

Arbitration centres in Dubai



By Alec Emmerson and Sapna Jhangiani

Over 400 dispute resolution practitioners descended on Dubai for a high-profile series of arbitration events over three days in mid-February, including the 12th IBA International Arbitration Day, and the LCIA Symposium. Whilst many important and controversial topics in the field of arbitration were raised and debated amongst delegates with some vigour, one issue in particular was at the fore of discussion, described by one delegate as a 'hare which had been set running', but which, practitioners must grapple with.

Dubai now has two international arbitration centres (and one Islamic one), the Dubai International Arbitration Centre (DIAC), and the Dubai International Finance Centre-London Court of International Arbitration (DIFC-LCIA).

Dr Habib Al Mulla, a member of the DIAC Executive Committee, had suggested in a newspaper article that there may be issues about enforcing DIFC-LCIA Awards and the arguments in the article were rebutted in an article by another local practitioner, Essam Al Tamimi. The authors would be happy to provide details of the articles and there is no point in repeating the argument here.

What is perhaps significant, however, is that at a mediation breakfast on the morning of the IBA conference, Sir Anthony Evans, the Chief Justice of the DIFC Courts, raised some relevant facts which warrant consideration as part of the debate, without giving a view on the dispute. Firstly, he pointed out that the activities permitted in the DIFC by Federal law are in fact widely defined. He then pointed out that the DIFC-LCIA Arbitration Centre itself carries on business within the DIFC and is not prohibited from carrying on business with parties outside the DIFC. Any parties selecting DIFC-LCIA Arbitration have done so to take advantage of the arbitration service offered by the centre and unless the parties agree otherwise, any DIFC-LCIA arbitration has the DIFC as its seat, and the hearing may take place there.

DIFC Courts exercise a supervisory role over the Arbitration, so in those cases at least there will be a substantial and significant connection between the reference and the DIFC.

The driver behind the issue being raised appears to be that, as Dr Al Mulla put it in a recent press interview, the DIFC-LCIA Arbitration Centre provides 'unhealthy competition' to the DIAC, an arbitration centre which pre-dates the DIFC-LCIA, and which has increasingly gained popularity as a dispute resolution forum, both locally and regionally. As Sir Anthony suggested, it may be that their interests and those of the parties they serve will best be served by maximum cooperation between them and we hope and expect that will occur, as it does between other institutions. The writers take the view that a choice of institutions is healthy competition, which should be good for users.

But where do we stand, on the enforceability of DIFC awards outside the DIFC and how should practitioners advise clients? First, let's not forget that most awards are honoured. Secondly, let's not overlook that enforcing a DIFC-LCIA Award in Dubai should be straightforward. Thirdly, if an award is to be enforced overseas and is not honoured, whether you have an ICC or LCIA award or one from either of the Dubai institutions or another institutional award, the key to enforcement will be found in the approach of the jurisdiction in which enforcement is sought – arbitration friendly jurisdictions are more likely to support an award than those which are not. It is hard to imagine that any arbitration friendly jurisdiction would conclude that the balance of a highly technical argument is that the Rulers of the UAE and Dubai enacted a constitutionally flawed model such that DIFC-LCIA awards are unenforceable!

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