

# Kluwer Arbitration Blog

## ICC Moves Offshore: Clash of the Titans?

Gordon Blanke (Blanke Arbitration LLC) · Friday, August 11th, 2017

According to a recent [announcement](#), the International Chamber of Commerce (ICC) International Court of Arbitration is set to open a representative office in the Abu Dhabi Global Market (ADGM), a free zone founded by the Ruler of Abu Dhabi on Al Maryah Island, a man-made island on the shores of the Emirate of Abu Dhabi. I have extensively reported on the ADGM as a seat of arbitration on Kluwer Blog previously (see [G. Blanke, “Arbitration in the Abu Dhabi Global Market: Ready, Steady, Go ...!”](#), *Kluwer Arbitration Blog*, 7 February 2016 ; and [G. Blanke, “Arbitrating in the ADGM: Some further thoughts and considerations”](#), *Kluwer Arbitration Blog*, 10 March 2016) ,and do not intend to belabour the subject unnecessarily here. Suffice it to recall that the ADGM is a free zone common law jurisdiction with its own stand-alone arbitration law, the 2015 ADGM Arbitration Regulations, which are modeled on the UNCITRAL Model Law. Arbitrations seated in the ADGM will be governed by the Regulations and given their UNCITRAL pedigree benefit from best standard international arbitration procedure.

The establishment of the ICC in the ADGM will add to arbitrations in the ADGM an endemic institutional dimension that will promote a choice for the administration of ADGM-seated arbitration under the ICC Rules of Arbitration. This, no doubt, marks a smart strategic move for the ICC that in free zone arbitration had lost ground to the London Court of International Arbitration (LCIA), its long-time rival, which was the first to set up as a free zone arbitration centre in the Dubai International Financial Centre (DIFC) about nine years ago. Regular followers of this Blog will know that the DIFC is the first common law jurisdiction established on the free zone model in the UAE. The DIFC-LCIA has since become the best-known free-zone arbitration centre internationally, soon registering in excess of 100 cases (beating the Qatar International Financial Centre and its home-grown arbitration centre to it). Taking account of the novelty of the concept of free zone arbitration and the lead-time for any disputes to originate from DIFC-LCIA arbitration clauses, this is no mean feat. Going forward, the DIFC-LCIA’s case portfolio looks to grow, conservatively speaking, by an average 30 to 50 references annually.

Admittedly, the ICC has been a strong contender for institutional arbitration in the Middle East even without a presence in the ADGM. The ICC has had a UAE national committee in place for a long time, assisting in the appointment of suitable arbitrators in references with Middle East and North Africa significance. Through its tireless advertising throughout the region, the ICC has also built a solid reputation amongst actual and potential users. That said, the move offshore will, no doubt, further strengthen this position and disperse the perception that common law style arbitration will only be possible within and is therefore reserved for a DIFC-LCIA institutional framework.

Leaving aside the institutional rivalry between the titans for a moment, the additional free zone arbitration offering of the ICC will further embellish and promote the reputation of the UAE as a leading regional arbitration hub. It will offer users a choice of institutional and ad hoc arbitration within the UAE, between the DIAC (with an offshore offering in the DIFC, see G. Blanke, “The DIAC goes offshore: Strategic move or promotional ploy?”, *Kluwer Arbitration Blog*, 6 June 2016, available <https://kluwerarbitrationblog.com/2016/06/06/the-diac-goes-offshore-and-the-proverbial-proof-of-the-pudding/>) and the ADCCAC in Abu Dhabi, as well as the many arbitration centres in other Emirates, in addition to the DIFC-LCIA and the ADGM-ICC.

At the operational level, future users should be aware, however, that the new ADGM-ICC will only be a representative office and not a fully-serviced operation of the size you will find at the ICC headquarters in Paris. Importantly, whereas the ADGM-ICC will be able to process requests of arbitration, the existing MENA case management teams of the ICC in Paris will remain in charge for the full administration of an individual reference. This is similar to the way the DIFC-LCIA operated initially (relying heavily on the capabilities in place at the LCIA parent in London) although it has become more self-sufficient in recent years. On the plus side, it is understood that the office will have state-of-the-art hearing facilities, which will serve as neutral ground for conducting hearings under the ICC Rules in arbitrations seated in the ADGM.

The ADGM-ICC is presently expected to become operational by the beginning of 2018. Until then, the ICC will no doubt endeavor to ponder further changes to its Rules, in particular to cater for seating an arbitration in the ADGM in order to facilitate true free zone arbitration. This could be achieved by amending the standard ICC arbitration clause to create a ADGM-ICC-specific clause that provides for the ADGM as a seat of arbitration for choice by the parties. That said, it is unlikely that the ICC will wish to alter its long-standing policy of leaving the designation of a default seat to the ICC International Court of Arbitration for determination in the event that the parties fail to agree. That said, it is presently not known whether the ICC will issue a new set of Rules for use in ADGM-seated arbitrations. It is unlikely to do so other than naming its standard Rules for use in the ADGM the “ADGM-ICC Rules” or a derivative of (again following the model of the DIFC-LCIA Rules).

At this stage, it is difficult to tell whether through its opening in the ADGM, the ICC will steal business from the DIFC-LCIA. That said, a true clash of the titans is probably some way off given that ADGM arbitration is likely to remain confined to arbitrations that exhibit a link to the ADGM. In this context, it is important to recall that the scope of arbitration in the ADGM is much more limited than arbitration in the DIFC. Unlike the case in the DIFC, disputing parties cannot contract into the resolution by arbitration of any disputes in the ADGM without demonstrating subject-matter nexus to the ADGM. This essentially means that arbitration in the ADGM is limited to (i) the resolution of civil or commercial disputes involving the ADGM or any ADGM stakeholders (i.e. ADGM authorities or establishments) or to (ii) the resolution of disputes arising out of a contract or a transaction conducted in whole or in part in the ADGM or out of an incident that occurred in the ADGM (see Arts 6-7, Law No. (4) of 2013 Concerning Abu Dhabi Global Market). As a consequence, DIFC arbitration remains an attractive option to those who wish to arbitrate in a common law environment in the Middle East. It will, as such, maintain the DIFC-LCIA’s competitive advantage as an institutional framework for free zone arbitration in the UAE.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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