AFFAKI

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Of Arbitration in Dubai under the 2022 DIAC Arbitration Rules

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1. In a region long considered – rightly or wrongly – as synonymous both of arcane arbitration laws and of domestic courts upholding elastic concepts of arbitrability leading arbitral agreements to a dead end or unwilling to abide by the strict grounds for recognition and enforcement of arbitral awards set out in the New York Convention, Dubai stood out as a beacon of arbitration-friendly jurisdiction. On the face of it, Dubai has it all: a holistic arbitral ecosystem fostered by multiple arbitration institutions headquartered in the Emirate, a diversified legal profession with expertise in arbitration and related court proceedings providing a genuine choice for parties to seek representation, world-standard travel and hearing facilities, and a time zone that easily bridges hiatuses between Africa, Asia and Europe.

2. True, from time to time, UAE court decisions raised eyebrows or caused shivers. The judgment rendered by the Dubai Court of Cassation on 14 June 2020 is a case in point. The court found that an award issued by the Dubai International Arbitration Centre (the DIAC) was invalid due to the arbitrators not signing the sections of the award setting out their reasoning leading to the dispositive section.[1] Given the reference to public policy in that judgment which is a ground for setting aside awards under Article 53.2(b) of Federal Law No. 6 of 2018 (the UAE Arbitration Law), arbitrators now invariably err on the side of caution by signing each page of the award, including the table of contents! Moreover, pursuant to an established case law interpreting Article 4.1 of the UAE Arbitration Law, a special authority remains necessary for a director to agree on arbitration on the company's behalf. In the presence of only a general authority to sign the contract embedding the arbitration clause, the arbitration may be held void and the award unenforceable.[2]

3. On the other hand, the Dubai Court of Cassation is increasingly showing a determined pro-arbitration stance leading it to redeeming potentially flawed awards. Alive to feedback from the arbitration community, the legislator showed readiness to enact new arbitration-friendly legislation to promote Dubai as a safe seat. An example is the happy epilogue of the amendment in

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2016 of the Penal Code,[3] which led to reading Article 257 of the UAE Federal Law No.3 as creating a threat of criminal prosecution against arbitrators in the event they act contrary to their duties "*of integrity and impartiality*." This provision deterred some international arbitrators from accepting appointments in proceedings seated in the UAE and prompted others to resign from ongoing proceedings. The drama was fueled by a handful of counsel unleashing criminal complaints against arbitrators seeking to engage their criminal liability for bias where the procedural order or award was not to their taste. In 2018, in order to bring this controversy to an end and to restore the attractivity of the seat, the UAE adopted Federal Decree-Law No. 24/2018 to exclude arbitrators from the scope of application of Article 257 of the Penal Code, which is now limited to experts, translators, and investigators.

4. In the same arbitration-friendly vein, as regards the duration of arbitral proceedings, the Dubai Court of Cassation rendered on 28 April 2019 a remarkable judgment in which it decided that parties could extend the duration of arbitral proceedings tacitly.[4] Redeeming the belatedly rendered award, the court considered that the time limit for rendering the award can be implicitly extended as the result of the parties' participation in the proceedings after the expiry of the initially set date.

5. This pro-arbitration stance can also be perceived in a number of rulings rendered by the Dubai Court of Appeal. In a case where a party petitioned the court to annul a DIAC award in which the arbitral tribunal found that it did not have jurisdiction to hear claims arising out of separate contracts signed between the same parties, each contract containing a separate arbitration clause selecting DIAC, the Court of Appeal disagreed and held that nothing in the UAE Arbitration Law or in the DIAC Rules prevented a party from filing a single request for arbitration based on several contracts, each containing a separate arbitration clause.[5] It is noteworthy that the court relied in its judgment on the dissenting minority's opinion to conclude that the arbitral tribunal had the power to arbitrate the claims.[6]

