



MIDDLE EAST AND AFRICA ARBITRATION REVIEW 2022

Published by Global Arbitration Review in association with

Al Tamimi & Company
ASAR – Al Ruwayeh & Partners
AudreyGrey
Clifford Chance
CRCICA
FTI Consulting
Matouk Bassiouny & Hennawy

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The Middle Eastern and African Arbitration Review 2022

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This article was first published in April 2022
For further information please contact insight@globalarbitrationreview.com

Published in the United Kingdom
by Global Arbitration Review
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street, London, EC4A 4HL
© 2022 Law Business Research Ltd
www.globalarbitrationreview.com

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ISBN: 978-1-83862-860-4

Printed and distributed by Encompass Print Solutions
Tel: 0844 2480 112

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Clifford Chance LLP

Preface

Welcome to *The Middle Eastern and African Arbitration Review 2022*, one of Global Arbitration Review's annual, yearbook-style reports.

Global Arbitration Review, for those not in the know, is the online home for international arbitration specialists everywhere. We tell them all they need to know about everything that matters.

Throughout the year, GAR delivers pitch-perfect daily news, surveys and features, organises the liveliest events (under our GAR Live and GAR Connect banners) and provides our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a series of regional reviews – online and in print – that go deeper into the regional picture than the exigencies of journalism allow. *The Middle Eastern and African Arbitration Review*, which you are reading, is part of that series. It recaps the recent past and provides insight on what these developments may mean, from the pen of pre-eminent practitioners who work regularly in the region.

All contributors are vetted for their standing before being invited to take part. Together they provide you the reader with an invaluable retrospective. Across 290 pages, they capture and interpret the most substantial recent international arbitration developments, complete with footnotes and relevant statistics. Where there is less recent news, they provide a backgrounder – to get you up to speed, quickly, on the essentials of a particular seat.

This edition covers Angola, Egypt, Ghana, Kuwait, Lebanon, Mozambique, Nigeria, Qatar, Saudi Arabia and the UAE, and has overviews on energy arbitration, investment arbitration, mining arbitration, damages (from two perspectives) and virtual hearings.

A close read of these reviews never disappoints. Among the nuggets this reader noted were:

- African governments are keener than ever to advance mining projects, for various reasons. To that end, some seem more willing to settle disputes;
- China's investment in renewables infrastructure exceeded its investment in fossil fuels in 2021;
- Egypt is home to a new sports-arbitration provider;
- someone with a criminal record can sit as an arbitrator in Egypt – if all parties agree;
- Egypt's court of cassation has reversed a worrying appeal court ruling that had seemed to allow annulment of awards where damages were disproportionate to the harm suffered;
- courts in Kuwait are growing more resistant to the 'no authority to sign an arbitration clause' defence;
- Chinese investment in Lebanon is on the increase;
- Nigeria's Supreme Court has gone out on a limb to decry frivolous challenges to arbitral awards – calling it a 'disturbing trend', *obiter dicta*;
- 84 teams took part in the most recent running of the Saudi Center for Commercial Arbitration's Arab Moot Competition; and
- although it's not fully clear-cut, Abu Dhabi onshore courts may be falling in line with case law from Dubai on 'apparent authority' to conclude arbitration agreements, which would be helpful. As ever though in both emirates the picture is a bit mixed.

And much, much more – I particularly commend this year's overviews, which are packed with useful stuff.

We hope you enjoy the review. I would like to thank the many colleagues who helped us to put it together, and all the authors for their time. If you have any suggestions for future editions, or want to take part in this annual project, GAR would love to hear from you. Please write to insight@globalarbitrationreview.com. Please note all the content in this volume predates unfortunate events in Ukraine – so you won't see mention of that.

David Samuels

Publisher, Global Arbitration Review

April 2022

United Arab Emirates

Paul Coates and James Abbott*

Clifford Chance LLP

IN SUMMARY

The year 2021 marked the 50th year since the foundation of the United Arab Emirates. The year saw the continued promotion of arbitration and other forms of alternative dispute resolution within the jurisdiction – including in the financial free zones of the Abu Dhabi Global Market (ADGM) and Dubai International Financial Centre (DIFC). (The ADGM and DIFC have their own courts and arbitration laws and are arbitration seats, separate from the UAE itself.) Notable developments during the past year have included the consolidation of arbitration centres in Dubai, amendments to arbitration legislation in the ADGM and the adoption of a Monday-to-Friday working week (from January 2022). 2021 also saw further consideration of the 2018 UAE Arbitration Law by the UAE courts, with mixed results for parties seeking to enforce arbitral agreements and awards.

