly noteworthy are the timelines to award, expedited procedure and the provision for ex-parte interim and emergency relief applications.

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<sup>1</sup> Akin Gump Strauss Hauer & Feld LLP declaration of interest: Graham Lovett is a Member of the Board of Directors of DIAC and a Member of the Arbitration Court of DIAC, and had a key role in drafting the new DIAC Rules. Additionally, Ryan Whelan was amongst a number of practitioners who were consulted on the new Rules and provided comments. The commentary contained in this article is that of the authors and does not represent the views of DIAC.

## 2. The Arbitration Court

The new Arbitration Court was formed pursuant to Decree No. 34. The court acts as DIAC's supervisory body and consists of 9 members. Akin Gump's Graham Lovett is a Board Member of DIAC and a member of the Court. The Court has various responsibilities, such as: (i) determining certain preliminary jurisdictional challenges; (ii) appointing arbitrators; (iii) determining consolidation and joinder applications prior to a Tribunal's formation; and (iv) conducting the procedural review of final awards.

## 3. The Core Objective

The core objective of the Rules is that DIAC arbitrations be conducted "*justly, fairly, impartially, efficiently and proportionately (having regard to the sum(s) claimed and/or counterclaimed and the complexity of the dispute)*". By adopting the Rules, the parties, representatives and Tribunal undertake to conduct arbitrations in accordance with this objective, and Tribunals are expressly empowered to report to relevant professional bodies any counsel misconduct and/or attempt to unfairly obstruct proceedings. The intention behind the Rule is to ensure that the conduct of arbitrations is efficient – and that procedures are adopted and decisions of Tribunals made to further that objective.

## 4. Key Changes

A key objective of the Rules was also to keep the drafting simple and understandable. DIAC's ambition is to be recognised as one of the top five arbitration centres in the world. The Rules are befitting of such a centre, and represent a clear statement of intent.

### Timeframes – shortening the path to monetising awards

Under the new Rules there is a standard and expedited procedure. Unless the parties agree otherwise, the expedited procedure will apply by default to claims valued less than or equal to AED 1 million (excluding interest and legal representation costs). The threshold was seen as too low by some but should encapsulate the type of cases that lend themselves to expedition. Not all participants will necessarily welcome a mandatory fast-track of claims but the ability for parties to opt out of the process remains. Likewise, if time is of the essence in a higher value case, parties may by written agreement opt in to the expedited procedure, or they can apply to the Arbitration Court in cases of exceptional urgency.

### A. Standard Procedure

The standard procedure provides that a final award must be issued (subject to any extension) 6 months from the date the file was sent to the Tribunal.<sup>2</sup> This target pace is market leading. The International Chamber of Commerce ("**ICC**") rules also provide for a 6 month timeframe. However, the trigger is the final signature of the Terms of Reference, which occurs later than file transmission to the Tribunal. To see how DIAC's position compares more broadly, the authors have included a snapshot of the timeframes that apply to awards under the various arbitral institutions:

Institution	Timeframe	Start of timeframe	Availability of extension
ICC. <sup>3</sup>	6 months.	Last signature on Terms of Reference (or notification of approval of the same by ICC Court).	Extendable by ICC Court.

<sup>2</sup> The deadline can be extended by the Arbitration Court or by written agreement of all parties.

<sup>3</sup> ICC International Court of Arbitration ("**ICC**").

Institution	Timeframe	Start of timeframe	Availability of extension
<b>LCIA.</b> <sup>4</sup>	3 months.	Last submission from parties in accordance with timetable notified to parties and Registrar.	Timetable may be revised and re-notified as necessary by Tribunal.
<b>SIAC.</b> <sup>5</sup>	45 days (Deadline for submission to SIAC Registrar).	Close of proceedings. Registrar to suggest modification(s) to the award as soon as practicable.	Extendable by parties or SIAC Registrar.
<b>HKIAC.</b> <sup>6</sup>	3 months.	Close of proceedings or relevant phase of proceedings.	Extendable by agreement of the parties, or where appropriate, by HKIAC.
<b>CIETAC.</b> <sup>7</sup>	6 months. <sup>8</sup>	Tribunal's formation.	Extendable by the Arbitration Court President if he/she considers it truly necessary and the reasons for extension truly justified.
<b>ADCCAC.</b> <sup>9</sup>	6 months.	File received by sole arbitrator/president of Tribunal.	Tribunal can extend by up to a maximum of 3 months. Further extension by ADCCAC Committee.
<b>BCDR.</b> <sup>10</sup>	60 days.	Close of proceedings.	Tribunal shall exert best efforts to meet timeframe. Timeframe applies unless otherwise agreed by parties or BCDR.
<b>QICCA.</b> <sup>11</sup>	6 months.	File of arbitration transmitted to Tribunal.	Timeframe applies unless longer period agreed with parties.
<b>SCCA.</b> <sup>12</sup>	60 days.	Close of hearing.	Timeframe applies unless otherwise agreed by parties, specified by law or determined by SCCA.