مرسوم رقم (34) لسنة 2021
بشأن
مركز دبي للتحكيم الدولي

نحن محمد بن راشد آل مكتوم حاكم دبي

بعد الاطلاع على القانون الاتحادي رقم (6) لسنة 2018 بشأن التحكيم،
وعلى القانون الاتحادي رقم (6) لسنة 2021 في شأن الوساطة لتسوية المُنازعات المدنيّة والتجاريّة،
وعلى القانون رقم (8) لسنة 1997 بشأن تنظيم غُرفة تجارة وصناعة دبي ولائحته التنفيذيّة وتعديلاتهما،
وعلى القانون رقم (12) لسنة 2004 بشأن محاكم مركز دبي المالي العالمي وتعديلاته،
وعلى القانون رقم (13) لسنة 2016 بشأن السُّلطة القضائيّة في إمارة دبي وتعديلاته،
وعلى القانون رقم (5) لسنة 2021 بشأن مركز دبي المالي العالمي،
وعلى قانون مركز دبي المالي العالمي رقم (1) لسنة 2008 بشأن التحكيم،
وعلى المرسوم رقم (10) لسنة 2004 بإنشاء مركز دبي للتحكيم الدولي،
وعلى المرسوم رقم (11) لسنة 2007 بالمُصادقة على قواعد التحكيم لدى مركز دبي للتحكيم الدولي،
وعلى المرسوم رقم (26) لسنة 2013 بشأن مركز فض المُنازعات الإيجاريّة في إمارة دبي،
وعلى المرسوم رقم (14) لسنة 2016 بإنشاء مركز الإمارات للتحكيم البحري،
وعلى المرسوم رقم (17) لسنة 2019 باعتماد النِّظام الأساسي لمركز دبي للتحكيم الدولي،
وعلى المرسوم رقم (31) لسنة 2019 بتشكيل مجلس أمناء مركز دبي للتحكيم الدولي،
وعلى المرسوم رقم (32) لسنة 2019 بتشكيل مجلس أمناء مركز الإمارات للتحكيم البحري،

Decree No. 34 on the DIAC

6. Against this background, Decree No. 34 concerning the DIAC (مرسوم رقم (34) لسنة 2021 بشأن مركز دبي للتحكيم الدولي) was issued on 14 September 2021 by Sheikh Mohammed Bin Rashid, the Ruler of Dubai. Somewhat misunderstood upon its enactment due to a minor provision about the succession of two co-existing arbitral institutions, Decree 34 is a giant leap towards a more stable arbitration environment in Dubai. It was shortly followed by a long-awaited sequel: the adoption and issue of the revised DIAC Arbitration Rules.[7] This Insight reviews both acts and offers reflections on the future of arbitration in the Emirate in the wake of the profound transformation evinced by the reform.

7. Decree 34 enacts a new charter for the DIAC. It also abolishes the Dubai International Financial Centre Arbitration Institute (the Institute) which, in effect, puts an end to the DIFC-LCIA and the Emirates Maritime Arbitration Centre (the **EMAC**) (the **Abolished Centres**). Following a reorganisation in November 2015,[8] the DIFC-LCIA was being operated by the Institute which

necessarily means that the abolishment of the Institute dissolves the DIFC-LCIA.

8. New Decree 34 provides that all rights, obligations, and property of the Abolished Centres are transferred to the DIAC including "*the lists of arbitrators, conciliators, and experts registered with*" the Abolished Centres.[9]

Of secessions, devolutions and successions

9. Article 6 of Decree 34 further provides that "*agreements to resort to arbitration at the Abolished Centres, concluded* [up to] *the effective date of this Decree, are deemed valid*." Pursuant to this provision, the jurisdiction of arbitral tribunals constituted under the rules of the Abolished Centres continues uninterrupted on all pending cases, although DIAC was expected to replace the Abolished Centres in administering the proceedings. Article 9 also states that the DIAC must coordinate with all concerned entities in order to ensure compliance with the Decree within six months from the implementation date of the Decree.