DISCUSSION POINTS

- Key developments in the UAE (onshore), the DIFC and the ADGM

REFERENCED IN THIS ARTICLE

- Federal Law No. 6 of 2018 on Arbitration
- Dubai Decree No. 34 of 2021
- ADGM Arbitration Regulations 2015
- ADGM Arbitration Regulations 2015 – Amendment No. 1 of 2020
- Dubai Court of Cassation Case No. 290/2021
- Dubai Court of Cassation Case No. 1308/2020
- Abu Dhabi Court of Cassation Case No. 922/2020
- (1) *NMC Healthcare Ltd (in administration) and associated companies* (2) *Richard Fleming* (3) *Benjamin Cairns v Dubai Islamic Bank PJSC & Others* [2021] ADGM CFI 0006

Key developments in the UAE (onshore)¹

The year 2021 continued to see the promotion of the UAE as a forum for arbitration proceedings, with steps taken – in Dubai, in particular – intended to enhance the appeal of the UAE as an arbitral seat. The ADGM and DIFC likewise continued to demonstrate a commitment to promoting and supporting arbitral proceedings, as discussed briefly below.

Perhaps the most significant change came in Dubai, which passed legislation (Dubai Decree No. 34 of 2021 (Decree 34)) abolishing the DIFC Arbitration Institute (DAI) and the Emirates Maritime Arbitration Centre (EMAC), leaving the Dubai International Arbitration Centre (DIAC) as the sole arbitration centre within the emirate.

In parallel with abolishing the DAI and EMAC, Decree 34 also introduced a new statute for DIAC, which made material changes to the institution's structure (including the introduction of a new DIAC board and arbitration court) and foreshadowed the introduction of new DIAC Rules, which have since been released. These changes are aimed at enhancing the position of DIAC through the adoption of international best practices.

The year also saw further development of the body of case law considering the recently enacted UAE Arbitration Law (Federal Law No. 6 of 2018) (although it should be noted that the UAE has no doctrine of binding precedent). Not all decisions demonstrated an overwhelming support for arbitration in all circumstances. Several decisions of the onshore courts reflected a perception of arbitration as an exception to the 'default' position of referring disputes to the courts, with the courts choosing to exercise jurisdiction on a number of occasions, despite parties' apparent choice of arbitration.

The consolidation of arbitration centres in Dubai

A key development in the arbitration sphere in Dubai has been the consolidation of arbitration centres following the issuance of Decree 34, which became effective on 20 September 2021. Decree 34 abolished the DAI and EMAC, which were consolidated into DIAC (articles 4 and 5 of Decree 34).

¹ There is no formal system of court reporting in the onshore UAE courts. References made in this article to cases are based on published reports, summarising the relevant judgments; the authors have not sighted the underlying judgments.

EMAC, a specialised maritime arbitration centre, was established as recently as 2016, so is perhaps less well known to international parties operating in the UAE and wider Middle East region.

By contrast, the DAI was responsible, in collaboration with the London Court of International Arbitration (LCIA), for the administration of arbitrations under the auspices of the DIFC-LCIA, a well-known arbitration centre located in the DIFC and popular with international parties, in particular.

Although not explicitly stated, the abolition of the DAI seems to have also caused the effective abolition of the DIFC-LCIA. To that end, a press release from the DIFC on 7 October 2021 stated that:

From the date of the enactment of the Decree, parties to contracts should not include arbitration agreements which provide for the resolution of disputes in accordance with the DIFC-LCIA Rules or for the DIFC-LCIA to administer, or to act as appointing authority in arbitrations, mediations or other ADR proceedings, pursuant to other, ad hoc, rules or procedures.²

Prior to its enactment, Decree 34 had not been the subject of widespread discussion or consultation – with the LCIA itself stating that it ‘came as a surprise’ in a statement issued on 7 October 2021.³ Practitioners in Dubai and the wider UAE and Middle East region were, for the most part, also unaware of Decree 34 before its publication.

