

Kluwer Arbitration Blog

2021 In Review: Middle East Overview

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Amidst reeling from the pandemic of 2020, 2021 witnessed a number of arbitration-related transformations, developments and notable decisions issued by the national courts in the Middle East. In this post, we focus in on the Middle East region to reflect on the significant developments that took place in arbitral centres, summarize key judgments issued by the courts and their implications and touch on some of the major arbitration related events that took place throughout the year.

Arbitral Centres

DIFC-LCIA Arbitration Centre

The most significant transformation that impacted many in the region, occurred in the UAE by way of Decree No. 34 of 2021 Concerning the Dubai International Arbitration Centre (“**Decree 34 of 2021**”) which essentially reformed the arbitration framework in Dubai. Decree 34 of 2021, which came into force on 20 September 2021, abolished the Dubai International Finance Centre (“**DIFC**”)’s Arbitration Institution (i.e., the DIFC-LCIA Arbitration Centre) as well as the Emirates Maritime Arbitration Centre and transferred the responsibility, including all assets, employees, financial allocations, list of arbitrators of these abolished arbitral centres, to the ‘onshore’ Dubai International Arbitration Centre (“**DIAC**”).

The main objective of Decree 34 of 2021 was to unify Dubai’s different arbitral institutions under the umbrella of a new and improved DIAC 2.0. Post its issuance, there were a number of commentaries on Decree 34 of 2021 that were shared on the Blog, (which can be found [here](#), [here](#) and [here](#)).

As noted by a number of [commentators](#) in the region, prior to the issuance of Decree 34 of 2021, the Dubai courts have been reluctant to exercise supervisory jurisdiction over DIFC-LCIA arbitrations despite the parties having expressly chosen the UAE courts as the seat of their DIFC-LCIA arbitration. (See an English translation of the judgment rendered by the Dubai Court of Cassation in Case No. 1132 of 2020 of one such decision, [here](#)). Decree 34 of 2021 is helpful in providing a linear distinction in this regard. It stipulates that, where the DIAC arbitration is seated in the Emirate (i.e., Dubai), the onshore courts are to be the supervisory competent court over the

arbitration with the application of the [UAE Arbitration Law \(Federal Arbitral Law No. 6 of 2018\)](#).¹⁾ On the other hand, where the DIAC arbitration is seated in the DIFC, the DIFC courts are to be the supervisory competent court over the arbitration with the application of the [DIFC Arbitration Law \(Law No. 1 of 2008\)](#).²⁾ Decree 34 of 2021 also designates the DIFC as the default seat of the DIAC arbitration if there is no agreement by the parties on the seat of the arbitration.³⁾ This provision would increasingly incentivize parties to opt for Dubai as their seat of arbitration, with the support of the DIFC courts' expertise in international arbitration matters.

While the rebranded identity of DIAC 2.0 remains to be completely unveiled in the coming year, the uncertainty associated with the future of DIAC appears to have been placated by the recent announcement releasing the latest [DIAC Arbitration Rules 2022](#), set to come into effect as of 21 March 2022. These rules put into motion the new operation of DIAC 2.0 post Decree 34 of 2021 and attempt to overcome the critiques associated with the discrepancies between the DIFC-LCIA arbitration rules, which largely mirrored the [LCIA Arbitration Rules](#), and the current version of the [DIAC Arbitration Rules](#), which were last updated in 2007.

With the establishment of [DIAC's new Board of Directors](#) and the release of the [DIAC Arbitration Rules 2022](#), there is much to be optimistic about on the future of arbitration in Dubai.

Oman Commercial Arbitration Centre

The Oman Commercial Arbitration Centre established in 2018, issued its arbitration rules in 2020 by way of Decision No. 8 of 2020 and became fully operational at that point. In 2021, it also issued its mediation rules by way of Decision No. 8 of 2021, strengthening the centre's resolution to resolve commercial disputes between companies, institutions and investors [in line with Oman's 2040 vision to encourage investments in the nation](#).

