



The Middle Eastern and African Arbitration Review

2023

United Arab Emirates

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The Middle Eastern and African Arbitration Review 2023 contains insight and thought leadership from 15 preeminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Europe's more interesting seats.

This edition also contains think pieces on human rights in arbitration, the mechanism's growing use in technology disputes, damages in investment disputes and the use of statistical samples.

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United Arab Emirates

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Summary

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In summary

The United Arab Emirates has steadily emerged as a reliable and neutral destination of choice for alternative dispute resolution. In the 13th survey released by Queen Mary University of London, focusing on arbitration in the energy sector, Dubai is now ranked in the top seven seats for international arbitration, surpassing Hong Kong. This can be attributed to continuous development and growth in all spheres of dispute resolution. This article provides an overview of the key developments in arbitration in the UAE over the past 12 months. This includes an analysis of the Dubai International Arbitration Centre (DIAC) Rules 2022; review and discussion of the decisions of the courts of Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM); consideration of the decisions of the UAE onshore courts; and recent developments to promote arbitration in the region. The overarching objective of 2022 has been solidifying the UAE's reputation as a global hub for alternative dispute resolution, notwithstanding the odd onshore court decision.

Discussion points

- Key developments in the UAE – onshore and ADGM
 - DIAC Rules 2022
 - Anti-suit injunctions and contempt of court in the DIFC
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Referenced in this article

- Federal Law No.6 of 2018 on Arbitration
 - Dubai Decree No. 34 of 2021
 - Dubai International Arbitration Centre Arbitration Rules 2022
 - Dubai Court of Cassation Cases 109 of 2022; 310 of 2022 and 247 of 2022
 - *(1) Lateef (2) Lukman v (1) Liela (2) Liyani* [2020] DIFC ARB 017
 - *Lunars v (1) Liuns (2) Lerstin (3) Liwt (4) Lohan (5) Lufits* [2022] DIFC CFI 042
 - *Ledger v Leeor* [2022] DIFC ARB 016
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Major developments in arbitration in the UAE

DIAC Rules 2022

By enactment of Decree No. 34 of 2021 (the Decree), the Emirates Maritime Arbitration Centre (EMAC) and the DIFC Arbitration Institute (DAI) (including its *Dubai International Financial Centre*-London Court of International Arbitration (DIFC-LCIA) Arbitration Centre), were abolished and all rights and obligations of the abolished arbitration centres were transferred to the Dubai International Arbitration Centre (DIAC).

According to the Decree:

- existing arbitration agreements subject to the abolished centres (see above) concluded before the Decree are valid (article 6(a)), although the DIAC will replace the abolished centre as the administering body, unless otherwise agreed;
- ongoing arbitrations administered by the abolished centres, where the arbitral tribunals were constituted before 20 September 2021, will continue to be administered by the LCIA and the DIFC-LCIA casework team; and
- the DIAC organisational structure includes an Arbitration Court that will undertake general supervision of the alternative dispute resolution methods offered by the DIAC and will ensure that they are properly used in a timely manner and with the required efficiency.

This was swiftly followed by new DIAC Rules (the DIAC 2022 Rules), which came into effect as of 21 March 2022.

By a joint press release issued on 28 March 2022,^[1] the DIAC and the LCIA confirmed that:

- all cases commenced and registered with the DIFC-LCIA under a designated case number on or before 20 March 2022 would be administered by the LCIA from London. The funds of the parties held on behalf of DIFC-LCIA will be distributed by LCIA directly to the respective beneficiaries; and
- all other arbitrations, mediations and alternative dispute resolution proceedings commenced on or after 21 March 2022, or cases commenced before 21 March 2022 but without a designated case number, will be registered by the DIAC and administered directly by its administrative body in accordance with the respective rules and procedures of the DIAC, unless otherwise agreed by the parties. Payments for arbitration costs made by parties will therefore be paid into accounts owned by the DIAC.

The DIAC 2022 Rules are a welcome improvement to the previous version of the DIAC Rules, which had not been updated since 2007. As set out in the introduction to the DIAC 2022 Rules:

since the 2007 Rules were published there have been many changes to the practice of arbitration, brought about in order to enhance its efficiency and cost-effectiveness. The Rules have adopted many of these practices and include provisions that deliver flexibility and choice to the parties, cementing DIAC's position as the pre-eminent arbitral institution for disputes in the Middle East region.

The Rules are intended to complement the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, as adopted by

the United Nations Commission on International Trade Law of 1985 and amended in 2006, on which the 2018 UAE Arbitration Law is based, while being flexible enough to be used with any seat of arbitration agreed by the parties.

Some of the notable developments in the DIAC 2022 Rules are detailed below.

