

Insights

DIFC ARBITRATION REFORM: A ROADMAP FOR EFFICIENT ARBITRATION

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Summary

The Dubai International Financial Centre (DIFC) is consulting on proposed amendments to the DIFC Arbitration Law. The consultation proposes some of the most substantial changes to the DIFC arbitral framework since the Arbitration Law was enacted in 2008 including the introduction of a new mediation regime. For arbitration, the proposed amendments have a common theme - to make DIFC arbitrations faster, more efficient, and harder to disrupt through procedural tactics.

Here's what you need to know about the proposed reforms:

Summary Determination: Faster Resolution of Weak Claims and Defences

Perhaps the most significant proposed is the introduction of an express power allowing tribunals to dispose of claims, defences, or issues on a summary basis where a party has "no real prospect" of succeeding.

Historically, arbitrators have been reluctant to adopt summary procedures for fear of due process challenges or enforcement objections. The proposed introduction of an express statutory power address that concern and should encourage tribunals to adopt a more robust approach in appropriate cases. This could significantly reduce the time and cost associated with pursuing clearly unmeritorious positions and may increase settlement pressure once weaknesses in a party's case are exposed.

Peremptory Orders: Stronger Control over Procedural Non-Compliance

The consultation would introduce a statutory regime for peremptory orders. Tribunals would be able to issue a peremptory order where a party fails to comply with procedural directions and impose significant consequences for continued non-compliance. Those consequences could

include adverse inferences, exclusion of evidence, dismissal of claims in certain circumstances, costs sanctions and, ultimately, court-backed enforcement.

These new powers would strengthen a tribunals' ability to deal with non-compliance, delay tactics and procedural obstruction and is consistent with the wider consultation theme of encouraging arbitrators to be more interventionist in case management and reducing so-called "due process paranoia".

Security for Costs: Clearer Protection Against Costs Risk

The proposed amendments would expressly authorise tribunals to order security for costs. Although many tribunals already assume they possess such powers, the introduction of an express statutory power is designed to remove any doubt about this and to align the DIFC with other major arbitral jurisdictions.

An express power to order security for costs would provide respondents with additional protection against the risk of facing claims from parties unable to satisfy an adverse costs award. This may be particularly important in cases involving third-party funding, special purpose vehicles, or financially distressed counterparties.

Significantly, the proposal would also prohibit tribunals from ordering security merely because a claimant is foreign on the grounds that such discrimination would be inconsistent with the DIFC's status as an international arbitration centre.

Joinder and Consolidation: Better Management of Complex Disputes

The consultation introduces express statutory provisions dealing with consolidation of related arbitrations; and joinder of additional parties.

While institutional rules often address these issues, the Arbitration Law currently contains no detailed framework. The proposed joinder and consolidation provisions would facilitate the resolution of related disputes within a single arbitral process where appropriate. This should reduce duplication, lower costs, and minimise the risk of inconsistent findings arising from parallel proceedings. However, the consultation prioritises party autonomy. Tribunals would only have consolidation powers where the parties have agreed to confer them.

Emergency Relief: Improved Access to Urgent Interim Relief

The proposals would modernise the interim relief regime in several respects. First, they would recognise and support emergency arbitrator procedures where institutional rules provide for them. Secondly, they would facilitate enforcement of emergency arbitrator decisions through a new peremptory order mechanism backed by the DIFC Courts. Parties seeking urgent asset

preservation, evidence preservation or other interim relief would benefit from clearer statutory support for emergency arbitrator procedures and more effective enforcement mechanisms.

The consultation also seeks to clarify that parties may agree to permit ex parte applications to arbitral tribunals rather than being forced to seek urgent relief solely from the DIFC Courts. This increases procedural flexibility – by allowing ex parte applications to an arbitrator - while preserving court support where required.

Arbitration Agreements: Increased Certainty Around the Validity and Scope

Several amendments are aimed at reducing disputes over the validity and scope of arbitration agreements, including:

- A new provision on separability of arbitration agreements;
- An express rule that, absent party agreement, the law of the seat governs the arbitration agreement;
- Confirmation that unilateral and asymmetrical arbitration clauses are valid; and
- Protections against one party having unilateral control over tribunal composition.

The proposed provisions on governing law, separability and asymmetric arbitration clauses would reduce jurisdictional disputes and provide greater predictability when drafting and enforcing arbitration agreements. This will be particularly welcome for financial institutions and other users of unilateral or asymmetric dispute resolution clauses.

Third-Party Funding: Increased Transparency

The proposed amendments would introduce the DIFC's first dedicated statutory regime governing third-party funding. Parties using third-party funding would face disclosure obligations concerning the existence of funding arrangements and the identity of funders. This should help identify conflicts of interest at an early stage and provide tribunals with information relevant to applications for security for costs and costs allocation. Given the increasing use of litigation and arbitration funding in the region, this is a welcome proposal.

Procedural Efficiency: Improving the Arbitral Process

A number of smaller but potentially important reforms also share the objective of making arbitrations faster and easier to manage.

Examples include:

- Recognition of electronic communications and service by email;
- Express permission for remote hearings;
- A more flexible confidentiality regime;
- The power to make provisional awards;
- Codification of standards of conduct for parties and their representatives; and
- Replacing the concept of a "full opportunity" to present a case with a requirement to provide a "reasonable opportunity".

The last of these is particularly interesting because it is expressly directed at reducing procedural challenges and empowering tribunals to manage proceedings more efficiently.

BCLP View

The consultation marks a clear shift towards giving DIFC-seated tribunals broader case-management powers and stronger tools to control cost, delay, and procedural abuse. The proposed introduction of summary determination, peremptory orders, security for costs, and clearer joinder and consolidation powers is therefore a welcome development. If enacted, these reforms would align the DIFC with the wider international trend towards more efficient, robust arbitration and reinforce its ambition to compete with leading arbitral centres.

Related Capabilities

- International Arbitration

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