



# An international force: the DIFC – LCIA Arbitration Centre

*Michael Diaz Jr. and Arti Sangar of Diaz Reus & Targ LLP take a look at how the DIFC's new international arbitration centre has become an efficient and well managed arbitration institution.*

**A**s a result of the global economic recession, Middle Eastern businesses facing regulatory and legal issues are increasingly turning to arbitration to resolve domestic and international disputes. In fact, the use of effective arbitration, a flexible, expedient and cost-effective alternative to litigation, has greatly increased worldwide. The recent establishment of the Dubai International Financial Centre – London Court of International Arbitration (DIFC – LCIA) alliance is now contributing to an upswing towards arbitration as a much preferred option across the Gulf region. The DIFC – LCIA Arbitration Centre has become a well managed and efficient institution to resolve conflicts out of court, irrespective of the location of the parties involved.

## **What is arbitration?**

As one dispute resolution tool, it is beneficial to have an understanding of how arbitration differs from other dispute resolution methods, and the advantages it can deliver.

Arbitration is a legal technique for dispute resolution outside of the court system where arbitrators, who perform as judges, are selected by the parties themselves and by whose decision the parties in dispute agree to be bound. Arbitration benefits adversaries through the appointment of highly qualified, impartial representatives who act as arbitrators. Moreover, it is often faster than court litigation, can usually provide confidential outcomes (as a result of being outside of a public court system), and provides awards that are generally more easily enforceable in foreign jurisdictions.

However, to date, arbitration has not been a preferred option for resolving disputes in the Middle East due to distrust of any court enforcement process, ambiguity of the method and a scarcity of local venues.

Will parties choosing to engage the services of the DIFC – LCIA Arbitration Centre reap the benefits that arbitration offers? Many legal practitioners will answer “yes” to this question. In this article, we consider the reasons why the answer is likely to be positive.



### The DIFC – LCIA Alliance

The DIFC – LCIA Arbitration Centre was established on the 17th of February 2008. It is worth mentioning that the London Court of International Arbitration (LCIA) is one of the most reputable commercial arbitration institutions in the world. Established over 100 years ago, it has never before been associated with an arbitration centre outside its home base in London. The decision by LCIA to enter into an alliance with the Dubai International Financial Centre (DIFC) to establish an international arbitration centre in the DIFC, is a clear sign of LCIA's confidence in the future development of arbitration and the unique legal system of the DIFC.

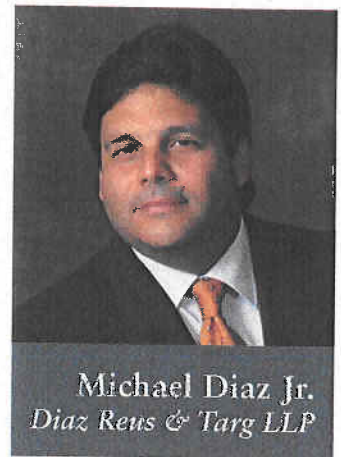
It is noteworthy that the DIFC Arbitration Law 2008 (DIFC Arbitration Law) is based on the UNCITRAL Model Law, and that the DIFC Arbitration Law has removed the earlier requirement of having a "nexus" or connection with the DIFC in order to arbitrate in the DIFC. The DIFC – LCIA Arbitration Centre has all powers to support the arbitral process, for example the appointment of arbitrators, ordering interim measures of protection and assistance on taking evidence. In accordance with general principles of international arbitration law, parties are free to have their disputes determined in a jurisdiction of their choice.

The DIFC – LCIA Arbitration Centre also has access to the LCIA's database of arbitrators. The database is not, however, a closed list and the parties are free to nominate alternative arbitrators not listed. More often than not, the initial language of arbitration will be the language of the arbitration agreement, unless the parties agree otherwise in writing. Any written decision rendered by arbitrators will be similar in content to a judgment of the court and is enforceable by Dubai courts.

### DIFC – LCIA Arbitration Agreements

Like any other arbitration process, the DIFC – LCIA process commences with an agreement between two parties that submit their disputes to arbitration. Care must be taken in the selection and drafting of complex dispute resolution clauses to avoid lengthy, complicated, and unintended outcomes. Given the diversity of contractual relationships and disputes which may arise between parties, there is no "one-size-fits-all" solution for dispute resolution clauses, so due consideration should be given to the particular circumstances of each case. For instance, the arbitration agreement

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might arise from a shareholder's agreement entered into at the onset of a business relationship or partnership. Conversely, parties may already be engaged in a dispute and decide on arbitration to reach resolution. In either case, the parties commence the arbitration process by selecting one or more arbitrators. Any decision made by arbitrators is final and binding. It is advisable to expend time drafting an arbitration agreement prior to the onset of a business relationship – such action is likely to deliver significant value and benefits at a later stage if and when the relationship between the parties worsens. Following the introduction of the DIFC Arbitration Law, there are no limits on who can now agree to the DIFC as the seat of their arbitration.

### Enforceability of DIFC – LCIA awards

How will an award of the DIFC – LCIA Arbitration Centre be enforced? The position should be straightforward.

### Enforcement of foreign arbitral awards in the DIFC

As per the DIFC Arbitration Law, an arbitral award, irrespective of the jurisdiction in which it is made, will be able to be recognized as binding within the DIFC upon the production of the original arbitral award (or a certified copy) along with the other requisite documents. The principal source of this ease of enforcement is the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) which, as at