10. The six-month period set in the Decree to implement Article 6 featured unnecessarily dramatic comments, often blown out of proportion by a pyromaniac press. Things came to a peaceful end on 28 March 2022 with the DIAC and the LCIA publishing a joint press release announcing that the LCIA will administer "*all existing DIFC-LCIA cases (i.e. those commenced and registered by the DIFC-LCIA under a designated case number on or before 20 March 2022) from London.*"[10] On the other hand, all arbitrations referring to the DIFC-LCIA Rules "*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 administered by the DIAC in accordance with the DIAC Rules. The parties to pending proceedings were offered the opportunity to opt out of the arrangement in favour of one or the other of the two institutions.[11] The press release also explains that advances on costs paid by parties on the bank account previously held on behalf of the DIFC-LCIA and now owned by the DIAC are to be transferred by the DIAC to the LCIA to be disbursed to the respective beneficiaries by the LCIA directly. This is a welcome step that will appease the concerns of many tribunals empanelled under the DIFC-LCIA rules, worried about who will ultimately pay their fees out of the advance on deposit with an institution no longer in existence.

11. In the celebratory mood that accompanied the publication of the press release – as it should – no one seemed to be much concerned about the fact that the arrangement between the two institutions took 21 March 2022 as the tipping point in time for the secession whilst Decree 34, in Article 6(b), conferred upon the DIAC the responsibility for the administration of the cases registered with the Abolished Centres as of 20 September 2021, the date on which the Decree came into force.[12]

A profound transformation of the DIAC

12. The new Charter of the DIAC changes dramatically its administrative structure. Article 10 of the Charter attached to the Decree creates the DIAC Arbitration Court (the **DIAC Court**). Inspired by the ICC International Court of Arbitration, the membership of the new DIAC Court offers a balanced representation and diversity and is conferred several functions, including:[13]

- Supervising the implementation of the Charter and the rules of arbitration and conciliation adopted by the DIAC;
- Proposing policies on arbitration, mediation, and alternative dispute resolution methods;
- Proposing arbitration and conciliation rules and procedures;
- Appointing arbitral tribunals and conciliation panels in accordance with the rules of arbitration and conciliation;
- Deciding on requests for recusal, removal, or reconsideration of appointment of arbitrators and conciliators; and
- Supervising the scrutiny of draft arbitral awards as to the form of the awards "*to ensure their validity and convenient enforceability*."

13. By abolishing the DIFC-LCIA and the EMAC, and by reorganising the DIAC, the Decree increased the importance of the DIAC manifold, thus anchoring its status as the main, government-backed arbitral institution in Dubai. It also paved the way for the adoption of the new arbitration rules which had been in the waiting for several years. The revised DIAC Rules entered into force on 21 March 2022.

The 2022 DIAC Arbitration Rules

14. DIAC had not revised its Arbitration Rules since 2007. It was necessary to modernise those Rules and to align them with international standards to reflect the dramatic evolution of arbitration both locally and internationally. This revision comes in the wake of several other arbitration institutions recently revising their rules, including the LCIA in 2020, the ICC in 2021, the QICCA and P.R.I.M.E. Finance in 2022 to name but a few. Other regional institutions are likewise ploughing ahead with the revision of their rules. This is notably the case of the Saudi Center for Commercial Arbitration, the new arbitration rules of which are expected to be finalised over the next months.

15. Throughout the five years that the revision of its Rules has taken, DIAC has broadly conferred with local and international arbitrators, counsel and users, thus ensuring that the participative process of rule-drafting leads to new Rules that address efficiently the challenges facing institutional arbitration in the UAE and internationally.

16. The new DIAC Rules are for now offered only in English, the language in which the successive drafts have been written and the consultations conducted. A translation into Arabic is underway. Care should be had in ensuring that the translation is thoroughly reviewed by the Arabic-speaking members of the rule drafting group to ensure substantive conformity with the original English rather than the mechanical translation that is much too often seen in similar exercises. After all, judges in the UAE petitioned to annul awards will primarily review the Arabic version of the Rules. A further option could be a reference that the English version of the Rules shall prevail in case of an inconsistency with the translation in Arabic.