## B. Expedited Procedure

The award will be issued (subject to any extension) 3 months from the date the file was sent to the Tribunal.<sup>13</sup> This time limit is half that which is required under the expedited provisions of many other international arbitration institutions (including the ICC and SIAC), which is again a statement of intent on the part of DIAC. In terms of how DIAC's position compares more broadly, a summary of timeframes applied by various arbitral institutions has been included below:

<sup>4</sup> London Court of International Arbitration ("**LCIA**").

<sup>5</sup> Singapore International Arbitration Centre ("**SIAC**").

<sup>6</sup> Hong Kong International Arbitration Centre ("**HKIAC**").

<sup>7</sup> China International Economic and Trade Arbitration Commission ("**CIETAC**").

<sup>8</sup> Time period shortened to 4 months for domestic arbitrations.

<sup>9</sup> Abu Dhabi Commercial Conciliation & Arbitration Center ("**ADCCAC**").

<sup>10</sup> Bahrain Chamber for Dispute Resolution ("**BCDR**").

<sup>11</sup> Qatar International Centre for Conciliation and Arbitration ("**QICCA**").

<sup>12</sup> Saudi Center for Commercial Arbitration ("**SCCA**").

<sup>13</sup> The deadline can be extended by the Arbitration Court on exceptional grounds.

Institution	Timeframe	Start of timeframe	Availability of extension
ICC.	6 months.	Case management conference.	Extendable by ICC Court.
LCIA.	Expedited formation of tribunal and replacement arbitrator appointment procedures available. Tribunal can set a faster timetable (generally after discussion with parties).		
SIAC.	6 months.	Tribunal's constitution.	Extendable by SIAC Registrar in exceptional circumstances.
HKIAC.	6 months.	Transmission of the case file to the Tribunal by HKIAC.	Extendable by HKIAC in exceptional circumstances.
CIETAC.	3 months.	Tribunal's formation.	Extendable by the Arbitration Court President if he/she considers it truly necessary and the reasons for extension truly justified.
ADCCAC.	Expedited procedure not available.		
BCDR.	30 days.	Close of proceedings.	Timeframe applies unless otherwise agreed by parties or determined by BCDR.
QICCA.	No express provision for expedited procedure (but the Tribunal is required to conduct the proceedings efficiently so as to avoid unnecessary delay).		
SCCA.	30 days.	Close of hearing.	30 day timeframe applies unless otherwise agreed by parties, specified by law or determined by SCCA. 180 day limit can be extended by SCCA in exceptional circumstances.
	In any case, 180 days.	Tribunal's constitution.	

#### Exceptional Procedures – protecting interests from the start (including without notice)

A number of exceptional procedures are available under the Rules, including interim measures, emergency interim measures, conciliation proceedings and the DIAC appointing authority procedure. The following developments are of particular note:

- i. Ex-parte Interim Relief: The new Rules expressly state that a party can apply for interim relief on an ex-parte basis if the party satisfies the Tribunal that notifying the other parties may jeopardise the efficacy of the application. Notwithstanding that the Rules have only been in operation for c. 6 months, we understand that ex-parte interim relief applications have already been sought. Similarly, emergency interim relief can be sought on an ex-parte basis, provided the applicant reasonably believes notice may jeopardise the efficacy of the application and such relief is permissible under the procedural law applicable to the arbitration seat.
- ii. Conciliation Procedure: This new procedure allows parties to attempt amicable dispute resolution, with the help of an independent conciliator. If conciliation is successful, parties will obtain a formal settlement agreement within 2 months from the date of the file's transmission to the conciliator (unless agreed otherwise). Should conciliation fail, the conciliation proceedings shall be terminated without prejudice to the merits of the dispute/arbitration proceedings. Mediation rules will also shortly be published.

## Legal Fees – position now in-line with market

It is now clear that Tribunals have the power to award legal fees, aligning DIAC's costs position with international practice. The 2007 rules were silent on this issue, which often led to Tribunals and/or local courts holding that legal fees were irrecoverable absent express agreement. The authors are even aware of a case in which express agreement was obtained (both in the terms of reference and list of issues) but the defeated party nevertheless avoided exposure on costs because the local courts accepted that even if a party agreed to costs through their legal counsel, the agreement would only be effective if the lawyer's POA expressly included the authority to agree costs on behalf of their client. Such decisions, which many in the arbitration community considered perverse, should now be a thing of the past.

## Awards – electronic signing and deemed issuance at seat

Removing another previous quirk of arbitrating in the UAE, Tribunals are now permitted to sign awards electronically and final awards are now deemed to have been issued at the seat of arbitration. This will put an end to the inefficient and costly practice of Tribunal members travelling to ensure their physical presence at the seat of arbitration when signing awards.

## 5. Other Key Developments

### Third Party Funding – permissible but must be disclosed

Recognising the increasing use of third party funding, the Rules provide that such arrangements must be disclosed promptly. Specifically, the relevant party must disclose the identity of the funder and whether or not the funder has accepted potential adverse costs liability, which is a factor the Tribunal can take into account in determining costs. If the third party funding agreement post-dates the Tribunal's constitution, the arrangement will only be allowed if it will not give rise to a conflict of interest between the funder and the Tribunal.

