

# New Dubai Decree Dissolves Emirates Maritime Arbitration Centre and DIFC Arbitration Institute and Transfers Their Operations to the Dubai International Arbitration Centre

EMEA – September 27, 2021

On September 14, 2021, the Ruler of Dubai His Highness Sheikh Mohammed bin Rashid Al Maktoum issued Dubai Decree No. 34 of 2021 on the Dubai International Arbitration Centre (DIAC) (Decree).

On September 20, 2021, the Decree came into force.

## Cancellation of EMAC and DIFC Arbitration Institute

The Decree abolishes the Emirates Maritime Arbitration Centre (EMAC) and the Dubai International Financial Centre (DIFC) Arbitration Institute (referred to in the Decree as the “Canceled Centers”) and transfers their existing operations and resources to DIAC (see below). By abolishing the DIFC Arbitration Institute, the Decree results in the closure of the DIFC-LCIA Arbitration Centre (DIFC-LCIA). Since November 2015, the LCIA has managed and administered arbitrations under the DIFC-LCIA rules pursuant to an agreement with the DIFC Arbitration Institute.

Pursuant to Article 5 of the Decree, all of the Canceled Centers’ assets, employees and operations shall be transferred to DIAC as follows:

1. Titles of real and moveable property and any assets owned by the Canceled Centers shall now be transferred to DIAC
2. The chairman of DIAC’s board of directors shall determine the employees of the Canceled Centers who shall be transferred
3. The Canceled Centers’ financial appropriations shall be transferred to DIAC
4. The rosters of arbitrators, mediators and experts, as well as members of the Canceled Centers, shall be equally registered in DIAC, under the same terms and conditions of the Canceled Centers, until the expiration of the respective mandates or membership periods

DIAC replaces the Canceled Centers in respect of all of their rights and obligations.

Article 7 reconfirms the Dubai Courts and the DIFC Courts’ jurisdiction to continue to consider applications and challenges relating to arbitral proceedings arising under both the Canceled Centers and DIAC in accordance with their applicable procedures and standards. This provision is of limited impact because these courts derive their supervisory powers from the parties’ choice of seat, rather than the institution administering the proceedings.

## Effect of the Decree on Arbitration Clauses and Ongoing Proceedings

The full impact of the Decree is yet to be seen, but some of the immediate effects are apparent from how it addresses arbitration clauses and ongoing arbitral proceedings:

1. Article 6(a): all arbitration clauses concluded before and up to the date of the Decree (September 20, 2021) providing for arbitration administered under either of the Canceled Centers are valid and binding. However, DIAC now replaces the Canceled Centers in administering disputes arising under such clauses, unless the parties agree otherwise.
2. Article 6(b): all ongoing arbitration proceedings (i.e., where the arbitral tribunals have already been constituted as of September 20, 2021) under either of the Canceled Centers shall continue without disruption in accordance with the rules and procedures of those Canceled Centers, unless the parties agree otherwise, provided that DIAC supervises these disputes moving forward.

It is important that parties are assured that their selected procedural rules are still applicable to their disputes and their choice is not compromised. This is particularly important given some peculiar provisions of the DIAC arbitration rules that may have historically led parties to opt out of the same. For example, DIAC rules are unclear on arbitrators’ authority to award costs of legal representation, an ambiguity that led the Dubai Courts to finding that arbitrators, in fact, lack this authority under the DIAC rules unless specifically agreed otherwise by the parties.

Article 8(c) provides that the procedural rules of the Canceled Centers, as well as the DIAC rules, shall continue to apply to the extent they do not contradict with the Decree and the DIAC Statute, until new procedural rules are approved by DIAC. While this provision may appear to qualify the assurance under Article 6(b) above, we interpret Article 8(c) simply to mean that the current procedural rules (EMAC, DIFC-LCIA and DIAC) are operational so long as they do not contradict the “transitional” rules of the Decree. In practical terms, DIAC will eventually administer arbitrations using three different sets of arbitration rules – unlike any other arbitral institution.

Article 9 of the Decree gives DIAC six months from the Decree’s effective date to coordinate with all relevant entities in Dubai to give effect to the Decree and the Statute.

## The DIAC Statute

The Decree supersedes Decree No. 10 of 2004 on the establishment of DIAC, and sets out the “new” DIAC powers, goals and organizational structure, including a newly established arbitration court.

The Decree establishes a new arbitration court that shall consist of 13 members comprising local and international arbitration experts, appointed by DIAC’s board of directors for a non-renewable term of four years. Article 11 of the DIAC Statute sets out the authorities of the arbitration court, which include appointing arbitrators and tribunals, deciding challenges to arbitrators, and determining the arbitration fees and expenses, among other things.

## Suggested Next Steps

If you have specified the DIFC-LCIA or EMAC arbitration rules in your agreements, and seek advice in light of the Decree, please contact us.

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