The introduction of Decree 34 has therefore given rise to some uncertainty, at least in the short term, as to (1) the impact on proceedings ongoing at the date Decree 34 came into force, and (2) the validity of pre-existing arbitration agreements, providing for disputes to be referred to arbitration under the rules of the DIFC-LCIA or EMAC.

In this respect, Decree 34 states that pre-existing arbitration agreements providing for arbitration under the rules of the abolished centres would remain valid and effective and that the relevant rules would remain in full force and effect to the extent they do not contradict Decree 34, until new DIAC Rules are approved. DIAC published new rules on 2 March 2022 (DIAC Arbitration Rules 2022), which came into effect on 21 March 2022.⁴ It remains to be seen what effect this will have on pre-existing agreements to arbitrate under the DIFC-LCIA or EMAC Rules. Decree 34 also provides

2 See <https://www.difc.ae/newsroom/news/dubais-position-global-hub-alternative-dispute-resolution-reconfirmed-through-unifying-arbitration-centres/>.

3 See <https://www.lcia.org/News/update-difc-lcia.aspx>.

4 See <http://www.diac.ae/idias/resource/Rules2022.pdf>.

that arbitral tribunals already formed under the rules of the abolished centres as of the effective date of Decree 34 will continue to handle the cases in front of them pursuant to their applicable rules and procedures, but that DIAC will undertake the supervision of such cases (article 6). It was subsequently reported – in the above-mentioned statements from the DIFC and LCIA – that existing cases before the DIFC-LCIA would continue to be administered by the DIFC-LCIA casework team and the LCIA.

Even with these transitional procedures in place, it remains to be seen, in practice, how new matters will be dealt with and how parties will react, particularly now that the new DIAC Rules have been introduced.

Notwithstanding the above, and the uncertainty that is likely to continue in the short term, the rationale behind Decree 34 remains consistent with Dubai's aim of promoting itself as an arbitration destination and it is hoped that the changes to the structure of DIAC will, once implemented, strengthen DIAC as an arbitral institution.

It should also be noted that the new DIAC statute, introduced by Decree 34, provides (among other things) that where parties fail to agree on the place or seat of arbitration, the DIFC will be deemed to be the applicable seat. This is a move that is likely to be popular with international parties, given the support that the DIFC courts have demonstrated for arbitration.

New working week

Another development in the UAE that is likely to be viewed positively by parties based outside of the Middle East is the move to a Monday-to-Friday working week from January 2022 (a change from the previous Sunday-to-Thursday working week). Although this move is not one that was aimed specifically at arbitration, it is nevertheless likely to prove beneficial to the conduct of proceedings in the UAE by making it easier to arrange hearings (whether in-person, virtual, or hybrid) across the full working week in different jurisdictions (as opposed to the previous options of operating a four-day hearing week or requiring at least one party to work on their weekend, in circumstances where working weeks did not align).

Key onshore court decisions

As noted above, 2021 also saw the continued development of case law concerning arbitration in the UAE onshore courts, including concerning the interpretation of the 2018 UAE Arbitration Law. This has included a number of decisions that suggest that arbitration continues to be viewed as an exceptional measure in some quarters, requiring clear agreement by both parties.

Thus, it was reported that, in Judgment No. 1308/2020, the Dubai Court of Cassation ruled that it had jurisdiction over a dispute arising out of a contract, into which the parties had incorporated by reference the 1987 FIDIC Red Book General Conditions.⁵ The Red Book General Conditions include an arbitration clause, but the Court of Cassation concluded (upholding the judgment of the Dubai Court of First Instance) that the incorporation of the Red Book General Conditions as a whole was not sufficient to incorporate the arbitration clause therein. To incorporate the arbitration clause would have required a specific reference, sufficient to establish the parties' knowledge of the clause's existence. This is an important decision to consider in the context of article 5(3) of the UAE Arbitration Law, which permits the incorporation of arbitration clauses by reference, provided that the reference is such as to make the clause part of the new contract.

