DIAC rules 2007 vs DIAC rules 2022
A comparative summary

A SUMMARY OF THE CHANGES MADE BY THE NEWLY-PUBLISHED 2022 RULES OF THE DUBAI INTERNATIONAL ARBITRATION CENTRE (“DIAC”) AS COMPARED TO THE PREVIOUS 2007 RULES

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ELEMENT	DIAC RULES 2007	DIAC RULES 2022	COMMENTARY
Commencement of arbitration	Hard copy Request to be submitted to DIAC with a sufficient number of copies (Articles 4.1, 4.3).	Request to be submitted to DIAC in **electronic format only**, by email or by any electronic case management system used by DIAC (Article 4.3).	This is in line with a general shift in arbitration rulesets towards electronic communication, mirroring the much greater importance of email in practice. Caution should be taken when filing a Request electronically as DIAC's systems are less advanced than some institutions. (As a matter of practice, DIAC refuses to accept hard copy requests and has a preference to receive documents by Wetransfer).
Party representatives	Parties may be represented by the representatives of their choice (Article 7.1).	Parties may be represented by the representatives of their choice (Article 7.1); however, after the Tribunal is constituted, the Tribunal's permission is required for a Party to change or add to its representatives (Article 7.5).	This may in some circumstances infringe on Party choice of representatives. We would expect this provision to be applied primarily where there is a potential conflict between counsel and a member of the Tribunal.
Communications and notifications	Communication must be in writing and may be by registered post, courier, fax, telex, telegram, email, or any other form of recorded telecommunication (Article 3.5).	Communications to the Centre must be by email or any electronic case management system used by the Centre (Article 3.1) – email is therefore the mandatory default.	This reflects the shift in practice to favouring email as the dominant or only method of communication.
Arbitrator appointment	Where there is a three member Tribunal, each Party shall nominate one arbitrator. The chairman shall be nominated by any mechanism agreed by the Parties; in the absence of any agreed mechanism, the Party-appointed arbitrators shall nominate the Chairman (or if they fail to do so within 15 days, the Centre shall appoint the Chairman). All nominations are subject to confirmation and appointment by the Centre. (Article 9)	Where the Parties have agreed on a mechanism for nomination of the Tribunal, that mechanism will be followed to the extent that it is capable of operating at the time and compatible with the Rules. If any nomination mechanism is not capable of operating or compatible with the Rules, the arbitrators shall be appointed by the Arbitration Court. Where the Tribunal consists of a sole arbitrator, the Parties may agree jointly to nominate the sole arbitrator. If they do not, the Arbitration Court shall appoint the sole arbitrator. Where there is a three member Tribunal, each Party shall nominate one arbitrator. The chairman shall be nominated by any mechanism agreed by the Parties; in the absence of any agreed mechanism, the Party-appointed arbitrators shall nominate the Chairman (or if they fail to do so within 10 days, the Arbitration Court shall appoint the Chairman).	The default mechanism for appointment is not substantially different under the 2022 Rules, save that (i) it expressly sets out the process for appointment of a sole arbitrator and (ii) the newly established Arbitration Court is responsible for many of the Centre's functions. The 2022 Rules also introduce the alternative, list-based procedure for appointment. This is likely to be slower but has the advantage of Party consensus on the arbitrator to be appointed.

