

THE IBERIAN CHAPTER MEETS WITH THE UAE BRANCH

THEME I Arbitrators and Arbitral Institutions: Examining the CIArb connections

October, 19 2022 / 17:00-18:30 CET | 19:00 - 21:30 GST

Arbitration and Arbitral Institutions: Examining the CIArb connections

Venue:
Online

Date & Time:
19 October 2022 | 17:00 - 18:30

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19 October 2022

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- Welcome
- The future of the Dubai International Arbitration Centre (DIAC) in the International Arbitration industry
- Collaboration of the Emirati Courts in provisional measures, Discovery and Evidence examination, and Award execution and the effects of the SCOTUS Judgment.
- The Civil/Common Law principles, UNCITRAL rules and Sharia Law Principles in the Emirates International Arbitral Practice.
- The presence of the CIArb in United Arab Emirates

Welcome

The aim of this event is to delve into some aspects of Arbitration in United Arab Emirates in order to gain a better understanding of the functioning of the arbitration and arbitral institutions in Dubai and address them from an Iberian perspective.

In order to do that, a group of high-profile professionals within the Arbitration Industry in United Arab Emirates will be forming our panel discussion group but also this will be supplemented with highly reputed professionals in the arbitration industry in Iberia which will give also their point of view.

Among the discussion topics that will be covered, one is the future of the Dubai International Arbitration Centre (DIAC) within the International Arbitration industry. The relevance of this topic resides in the strategic location of Dubai as an international hub for dispute resolution being the DIAC the largest arbitration centre in the Middle East.

Our panellists will share their views on the collaboration of the Emirati Courts with the Arbitral Institutions here in UAE. They will discuss the collaboration of both institutions at the time to grant provisional measures in connection with arbitral disputes. On the topic of collaboration between arbitral institutions our panellists will comment on the discovery process and the implications of the consolidated decision on 13 June 2022 of the ZF Auto. US v. Luxshare, Ltd. and AlixPartners v. The Fund for Prot. of Inv. Rights in Foreign States in connection with Section 1782 of Title 28 of the US Code (Section 1782) which allows a foreign or international tribunal or 'any interested person' to file an application in a US district court in the jurisdiction where the respondent resides or can be 'found' within the district. To finalize this block we will proceed with collaboration of execution on an arbitral award between the Arbitral institutions and Emirati Courts.

The last question that our panellists will address is how the combination of UAE law principles, UNCITRAL rules and Sharia law principles performs within the International Arbitral Practice.

Also we will delve into the presence of the CIArb in UAE and the training and education programmes that they are undertaking to promote the alternative dispute resolution in this region.

I have full trust that this event will help to understand certain aspects of how arbitration works in this region to promote transcontinental links and moreover to answer some question which sparked much interest from the Iberian side.

Natalia Barroso (FCIArb) has wrote here a brief paragraphs to get first approach to the DIAC reality of current tiems, and tackle to the CIAM comparison, one of our main references in the local area of our Chapter to perform arbitral commitments.

Nazareth Romero (MCIArb) has wrote also another post in reference to our current Arbitral Legislation, and the main drivers to frame it courtyard for professionals involves in Spain or dealing with spanish jurisdiction.

But, finally, is not only the CIAM the sort of Court with tradition and presence in our local area of competence. In fact, the CIAM is a sort of joint venture among different and Tully relevant private and public institutions related to Arbitral concerns, most of them settled in Madrid, which build up a new Center to address international disputes, especifically, for giving an answer to parties in a conflict to easae in developing disputes resolution in an enviroment closer to their manner of understanding law and procedures. But other Arbitral Centers are the rather new TAPA (Tribunal Arbitral del Principat d'Andorra), the TAB (Barcelona Arbitral Tribunal), and the still a project of a new Arbitral Tribunal which will joint together Commerce Courts in Lisbon and Porto. Institutional Arbitration in the Iberian Chapter is facing big challengies for the times for coming.

I would simply like to add that I hope you enjoy this seminar.

Antonio Amusatogui

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Arbitration and Arbitral Institutions

By FCIArb Natalia Barroso Carmona

Brief insight to DIAC and CIAM

The importance of Dubai in Middle East is well known as a result of its high dynamic economy and that of its surrounding countries. An inherent part of commercial transactions are the disputes that arise from business when they become sour, and therefore it is not a surprise that Dubai through the DIAC has *'the largest arbitration centre in the Middle East'*¹

The recent changes as a result of the Decree 34² dated on September 2021 and the new DIAC Arbitration Rules 2022³ which took effect on 21 March 2022 are the fundamental changes put in place to establish one single arbitration centre and to promote Dubai as one of the top jurisdictions for arbitrations in the world⁴, rendering the DIAC as the unique arbitration centre in Dubai.

