

# Kluwer Arbitration Blog

## The DIAC goes offshore: Strategic move or promotional ploy?

Gordon Blanke (Blanke Arbitration LLC) · Monday, June 6th, 2016

According to a recent announcement (see the official DIAC website at <https://www.dubaichamber.com/en/news/dubai-international-arbitration-centre-opens-an-office-in-difc>), the Dubai International Arbitration Centre, widely known by its acronym as the “DIAC”, is set to open a branch in the Dubai International Financial Centre, in shorthand the “DIFC”. This anticipated move is no doubt a promotional exercise to address concerns that the offshore DIFC has gained increasing credibility in recent years as a preferred seat of arbitration over onshore Dubai. Despite the recent pro-enforcement history of foreign arbitral awards before the UAE and in particular Dubai courts under the New York Convention (on the recognition and enforcement of foreign arbitral awards 1958) and the comparative arbitration-friendliness of the UAE courts (contrary to the often overstated criticism that the UAE courts are critical and as such little promotive of arbitration as an alternative form of dispute resolution), the DIFC courts have succeeded in establishing themselves as a port of call of both domestic and international investors for the enforcement of domestic and foreign arbitral awards against assets of award debtors in onshore Dubai.

The DIAC’s decision to open in the DIFC is promoted by the DIAC as facilitating a choice for DIAC users to resort to enforcement of a DIAC award before the DIFC or the Dubai courts. In the words of the Chairman of the DIAC Board of Trustees, Dr. Habib Al Mulla,

“as part of its development plans, the DIAC has decided to establish an office in the DIFC thus providing parties to arbitration disputes with an alternative option of courts that they can resort to in order to obtain recognition and enforcement of their awards.

[...] arbitration is about choice, and [...] the presence of the DIAC in the DIFC office will give arbitration parties the choice of resorting either to the DIFC courts or to the Dubai Courts if they so wish to enforce their awards.

The new [DIAC] office will benefit from the many companies operating in DIFC. Our new office’s presence will contribute to enhancing those companies’ awareness about our services and how they can use our services to develop and support their activities.” (see again the official DIAC website)

Specialist arbitration practitioners will, of course, note that this choice of forum has existed for a

while, especially in the light of the DIFC courts' acquired status as a conduit or host jurisdiction over the past two to three years (see my various blogs on the subject-matter, in particular [here](#)). In this sense, domestic award creditors have benefited from enforcement of DIAC awards against assets of an award debtor in onshore Dubai through the offshore DIFC courts (see *ARB 003/2013 – Banyan Tree Corporate Pte Ltd v. Meydan Group LLC* and my previous reporting [here](#)), even without the need for the DIAC to move offshore. For the avoidance of doubt, the location of an arbitration institution has precious little to do with the competence of eligible supervisory courts: the competence of a court of enforcement is completely independent from the geographic location of the arbitration institution in charge and even the identity of the seat. This being said, an element of psychology may come into play in that the choice of an arbitration institution located in a free zone, like the DIFC, may create the fiction of a greater degree of enforceability of a resultant award and hence serve to promote e.g. DIAC arbitration. Nonetheless, DIAC arbitration will be no different, whether administered by the parent institution in onshore Dubai or a prospective branch located in the offshore DIFC. What will make a difference, however, will be the choice of the seat of arbitration: seating a DIAC arbitration in the DIFC will import the application of the DIFC Arbitration Law (see DIFC Law No. 1 of 2008), which is modeled on the UNCITRAL Model Law, as the procedural law of the arbitration and trigger the competence of the DIFC courts as the curial courts of the arbitration. This will assist in avoiding the at times erratic interpretation of Article 216 of the UAE Civil Procedures Code that sets out the potential grounds of nullification of a DIAC award with seat in onshore Dubai.

Taken in the round, the alternative location of the DIAC offshore may encourage DIAC users to seat their arbitrations in the DIFC under the auspices of the DIAC, which in turn may possibly make a resultant award more resistant to potential challenges (which would have to be advanced under the stricter grounds of the DIFC Arbitration Law). In any event, whether the DIAC's relocation to the DIFC is a strategic move or a promotional ploy (or indeed a combination of both), each reader will be left to judge for him/herself!

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This entry was posted on Monday, June 6th, 2016 at 10:45 am and is filed under [Arbitration Institutions and Rules](#), [DIFC](#), [Domestic Courts](#), [Dubai](#), [Enforcement](#), [Middle East](#), [UAE](#)

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