- The DIAC Rules 2022 designate the DIFC as the default seat of arbitration; in other words, where parties fail to agree on the place or seat of arbitration, the DIFC will be deemed to be the applicable seat and the DIFC Arbitration Law shall apply.
- This default DIFC seat triggers the application of DIFC Arbitration Law No. 1 of 2008 for procedural questions, and makes the offshore common law English-speaking DIFC courts the relevant supervising court.
- The designation of the seat as the DIFC and the DIFC court as the supervisory court is likely to be popular with international parties, given the pro-arbitration track record of the DIFC courts.
- The DIAC 2022 Rules clarify that parties are at liberty to conduct hearings in a venue other than the seat of arbitration, and such action would have no impact on the choice of their seat. This aligns with the provisions of the 2018 UAE Arbitration Law, which allows parties to hold physical hearings in a venue other than the seat. This clarification is helpful as parties sometimes confuse the venue with the seat of arbitration, arguing that hearings can only be held in the same jurisdiction as the seat of arbitration.
- The DIAC 2022 Rules provide for circumstances where parties may issue a single request for arbitration in respect of multiple claims arising out of or in connection with more than one agreement to arbitrate, submit a request for consolidation of multiple arbitrations or submit a request for joinder of parties. The introduction of provisions for joinder and consolidation modernise the rules and bring them in line with other major arbitral institutions.
- The DIAC 2022 Rules provide that disputes will be determined by a sole arbitrator, unless the parties specify otherwise or the Arbitration Court exercises its discretion to the contrary. While this provision was also present in the 2007 Rules, inclusion of it in the DIAC 2022 Rules shows the DIAC's continued efforts to make arbitration more time- and cost-effective.
- The DIAC 2022 Rules embrace the international nature of disputes and there is a clear shift towards paperless communications and remote hearings:
 - tribunals, after consulting with the parties, have the option of conducting hearings or meetings at any place, be it in person, by telephone or through any other appropriate means of virtual communication including videoconferencing;
 - article 34.6 of the DIAC 2022 Rules permits the use of electronic signatures for awards; and
 - arbitration awards are deemed to have been issued in the seat of the arbitration, even if they were signed by the tribunal outside of the seat of arbitration.
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The DIAC 2022 Rules introduce the option of expedited proceedings and emergency arbitration procedures. These provisions were missing from the DIAC 2007 Rules, and are a necessary requirement for any modern arbitration centre looking to cater to the urgent demands of businesses and the fast-moving commercial world:

- under the emergency arbitration procedures, a party in need of urgent interim relief may, concurrently with or following the filing of a request for arbitration, but prior to the constitution of the tribunal, apply for emergency interim relief. Short time periods are provided for speedy determination of the application, and theoretically this can happen within five to seven business days; and
 - for expedited procedures, the rules provide that where (unless otherwise agreed) principal sums claimed and counterclaimed are less than 1 million dirhams, where the parties have agreed in writing, or in cases of exceptional urgency, under the DIAC Rules, a sole arbitrator is to be appointed within five days and the time limit for rendering awards is only three months.
- In terms of legal costs, the DIAC 2022 Rules introduce significant changes:
 - prior to the constitution of the tribunal, a party that has entered into a third-party funding arrangement must disclose that fact to all other parties and the Centre, together with details of the identity of the funder and whether the funder has committed to an adverse costs liability. This takes into account the growing popularity of third-party funding arrangements and the issues that might arise from them; and
 - the 2007 Rules did not provide for assessment of legal costs by the tribunal (as confirmed by the Dubai Court of Cassation in Case No. 282 of 2012), and this was a deterrent for award creditors and a cause of concern for practitioners. The DIAC 2022 Rules provide that the costs of the arbitration, to be assessed by the tribunal, should include the fees of legal representatives, unless expressly excluded.
 - The DIAC 2022 Rules also contain clear provisions as to exclusion of liability of tribunal members, persons appointed by a tribunal, the Arbitration Court and its members for any act or omission in connection with any arbitration or conciliation governed by the Rules or any matter in which the Centre acts as an appointing authority. This provision appears, in part, to be a direct response to the DIFC court judgment on the issue of liability of an arbitration centre.

In addition, in early 2023, the DIAC announced the appointment of Julian de Lange, a senior international dispute resolution practitioner with on-ground regional experience, as the registrar of the DIAC. The position of registrar has been vacant at the DIAC for some time. The appointment of Mr de Lange provides the administrative body of the DIAC the structure and experience to take the Centre forward in the right direction.

These developments align with the provisions of the UAE Federal Arbitration Law and reflects the efforts of the UAE government to promote the UAE as an international arbitration hub.

Key onshore court decisions^[2]

In 2022, in general, the UAE courts continued to develop a pro-arbitration regime through case and legislative developments, but two judgments of the Dubai Court of Cassation have identified potential hurdles to enforcement of foreign awards in the UAE.

