

Dubai Court of Appeal confirms time extension provisions under the DIAC Rules and other pro-arbitration dicta

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In an encouraging ruling of earlier this year (see Case No. 249 of 2013 – *Middle East Foundations LLC v. Meydan Group LLC (formerly Meydan LLC)*, Commercial Appeal, ruling of the Dubai Court of Appeal of 15 January 2014), the Dubai Court of Appeal confirmed the time extension provisions for rendering final awards under the DIAC Rules in an attempt to rectify an earlier ruling of the Dubai Court of First Instance in the same case (see Case No. 934 of 2012 – *Middle East Foundations Group LLC v. (1) Meydan Group LLC (formerly Meydan LLC) and (2) Nael Buni*, Commercial Plenary, ruling of the Dubai Court of First Instance of 14 February 2013), which essentially disregarded the full scope of the powers given to the DIAC Executive Committee to extend the common time-limit of six months that prevails under UAE law. By doing so, the Dubai Court of Appeal lent full force to an arbitration award rendered in DIAC Case No. 151/2009, subject to a presently pending appeal before the Dubai Court of Cassation.

For those unfamiliar with the position under UAE law, it may be worth recalling that in the terms of Article 210(1) of UAE Civil Procedures Code, which in turn forms part of the UAE Arbitration Chapter, “[i]f, in the arbitration agreement, the parties have not stipulated a time-limit for the award, the arbitrator must render the award within six months from the date of the first hearing in the arbitration.” Article 210(2) continues to provide that “[t]he parties may agree – expressly or impliedly – to extend the time-limit laid down in the agreement or by law.” I have extensively commented on the application of this Article in previous writings, advising that “[t]he implication of the parties’ agreement usually takes the form of a reference in the underlying arbitration agreement to the conduct of the arbitration process under an institutional set of rules, such as the DIAC or the ADCCAC Rules, which, in turn, contain express provisions on extension of time (see Article 36 of the DIAC Rules and Article 36(10) of the [1994 version of] the ADCCAC Rules).” (see Gordon Blanke, *Annotated Guide to Arbitration in the UAE – Volume I: The UAE Arbitration Chapter*, Thomson Reuters, 2014).

This advice now stands confirmed in its application to Article 36 of the DIAC Rules. More specifically, in the present ruling, the Dubai Court of Appeal left no doubt that arbitration proceedings may be extended for subsequent periods of a maximum of six months at a time in reliance on Article 36.4 of the DIAC Rules and are not confined to a single, one-off extension of six months only. In doing so, the Court of Appeal reversed the previous nullification of the Court of First Instance pronounced on the basis that four consecutive extensions of the time-limit for rendering the Final Award in DIAC Case No. 151/2009 fell outside the scope of Article 36. A restrictive reading of the DIAC Rules that limits

extensions under Article 36 by the Executive Committee to one time only is patently incorrect: Pursuant to Article 36.3, “[t]he Tribunal may, on its own initiative, extend the time-limit [of the original six months] for up to an additional six months[.]”; and Article 36.4 empowers the Executive Committee to “extend this time-limit **further** pursuant to a reasoned request or on its own initiative if it decides that it is necessary to do so.” (my emphasis) The use of the word “further” is clearly intended to allow manifold (rather than just one single) extension(s), provided there is good cause. For the avoidance of doubt, there can only be good cause if the extension is justified and operated properly and in a timely fashion, i.e. is contiguous with the date of expiry of the previous time-limit and made prior to it (see again my commentary on the application of Article 210 in Gordon Blanke, *Annotated Guide to Arbitration in the UAE – Volume I: The UAE Arbitration Chapter*, Thomson Reuters, 2014). Further, it is arguable that each individual extension may only be for a maximum of six months, taking account of the wording of Article 210(1) of the UAE Arbitration Chapter and established DIAC practice. This would also seem to stand confirmed by the wording of Article 36.2, which reflects the six-month base time-limit contained in Article 210(1). Finally, the implication by reference of the contracting parties’ agreement to the time extension provisions under the DIAC Rules finds support in the wording of Article 36.1, which provides that “[b]y submitting to arbitration under these Rules the parties shall [be] so deemed to have agreed that the provisions of this Article shall apply to extending the time limit for rendering the final award.”

Making blank reference to Articles 36.2, 3 and 4, the Dubai Court of Appeal – correctly to my mind – concluded:

“[Paragraphs 3 and 4 of Article 36] state that the Tribunal may, on its own initiative, extend the time-limit for up to an additional six months. The Executive Committee may extend this time-limit further. This means that the extension [in DIAC Case No. 151/2009] was valid and the DIAC is authorised to make this extension. The arbitral award was issued within the time-limit specified, which means the arbitration proceedings were valid and in accordance with the rules and arbitration agreement made between the two parties. The Court of First Instance should have recognized the arbitral award.”

This, of course, does not mean that arbitrators under the DIAC Rules are discharged from general obligations of procedural expediency, but they will have reassurance that in complex disputes, extensions of time may be obtained with good measure.

On a further note, the Court of First Instance also correctly rejected the joinder of Nael Buni, the Head of the DIAC Executive Committee, for providing additional evidence on the extension point given, *inter alia*, that a full record of relevant DIAC correspondence informing the parties of the decisions of the DIAC Executive Committee to extend had already been submitted in evidence before the Court.

In addition, in a pro-arbitration spirit, the Dubai Court of Appeal helpfully confirmed the following points:

- Meydan Group LLC (formerly Meydan LLC) – despite its partial governmental shareholding – qualifies as a private company under UAE law (as confirmed by the terms of its trade license) and does as such not benefit from any special conditions precedent prior to recourse to arbitration (see Article 36 of Dubai Law no. 6 of 1997 read together with Dubai Instruction Order of 6 February 1998; Articles 8 and 9 of Dubai Law No. 32 of 2008; and Council of Ministers Decision No. 406/2 of 2003).
- The Parties’ choice of DIAC as an institutional framework in derogation from the standard ICC reference contained in the FIDIC General Conditions is enforceable under UAE law.

It is to be hoped that all the above pro-arbitration dicta made by the Dubai Court of Appeal will stand confirmed by the Dubai Court of Cassation in its impending ruling on the subject-matter and confirm the UAE as a generally arbitration-friendly jurisdiction.