¹ Ref.: <http://www.diac.ae/idias/aboutus/>

² Ref.: Decree No. (34) of 2021 Concerning the Dubai International Arbitration Centre

³ Ref.: <http://www.diac.ae/idias/resource/Rules2022.pdf>

⁴ Ref.: DIAC takes it all: the integration of Dubai's arbitration institutions, <https://www.lexology.com/library/detail.aspx?g=d7d5e24a-7892-412c-973a-649780dfe80d>

Someone can find certain similarities with the *Centro Internacional de Arbitraje de Madrid* (CIAM), which was founded on 1 January 2020 as a result of the implementation of a strategy which aimed to have one single arbitration centre in Madrid envisaging the CIAM to be an international hub for arbitration for disputes not only in Spain but also in LATAM resulting from the common roots and languages with many countries in that region.

The above certainly emphasizes the interesting nature of the two regions. Other similarities between the countries in which these arbitral institutions are located is that their arbitration law is based on the UNCITRAL Model Law and both adopt a civil law system, although UAE has additionally the Sharia law system. It should be noted that Sharia laws⁵ in UAE affect disputes non arbitrable due to public policy as can be family disputes such as divorce, inheritance, child custody among others and therefore could be said that Sharia law does not have an effect on arbitrable matters.

In conclusion, both arbitral institutions certainly present a very attractive value proposition to be among the most preferred arbitral institutions.

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Brief introductory note about Arbitration in Spain

By Nazareth Romero MCI Arb

Arbitration in Spain is governed by the Arbitration Act 60/2003 of 23 December, as amended by Acts 5/2011 and 11/2011 of May 20, 2011. The Arbitration Act applies both to domestic and international arbitrations.

This Arbitration Act applies without prejudice to the provisions of treaties to which Spain is a party or to legislation containing specific provisions relating to arbitration, such as consumer protection and intellectual property regulations, Articles 1.1 and 1.3; and employment arbitration is excluded from the scope of the Arbitration Act, Article 1.4.

Our Spanish Arbitration Act is based on the UNCITRAL Model Law 1985, amendments 2006. It's a monist system law based, there are no major distinctions between domestic and international arbitration in Spain. The only differences refer to the form and content of the arbitration agreement, Article 9 Arbitration Act, the rules applicable to the substance of the dispute, Article 34 Arbitration Act, and the correction, clarification and the issue of a supplement to the award, Article 39 Arbitration Act.

Spanish Arbitration Act follows a monist system: it applies to all arbitrations that take place in Spain; both national and international, Article 1 Arbitration Act. Provisions regarding the jurisdiction of the Spanish courts, interim measures, the arbitration agreement and the recognition and enforcement of

⁵ Ref.: <https://u.ae/en/about-the-uae/the-uae-government/the-federal-judiciary>

awards shall apply even when the seat of the arbitration is not in Spain, Article 1.2 Arbitration Act.

Spain has ratified The New York Convention 1958, the Washington Convention 1956.

Under Article 2 Arbitration Act, only disputes relating to matters within the free disposition of the parties are arbitrable. Criminal matters and parental issues are not arbitrable. Certain family law issues cannot be arbitrated but economic agreements since family law issues can be arbitrate; and industrial property and issues submitted to company by-laws are expressly recognised as arbitrable by Spanish legislation.

The Arbitration Act presents a high degree of flexibility with respect to international arbitration in that it provides that a dispute may be arbitrated if the requirements of the rules of law chosen by the parties to govern the arbitration agreement, or if the rules of law applicable to the merits of the case, or Spanish law are met. Pursuant to the principle of competence-competence, expressly recognised in Article 22.1 Arbitration Act, the arbitrators will decide whether the matter is arbitrable or not. Hence, the lack of arbitrability is a matter of jurisdiction.

In essence nowadays improve the efficiency and transparency of the arbitration procedures for all: Agents involved in the Arbitration and for the Society in General, since promoting a benefit also generates an incentive to approach the Arbitration; Arbitral Institutions enact norms, rules and soft law on: Efficient management of the Arbitration, Control of time and costs, Independence and Impartiality of the Arbitrators;

Avoid Conflict from prevention since a Multistep Arbitration Clauses and training of the Company, the Parties in order to remain in control of the business such as: Anticipation in the control of internal and external processes, the preservation of the relationship with suppliers, with the Parties;

Today remark UN General Assembly Secretary General Antonio Guterres

“Let us find the wisdom to use the tools, plans and resources already in our hands to achieve inclusive and sustainable development – a goal in its own right but also our best form of conflict prevention...to achieve fair [ARBITRATION] globalization.”

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