17. The 2022 DIAC Arbitration Rules aim at increasing the flexibility, efficiency, and transparency of the arbitral procedure. They also take into consideration the growing use of technology in arbitration.[14] New features in the DIAC Rules include several modifications and additions on issues relating to multiparty / multi-contract proceedings (**I**), the transparency of arbitral proceedings (**II**), the increase of the use of technology in arbitral proceedings (**III**), the creation of special procedures for small-value disputes and urgent interim relief (**IV**), the scrutiny of awards by the DIAC Court (**V**), the power to award parties' legal fees and expenses (**VI**), and tribunal deliberations (**VII**).

I. Multiparty / Multi-contract proceedings

18. Multiparty and multi-contract proceedings in arbitration are frequent. This is particularly the case in construction, banking and shareholder disputes. Recent statistics reveal that a third of registered cases involve multiple parties.[15] The new DIAC Rules create two procedural mechanisms, consolidation and joinder, to permit DIAC to administer properly complex disputes.

19. **Consolidation**. Under the 2007 DIAC Rules, a party willing to bring multiple claims arising out of separate but related transactions or contracts had to start separate arbitrations with the risk of irreconcilable outcomes and the certainty of increasing costs. Like in the revised LCIA Rules

and the ICC Rules, the 2022 DIAC Rules now allow a party to bring multi-contract disputes in a single arbitration.

20. The consolidation of proceedings consists of bringing two or more already commenced arbitral proceedings into a single procedure concerning all related parties and disputes. Pursuant to Article 8.2 of the new DIAC Rules, a consolidation can be ordered where all the parties so agree, or when the following requirements are met on a *prima facia* basis:

(a) all claims in the arbitrations are made under the same agreement to arbitrate; or

(b) the arbitrations involve the same parties, the agreements to arbitrate are compatible, and:

  (i) the disputes arise out of the same legal relationship(s); or

  (ii) the underlying contracts consist of a principal contract and its ancillary contract(s); or

  (iii) the claims arise out of the same transaction or series of related transactions.

21. Observers will note that the criteria for consolidation set out above differ from the ones in the 2021 ICC Rules in one important respect. Article 10(b) of the 2021 ICC Rules allows for consolidation when all claims are made under the same arbitration agreement *or agreements*. In its Note to Parties and Arbitral Tribunals dated 1 January 2021, the ICC referred to the following scenario in which Article 10(b) would allow for consolidation: if four parties, A, B, C and D are all parties to a Share Purchase Agreement (SPA) and a Shareholders Agreement (SHA), and that A and D are parties to an arbitration under the SHA, while B and C are parties to another arbitration under the SPA, these two proceedings can be consolidated under Article 10(b), [16] but seems excluded under the new DIAC Rules. The reason is that new Article 8.2 of the DIAC Rules provides that claims arising out of series of related transactions could only be consolidated if "*the arbitrations involve the same parties*," which would not be the case in the scenario mentioned above.[17]

22. Another difference between the 2022 DIAC Rules and the ICC Rules is that, under the DIAC Rules, if a party requests a consolidation before the empanelment of the tribunal, the decision is rendered by the DIAC Court.[18] After the constitution of the arbitral tribunal, the decision on consolidation is no longer DIAC's, but the tribunal's.[19] Under the ICC Rules, the decision remains that of the Court throughout the proceedings. Trusting empanelled tribunals with the decision on consolidation speaks volumes about the empowerment of tribunals under the new DIAC Rules.