In Dubai Court of Cassation 109 of 2022,^[3] the Court refused enforcement of a foreign arbitration award issued under the International Centre for Dispute Resolution-American Arbitration Association Rules. The arbitration arose from a dispute under a non-disclosure agreement. The issue before the Court was whether an arbitration award issued in a New York Convention country can be ratified and executed in circumstances where the award had only been signed on one page (ie, the operative section at the end of the award) rather than on every page of the award. The Court held that both the operative and reasons part of an arbitral award are required to be signed by the arbitrator for it to be enforceable. In the absence of both parts being signed, the arbitral award cannot be attributed to the arbitration, and is rendered void. The Court further held that it is a matter of public policy. This decision is not the first time that the UAE courts have adopted a strict approach to placement of signatures on an award. It is a timely reminder to arbitration practitioners to adopt a cautious approach and ensure that awards are signed at all relevant parts to avoid enforceability issues on that basis.

In a separate matter, the Dubai Court of Cassation refused enforcement of an arbitration award against a foreign award debtor on the basis that the debtor does not have a domicile in the UAE, and the asset (shares of a UAE company in the name of the award debtor) sought to be enforced against are not named in the arbitral award.^[4] This judgment (in part) related to the interpretation of article III of the New York Convention, which provides that enforcement of an award should be 'in accordance with the rules of procedure of the territory where the award is relied upon . . . there shall not be imposed substantially more onerous conditions . . . on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards'. Without taking into account the latter part of the article, the refused ratification was on the basis of domicile, notwithstanding that domestic awards against foreign parties are enforceable in the UAE. This novel interpretation of article III creates a new conundrum for parties considering enforcement in the UAE.

In contrast, the Dubai Court of Cassation in Case 310 of 2022 upheld the decision of the court of appeal overturning a payment order decision on the basis that the underlying agreement contained an arbitration clause, and that the matter should be referred to arbitration.

In a similar vein, the Dubai Court of Cassation in Case 247 of 2022 dismissed a challenge to a DIAC arbitral award. The respondent had sought nullification of the award on the basis that proper notification had not been given, and accordingly the respondent had been given the opportunity to present its case. After reviewing the evidence on record, the Court rejected the challenge.

Aside from the decisions of the Dubai courts, 2022 saw two important decisions by the Abu Dhabi Court of Cassation.

In the first matter, the Abu Dhabi Court of Cassation determined that establishment of the ICC International Court of Arbitration case management office in the ADGM in 2021 subjects Abu Dhabi-seated ICC arbitrations to the jurisdiction of the ADGM courts.^[5]

In finding that it does not have jurisdiction, the Abu Dhabi Cassation Court noted that the arbitration was subject to the ICC Rules. This resulted in the arbitration proceedings

being subject to the ICC representative office in the ADGM, and as the ICC representative office in the ADGM is considered an ADGM establishment, the ADGM courts have exclusive jurisdiction to consider challenges to the arbitration award.

In a separate matter, the Abu Dhabi Court of Cassation nullified an arbitral award for failure of the arbitrator to declare a conflict of interest.^[6] In this matter, the arbitrator accepted the appointment after submitting a statement of acceptance, impartiality and independence, but failed to declare that the arbitrator was an ex-employee of the law firm that was the legal representative of the claimant in the dispute. The Court, when determining this matter, referred to articles 10(4) and 53(f) of the 2018 UAE Arbitration Law, which refer to the impartiality and independence of arbitrators. This is an important decision that underlines the significance of preserving the integrity of the arbitral process.

Key developments in the DIFC

The DIFC courts continue to lead the way in providing clarity as to the role of courts when there is an arbitration agreement in consideration.

This has been particularly notable in the anti-suit injunction arena.

In *Brookfield Multiplex Constructions LLC v (1) DIFC Investments LLC (2) Dubai International Financial Centre Authority* [2016] DIFC CFI 020, the DIFC courts considered their power to award interim measures and identified the distinction between their supervisory and supportive jurisdiction in relation to arbitration proceedings. It was the first time the DIFC courts had confirmed that they had the power to grant anti-suit injunctions.

This was followed by the unpublished judgment in *Multiplex Constructions LLC v Elemec Electromechanical Contracting LLC* (November 2020),^[7] where the DIFC courts established that they will grant anti-suit injunctions where the parties are bound by an arbitration agreement and the seat of the arbitration is the DIFC.

In the case of *Ledger v Leeor* [2022] DIFC ARB-016 (as upheld in the court of appeal in CA 13 of 2022), once again, the DIFC courts explored anti-suit injunctions in circumstances where the seat of arbitration was in contention. This case arose from an application from Ledger seeking an anti-suit injunction to stop ongoing proceedings in the Dubai courts. The premise of the application was that the seat of the arbitration was the DIFC in circumstances where (1) the alleged arbitration agreement referred to 'Dubai' as the 'place' of arbitration. Accordingly, following the Decree, pursuant to article 4(b) of the DIAC statute, the DIFC is the default seat; (2) alternatively, the reference to 'Dubai' as the 'place' of arbitration was inclusive of the DIFC.