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		All nominations are subject to confirmation and appointment by the Arbitration Court. (Article 12)	
Seat and venue of the arbitration	The Parties may agree in writing the seat of the arbitration. If they do not do so, the **default seat is (onshore) Dubai**, unless the Centre decides that another seat would be more appropriate (Article 20.1). The Tribunal may conduct hearings or meetings at any place which it considers appropriate and deliberate wherever it considers appropriate (Article 20.2). There is no express provision dealing with a non-physical hearing.	The Parties may agree in writing the seat of the arbitration. If the Parties agree a location or venue for the arbitration, but do not expressly agree a seat, the location or venue shall be deemed the seat of arbitration unless the Parties agree otherwise (Article 20.1). In the absence of the Parties' agreement, the **default seat is the DIFC**, though the Tribunal has the power finally to determine the seat (Article 20.1). The Tribunal may conduct hearings or meetings at any place it deems appropriate. The Tribunal has the **express power to conduct a hearing or meeting by telephone or virtually** (Article 20.2).	The 2022 Rules give official recognition to virtual hearings, which have entered standard practice. While most arbitration agreements expressly provide for the seat, the decision to make the DIFC the default seat is a recognition of the valuable support provided to arbitrations by the common law DIFC courts.
Emergency arbitrator	No provision for an emergency arbitrator.	A Party in need of emergency interim relief may apply for the appointment of an emergency arbitrator. An emergency arbitrator appointed in accordance with these provisions may order emergency interim relief in accordance with the provisions of Article 1, Appendix II (see below). The emergency arbitrator provision offers a swift path to interim relief: the Centre aims to appoint an emergency arbitrator within one day of the Request if the Arbitration Court is satisfied that it is reasonable to appoint one. The Rules then allow two business days from notification for a Party to challenge the appointment, and two business days for the emergency arbitrator to decide a timetable for the application. (Appendix II, Article 2)	The introduction of emergency arbitrator provisions gives significantly more flexibility to Parties arbitrating under the 2022 Rules. This is a swift route for a Party to obtain an order for interim relief in urgent circumstances, which may then be enforced by a relevant court. This is one of several updates which bring the 2022 Rules more into line with the rulesets of other leading international arbitration institutions. Emergency arbitrators are one of a number of innovations which have been adopted widely by the most successful institutions, and their inclusion in the 2022 DIAC Rules is welcome.

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Expedited procedure	There is provision for the expedited formation of the Tribunal on application by a Party in cases of exceptional urgency (Article 12). However, there is no provision for the arbitration proceedings as a whole to be expedited.	The Rules contain provision for expedited proceedings, in the following cases: • unless the Parties agree otherwise in writing, if the total value of the sums claimed and counterclaimed is no more than AED 1 million (excluding interest and legal costs); or • the Parties agree in writing; or • in cases of exceptional urgency; in each case provided that the Arbitration Court considers expedited proceedings appropriate. Where expedited proceedings are adopted, the Tribunal will decide on the procedure and may limit the scope of evidence to be submitted. The Tribunal must issue the final award within three months from the transmission of the file to the Tribunal, unless extended by the Arbitration Court on exceptional grounds. (Article 32)	The introduction of expedited procedures offers a cheaper and more efficient way to resolve minor disputes which may arise under a contract, as well as making the 2022 Rules suitable for agreements where the probable value of a dispute is too low to justify the time and expense normally associated with arbitration. The rules for expedited proceedings envisage a flexible but streamlined process to allow a dispute to be resolved in a short timeframe.
Joinder of other parties	No provision for joinder.	A Party may be joined to an arbitration, on application by a Party (whether or not that Party is already a Party to the arbitration), provided that either all Parties agree or the Party to be joined is a Party to the arbitration agreement (Article 9).	This allows a Party to be joined to an arbitration, either of its own volition or on the application of an existing Party, avoiding the risk of unnecessarily expensive and potentially inconsistent duplicate proceedings. A Party may be joined where all Parties agree, even if it is not party to the arbitration agreement; or in circumstances where it does not agree, provided that it is a party to the arbitration agreement. This broadens the scope of the joinder rules sufficiently to be able to cover the proper Parties to a dispute, without decoupling arbitration from its basis in the Parties' agreement.