23. **Joinder of third parties**. The 2022 DIAC Rules allow the DIAC Court to join one or more parties in the proceedings, upon an application by a party, prior to the appointment of the tribunal, provided that all parties, including the party to be joined, have consented in writing to the joinder, or that the DIAC Court is *prima facie* satisfied that the third party may be a party to the arbitration agreement.[20] After its constitution, the arbitral tribunal can also allow one or more parties to be joined provided that all parties have consented in writing to the joinder and that the joined party expressly agree to the appointment and powers of the tribunal, or provided that the tribunal is satisfied that the joined party is a party to the agreement to arbitrate. The tribunal will also consider any other relevant factors, including potential conflicts of interest and the impact of the joinder on the arbitration and its efficient and expeditious progress.[21]

24. The joinder of a party after the constitution of the tribunal is different in the 2021 ICC Rules, which allow for such joinder even if all parties do not agree, when the additional party accepts the constitution of the tribunal and agrees to the terms of reference if they are already executed.[22] The 2020 LCIA Rules also give the power to the tribunal to join an additional party even if all the parties do not agree, provided that the applicant and the third person consent to such joinder.[23]

25. The two alternative conditions required by the DIAC Rules for the joinder (*i.e.*, the joined party is a party to the arbitration agreement or the consent of all parties) will limit in practice the significance of this important change. By comparison, the more liberal approach used by the ICC and LCIA does not allow a party to prevent the joinder – as the consent of all parties is not required – thus granting the arbitral tribunal and the parties greater flexibility to streamline arbitral proceedings. That said, the new joinder regime in the 2022 DIAC Rules is nonetheless a welcome change. The joinder of an additional party with an interest will avoid separate proceedings being conducted in parallel, at great costs to the parties and with the risk of conflicting awards.[24]

II. Increasing the transparency of arbitral proceedings

26. **Disclosing Third party funding**. Article 22.1 of the 2022 DIAC Rules requires parties which entered into a third-party funding arrangement prior to the constitution of the tribunal to disclose that arrangement "*together with details of the identity of the funder, and whether or not the funder has committed to an adverse costs liability*." Article 22.3 of the DIAC Rules also provides that the arbitral tribunal can take into account "*the existence of any third-party adverse costs liability when apportioning the costs of the arbitration between the parties*."

27. This disclosure obligation is welcome in that it reinforces the transparency of the proceedings. That said, the purpose sought by referring in Article 22.3 to the apportionment of costs is unclear. One can readily understand that the existence of a third-party funder might influence a decision on whether to order a security for costs. However, it is less obvious why it should impact the tribunal's decision on the apportionment of the costs of the arbitration between the parties.

28. This disclosure obligation mirrors the 2021 ICC Rules which require parties to disclose the "*existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration*."[25] Article 12.1 of the P.R.I.M.E. Finance Arbitration Rules goes a step farther in requiring parties to disclose "*the identity of any third party with a significant interest in the outcome of the dispute, including but not limited to third persons funding any claim or defence, and the nature of their respective interest*." Surprisingly, the LCIA Rules remain silent in relation to the need to disclose third-party funding arrangements.

29. Interestingly, Article 22.2 of the DIAC Rules does not allow parties, after the constitution of the tribunal, to "*enter into a Third-party Funding Arrangements if the consequence of that arrangement will or may give rise to a conflict of interest between the third-party funder and any member of the Tribunal*." This rule has no equivalent to our knowledge in other institutional rules, but serves a laudable purpose of reinforcing the integrity of the arbitral proceedings.

30. **Changes in party representation**. Article 7.5 of the new DIAC Rules provides that a party willing to change its representatives after the constitution of the tribunal must obtain the tribunal's approval. When considering whether to grant approval, the arbitral tribunal must have regard to several factors, including the potential conflicts of interest, the stage of the arbitration, and any impact upon time and/or cost. This rule echoes the IBA Guidelines on Party Representation in International Arbitration, that inspired the 2021 ICC Rules, Article 17.2 of which grants the arbitral tribunal the power to "*take any measure*," including "*the exclusion of new party representatives*" to avoid conflicts of interest that

might arise from a change in party representatives. New Article 7.5 is a welcome addition in the new Rules as it allows the arbitral tribunal to pre-empt conflicts of interest that could arise during the course of the proceedings and reduces the risk of disruption of the arbitration by challenges against arbitrators prompted by the introduction of new counsel by the challenger. On the other hand, it had been pointed out that this provision could raise some difficulties, as it allows the tribunal to interfere in matters of party representation and with the "*inherent right of each party to choose its representatives*."[26] All in all, we consider that the policy reason underlying Article 7.5, consisting of protecting the integrity of the proceedings, is compelling and mandates the adoption of the new rule.

