

The New DIFC Arbitration Law opens way to DIFC

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In today's current economic climate, parties are increasingly turning away from the courts to resolve disputes, in favour of alternative dispute resolution procedures such as arbitration. Businesses in Dubai too are seeing the advantages of arbitration over litigation. This demand has led to widespread arbitration law amendments in Dubai in order to align the country with the world's leading arbitration centers. Dubai now has two modern arbitral institutions (a) the Dubai International Arbitration Centre (the DIAC); (b) the newer DIFC-LCIA Arbitration Centre. As the name implies, the DIFC-LCIA Arbitration Centre is essentially a joint venture between the DIFC and the London Court of International Arbitration (LCIA), one of the leading players in the arbitration world.

The DIFC has recently amended its arbitration law which will further enhance and promote the DIFC as a venue for the settlement of international commercial disputes. The DIFC has its own courts of first instance and appeal, with a team international judges experienced in, and supportive of, international arbitration. It is therefore anticipated that the DIFC courts will implement the new arbitration law in accordance with standards of international best practice, will be slow to set aside arbitral awards and will deal expeditiously with enforcement.

DIFC-LCIA Arbitration Centre

In early 2008, the DIFC and LCIA launched a new regional international centre – the DIFC-LCIA Arbitration Centre. The DIFC-LCIA Arbitration Center now arbitrates cases arising from the widest range of contractual relationships, provided only that the parties have an agreement in writing to submit their disputes to DIFC-LCIA arbitration – there is a limited exclusion of employment and consumer contracts.

Amended DIFC Arbitration Law

On 1 September 2008, the DIFC Arbitration Law No. 1 of 2008 (DIFC Arbitration Law 2008) came into force, repealing the previous arbitration legislation (DIFC Arbitration Law 2004). The previous DIFC Arbitration Law 2004 effectively limited the scope of arbitration to disputes arising out of or in connection with the DIFC and to which at least one party was an arbitration party.

The first and most important point to note is that the new DIFC Arbitration Law 2008 will enable parties from anywhere in the world to select the DIFC-LCIA Arbitration Centre as their forum of choice. The new DIFC Arbitration Law 2008 applies to all arbitration agreements regardless of where they were made and it is based on the UNCITRAL Model Law. What it means is that parties, irrespective of any connection with the DIFC, may now choose the DIFC as their seat of arbitration. The new DIFC Arbitration Law 2008 offers parties who might otherwise be reluctant to agree to arbitration in the Middle East as real alternative to traditional jurisdictions in Europe and Asia. The DIFC Arbitration Centre is independent from the DIFC courts, as any

arbitration institution must be, but the new DIFC arbitration Law 2008 recognizes that the DIFC courts will exercise the supervisory role which in all systems of law is exercised by the relevant national court.

Enforcement of DIFC-LCIA Arbitration Awards:

An award issued by the DIFC-LCIA Arbitration Centre will, once ratified by the DIFC Court, will be enforceable within DIFC. However, awards will have to be ratified by the DIFC court in order to be enforced within DIFC in a manner prescribed by the rules of the DIFC Court.

If the award is to be executed in Dubai, but outside the jurisdiction of the DIFC, the award must first be ratified by the DIFC Court, and then, if enforcement proceedings are necessary, it may be enforced through an execution judge at the Dubai Courts. The DIFC Court law states that awards issued or ratified by the DIFC Court may be enforced outside the DIFC by an execution judge of the Dubai Courts in accordance with the Judicial Authority Law of Dubai. Article 7 of the Judicial Authority Law provides that if the subject of execution falls outside the DIFC, an arbitral award made by the DIFC courts shall be enforced by an executive judge of the Dubai courts, provided that the award is “final and appropriate for enforcement” and it has been translated into Arabic. The term, “final and appropriate for enforcement” has not been defined in the Judicial Authority Law and this has resulted in some challenges of interpretation. It remains to be seen how this route of enforcement will be implemented by executive judges of the Dubai Courts. There has been extensive discussion and cooperation between DIFC and the Dubai Courts and it is expected that Dubai court judges will be concerned primarily with

the formalities of an award and that, subject to these being in order, the Dubai courts will enforce an award issued by the DIFC-LCIA Arbitration Centre, without considering it necessary to investigate the merits of the case. Indeed, the DIFC Arbitration Law 2008 includes a provision which ensures that arbitral awards made within the DIFC are enforced by the Dubai Courts without further review of the merits. More recently, a protocol of enforcement between the DIFC courts and Dubai courts listing the criteria and mechanism for enforcement of judgments between the two courts. This was intended to strengthen mutual cooperation on enforcement matters to ensure the decisions of each court are enforced within the jurisdiction of the other.

Finally, an award issued by the DIFC-LCIA Arbitration Centre can also be enforced in other New York Convention jurisdictions. As the UAE is now party to the New York Convention, enforcement of awards in New York Convention states should be straightforward.

Need for a Federal Arbitration Law

What is still required in the UAE is a new federal arbitration law to replace the UAE Federal Law No (11) of 1992 (UAE Federal Law), which applies to all arbitrations where the seat is not the DIFC. Infact, the current law is under review and a draft of a new federal arbitration law based on the UNCITRAL Model Law was circulated last year for discussion. A new law is a key requirement for the progress of arbitration in Dubai, even though the new DIFC Arbitration Law has provided parties with the ability to circumvent the UAE Federal Law by allowing them to choose the DIFC as their seat of arbitration.