

THE NEW DIFC-LCIA ARBITRATION RULES 2016

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Legal Briefings - By **Caroline Kehoe, Michael Hartley and Joseph Bentley**

The DIFC-LCIA Arbitration Centre has issued its new rules which will apply to all arbitrations commencing on or after 1 October 2016

THE DIFC-LCIA'S 2016 RULES

On 1 October 2016, the DIFC-LCIA Arbitration Centre ("**DIFC-LCIA**") released its new DIFC-LCIA Arbitration Rules (the "**2016 Rules**"). The 2016 Rules introduce: **(1)** a procedure for appointing an emergency arbitrator; **(2)** a procedure for consolidation of multi-party disputes; **(3)** measures to increase efficiency and avoid delays; and **(4)** sanctions to punish counsel for poor conduct.

It is a key objective of DIFC-LCIA to administer cost effective and timely arbitrations. Since its re-launch in November 2015 Mohamed ElGhatit, its new Director and Registrar, has been tasked with carefully monitoring and administering cases to ensure they proceed as expeditiously and cost effectively as possible.

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INTRODUCTION OF THE EMERGENCY ARBITRATOR (ARTICLE 9B)

Following the lead of other institutions such as the Singapore International Arbitration Centre (SIAC) which streamlined the process for appointing an Emergency Arbitrator in its August 2016 revisions to its Rules, ([Click Here](#) for details), DIFC-LCIA is here bringing its rules in line with the rules of other major institutions.

At any time before the formation of the tribunal, a party may apply for the immediate appointment of an Emergency Arbitrator to conduct emergency proceedings to determine urgent matters or order emergency or protective measures pending formation of the tribunal. The LCIA Court must determine the application as soon as possible in the circumstances and appoint the Emergency Arbitrator within 3 days of receipt of the application (or as soon as possible thereafter) and the Emergency Arbitrator must decide the claim for relief as soon as possible and no later than 14 days following his/her appointment.

The availability of emergency arbitrators is increasingly viewed as a 'must have' for commercial parties contemplating which institution's rules to adopt in their contracts, filling a need otherwise only available in the courts. Notably, however, the availability of such procedure does not prejudice any party's right to apply to a state court or other legal authority for interim or conservatory measures before formation of the tribunal and it is not to be treated as an alternative or substitute for the exercise of such right (Article 9.12).

Any order by the Emergency Arbitrator may be confirmed, varied, discharged or revoked in whole or in part by the Arbitral tribunal once appointed, either upon its own initiative or on the application of any party.

MULTI-PARTY ARBITRATION AND CONSOLIDATION

The 2016 Rules acknowledge that there may be more than one claimant or respondent (Articles 1.5 and 2.5) and go further in Article 15.6 which empowers the Arbitral Tribunal to provide additional directions in relation to witness statements, submissions and evidence, particularly where there are multiple claimants, multiple respondents or any cross-claim between two or more respondents or between two or more claimants.

The 2008 Rules were silent on consolidation – the process through which two or more separate proceedings are combined into one single set of proceedings. Article 22 of the 2016 Rules includes in the additional powers of the Arbitral Tribunal the power, on application of the parties, to order consolidation (with the approval of the LCIA Court) where:

- (A) all the parties to the arbitrations to be consolidated agree in writing (Article 22.1 (x));
- (B) the other arbitration is subject to the DIFC-LCIA Rules commenced under the same arbitration agreement or compatible arbitration agreement and between the same disputing parties provided that no tribunal has been formed for the other arbitration or where that tribunal is composed of the same arbitrators (Article 22.1(x)).

The LCIA Court may also itself determine, after giving the parties a reasonable opportunity to state their views, that two or more arbitrations should be consolidated where those arbitrations are (i) subject to the DIFC-LCIA Rules; (ii) commenced under the same arbitration agreement; (iii) between the same contracting parties; and further provided that (iv) no tribunal has yet been formed for any of the arbitrations (Article 22.6).

The changes do not go as far as those of SIAC which contemplate a claimant in a multi-contract dispute filing multiple Notices of Arbitration in respect of disputes under each contract, and concurrently apply to consolidate the proceedings or filing a single Notice of Arbitration for all disputes, which is then deemed to be an application to consolidate all proceedings. However, this new provision, in tandem with the rules on joinder and new rules on multiple parties, which address the procedural difficulties that can arise when there are multiple parties to the same dispute and/or multiple contracts, provide an important measure of certainty to parties dealing with multiple contract scenarios.

MEASURES TO INCREASE EFFICIENCY

The 2016 Rules provide for a more efficient process for the formation of the tribunal, providing expressly in Article 5.1 that "*the LCIA Court shall not be impeded by any controversy between the parties relating to the sufficiency of the Request or the Response*" and further that the LCIA Court "*may also proceed with the arbitration notwithstanding that the Request is incomplete or the Response is missing, late or incomplete*". The Rules also provide for an accelerated procedure for the appointment of a replacement (Article 9C), revocation and challenges to appointment (Article 10) and nomination of a replacement arbitrator (Article 11).

There is also now a new online filing system which will allow parties to:

- File Requests for Arbitration, Responses, applications for expedited formation of the tribunal, applications for expedited appointment of a replacement arbitrator, and applications for the appointment of an Emergency Arbitrator;
- Submit any supporting documentation electronically;
- Pay any filing fees online;
- Generate a pdf document, at the conclusion of the process (and following payment of any fee), which you can print/save to your computer and also serve for service on the other parties to the arbitration; and
- Access all your filings made online, including payment history.

SANCTIONS FOR POOR CONDUCT

Interestingly, the 2016 Rules also grant a power to the tribunal to sanction legal representatives in the event of poor conduct. General guidelines "*intended to promote the good and equal conduct of the parties' legal representatives*" are attached to the Rules as an Annex and Article 18.6 gives the tribunal the power to deal with violations of those Guidelines: in circumstances where a party or the tribunal complains about opposing counsel's conduct, counsel will be given an opportunity to answer any complaint made and following this, if the tribunal finds that the counsel is in breach of the conduct guidelines the tribunal may: **(1)** issue a written reprimand; **(2)** issue a written caution as to future conduct in the arbitration; and **(3)** take any other measure necessary to fulfil within the arbitration the general duties required of the Arbitral Tribunal under Articles 14.4(i) and (ii).

CONCLUSION

The changes introduced by the 2016 Rules demonstrate the DIFC-LCIA's commitment to providing a modern dispute resolution centre that is in line with market standards. As we noted in relation to the recent amendments to the SIAC Rules, these revisions are timely in addressing the growing criticism by some of arbitration as a form of dispute resolution and the growth of international commercial litigation. The changes will increase confidence among legal practitioners, arbitrators and commercial users and ensure that the DIFC-LCIA maintains a prominent position as an arbitration centre in the GCC region.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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