III. Technology everywhere

31. In the wake of the many creative adaptations in arbitral proceedings prompted by the COVID-19 pandemic, the new DIAC Rules introduce several provisions supporting a broader use of technology in arbitral proceedings. They include:

- All notifications and communications from the parties or the arbitrators to the DIAC "*shall be made in writing by email or in accordance with the terms of use of any electronic case management system implemented by the Centre*" pursuant to Article 3.1.
- The request for arbitration (Article 4.3) and the answer (Article 5.3) must be submitted to the DIAC by email "*or in accordance with the terms of use of any electronic case management system implemented by the Centre*."
- Under Article 34.6 of the DIAC Rules, the arbitral tribunal may sign the award by electronic means, provided that it is made through a certified electronic software or service, which allows the digital verification of the signatories' identity and their intent to sign the document.

32. Observers will note that Article 41.6 of UAE Arbitration Law already permits awards to be electronically signed. Long gone are the days where tribunals had to be flown to Dubai merely to hand sign orders or awards to comply with a conservative reading of the then applicable arbitration section in the Federal Code of Civil Procedure.

IV. Small-value disputes and urgent interim relief

33. **Expedited proceedings**. Article 32 of the new DIAC Rules provides for the procedure to be expedited in the following cases: if the total of the sum(s) claimed and counterclaimed is below or equals AED 1,000,000 (approx. EUR 253,600), if the parties agree in writing or, in cases of exceptional urgency, as determined by the DIAC Court.[27] According to that special procedure, the time limit for the arbitral tribunal to render the final award is limited to three months from the date of the transmission of the file to the arbitral tribunal by the DIAC, "*unless extended by the Arbitration Court on exceptional grounds*."[28]

34. While three months might appear ambitious given the many possibilities in the law and the rules to disrupt the proceedings, including challenges to arbitrators, requests for extensive document production or parallel court proceedings, the DIAC wisely conferred upon its new Court the power to avoid the lapse of the time limit by deciding to extend the date for the rendering of the final award without limitation.

35. **Emergency arbitrator**. Pursuant to Article 2 of Appendix II to the DIAC Rules, a party may now submit an application for emergency interim relief

to the DIAC prior to the constitution of the tribunal. If the "*Arbitration Court is prima facie satisfied that in view of the relevant circumstances it is reasonable to allow such proceeding, the Centre shall seek to appoint the Emergency Arbitrator within 1 day of receipt by the Centre of the application*."[29] The emergency arbitrator must establish a timetable within two business days from the date of transmission of the file.[30]

36. Under the new DIAC Rules, emergency arbitrators must issue their order "*as soon as reasonably practicable*."[31] It would have been preferable to set a precise time limit for the rendering of the order, such as 15 days from the transmission of the file similarly to what is provided in Article 6.4 of Appendix V to the 2021 ICC Rules. That said, the new DIAC emergency arbitrator comes handily to permit parties to obtain emergency measures such as the issuance of an order asking a party to refrain from acting in a certain way or the issuance of an order for the specific performance of an obligation, pending the constitution of the arbitral tribunal.

V. Scrutiny of draft awards by the DIAC Court

37. Pursuant to Article 34.5(a) of the 2022 DIAC Rules, the DIAC Court will scrutinise "*the form of the final draft in order to ensure, insofar as possible, that the formalities required by the Rules have been complied with*." This newly introduced scrutiny mechanism is limited to the form of the award, unlike the ICC Court's scrutiny of awards, which "*may also draw* [the Tribunal's] *attention to points of substance*."[32] Traditionally, the scrutiny of the award as to its form includes the correction of typos or calculation errors and making sure that the award contains all the elements that are necessary under the arbitration rules, while the scrutiny of the substance involves drawing the attention of the arbitral tribunal to the lack of reasons for the award, to the ambiguity of certain sections of the award, or to an inconsistency of the reasoning, all of which are potential grounds for annulment under Article 53 of the UAE Arbitration Law.