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Consolidation	No provision for consolidation.	There is provision to consolidate arbitrations. A claimant may submit a single Request in respect of multiple claims arising out of multiple agreements to arbitrate, or multiple arbitrations may be consolidated prior to the appointment of any arbitrators, if (i) all Parties agree or (ii) the Arbitration Court is *prima facie* satisfied that: • all claims in the arbitrations are made under the same arbitration agreement; or • the arbitrations involved the same Parties, the arbitration agreements are compatible, and: • the disputes arise out of the same legal relationship(s); or • the underlying contracts consist of a principal contract and its ancillary contract(s); or • the claims arise out of the same transaction or series of related transactions. It is also possible to consolidate arbitrations with the agreement of the Parties or permission of the Arbitration Court where a Tribunal has been constituted in one arbitration and no arbitrators have been appointed in the other(s); or where the same Tribunal has been appointed in multiple arbitrations. The parties may expressly agree to opt out of the consolidation provision in the arbitration agreement. (Article 8)	In a similar manner to joinder (see above), the 2022 Rules permit the more efficient resolution of disputes by allowing the consolidation of multiple claims into a single set of proceedings. This is an opt-out provision so Parties uncomfortable with the prospect of consolidating arbitrations, potentially brought under different (but related) arbitration agreements, may avoid doing so.

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Interim or conservatory measures	The Tribunal may issue any provisional orders or take other interim or conservatory measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute. The Tribunal may make the granting of such measures subject to appropriate security provided by the requesting Party. (Article 31)	The 2022 Rules contain more detailed and extensive provisions dealing with interim measures. The Tribunal may order interim measures, for example to order a Party to: • maintain or restore the status quo pending determination of the dispute; • take action to prevent, or refrain from taking action that may cause, current and imminent harm or prejudice to the arbitral process; • prevent the dissipation of assets; • preserve evidence; or • provide security for costs of the arbitration. Interim measures are available where the Tribunal is satisfied that (i) the harm which the measures seek to prevent or remedy is not adequately reparable by an award of damages and substantially outweighs the harm that the measures are likely to cause to the subject Party and (ii) the requesting Party has a reasonable possibility of succeeding on the merits of the claim. (Appendix II, Article 1)	The primary difference between the rulesets is that the 2022 Rules are much more detailed in describing the Tribunal's power to order interim measures. The 2007 Rules did not restrict the scope for interim measures, but the more detailed provisions of the 2022 Rules specifically empower Tribunals to issue a range of measures, such as security for costs. The types of interim measure which may be granted mirror those set out in the UAE Federal Arbitration Law, but conditions are placed on their availability: only where the harm which they intend to prevent or remedy is not adequately reparable by damages, where it substantially outweighs the harm caused to the subject Party, and the requesting Party has a reasonable possibility of success on the merits – conditions which do not appear in the Federal Arbitration Law.

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Conciliation proceedings	No provision for conciliation proceedings.	The 2022 Rules set out a framework for a conciliation procedure which may be commenced with the agreement of the Parties. Similar provisions apply to the appointment of conciliators as to arbitrators. Conciliation may result in the preparation of a formal settlement agreement if successful; if unsuccessful it is without prejudice to the merits of the dispute (Appendix II, Article 3).	The 1994 Rules of the Dubai Chamber of Commerce and Industry – the parent body of DIAC – contained provision for both arbitration and conciliation, though conciliation was dropped from the 2007 DIAC Rules. The new 2022 Rules provide for a form of non-binding mediation, conditional on the Parties' agreement, which may be administered by DIAC, adapting some of the provisions of the arbitration ruleset where appropriate.
Third party funding	No provision for third party funding.	Third party funding is expressly dealt with and implicitly permitted. A Party which has entered into a third party funding arrangement must promptly disclose it to the other Parties and the Centre, together with details of the identity of the funder and whether or not the funder has committed to an adverse costs liability (Article 22.1). After the Tribunal has been constituted, a Party may only enter into a third party funding arrangement if it would not give rise to any conflict of interest between the funder and any member of the Tribunal (Article 22.2). The Tribunal may take account of the existence of a third party adverse costs liability when apportioning the costs of arbitration (Article 22.3).	Third party funding is not dealt with in either the Federal Arbitration Law, the DIFC Arbitration Law, or the 2007 Rules. The provisions in the 2022 Rules in effect confirm that third party funding is permitted, which entails no change in substance given the lack of any prior prohibition. The key development is the requirement to disclose any third party funding arrangement, which is a consideration Parties will need to bear in mind. Disclosure of third party funding may offer a strategic advantage as it demonstrates that a third party has confidence in the strength of the claims and that a claimant has the resources to pursue them, but in some circumstances Parties and/or funders may be sensitive about disclosure.
Hearing	No express provision for virtual hearings (though there is no prohibition on virtual hearings).	The Tribunal will decide whether any hearing should be held in person, by telephone, or virtually (Article 26.1).	Again, the 2022 Rules expressly endorse the standard practice of integrating virtual hearings into arbitral proceedings.