### Appointment of Arbitrators – new alternative procedure

To ensure the efficient constitution of a Tribunal, a new alternative procedure is available for the appointment of arbitrators. This applies where: (i) the parties agree to adopt the procedure; (ii) the parties have not prescribed a method of appointment; or (iii) there is a failure to appoint an arbitrator. Under the alternative procedure, DIAC shall circulate a list of candidates for the parties/co-arbitrators to add and rank their preferences. Each party has 7 days to return the updated list. If a party fails to comply with the deadline, they will be taken to have equally ranked the list of arbitrators selected by DIAC. This ranking procedure reflects the practice informally adopted by some parties in recent years to try to maximise party autonomy in respect of the appointment of a single arbitrator (instead of referring to an institution) and/or the appointment of the President of a 3 arbitrator tribunal (rather than allow the party nominated arbitrators and/or institution to choose).

### Change in Counsel –Tribunal approval required

After a Tribunal is constituted, any change of counsel is subject to Tribunal approval. Certain commentators take the view that this is controversial on the basis that the provision interferes with a party's right to freely select its legal counsel. We anticipate that concerns will fall away as the new Rules are applied, it being unlikely that approval would be withheld by a Tribunal absent circumstances where there was a conflict and/or the change in counsel is considered to be motivated by a desire to obstruct the proceedings, undermining the core objective of the Rules.

## Virtual Hearings – here to stay

In line with the desire to conduct proceedings efficiently, the Rules expressly empower Tribunals to conduct meetings and/or hearings (including accepting oaths and conducting witness examination) via telephone or video conferencing. Communications and filings can also be made electronically, via email or an electronic case management system that is to be implemented by DIAC. These environmentally conscious changes reflect the ever-increasing use of technology in the post-COVID world.

## Award Scrutiny – avoiding procedural challenge

Prior to an award being issued the Arbitration Court will review the award to ensure it is procedurally sound, reducing the likelihood of procedural non-compliance challenges at enforcement stage. DIAC, unlike the ICC, will not undertake substantive reviews, which should mean a time and cost saving for parties.

## 6. DIAC's New Rules v DIFC-LCIA Rules

All arbitrations referring to the rules of the DIFC-LCIA commenced on or after 21 March 2022 (or commenced before 21 March 2022 but not registered by the DIFC-LCIA under a designated case number) will be registered by DIAC and administered directly by DIAC in accordance with the Rules. Many parties with DIFC-LCIA arbitration agreements are therefore keen to understand the material differences between the DIAC Rules and the old rules of the DIFC-LCIA. In headline terms:

	DIAC new Rules	DIFC-LCIA Rules 2021
<b>Deadline for Response.</b>	30 days after the Request for Arbitration has been notified to the Respondent. DIAC may grant an extension of up to 10 days.	28 days from the date the Request for Arbitration, accompanying documents and fee is received electronically by the Registrar (or such lesser or greater period determined by the LCIA Court).
<b>Time Limit for Challenging Arbitrator.</b>	15 days from: (i) receipt of the notification of the arbitrator's appointment; or (ii) when the relevant facts and circumstances became (or ought reasonably to have been) known.	14 days from: (i) formation of the Tribunal; or (ii) becoming aware of the relevant grounds.
<b>Expedited Procedure.</b>	Available.	Not available, but Tribunal may make any procedural order it considers appropriate in relation to expeditious conduct of the arbitration. Provision made for expedited formation of the Tribunal and appointment of replacement arbitrator.
<b>Summary Dismissal.</b>	No express provision, but arguably available pursuant to Rule 17.2.	Available.
<b>Ex-parte Interim Relief.</b>	Available.	Not available. Parties given 'reasonable opportunity' to respond to application for interim measures.

	DIAC new Rules	DIFC-LCIA Rules 2021
<b>Timeframe for issuance of Award.</b>	6 months from the date the file was sent to the Tribunal (subject to extension).	3 months following the last submission from the parties (subject to revision of timetable).
<b>Timeframe for correction of Award or issuance of an additional award for claims / counterclaims not dealt with.</b>	Parties to request correction, interpretation or additional award within 30 days of receipt of the award. Correction or interpretation to be made within 30 days of receipt of request. Additional award to be made within 60 days of receipt of request.	Parties to request correction or additional award within 28 days of receipt of the award. Correction to be made within 28 days of receipt of request, Additional award to be made within 56 days of receipt of request.

## 7. Global Comparisons

As mentioned and illustrated above, we have compared the new DIAC Rules against the “Top 5” arbitration rules [here](#) and against the other key arbitration rules [here](#). It is clear on all metrics that the DIAC Rules compare favourably and that the centre is now substantively well positioned to set the pace and pursue its stated aim of becoming a top five arbitral centre.

**Akin Gump’s Middle East disputes team has market-leading knowledge on arbitration, including the DIAC Rules. If you would like to meet with us or receive a training session on the new Rules, please contact Ryan Whelan ([rwhelan@akingump.com](mailto:rwhelan@akingump.com))**

**If you have any additional questions concerning this alert, please contact:**



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