Arbitration-related Decisions Rendered by the National Courts

UAE

The UAE courts are generally pro-arbitration. In a recent landmark decision rendered by the [Dubai Court of Appeal in Case No. 19 of 2020](#), the parties' dispute related to an underlying DIAC arbitration commenced to claim outstanding payments due to the claimant under six distinct contracts between the same parties, pertaining to the same project and which contained identical arbitration clauses. While the Tribunal in this case issued a preliminary award on jurisdiction determining that it did not have jurisdiction over the arbitration on the basis that the party's claim pertained to six different underlying agreements, the Dubai Court of Appeal set aside the Tribunal's preliminary award on jurisdiction and decided that the Tribunal had jurisdiction to hear a consolidated arbitration case. The UAE courts held that nothing in the [DIAC Arbitration Rules](#) or the [UAE Arbitration Law](#) explicitly prohibits or bars the filing of a single Request for Arbitration based on multiple contracts, each containing an arbitration clause. Further, the UAE courts also relied on the fact that UAE law, the governing law of the parties' contracts does not prevent the filing of an action based on multiple separate contracts that exist on a standalone basis.

Notwithstanding this, there have been a number of notable decisions rendered by the Dubai courts over the course of last year which have not been reflective of this stance. For instance, in Dubai

Court of Cassation Case No. 209 of 2021, the UAE courts exercised jurisdiction over a matter in the interest of justice, despite the existence of an arbitration clause. The parties' dispute in this matter was subject to two related contracts, a construction contract and a consultancy contract. While the consultancy contract contained an arbitration clause, the construction contract did not. The Dubai Court of Cassation was of the view that the dispute should not be divided and determined separately and held that it had jurisdiction over the parties' dispute. As noted in the commentary of this case in the [Blog here](#), it might have been the case that the UAE courts would have decided the matter differently if the parties' dispute did not depend on a finding of liability under the construction contract, which did not contain an arbitration clause.

In a similar ruling by the Dubai Court of Cassation in Case No. 1270 of 2020, that has also been previously commented on in the [Blog here](#), the UAE courts accepted jurisdiction in a dispute concerning a number of parties where only some of the parties had concluded an arbitration agreement, while others had not.

The Abu Dhabi courts have also rendered similar decisions in the course of 2021. In a notable decision rendered by the Abu Dhabi Court of Cassation in Case No. 992 of 2020, that was commented on in the [Blog here](#), the UAE courts expressly held that an arbitration agreement is an "exceptional arrangement" as a form of waiver of the right to access courts and accordingly, a party's intention to arbitrate had to be explicit and free from doubt. This case concerned a party's challenge to an arbitration agreement on the basis that the claimant lacked the requisite authority to agree to arbitration. The Abu Dhabi Court of Cassation agreed and set aside the arbitration agreement on the basis that the power of attorney granted to the claimant's representative was qualified to be without prejudice to Article 58(2) of the UAE Civil Procedure Law (Federal Law No. 11 of 1992), which excluded the right to agree to arbitration agreements.

Some of these judgments issued by the UAE courts serve to reinforce the traditional notion that arbitration is an exceptional route to resolving the parties' dispute in the UAE and the parties' agreement to arbitrate needs to be clear and in line with the formalities associated with such agreements under UAE laws in order for them to be enforceable and free from challenges.

Qatar

Recent judgments that have been issued by the Qatari courts suggest a positive change in the arbitration landscape of Qatar. In a decision rendered by the Qatar Court of Appeal recently, the Qatari courts dismissed an application to set aside an award on the basis that the award was not issued in the name of the Emir of Qatar. As was noted in a previous [post](#) on this decision, prior to this there were a number of judgments issued by the Qatari courts where parties were successful in their actions to set aside awards on the basis that the award had not been issued in the name of the Emir of Qatar. This judgment by the Qatar Court of Appeal in Case No. 2186 of 2019 has hopefully laid to rest the requirement that Qatar seated awards are required to be issued in the name of the Emir and has affirmed the position that awards in Qatar can only be set aside under one of the limited grounds contained in Article 33 of the [Qatar Arbitration Law \(Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law\)](#), which mirror the grounds for refusing the enforcement of foreign awards contained in Article V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**").