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Award	The award shall be deemed to have been made at the seat of the arbitration (Article 20.3). The Rules contemplate that the award must be signed in hard copy and originals provided to the Centre (Article 37.8). The time limit for issuing the award is six months from the transmission of the file to the Tribunal. The Tribunal may on its own initiative extend for a further six months, and the Centre may extend further on a reasoned request from the Tribunal or on its own initiative (Article 36).	The award is deemed to be issued at the seat of arbitration, regardless of whether signed by the Tribunal. The **award may be signed physically or electronically**, and in one sitting or separately by each arbitrator (Article 20.3). It is sufficient for the award to be signed in electronic form only (subject to any mandatory provisions of the applicable procedural law) and provided to the Centre in electronic form (Article 34.6). The **Arbitration Court will review the final draft award** to (a) ensure that the formalities required by the Rules are complied with and (b) fix the fees and expenses of the Tribunal (Article 34.5). The time limit for issuing the award is six months from the transmission of the file to the Tribunal. This may be extended by the written agreement of the Parties or by the Arbitration Court, either on its own initiative or in response to a reasonable request from the Tribunal – not by the Tribunal acting on its own initiative (Article 35).	The flexibility of electronic signature of the Award is a welcome development, particularly in international arbitration (where the Tribunal may be spread across different countries), and particularly where all other aspects of the procedural including the final hearing may be virtual. This is consistent with the UAE Federal Arbitration Law, but Parties and Tribunals should consider any mandatory requirements of the seat or likely place of enforcement (where outside the UAE). While the 2022 Rules (unlike the 2007 Rules) provide for review of the award by the Arbitration Court, the stated remit is narrow (compliance with procedural formalities) and does not constitute award scrutiny, for example as provided by the ICC.
Legal costs	The Tribunal may decide which of the Parties shall bear the costs of the arbitration, and in what proportion (Appendix, Article 4). The costs of the arbitration include: the Centre's administrative fees, the fees and expenses of the Tribunal, and the fees and expenses of any Tribunal-appointed expert (Appendix, Article 2).	The Tribunal may decide and make an award in respect of the costs of the arbitration (Article 36.2). The costs of the arbitration include registration fees, the Centre's administrative fees, the fees and expenses of the Tribunal, fees and expenses of Tribunal or Party-appointed experts, fees and expenses of legal representatives, and any other costs (Article 36.1). Crucially, **this allows a Party (typically the successful Party) to recover some or all of their legal costs**, and potentially their entire costs incurred in the arbitration.	Allowing Parties to recover all of their legal costs, rather than restricting recovery to the Centre's and Tribunal's (and Tribunal-appointed expert) costs is a significant development. The 2007 Rules were out of step with international practice, and the 2022 Rules bring this element up to date. Costs recovery effectively (in general terms) acts as a deterrent to spurious or ill-founded claims by increasing the cost, while reducing the ultimate cost of meritorious claims, and may serve to encourage settlement as an unsuccessful Party has more to lose.

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"Andrew Mackenzie has "an exceptional knowledge" of disputes matters in the Middle East and he has "relentless tenacity and absolute client focus".

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