In his judgment, Justice Michael Black, while confirming that the DIFC courts have the power to grant anti-suit injunctions, gave guidance on the criteria for making such an order. He made clear that where the parties are bound by an arbitration agreement and the seat is the DIFC, and those elements are not in issue, the DIFC court will grant anti-suit injunctions restraining the continuation of proceedings brought in breach of the arbitration agreement. However, where there is an issue as to whether there is a binding agreement to have disputes determined by arbitration in the DIFC, the applicant will need to show with a 'high degree of probability' that there was such an agreement, which the applicant was not able to do in this matter. Justice Black further went on to reject the argument that 'place' means 'venue', and noted that it was 'at least as likely' that the parties had agreed the seat as 'Dubai', and that

there were no 'exceptional' circumstances otherwise for the court to exercise jurisdiction. The court did not go on to explain what these 'exceptional cases' could be.

In 2022, the DIFC courts also provided clarity in relation to contempt and disclosure.

The DIFC courts first explored their powers in relation to contempt in *VIH Dubai Palm Jumeirah Ltd v Assas Opco Ltd*. The application for contempt in that case was based on alleged breach of a freezing order granted in support of arbitration proceedings. While the application for contempt in that case had failed, Justice Richard Field held that:

Although Article 43 of the Court Law provides that the Court in the exercise of its contempt of court jurisdiction may make any order it considers necessary in the interests of justice, in my judgment this would not include the imposition by the Court of a sentence of imprisonment.

This issue arose again in a recent case before the DIFC courts: *(1) Lateef (2) Lukman v (1) Liyela (2) Liyani* [2020] DIFC ARB 017. In this case, the DIFC courts issued worldwide freezing orders and accompanying asset information orders as part of the claimants' attempts to enforce a New York arbitral award, which had allegedly been breached, resulting in the contempt application.

In his judgment, Justice Wayne Martin affirmed the position as set out in *VIH Dubai Palm Jumeirah Ltd v Assas Opco Ltd*, and gives helpful guidance on the principles relevant to applications relating to contempt of court: 'the allegations of contempt of court must be proved to what is the criminal standard of proof in criminal jurisdictions, namely, beyond reasonable doubt', and 'the onus of proof of criminal conduct rests at all times upon the party alleging that criminal conduct has occurred. That onus does not change at any point in the process, and the party against whom an application for an order of committal is made carries no obligation to prove anything by way of defence.' The court further held that while it does have the power to impose criminal sanctions, it can impose fines and, in cases where this is inadequate to appropriately reflect the significance of the contempt, reference may be made to the Dubai Attorney General for prosecution. The case is an example of the consequences of breach and the teeth that DIFC court orders carry.

In *Lunars v (1) Liuns (2) Lerstin (3) Liwt (4) Lohan (5) Lufits* [2022] DIFC CFI 042, the court explored the ambit of its powers to grant pre-action disclosure in support of arbitration proceedings to be commenced. In this case, the claimant filed an application seeking pre-action disclosure under Rule 28.48 of the DIFC Court Rules (RDC) against defendants 1–3 and non-party disclosure under RDC 28.51, Norwich Pharmacal order relief and a Banker's Trust order against defendants 4 and 5.

The court dove deep into pre-action disclosure, looking at principles and authorities established in other common law jurisdictions, setting out the criteria that must be satisfied for it to exercise its discretion for a pre-action disclosure, including that a pre-action production may be refused where proceedings are inevitable and so RDC 28.48(4) cannot be satisfied.

The court further held that:

the DIFC Court will not grant pre-action disclosure in aid of a dispute that will be referred to arbitration, rather than litigated in court. The power to invoke pre-action disclosure could only be invoked by an applicant who appeared to

the Court likely to be a party to subsequent proceedings in that Court. Hence, it is common ground that the Court will not have jurisdiction to make an order under RDC 28.48 for pre-action disclosure where the dispute between the parties will be decided in arbitration.

The claimant also failed in its applications against defendants 4 and 5.

This case provides important guidance to parties looking to seek assistance from the courts with respect to pre-action disclosure in support of arbitration proceedings.

Key developments in the ADGM

The ADGM continues to support arbitration through institutional cooperation agreements, legislative developments and innovative solutions.

There have been a limited number of reported ADGM court judgments focusing on arbitration. These cases demonstrate the ADGM courts' pro-arbitration approach. In the most recent case, **A5 v (1) B5 (2) C5** [2021] ADGMCFI 0007, the ADGM court upheld an application for the recognition of an arbitral award. The judgment considers a number of issues, including timing for a set aside application and decision of the tribunal as to jurisdiction.