In a similar vein, it was reported that, in Case No. 922/2020, the Abu Dhabi Court of Cassation ruled that a representative acting under a power of attorney is only authorised to enter into an arbitration agreement if their power of attorney permits them to do so in clear and unequivocal terms.⁶ The requirement of explicit authority to bind a company or other principal to an agreement to arbitrate (as distinct from a general authority to bind the principal to contracts) is a long-standing issue that was incorporated into the new UAE Arbitration Law in 2018.⁷ The decision by the Abu Dhabi Court of Cassation re-affirms previous decisions that the authority granted under a power of attorney will be narrowly construed and that, in the event of ambiguity as to a representative's authority to bind the principal to arbitration, there is a danger that the court will conclude that there is no valid and enforceable arbitration agreement.

By contrast, it was also reported that, in a separate case, the Abu Dhabi Court of Cassation acknowledged the possibility of verbal, implied or apparent authority to arbitrate being granted.⁸

5 See https://www.lexismiddleeast.com/case/Dubai/DCC_2021_1308_2020/.

6 See <https://www.wilmerhale.com/en/insights/publications/20210609-the-abu-dhabi-court-considers-special-authority-is-required-to-conclude-an-arbitration-agreement-by-power-of-attorney>.

7 See <https://www.wilmerhale.com/en/insights/publications/20210609-the-abu-dhabi-court-considers-special-authority-is-required-to-conclude-an-arbitration-agreement-by-power-of-attorney>.

8 See <https://waselandwasel.com/articles/abu-dhabi-cassation-court-acknowledges-verbal-implied-or-apparent-authority-to-bind-principal-to-arbitration-agreement/>.

This decision is consistent with another line of cases (notably in the Dubai courts), in which the courts have accepted apparent authority as being sufficient to defeat a party's attempt to invalidate an arbitration agreement (often following the receipt of an adverse arbitral award).

However, there remains uncertainty as to which approach the UAE courts will take when faced with this issue (and the approach may differ, depending on the type of corporate entity being dealt with), such that parties contracting with UAE parties should continue to ensure that anyone signing on behalf of their counterparts has adequate authority to commit to arbitration.

The UAE courts also elected not to enforce an arbitration agreement in another decision reported this year, by the Dubai Court of Cassation in Case No. 290/2021.⁹ The case concerned disputes arising out of a contract between a developer and its consultant (which contained an arbitration clause) and the related contract between the developer and its contractor (which did not). The Dubai Court of Cassation held that disputes arising out of multiple contracts (only one of which contained an arbitration agreement) relating to the same transaction were so closely connected that it was in the interests of justice, and necessary to avoid inconsistent judgments, that the disputes should be determined in one forum. As the arbitration agreement was not binding on all of the parties, it was not possible for the whole dispute to be determined by arbitration – and the disputes under the two contracts should therefore be determined by the Dubai courts.

Elsewhere, it was reported that the Dubai Court of Cassation upheld a challenge to the recognition and enforcement of an arbitral award issued by the China International Economic and Trade Commission on the basis that the award was not signed (or not properly signed) by the arbitrator.¹⁰ The reports do not make clear whether the arbitrator had failed to sign the award entirely (which would perhaps provide greater justification for a refusal to enforce) or had failed to sign the reasoning or decision within the award (which was a requirement in the UAE prior to the enactment of the UAE Arbitration Law in 2018 and would seem still to be required, even

9 See <https://www.klgates.com/Dubai-Court-of-Cassation-Finds-that-the-Interests-of-Justice-Can-Override-an-Agreement-to-Arbitrate-in-Circumstances-Where-a-Dependent-Contract-does-not-also-Provide-for-Arbitration-8-9-2021> and <https://dwfgroup.com/en/news-and-insights/insights/2021/8/dubai-court-of-cassation-overrides-an-arbitration-agreement-in-the-interest-of-justice>.

10 See <https://waselandwasel.com/articles/dubai-cassation-court-rejects-enforcement-of-unsigned-arbitration-award/>.

though not explicitly stated in the law). The Court of Cassation apparently concluded that enforcement of the award would be contrary to the public policy of the UAE,¹¹ seemingly in reliance on article 41(3) of the UAE Arbitration Law, which requires arbitral awards to be signed by the arbitrators (or a majority thereof).