38. The DIAC Court will be able to check that the requirements of the DIAC Rules set out, in particular, in Article 34 were correctly implemented by the tribunal, for example, as concerns the inclusion in the award of the names of the parties and the tribunal, the reference to the seat, the language, the rules of law applicable to the merits, and the summary of the claims and counterclaims. However, due to the drafting of Article 34.5(a) which limits the scrutiny of the award to questions of form, it is not clear whether the DIAC Court will be able to go as far as the ICC Court which can, for example, determine whether all claims and counterclaims have been addressed by the tribunal – or if the tribunal awarded relief beyond the claims and counterclaims of the parties – which reduces the risk of *infra* or *ultra petita* and ensures the enforceability of the award. Regardless of how broadly Article 34.5 of the new DIAC Rules were to be read, the DIAC Court would be well advised to bring to the attention of the tribunal any flaws discernible in the award, were they matters of substance. The moral authority of the Court will likely carry weight with the tribunal and bring it at least to review its initial drafting, as a century-old practice of the ICC Court consistently shows.

VI. Legal fees and expenses

39. Amongst the helpful reminders that arbitrators new to the experience of sitting in Dubai ought to be given is the decision in 2013 by the Dubai Court of Cassation that legal and counsel fees were unrecoverable in proceedings governed by the 2007 DIAC Rules due to the absence of express reference to the recovery of such fees in these Rules, unless the arbitral tribunal has been empowered in the arbitration agreement or in a later agreement of the parties to award such costs.[33] The Court reaffirmed its precedent in an *ad hoc* proceeding, as it ruled that arbitral tribunals could only award legal fees and expenses if a legislative provision or an arbitration agreement explicitly allowed the tribunal to do so.[34]

40. The 2022 DIAC Rules remedied this surprising limitation on the tribunal's powers and now provide

for the possibility for parties to claim the fees of the DIAC Centre, as well as the fees and expenses of the arbitral tribunal, experts, and legal representatives, and any other party's costs.[35]

VII. Tribunal deliberations

41. One of the criticisms made to the UAE Arbitration Law is that Article 41.2 provides that a dissenting opinion to an award form an integral part of the award. This provision does not come from the UNCITRAL Model Law on International Commercial Arbitration which had been the model of the UAE Arbitration Law and, to the best of our knowledge, does not have an equivalent in other arbitration laws or rules. In one case, a disgruntled arbitrator unhappy with the majority decision relied on Article 41.2 to include in his dissenting opinion … all of the tribunal deliberation exchanges!

42. The 2007 DIAC Rules only stated in Article 41 on confidentiality that the deliberations of the tribunal are confidential. The new DIAC Rules clarify and reaffirm this principle by creating a separate rule on tribunal deliberations. Article 39 provides that the "*deliberations of the Tribunal and any other internal communication between the members of the Tribunal are confidential to its members at all times*." This reaffirmation should prevent the unwanted result prompted by a misuse of Article 41.2 of the UAE Arbitration Law as related in the preceding paragraph.

Gazing into the future

43. The 2022 DIAC Rules modernise arbitration procedures before the DIAC and align them with those of other leading arbitration institutions in the world. It is a leap forward towards increasing the attractivity of Dubai as a safe arbitration centre. With the strong support shown in Dubai to its henceforth unique arbitration institutions, the stars are aligned for DIAC becoming the linchpin of a revamped image of Dubai as a safe seat for international arbitration. This should prompt DIAC to use its new powers to engage with the local judiciary to limit its intervention in arbitral proceedings to shielding legitimately-engaged proceedings from guerrilla tactics and to supporting arbitral tribunals' powers towards non-parties in the matter of taking evidence. A possible reform of the judiciary could possibly lead to consolidating all arbitration-related court proceedings before a single court chamber following the examples set in France, Switzerland, and the DIFC.