Institutional cooperation

As part of its push for collaboration and establishing its presence on a global scale, in March 2022, the ADGM entered into a cooperation agreement with the International Centre for Settlement of Investment Disputes (ICSID). This agreement is based on article 63 of the ICSID Convention. The agreement provides for the possibility of holding ICSID hearings at ADGM facilities. The Agreement also encourages knowledge-sharing between ICSID and the ADGM in relation to arbitration, conciliation, mediation and other methods of dispute resolution.

Innovative developments

The ADGM has been a leader in the digital justice space. The two significant advancements in this area have been the first-ever introduction of blockchain technology for the global enforcement of commercial judgments^[8] and the world's first 'mediation in the metaverse' service.^[9]

- The blockchain technology introduced by the ADGM courts is a unique solution that publishes judgments to the blockchain, enabling enforcing commercial courts to independently and instantly verify the authenticity of judgments. The blockchain solution will result in substantial time- and cost-savings for parties in the enforcement of their commercial judgments, and signals a shift in the international enforcement space.
- The ADGM Arbitration Centre has launched the world's first 'mediation in the metaverse' service. This seeks to revolutionise mediation across the globe by making

it more accessible and cost effective. For users, it would be a more immersive experience, seeking to replicate the physical world.

Round-up

The year 2022 was a promising one for dispute resolution in the UAE. While there is scope for further developments, in particular with respect to the onshore courts, the DIFC and the ADGM have established themselves as arbitration-friendly jurisdictions and the UAE continues to adopt a pro-arbitration approach, cementing its place on the global arbitration map.

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The author is grateful for the contribution of Liwei Gong, an associate at King & Wood Mallesons.

Footnotes

[1] See <https://www.lcia.org/News/update-difc-lcia.aspx>.

[2] References made in this article to onshore UAE cases are based on published reports summarising the relevant judgments. The authors have not reviewed the underlying judgments.

[3] See <https://arbitrationblog.kluwerarbitration.com/2022/09/12/uae-court-rejects-enforcement-of-foreign-arbitral-award-for-irregularity-in-the-placement-of-the-arbitrators-signature-and-confirms-the-period-for-appealing-an-order-to-execute-foreign-arbitr/>.

[4] See <https://www.lexology.com/library/detail.aspx?g=6680fb24-37c0-4a04-8269-0fe5ea608b02>.

[5] See <https://www.lexology.com/library/detail.aspx?g=8cabf109-bdca-4a56-ac7b-31ddc5813900>.

[6] See <https://www.thefirmdubai.com/the-nullification-of-an-arbitral-award-by-abu-dhabi-courts-recent-judgments-of-abu-dhabi-cassation-court-and-abu-dhabi-appeal-court-2>.

[7] See <https://hsfnnotes.com/arbitration/2020/12/16/difc-court-grants-first-ever-an-ti-suit-injunction-in-respect-of-on-shore-dubai-court-proceedings/>.

[8] See <https://www.adgm.com/media/announcements/adgm-courts-put-justice-on-the-blockchain#:~:text=ADGM%20Courts%20announce%20a%20groundbreaking,the%20enforceability%20of%20foreign%20judgments>.

[9] See <https://www.adgm.com/media/announcements/abu-dhabi-global-market-launches-mediation-in-the-metaverse>.

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The United Arab Emirates has steadily emerged as a reliable and neutral destination of choice for alternative dispute resolution. In the 13th survey released by Queen Mary University of London, focusing on arbitration in the energy sector, Dubai is now ranked in the top seven seats for international arbitration, surpassing Hong Kong. This can be attributed to continuous development and growth in all spheres of dispute resolution. This article provides an overview of the key developments in arbitration in the UAE over the past 12 months. This includes an analysis of the Dubai International Arbitration Centre (DIAC) Rules 2022; review and discussion of the decisions of the courts of Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM); consideration of the decisions of the UAE onshore courts; and recent developments to promote arbitration in the region. The overarching objective of 2022 has been solidifying the UAE's reputation as a global hub for alternative dispute resolution, notwithstanding the odd onshore court decision.

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 - prior to the constitution of the tribunal, a party that has entered into a third-party funding arrangement must disclose that fact to all other parties and the Centre, together with details of the identity of the funder and whether the funder has committed to an adverse costs liability. This takes into account the growing popularity of third-party funding arrangements and the issues that might arise from them; and
 - the 2007 Rules did not provide for assessment of legal costs by the tribunal (as confirmed by the Dubai Court of Cassation in Case No. 282 of 2012), and this was a deterrent for award creditors and a cause of concern for practitioners. The DIAC 2022 Rules provide that the costs of the arbitration, to be assessed by the tribunal, should include the fees of legal representatives, unless expressly excluded.
- The DIAC 2022 Rules also contain clear provisions as to exclusion of liability of tribunal members, persons appointed by a tribunal, the Arbitration Court and its members for any act or omission in connection with any arbitration or conciliation governed by the Rules or any matter in which the Centre acts as an appointing authority. This provision appears, in part, to be a direct response to the DIFC court judgment on the issue of liability of an arbitration centre.