Key developments in the DIFC

As discussed in more detail above, the key arbitration-related development in the DIFC was Decree 34, which effectively served to abolish the DIFC-LCIA. Prior to the introduction of Decree 34, the DIFC-LCIA had enacted new, updated rules and a new law, Dubai Law No. 5 of 2021, had introduced changes to the DAI. However, these changes were superseded by the subsequent introduction of Decree 34.

The DIFC courts have continued to be supportive of arbitration, most notably in an unpublished decision from November 2020, in which the DIFC Court of First Instance granted an anti-suit injunction in relation to proceedings commenced in the onshore Dubai courts, in breach of an agreement to arbitrate, with a seat in the DIFC.¹²

The case – *Multiplex Constructions LLC v Elemec* – was the first instance of the DIFC courts granting an injunction restraining a party from pursuing litigation in the onshore UAE courts. It arose when Elemec commenced proceedings in the onshore Dubai courts, in breach of the parties' agreement to arbitrate. In turn, Multiplex commenced DIFC-LCIA arbitration proceedings – as provided for in the parties' agreement – and sought an injunction against Elemec continuing proceedings in the onshore courts.

HE Justice Shamlan Al Sawalehi – who issued the injunction in the DIFC court – found in favour of the binding nature of the arbitration agreement and confirmed that the onshore court proceedings were in violation of the agreement to arbitrate. As such, Justice Al Sawalehi issued an anti-suit injunction that restrained the continuation of the onshore proceedings.

The decision confirms the DIFC courts' support of arbitration, and willingness to intervene to protect agreements to arbitrate in the DIFC – even in the face of competing proceedings in the onshore UAE courts.

11 See <https://waselandwasel.com/articles/dubai-cassation-court-rejects-enforcement-of-unsigned-arbitration-award/>.

12 See <https://hsfnotes.com/arbitration/2020/12/16/difc-court-grants-first-ever-anti-suit-injunction-in-respect-of-on-shore-dubai-court-proceedings/>.

Key developments in the ADGM

Throughout 2021, the ADGM and the ADGM courts continued to demonstrate their support of arbitration through legislative developments and court decisions. 2021 also saw the establishment of a case management office of the International Chamber of Commerce (ICC) in the free zone.

Legislative development

On 23 December 2020, a new ADGM law, Arbitration Regulations 2015 – Amendment No. 1 of 2020 (the Amendment Law), was enacted to amend and update the underlying arbitration law in the ADGM.¹³

The key changes made to the ADGM Arbitration Regulations include:

- Requirements for a valid arbitration agreement: section 14(2) of the Arbitration Regulations 2015 now provides that parties who do not record their agreements in writing may agree to be bound orally or by conduct.
- Unilateral and asymmetrical clauses permitted: the Amendment Law introduced a new provision, section 14(6), which clarifies that an arbitration agreement containing a unilateral or asymmetrical right to refer a dispute either to an arbitral tribunal or to a court is not inconsistent with the Arbitration Regulations 2015 and will therefore be enforceable.
- Opt-in jurisdiction: the Amendment Law confirmed the ADGM as an ‘opt-in’ jurisdiction for arbitration, meaning that parties can agree to arbitration seated in the ADGM, without any connection to the jurisdiction. Section 35(2) of the ADGM Arbitration Regulations now provides that ‘if the parties have agreed that the seat of arbitration shall be the Abu Dhabi Global Market, no other connection with the Abu Dhabi Global Market is required for these Regulations to apply.’
- The ADGM is not a ‘conduit’ jurisdiction: the Amendment Law confirms that the ADGM cannot be used as a ‘conduit route’ for enforcement of non-ADGM judgments and awards rendered in other jurisdictions (save for judgments rendered by other courts in the emirate of Abu Dhabi).¹⁴ In other words, parties wishing to enforce foreign arbitration awards in the onshore UAE cannot do so by first

13 ADGM Arbitration Regulations 2015 (<https://www.adgmac.com/arbitration/arbitration-regulations/>).

14 Section 61(5) of the Arbitration Regulations – Amendment No. 1 of 2020 (<https://en.adgm.thomsonreuters.com/rulebook/arbitration-regulations-2015-amendment-no-1-2020>).

having them ratified by the ADGM courts (and then using established processes for enforcing ADGM court judgments in the onshore Abu Dhabi courts and the wider UAE).