44. The same dialogue with the judiciary should also aim to reinforcing the adherence to the recognition and enforcement of arbitration agreements, orders and awards, made in the UAE or abroad, in accordance with the rules set in the New York Convention.

45. Finally, the new DIAC should consider engaging with arbitrators sitting under its rules with a view to assessing the adequacy of its current fee table and ensuring their immunity from civil liability for anything done or omitted by the arbitrators in good faith in their capacity as arbitrators. There shall thence be no limit to the potential of DIAC as a pole of attractivity to arbitration domestically, regionally, and internationally.

[1] Dubai Court of Cassation, 14 June 2020, Case No. 445/2019/1083. See also Dubai Court of Cassation, 15 April 2021, Case No. 403/2020.
[2] Dubai Court of Cassation, 23 September 2018, Case No. 294/2018; Abu Dhabi Court of Cassation, 27 October 2020, Case No. 922-2020.
[3] Federal Decree-Law No. 7/2016.
[4] Dubai Court of Cassation, 28 April 2019, Case No. 1029/2018.
[5] Dubai Court of Appeal, 9 September 2020, Case No. 19/2020.
[6] G. Blanke, "Blanke On UAE Arbitration Legislation and Rules, A Multi-Volume Article-By Article Commentary", Second Edition, Vol. 1, Thomson Reuters, 2021, pp. 436-437, ¶ III-386.
[7] AFFAKI participated in the revision of the DIAC Rules by submitting a detailed set of comments to the DIAC on the draft DIAC Rules.
[8] LCIA Press release, dated 18 November 2015, available at this link.
[9] Article 5 of the Decree 34 of 2021 concerning the Dubai International Arbitration Centre.
[10] DIAC and LCIA Joint Press Release, available at this link.
[11] Article 6 of Decree 34.
[12] Article 10 of Decree 34 provides that the Decree will enter into force on the date it is published in the Official Gazette which was done on 20 September 2021. The Official Gazette is available at this link.
[13] Article 11 of the Statute of the Dubai International Arbitration Centre.
[14] S. Corm-Bakhos, "DIAC 2022 Rules of Arbitration: A Modernised Set of Rules for a New Era", Kluwer Arbitration Blog, 21 March 2022.
[15] ICC Dispute Resolution 2020 Statistics, p. 9.
[16] ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration, 1 January 2021, p. 5, available at this link.
[17] Article 8 of the 2022 DIAC Rules is almost identical to Article 10 of the 2017 ICC Rules which, since, was amended to provide for this additional consolidation possibility.
[18] Article 8.3 of the 2022 DIAC Rules.
[19] See Articles 8.5 to 8.6 of the 2022 DIAC Rules.
[20] Article 9.1 of the 2022 DIAC Rules.
[21] Article 9.4 of the 2022 DIAC Rules.
[22] Article 7.5 of the 2021 ICC Rules.
[23] Article 22.1(x) of the 2020 LCIA Rules.
[24] See S. Menon, "Joinder and Consolidation Provisions under 2021 ICC Arbitration Rules: Enhancing Efficiency and Flexibility for Resolving Complex Disputes", Kluwer Arbitration Blog, 3 January 2021.
[25] Article 11.7 of the 2021 ICC Rules.
[26] A. Leoveanu, R. Giosan, "The 2021 ICC Arbitration Rules: Changes to the Arbitral Tribunal's Powers", Kluwer Arbitration Blog, 4 January 2021.
[27] Article 32.1 of the 2022 DIAC Rules.
[28] Article 32.5 of the 2022 DIAC Rules.
[29] Article 2.5 of Appendix II to the 2022 DIAC Rules.
[30] Article 2.9 of Appendix II to the 2022 DIAC Rules.
[31] *Ibid*.
[32] Article 34 of the 2021 ICC Rules.
[33] Dubai Court of Cassation, 3 February 2013, Case No. 282/2012.
[34] Dubai Court of Cassation, 28 April 2019, Case No. 1068/2018.
[35] Article 36 of the 2022 DIAC Rules.

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