In addition, in early 2023, the DIAC announced the appointment of Julian de Lange, a senior international dispute resolution practitioner with on-ground regional experience, as the registrar of the DIAC. The position of registrar has been vacant at the DIAC for some time. The appointment of Mr de Lange provides the administrative body of the DIAC the structure and experience to take the Centre forward in the right direction.

These developments align with the provisions of the UAE Federal Arbitration Law and reflects the efforts of the UAE government to promote the UAE as an international arbitration hub.

Key Onshore Court Decisions[2]

In 2022, in general, the UAE courts continued to develop a pro-arbitration regime through case and legislative developments, but two judgments of the Dubai Court of Cassation have identified potential hurdles to enforcement of foreign awards in the UAE.

In Dubai Court of Cassation 109 of 2022,^[3] the Court refused enforcement of a foreign arbitration award issued under the International Centre for Dispute Resolution-American Arbitration Association Rules. The arbitration arose from a dispute under a non-disclosure agreement. The issue before the Court was whether an arbitration award issued in a New York Convention country can be ratified and executed in circumstances where the award had only been signed on one page (ie, the operative section at the end of the award) rather than on every page of the award. The Court held that both the operative and reasons part of an arbitral award are required to be signed by the arbitrator for it to be enforceable. In the absence of both parts being signed, the arbitral award cannot be attributed to the arbitration, and is rendered void. The Court further held that it is a matter of public policy. This decision is not the first time that the UAE courts have adopted a strict approach to placement of signatures

on an award. It is a timely reminder to arbitration practitioners to adopt a cautious approach and ensure that awards are signed at all relevant parts to avoid enforceability issues on that basis.

In a separate matter, the Dubai Court of Cassation refused enforcement of an arbitration award against a foreign award debtor on the basis that the debtor does not have a domicile in the UAE, and the asset (shares of a UAE company in the name of the award debtor) sought to be enforced against are not named in the arbitral award.^[4] This judgment (in part) related to the interpretation of article III of the New York Convention, which provides that enforcement of an award should be 'in accordance with the rules of procedure of the territory where the award is relied upon . . . there shall not be imposed substantially more onerous conditions . . . on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards'. Without taking into account the latter part of the article, the refused ratification was on the basis of domicile, notwithstanding that domestic awards against foreign parties are enforceable in the UAE. This novel interpretation of article III creates a new conundrum for parties considering enforcement in the UAE.

In contrast, the Dubai Court of Cassation in Case 310 of 2022 upheld the decision of the court of appeal overturning a payment order decision on the basis that the underlying agreement contained an arbitration clause, and that the matter should be referred to arbitration.

In a similar vein, the Dubai Court of Cassation in Case 247 of 2022 dismissed a challenge to a DIAC arbitral award. The respondent had sought nullification of the award on the basis that proper notification had not been given, and accordingly the respondent had been given the opportunity to present its case. After reviewing the evidence on record, the Court rejected the challenge.

Aside from the decisions of the Dubai courts, 2022 saw two important decisions by the Abu Dhabi Court of Cassation.

In the first matter, the Abu Dhabi Court of Cassation determined that establishment of the ICC International Court of Arbitration case management office in the ADGM in 2021 subjects Abu Dhabi-seated ICC arbitrations to the jurisdiction of the ADGM courts.^[5]

In finding that it does not have jurisdiction, the Abu Dhabi Cassation Court noted that the arbitration was subject to the ICC Rules. This resulted in the arbitration proceedings being subject to the ICC representative office in the ADGM, and as the ICC representative office in the ADGM is considered an ADGM establishment, the ADGM courts have exclusive jurisdiction to consider challenges to the arbitration award.

In a separate matter, the Abu Dhabi Court of Cassation nullified an arbitral award for failure of the arbitrator to declare a conflict of interest.^[6] In this matter, the arbitrator accepted the appointment after submitting a statement of acceptance, impartiality and independence, but failed to declare that the arbitrator was an ex-employee of the law firm that was the legal representative of the claimant in the dispute. The Court, when determining this matter, referred to articles 10(4) and 53(f) of the 2018 UAE Arbitration Law, which refer to the impartiality and independence of arbitrators. This is an important decision that underlines the significance of preserving the integrity of the arbitral process.

Key Developments In The DIFC

The DIFC courts continue to lead the way in providing clarity as to the role of courts when there is an arbitration agreement in consideration.