- **Focus on technology:** section 31(5) of the ADGM Regulations 2015 now provides that an arbitral tribunal should consider the use of technology in order to enhance the efficient and expeditious conduct of arbitration. A new section 43(2) also allows arbitral tribunals to decide whether a hearing is to be conducted, in whole or in part, by video conference, telephone or other communication technology,¹⁵ unless parties have agreed otherwise. In addition, if a hearing is to be held in person, a party may apply to the arbitral tribunal for any of its fact or expert witnesses to attend by video conference, telephone or other communication technology. Section 55(4) also confirms the legal validity and enforceability of awards signed electronically by tribunals.
- **Conduct of parties' representatives:** section 44(1) of the ADGM Regulations 2015 now sets out required standards of conduct for party representatives and provides (at section 44(1)(a)) that representatives shall 'not engage in activities intended to obstruct or delay the arbitral proceedings, jeopardise the integrity of the proceedings or the finality of any award.' Potential sanctions will apply if a representative contravenes section 44(1).

Key decisions in the ADGM

Aside from the above legislative developments, 2021 also saw an important decision in the ADGM courts, which considered both the circumstances in which the ADGM courts would stay proceedings in favour of another UAE court and the circumstances in which a stay would be granted in favour of arbitration.

The case related to 'protective' claims by NMC Healthcare Ltd (NMCH) and other members of the NMC Group (all of which were in administration proceedings in the ADGM) against one of the group's creditors and concerned the question of whether the creditor had any security interest over certain insurance receivables.¹⁶ What is important for current purposes is that the creditor challenged the commencement of proceedings in the ADGM courts on the following grounds (among others):

¹⁵ Section 43(3) of the Arbitration Regulations – Amendment No. 1 of 2020 (<https://en.adgm.thomsonreuters.com/rulebook/arbitration-regulations-2015-amendment-no-1-2020>).

¹⁶ (1) *NMC Healthcare LTD (in administration) and associated companies* (2) *Richard Fleming* (3) *Benjamin Cairns v Dubai Islamic Bank PJSC & Others* [2021] ADGM CFI 0006 (<https://www.adgm>).

- certain of the claims should be stayed in favour of an arbitration clause in relevant financing documents; and
- certain other of the claims should be stayed in favour of jurisdiction clauses in security documents, in favour of the onshore Dubai courts.

In relation to the first issue, the ADGM court granted a stay of the ADGM court proceedings, to the extent necessary to give effect to the creditor's right to have a specific claim determined in arbitration. In doing so, the ADGM court relied on article 16 of the ADGM Arbitration Regulations 2015.

Further, and different from the approach adopted by the Dubai Court of Cassation in the case discussed above – in which the court held that an arbitration agreement in one contract should not be enforced, so that disputes under two related contracts could be heard together in the same forum – the ADGM court noted expressly that 'it is widely recognised that fragmentation is a price to be paid for the policy of enforcing arbitration agreements.' It would therefore seem that the ADGM court is prepared to go to greater lengths – and to risk procedural efficiency – in order to uphold agreements to arbitrate.

In relation to the second issue, NMCH argued (among other things) that the ADGM court has no power to order a stay in favour of proceedings in another UAE court. This argument was founded primarily on the decision of the DIFC Court of Appeal in *IGPL v Standard Chartered Bank*,¹⁷ in which it was held that, under the Constitution of the UAE, the power to determine conflicts between the decisions of different courts of the UAE is vested in the Union Supreme Court, which has exclusive jurisdiction to determine such matters. The DIFC Court of Appeal did not, therefore, consider that it had jurisdiction to consider arguments of forum non conveniens in the context of an application to stay the DIFC proceedings in favour of the Sharjah courts.

In distinguishing the decision of the DIFC Court of Appeal from the scenario before it, the ADGM court highlighted that, in the DIFC case, IGPL had conceded that the parties had not agreed to opt out of the jurisdiction of the DIFC court. By contrast, in the contracts relevant for the stay application in this case, the parties

com/documents/courts/judgments/2021-may/adgmcfi2020020-and-adgmcfi2021042--nmch--dib-pjsc--judgment-of-justice-sir-andrew-smith-final-240520.pdf).

