Dubai International Arbitration Centre’s Default Seat of Arbitration

Proposed Change

The Dubai International Arbitration Centre (DIAC), established in 1994, is an arbitration centre located in ‘onshore’ Dubai (i.e. outside of the free zone areas located within Dubai). It has its own arbitration rules, specifically the DIAC Arbitration Rules 2007 (the “DIAC Rules 2007”). Pursuant to these rules, parties to a DIAC arbitration are free to agree in writing on the seat of arbitration. However, in the absence of such a choice, Article 20.1 of the DIAC Rules 2007 provides that the default seat of the arbitration will be Dubai.

Last year, DIAC released a draft set of new rules, the DIAC Arbitration and Conciliation Rules 2016 (the “DIAC Rules 2016”) for public consultation and it has recently indicated that the revisions to its rules will include a change to the default seat of arbitration from the ‘onshore’ Dubai to the ‘offshore’ Dubai International Financial Centre (DIFC).

The impact of the proposed change

Since there is no distinct arbitration law in Dubai (although, according to Global Arbitration Review, the UAE finally appears to be on the verge of enacting a new arbitration law based on the UNCITRAL Model Law (a draft of which has been under consideration for many years)), arbitrations seated in Dubai under the DIAC Rules 2007 are governed by Federal Law No (11) of 1992 (the “UAE Civil Procedure Code”). The focus of the Civil Procedure Code is court litigation and the articles relating to arbitration are brief and can be difficult to interpret in their English translations. However, the DIFC has its own comprehensive arbitration law, specifically the Arbitration Law DIFC Law No. 1 of 2008 (the “DIFC Arbitration Law”), which is based on the UNCITRAL Model Law on International Commercial Arbitration. Furthermore, the DIFC courts are recognised for their pro-arbitration approach and the DIFC Arbitration Law covers all stages of the arbitral process, from the arbitration agreement to the recognition and enforcement of arbitral awards.

If the parties to a DIAC arbitration fail to specify the seat of arbitration or otherwise are unable to agree on the seat, and the DIFC kicks in as the default seat of arbitration, the DIFC Arbitration Law will become the
procedural law of the arbitration triggering the jurisdiction of the DIFC Courts as the ‘curial’ or supervisory courts of the arbitration. This shift poses significant advantages for both parties and practitioners in arbitration.

- **Transferability and enforcement:** An arbitration award rendered in a DIFC seated arbitration is easily transferable into a DIFC court judgement which can be enforced directly in ‘onshore’ Dubai and all the other federal states, with limited scope for challenge in the onshore courts.

- **Security:** The DIFC courts have implemented a range of policies to discourage the challenging of arbitration awards and give parties additional security such as awarding costs on an indemnity basis against unsuccessful challengers and a requirement to pay the award amount into court prior to any challenges.

- **Confidentiality:** All information relating to arbitral proceedings in DIFC Courts is kept confidential, unless disclosure is required by the DIFC Court. Under the Civil Procedure Code, the parties are under no obligation to keep this information confidential unless specifically agreed between the parties.

- **Availability of interim measures:** An arbitral tribunal in a DIFC seat has discretion to order interim measures at the request of parties, whereas under the Civil Procedure Code, arbitral tribunals have limited powers when it comes to dealing with urgent and interim applications.

- **Availability of remedies if proceedings are brought in breach of a valid arbitration agreement:** The DIFC Court has authority to dismiss any action brought before the DIFC Court in a matter subject to an arbitration agreement, and to grant anti-suit injunctions if foreign proceedings are brought in breach of a valid arbitration clause. The position is far less straightforward in ‘onshore’ Dubai when it comes to obtaining such remedies.

**Conclusion**

Despite this development being a great leap forward in cementing Dubai’s reputation as the middle eastern hub of arbitration, it remains best practice for parties to agree on the seat of arbitration in their contracts beforehand to maximize certainty and avoid later hurdles and conflict. Of course, it remains to be seen whether the DIFC will be the parties’ preferred choice, particularly in respect of parties entering into construction contracts who have a tendency to stick with tried and tested methods of dispute resolution.

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