This has been particularly notable in the anti-suit injunction arena.

In *Brookfield Multiplex Constructions LLC v (1) DIFC Investments LLC (2) Dubai International Financial Centre Authority* [2016] DIFC CFI 020, the DIFC courts considered their power to award interim measures and identified the distinction between their supervisory and supportive jurisdiction in relation to arbitration proceedings. It was the first time the DIFC courts had confirmed that they had the power to grant anti-suit injunctions.

This was followed by the unpublished judgment in *Multiplex Constructions LLC v Elemec Electromechanical Contracting LLC* (November 2020),^[7] where the DIFC courts established that they will grant anti-suit injunctions where the parties are bound by an arbitration agreement and the seat of the arbitration is the DIFC.

In the case of *Ledger v Leeor* [2022] DIFC ARB-016 (as upheld in the court of appeal in CA 13 of 2022), once again, the DIFC courts explored anti-suit injunctions in circumstances where the seat of arbitration was in contention. This case arose from an application from Ledger seeking an anti-suit injunction to stop ongoing proceedings in the Dubai courts. The premise of the application was that the seat of the arbitration was the DIFC in circumstances where (1) the alleged arbitration agreement referred to 'Dubai' as the 'place' of arbitration. Accordingly, following the Decree, pursuant to article 4(b) of the DIAC statute, the DIFC is the default seat; (2) alternatively, the reference to 'Dubai' as the 'place' of arbitration was inclusive of the DIFC.

In his judgment, Justice Michael Black, while confirming that the DIFC courts have the power to grant anti-suit injunctions, gave guidance on the criteria for making such an order. He made clear that where the parties are bound by an arbitration agreement and the seat is the DIFC, and those elements are not in issue, the DIFC court will grant anti-suit injunctions restraining the continuation of proceedings brought in breach of the arbitration agreement. However, where there is an issue as to whether there is a binding agreement to have disputes determined by arbitration in the DIFC, the applicant will need to show with a 'high degree of probability' that there was such an agreement, which the applicant was not able to do in this matter. Justice Black further went on to reject the argument that 'place' means 'venue', and noted that it was 'at least as likely' that the parties had agreed the seat as 'Dubai', and that there were no 'exceptional' circumstances otherwise for the court to exercise jurisdiction. The court did not go on to explain what these 'exceptional cases' could be.

In 2022, the DIFC courts also provided clarity in relation to contempt and disclosure.

The DIFC courts first explored their powers in relation to contempt in *VIH Dubai Palm Jumeirah Ltd v Assas Opco Ltd*. The application for contempt in that case was based on alleged breach of a freezing order granted in support of arbitration proceedings. While the application for contempt in that case had failed, Justice Richard Field held that:

Although Article 43 of the Court Law provides that the Court in the exercise of its contempt of court jurisdiction may make any order it considers necessary in the interests of justice, in my judgment this would not include the imposition by the Court of a sentence of imprisonment.

This issue arose again in a recent case before the DIFC courts: *(1) Lateef (2) Lukman v (1) Liyela (2) Liyani* [2020] DIFC ARB 017. In this case, the DIFC courts issued worldwide freezing orders and accompanying asset information orders as part of the claimants' attempts to enforce a New York arbitral award, which had allegedly been breached, resulting in the contempt application.

In his judgment, Justice Wayne Martin affirmed the position as set out in *VIH Dubai Palm Jumeirah Ltd v Assas Opco Ltd*, and gives helpful guidance on the principles relevant to applications relating to contempt of court: 'the allegations of contempt of court must be proved to what is the criminal standard of proof in criminal jurisdictions, namely, beyond reasonable doubt', and 'the onus of proof of criminal conduct rests at all times upon the party alleging that criminal conduct has occurred. That onus does not change at any point in the process, and the party against whom an application for an order of committal is made carries no obligation to prove anything by way of defence.' The court further held that while it does have the power to impose criminal sanctions, it can impose fines and, in cases where this is inadequate to appropriately reflect the significance of the contempt, reference may be made to the Dubai Attorney General for prosecution. The case is an example of the consequences of breach and the teeth that DIFC court orders carry.

In *Lunars v (1) Liuns (2) Lerstin (3) Liwt (4) Lohan (5) Lufits* [2022] DIFC CFI 042, the court explored the ambit of its powers to grant pre-action disclosure in support of arbitration proceedings to be commenced. In this case, the claimant filed an application seeking pre-action disclosure under Rule 28.48 of the DIFC Court Rules (RDC) against defendants 1–3 and non-party disclosure under RDC 28.51, Norwich Pharmacal order relief and a Banker's Trust order against defendants 4 and 5.

The court dove deep into pre-action disclosure, looking at principles and authorities established in other common law jurisdictions, setting out the criteria that must be satisfied for it to exercise its discretion for a pre-action disclosure, including that a pre-action production may be refused where proceedings are inevitable and so RDC 28.48(4) cannot be satisfied.