17 *Investment Group Private Ltd v Standard Chartered Bank* [2015] DIFC CA 004 (<https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/investment-group-private-limited-v-standard-chartered-bank-2015-difc-ca-004>).

had expressly agreed to refer disputes to the onshore Dubai courts, as permitted by article 13(9) of the ADGM Founding Law.¹⁸ The basis of the stay – which was granted – was not, therefore, avoiding inconsistent decisions (which the DIFC Court of Appeal had decided was a matter solely for the Union Supreme Court), but rather preventing a party from flouting an agreement not to bring proceedings in the ADGM courts.

Institutional changes and developments

Away from the ADGM courts and legislature, the ICC International Court of Arbitration opened a case management office in the ADGM (its fifth globally). As well as administering regional arbitrations under the ICC Rules, the office will also conduct training and collaborate with the ADGM on promotional activities. Other activities will include ICC court sessions and workshops for companies incorporated in the ADGM.

Another development saw the signing of a Cooperation Agreement between the ADGM Arbitration Centre and the Permanent Court of Arbitration (PCA) in September 2021.

As part of the Cooperation Agreement, the organisations will collaborate to raise awareness and promote more effective resolution of international disputes through arbitration and other means of dispute settlement. As part of this push for greater collaboration, the ADGM Arbitration Centre is also set to extend support to the PCA for hearings or meetings conducted in Abu Dhabi through the provision of facilities, services, and personnel. The two organisations will also collaborate to organise lectures and seminars on arbitration and other means of dispute resolution.

Looking ahead

Legislative developments in both the onshore UAE and the free zone jurisdictions in the ADGM and DIFC during 2021 have continued the pro-arbitration trend of recent years. Both the onshore UAE and the two free zones continue to seek to position themselves as arbitration-friendly jurisdictions.

While the courts in the ADGM and DIFC have generally adopted a consistent pro-arbitration approach, the onshore UAE courts have a slightly more varied track record. This trend was continued in 2021, which saw a number of decisions

¹⁸ Abu Dhabi Law No. 4 of 2013 (<https://en.adgm.thomsonreuters.com/rulebook/abu-dhabi-law-no-4-2013>).

that reflected the onshore courts' continued perception of arbitration as an exception to determination of disputes by the courts. It is hoped that the proportion of pro-arbitration decisions will increase in the coming years.

The most significant development in the UAE in 2021 is likely to prove to be the effective abolition of the DIFC-LCIA and EMAC arbitration institutions by Decree 34, in favour of a single, pre-eminent Dubai-based institution in DIAC. This was a move that caught some institutions and practitioners alike off-guard, and it remains to be seen what impact the changes will have on the conduct of arbitrations under the DIFC-LCIA and EMAC Rules, at least in the short term.

With new DIAC rules now published, and a new arbitration court established, it is to be hoped that, once the 'new' DIAC is fully up-and-running, the aim of establishing an internationally recognised arbitration centre is realised.

* *The authors are grateful for the contributions of Lana Ristic (associate), Rany Rifaat (associate) and Tosin Murana (trainee solicitor).*

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Paul Coates heads the firm's construction disputes practice in the Middle East. He advises on a wide range of international and investment treaty arbitrations, both on an ad hoc and institutional basis, and has experience of advising on the rules of many of the major institutions, including the DIAC, DIFC-LCIA, LCIA, ICC, LMAA, AAA and ICSID.

Paul's work spans many jurisdictions and economic sectors, with a particular focus on disputes arising out of large-scale construction and energy projects. He is also a member of the DIFC Court's Arbitration Working Group.

**JAMES ABBOTT**

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James Abbott is head of the disputes practice in the Middle East. James specialises in commercial litigation, arbitration and ADR. James has significant experience of cross-border banking and financial litigation, including fraud and asset tracing, regulatory investigations, sanctions issues, joint venture and shareholder disputes.

He has advised on a number of major infrastructure and construction projects and represents insurers and reinsurers. James has experience of arbitration under the ICC, LCIA, UNCITRAL, ICSID and DIAC Rules.

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ISBN 978-1-83862-860-4