

# The New DIAC Arbitration Rules 2018

**20 November 2017**

*Client Alert*

The most prominent development during [Dubai Arbitration Week 2017](#) last week was the announcement from the Dubai International Arbitration Centre (the "**DIAC**") that they will soon release and enact the new DIAC Arbitration Rules 2018 (the "**Proposed New Rules**"). The Proposed New Rules have not yet been published and no draft has been circulated as of yet, though excerpts were outlined.

We set out below our initial thoughts on the main outlined changes of the Proposed New Rules.

## **Default seat**

Unless parties agree otherwise, the default seat of the DIAC arbitrations will be the Dubai International Financial Centre ("**DIFC**"). The curial law would therefore be DIFC Law No. 1 of 2008 as amended (the "**DIFC Arbitration Law**"), rather than the arbitration chapter of Federal Law No. 11 of 1992 (the "**UAE Civil Procedure Code**" or "**CPC**"). The implication of this change is potentially two-fold: first, enforcement of DIAC arbitral awards in the DIFC Courts would potentially be more straightforward and save time and costs. Secondly, parties would have recourse to a wider range of interim relief supported by the DIFC Courts under the DIFC Arbitration Law.

**No need to sign the award in Dubai**

Article 212(4) of the CPC has been widely interpreted and recognised as requiring arbitrators to render the award within the UAE, with signing of the award physically taking place in the UAE. The Proposed New Rules expressly permit arbitrators to sign awards outside the UAE. Although the Proposed New Rules will be issued by Decree thus having force of law (as is the case with the current DIAC Arbitration Rules 2007), in the hierarchy of laws, the CPC would still have supremacy over the Decree, raising doubts over the compatibility of this proposed provision.

**Power to sanction counsel?**

The Proposed New Rules include a section on the Tribunal's power to sanction the parties and/or counsel in case of misconduct by counsel, and provides a non-exhaustive list of examples of such misconduct. If such a power of the Tribunal includes the power to sanction counsel (as opposed to parties), this raises the issue of whether the Tribunal has the jurisdiction over counsel to take any steps to comply with the sanctions.

**Expedited proceedings**

A party can, either by agreement or application to the DIAC Executive Committee, request that the arbitration be dealt with on an expedited basis. This applies to cases where the amount in dispute is less than AED2 million. The expedited arbitration would be decided by a sole arbitrator and on the basis of written submissions only, with shortened deadlines being imposed on the parties and a final award being issued within three months of referral under this procedure.

## **Legal fees and third party funding**

The Proposed New Rules make it clear that parties' legal fees (i.e. lawyer and expert fees) will be recoverable. Previously, legal fees were not considered recoverable on the basis of the Dubai Court of Cassation's decision in Case No. 282/2012, which decided that a Tribunal did not have the power to award legal fees in the absence of any express agreement by the parties to recover such fees. The Proposed New Rules also expressly recognise that parties' legal fees can be financed by way of third party funding.

This is a preliminary overview based on the discussions that took place during Dubai Arbitration Week. We will provide a more comprehensive analysis of the draft rules at our Annual Middle East Dispute Resolution Seminar on 11 December 2017 and indeed, a more definitive analysis of the Proposed New Rules once they are enacted.

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