The court further held that:

the DIFC Court will not grant pre-action disclosure in aid of a dispute that will be referred to arbitration, rather than litigated in court. The power to invoke pre-action disclosure could only be invoked by an applicant who appeared to the Court likely to be a party to subsequent proceedings in that Court. Hence, it is common ground that the Court will not have jurisdiction to make an order under RDC 28.48 for pre-action disclosure where the dispute between the parties will be decided in arbitration.

The claimant also failed in its applications against defendants 4 and 5.

This case provides important guidance to parties looking to seek assistance from the courts with respect to pre-action disclosure in support of arbitration proceedings.

Key Developments In The ADGM

The ADGM continues to support arbitration through institutional cooperation agreements, legislative developments and innovative solutions.

There have been a limited number of reported ADGM court judgments focusing on arbitration. These cases demonstrate the ADGM courts' pro-arbitration approach. In the most recent case, *A5 v (1) B5 (2) C5* [2021] ADGMCFI 0007, the ADGM court upheld an application for the recognition of an arbitral award. The judgment considers a number of issues, including timing for a set aside application and decision of the tribunal as to jurisdiction.

Institutional Cooperation

As part of its push for collaboration and establishing its presence on a global scale, in March 2022, the ADGM entered into a cooperation agreement with the International Centre for Settlement of Investment Disputes (ICSID). This agreement is based on article 63 of the ICSID Convention. The agreement provides for the possibility of holding ICSID hearings at ADGM facilities. The Agreement also encourages knowledge-sharing between ICSID and the ADGM in relation to arbitration, conciliation, mediation and other methods of dispute resolution.

Innovative Developments

The ADGM has been a leader in the digital justice space. The two significant advancements in this area have been the first-ever introduction of blockchain technology for the global enforcement of commercial judgments^[8] and the world's first 'mediation in the metaverse' service.^[9]

- The blockchain technology introduced by the ADGM courts is a unique solution that publishes judgments to the blockchain, enabling enforcing commercial courts to independently and instantly verify the authenticity of judgments. The blockchain solution will result in substantial time- and cost-savings for parties in the enforcement of their commercial judgments, and signals a shift in the international enforcement space.
- The ADGM Arbitration Centre has launched the world's first 'mediation in the metaverse' service. This seeks to revolutionise mediation across the globe by making it more accessible and cost effective. For users, it would be a more immersive experience, seeking to replicate the physical world.

ROUND-UP

The year 2022 was a promising one for dispute resolution in the UAE. While there is scope for further developments, in particular with respect to the onshore courts, the DIFC and the ADGM have established themselves as arbitration-friendly jurisdictions and the UAE continues to adopt a pro-arbitration approach, cementing its place on the global arbitration map.

*

The author is grateful for the contribution of Liwei Gong, an associate at King & Wood Mallesons.

Endnotes

- 1 See <https://www.lcia.org/News/update-difc-lcia.aspx>. [^ Back to section](#)

- 2 References made in this article to onshore UAE cases are based on published reports summarising the relevant judgments. The authors have not reviewed the underlying judgments. [^ Back to section](#)

- 3 See <https://arbitrationblog.kluwerarbitration.com/2022/09/12/uae-court-rejects-enforcement-of-foreign-arbitral-award-for-irregularity-in-the-placement-of-the-arbitrators-signature-and-confirms-the-period-for-appealing-an-order-to-execute-foreign-arbitr/>. [^ Back to section](#)

- 4 See <https://www.lexology.com/library/detail.aspx?g=6680fb24-37c0-4a04-8269-0fe5ea608b02>. [^ Back to section](#)

- 5 See <https://www.lexology.com/library/detail.aspx?g=8cabf109-bdca-4a56-ac7b-31ddc5813900>. [^ Back to section](#)

- 6 See <https://www.thefirmdubai.com/the-nullification-of-an-arbitral-award-by-abu-dhabi-courts-recent-judgments-of-abu-dhabi-cassation-court-and-abu-dhabi-appeal-court-2>. [^ Back to section](#)

- 7 See <https://hsfnotes.com/arbitration/2020/12/16/difc-court-grants-first-ever-anti-suit-injunction-in-respect-of-on-shore-dubai-court-proceedings/>. [^ Back to section](#)

- 8 See <https://www.adgm.com/media/announcements/adgm-courts-put-justice-on-the-blockchain#:~:text=ADGM%20Courts%20announce%20a%20groundbreaking,the%20enforceability%20of%20foreign%20judgments>. [^ Back to section](#)

- 9 See <https://www.adgm.com/media/announcements/abu-dhabi-global-market-launches-mediation-in-the-metaverse>. [^ Back to section](#)

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