

INSIGHTS

## Decree No. 34 of 2021 Concerning the Dubai International Arbitration Centre Impacting DIFC-LCIA Arbitration – Update

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Described as aggressive yet progressive, on 14 September 2021, Sheikh Mohammed bin Rashid Al Maktoum, Ruler of Dubai, issued Decree No. 34 of 2021 (the “**Decree**”), accompanied by the Statute of Dubai International Arbitration Centre (the “**Statute**”). The Decree, came into effect on 20 September 2021 (the “**Effective Date**”) and took many within the dispute resolution community by surprise, as it introduced fundamental amendments to the arbitration framework in the Emirate of Dubai, including the offshore freezone commonly known as the Dubai International Financial Centre (DIFC). In essence, the Decree:

- abolishes both of the: (i) Emirates Maritime Arbitration Centre and; (ii) DIFC’s Arbitration Institute (DAI) understood to mean the institution founded by the Dubai government in 2014 under whose auspices the London Court of International Arbitration (LCIA) administers around 140 international arbitrations in the DIFC annually using the DIFC-LCIA Rules (collectively the “**Abolished Centres**”);
- provides for the Dubai International Arbitration Centre (“**DIAC**”) to assume the rights and obligations of the Abolished Centres and thereafter administer cases; and
- lays down key details relating to the objectives, scope and organisation of DIAC.

Established by the Dubai Chamber of Commerce and Industry in 1994 as the ‘Centre for Commercial Conciliation and Arbitration’, DIAC provides local and international businesses with arbitration services. In the coming months, it is expected for DIAC to issue new rules of arbitration, form a new arbitration court similar to that of the ICC International Court of Arbitration, as well as a new board and a new administering body.

The following are certain key considerations for parties today: (i) currently engaged in arbitration within an Abolished Centre; (ii) with an agreement which currently provides for arbitration within an Abolished Centre in the event of a dispute occurring; or (iii) entering into new agreements post the Effective Date or with standard terms and conditions which apply to the supply of (for instance) goods or services post the Effective Date.

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| <b>Relationship between the Abolished Centres and DIAC</b> | <p>From the Effective Date, the following (in respect of each Abolished Centre) shall be transferred to DIAC:</p> <ul style="list-style-type: none"> <li>• ownership of properties, movables, assets, devices, equipment and funds;</li> <li>• employees (subject to a decision by the DIAC Board Chairman);</li> <li>• financial allocation designated to the Abolished Centres by the Government of Dubai; and</li> <li>• the list of the Abolished Centre's arbitrators, conciliators and experts.</li> </ul>                                        |
| <b>Validity of existing arbitration agreements</b>         | <p>All agreements entered into prior to the Effective Date that make reference to dispute resolution via an Abolished Centre's regulations shall be deemed valid and effective, unless otherwise agreed by the parties to such an agreement, in such circumstances, DIAC shall replace the Abolished Centres in considering and determining disputes. Based on the provisions of the Decree, our understanding is that any agreement entered into after the Effective Date providing for the jurisdiction of an Abolished Centre will not be valid.</p> |
| <b>Competent Courts</b>                                    | <p>Dubai Courts and DIFC Courts will continue to consider cases, requests and challenges relating to any arbitration award or procedure issued by arbitral tribunals within DIAC and the Abolished Centres, in accordance with their respective procedures and standards.</p>                                                                                                                                                                                                                                                                           |
| <b>Default Seat</b>                                        | <p>Pursuant to the Statute, the Dubai International Financial Centre shall be designated as the default seat of DIAC arbitration proceedings in instances where the parties do not agree to a seat or place of arbitration pursuant to their arbitration agreement or otherwise.</p>                                                                                                                                                                                                                                                                    |
| <b>Transition Period</b>                                   | <p>The Decree provides DIAC with six months from the Effective Date to coordinate with all concerned entities and give effect to the transition set forth in the Decree and the Statute.</p>                                                                                                                                                                                                                                                                                                                                                            |

Further clarification on how the Decree will impact parties, as well as how the transition from the Abolished Centres to DIAC will work from a practical perspective are expected to be released in the coming weeks. Once further information is available we will publish a follow up to this alert. In the meantime, any references in existing standard terms and conditions, or existing and/or new contracts that are being currently negotiated that provide for arbitration in

an Abolished Centre should be urgently reviewed and revised to take into account the ensuing period of uncertainty arising from the surprise Decree.