Following from the pro-arbitration judgments issued by the Qatari courts, in [Qatar Court of Appeal Case No. 2211 of 2019](#), the Qatari courts dismissed a setting aside application initiated on the

grounds of irregularity in the legal representation of the parties. By this, the Qatar courts have established that the failure of a party to appoint Qatari lawyers in accordance with the [Qatar Code of Law Practice \(Law No. 23 of 2006\)](#), in arbitrations governed under Qatari law and seated in Qatar, is not a ground to set aside an award. Once again, the Qatari courts relied on the limited grounds to set aside awards under Article 33 of the Qatar Arbitration Law.

Other recent judgments by the Qatari courts, such as in [Qatar Court of Cassation Case No. 24 of 2018](#) and [Qatar Court of Appeal Case No. 31 of 2019](#), amongst others, have dismissed challenges to awards in which interests contractually accrued on commercial debts or as compensation for damages for delay in payment have been awarded by the tribunal. The Qatari courts have held that the award of interest is lawful and not in contravention of the Islamic Sharia law rules and principles or public policy on the basis that (i) the interest awarded is part of the banking system and (ii) regulated by Qatar Central Bank.

These judgments showcase the intention of the Qatari courts to move past its era of controversial arbitration rulings and align itself with Qatar's intent to develop into a pro-arbitration jurisdiction.

KSA

Recent statistics adduced by the Saudi Center for Commercial Arbitration (“**SCCA**”) reveal that the Saudi courts are increasingly reluctant to set aside awards, indicating KSA's clear intention to promote arbitration in tandem with the pro-arbitration support of its judiciary. Of the 107 motions that were initiated to set aside awards before the Saudi courts between 2017 to 2021, 94% of these motions were dismissed and only 6% were accepted. The findings that were released by the SCCA on its study and analysis of published Saudi case law related to arbitration can be found [here](#).

Arbitration-related Events in the Middle East

ICC MENA Conference

The [2021 ICC MENA Conference \(ninth edition\)](#) held virtually for the very first time between 22 and 25 February 2021 featured prominent arbitration practitioners and arbitrators touching on notable arbitration related judgments issued by the national courts in the region. This event also showcased the opening of the ICC Court Secretariat's latest (and fifth) case management office at the ADGM Arbitration Centre at the end of December 2020.

SIAC Middle East Academy

In the middle of 2021, the Singapore International Arbitration Centre (“**SIAC**”) held its inaugural SIAC Middle East Academy on 7 and 8 April 2021 virtually. The focus of the Academy was on provisions of the SIAC rules that saved time and cost such as Emergency Arbitration, Expedited Procedure and Early Dismissal that would be helpful to arbitration users in the Middle East.

Dubai Arbitration Week

2021 ended with [Dubai Arbitration Week 2021](#) taking place between 14 to 18 November 2021. The week featured over 40 conferences, symposia, working lunches and dinners organized by leading global arbitral bodies, organizations and practices that operate in the region. Three notable

events that took place during the week included:

- i. The CI Arb YMG Annual Conference in which speakers discussed and debated topics revolving around the recent changes that have been witnessed in arbitration such as technology, diversity and climate change.
- ii. The GAR Live Dubai where prominent arbitration practitioners and arbitrators came together to share their perspective on salient arbitration developments and the impact that Covid-19 continues to have in the region in the post-pandemic climate.
- iii. The SCCA Morning Symposium where key SCCA personnel and senior government representatives shed light on KSA's recent developments and reforms on KSA's legation, its pro-arbitration judiciary and its enhanced mechanism of managing arbitrations matters within the SCCA. A new SCCA Case Report was also launched in this event.

This events-filled week came to a close with the final event held in Al Tamimi & Company's office on the launch of the [MENA Sub-Committee of the Campaign For Greener Arbitration](#), a bittersweet event given that it was the final event in Dubai Arbitration Week that would feature the DIFC-LCIA Arbitration Centre.

Concluding Remarks

The Middle East arbitration landscape has witnessed a number of significant developments and transformations in 2021. There is, indeed, a lot of positive changes for arbitration users in the Middle East to be optimistic about in the coming year.

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References

?1 [Article 4 \(a\)\(1\)](#)

?2 [Article 4 \(a\)\(2\)](#)

?3 [Article 4 \(b\)](#)

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