Conducting arbitration in Dubai, UAE: further developments

The DIAC-DIFC DRA Memorandum of Understanding (MoU), and the new DIFC-LCIA Arbitration Rules come into force.

Introduction

Arbitration is commonly chosen by parties in the construction industry in Dubai as the forum for resolution of disputes. Two leading arbitration institutions in Dubai, UAE, are the Dubai International Arbitration Centre (DIAC) and the DIFC-LCIA Arbitration Centre.

DIAC, which was first established in 1994 as the "Centre for Commercial Conciliation and Arbitration", is an arbitration centre located in "onshore" Dubai, i.e. outside of the many free zone areas located within Dubai. It has its own arbitration rules, the current version of which is the DIAC Arbitration Rules 2007 (although DIAC has recently closed a public consultation on a draft set of new rules, the DIAC Arbitration and Conciliation Rules 2016). There is no distinct arbitration law in Dubai and therefore arbitrations seated in Dubai under the DIAC rules are governed by the UAE Civil Procedures Code.

The DIFC-LCIA Arbitration Centre is part of the Dubai International Financial Centre (DIFC) Dispute Resolution Authority (DRA). The DIFC is an "offshore" financial free zone established in 2004 which has its own independent legal system based on English common law principles. The DIFC DRA was established in 2014 and is comprised of the DIFC Courts, the DIFC-LCIA Arbitration Centre, and other institutions, including the DIFC Academy of Law, and Wills and Probate Registry. The DIFC-LCIA Arbitration Centre itself was established in the DIFC in 2008. It has its own arbitration rules, the DIFC-LCIA Arbitration Rules, which are closely modelled on the London Court of International Arbitration (LCIA) rules and the latest rules have just been published (see below). The DIFC has its own distinct arbitration law, which is based on the UNCITRAL Model Law. In addition, judgments of the DIFC Courts are subject to a mutual co-operation regime and an agreed enforcement protocol with the Dubai Courts, which, in principle requires the Dubai Courts to recognise those judgments without reconsidering its merits.
The enforcement procedure in the UAE requires arbitration awards to be ratified by the court. Historically, the Dubai Courts had exclusive jurisdiction to recognise and enforce arbitration awards rendered in “onshore” Dubai. However, the process for ratification of an arbitration award in the Dubai Courts has been found to be cumbersome and at times unpredictable.

A significant development then occurred in 2014 in the case of *Banyan Tree v Meydan Group LLC* where DIFC Court of Appeal decided that the DIFC Courts have jurisdiction to recognise and enforce arbitral awards rendered in “onshore” Dubai (including those made pursuant to DIAC Arbitration Rules), even in the absence of any geographic nexus with the DIFC.

A claim for recognition of an award before the DIFC Courts, rather than before the Dubai Courts is a more attractive option for parties as it has the potential to avoid often timely and costly proceedings with a more uncertain outcome before the Dubai Courts. Nonetheless, some uncertainty remains in respect of the correct procedure to follow and the DIAC-DIFC MoU is intended to address this.

**DIAC-DIFC MoU**

On 20 September 2016, DIAC and the DIFC DRA, entered into a MoU for mutual corporation with an aim to further enhance their mutual goals, missions and visions.

The purpose of the MoU is for the centres to work together and exchange information in areas of mutual interest that will further enhance the centres respective strategic interest and objectives, including, amongst other things, enhancing the expedited, recognition, ratification and enforcement of DIAC arbitration awards by the DIFC Courts.

Under the terms of the MoU, the centres will work together to exchange information regarding the applicable rules and procedures relevant to the recognition, ratification and enforcement of a DIAC award by the DIFC Courts.

The centres will also work together to identify means to ensure parties are aware of the available options in Dubai when choosing a seat of arbitration under the DIAC Rules. Opting for the DIFC as the seat of arbitration in a DIAC arbitration will automatically import the application of the DIFC Arbitration Law, as the procedural law of the arbitration and therefore trigger the jurisdiction of the DIFC Courts as the ‘curial’ or supervisory courts of the arbitration. This will help parties to a dispute avoid sometimes unpredictable
interpretation of the UAE Civil Procedures Code that sets out the potential grounds of nullification of a DIAC award with a seat in “onshore” Dubai.

**DIFC-LCIA Arbitration Rules 2016**

The past couple of years have seen a number of major arbitration institutions around the world issuing new arbitration rules to reflect the development and innovations in practice. The institutions in Dubai are no exception. As mentioned above, DIAC has published a draft set of new rules for public consultation. In addition, on 1 October 2016 the new DIFC-LCIA rules came into force.

The changes in the DIFC-LCIA Arbitration Rules 2016 bring these rules in line with the LCIA Rules 2014. As such, they reflect international best practice and are designed to ensure that DIFC-LCIA arbitrations are more efficient and less expensive, making them a more appealing option to parties seeking to agree dispute resolution provisions in a contract.

There are many changes in the 2016 rules when compared to the previous, 2008 rules, although most of these changes are textual. Nevertheless, four of the most important substantive changes are discussed further below.

**1) Access to an emergency arbitrator**

Under the new rules, a party may, at any time before the arbitral tribunal is formed, apply for the immediate appointment of an emergency arbitrator to conduct emergency proceedings to determine matters of an urgent nature or order protective measures pending formation of the arbitral tribunal. The availability of an emergency arbitrator offers the parties a remedy to resolving matters of an urgent nature that would otherwise only be available via the courts.

**2) Multi-party arbitration and consolidation**

The new rules recognise that there may be more than one claimant or respondent and give the arbitral tribunal the power to provide additional procedural directions in relation to matters such as witness statements, submissions and evidence.

Additionally, under the new rules the arbitral tribunal also have the power to order consolidation where (1) all parties agree; and (2) the other arbitration is
subject to the DIFC-LCIA Rules commenced under the same arbitration agreement and between the same parties (provided that no arbitral tribunal has been formed for the other arbitration or where the arbitral tribunal is composed of the same arbitrators).

These changes address procedural difficulties that can arise when there are multiple parties to the same dispute and / or multiple contracts and therefore allow parties to avoid proceedings being delayed for the purpose of resolving procedural uncertainties.

(3) Measures to increase efficiency

The new rules provide a more efficient process for the formation of the arbitral tribunal and specifically provide that the LCIA Court shall not be delayed by any disagreement between the parties relating to the adequacy of the request for arbitration or response to request for arbitration.

The new rules also provide a quicker procedure for the appointment of a replacement, revocation and challenges to appointment, and nomination of a replacement arbitrator.

Again, this should help parties avoid proceedings being held up due to a dispute over procedural matters.

(4) Sanctions for poor conduct

Under the new rules, the arbitral tribunal is given power to sanction legal counsel for poor conduct including issuing a written reprimand or any other measure the tribunal believes is necessary for it to ensure its ability to maintain its general duties is preserved.

Conclusion

These developments are a positive step to bringing arbitration procedures and practices in Dubai inline with international standards and are likely to be welcomed by users of both DIAC and DIFC-LCIA arbitration.

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