

White list / Institutions Worth a Closer Look - Middle East & Africa

29 July 2022

Overview

In 1997, Judge Charles Brower published a piece in *The American Journal of International Law* on the history of arbitration in the Middle East. It described “three phases”.

Phase one – World War II to the 1970s – consisted of cases ending poorly for the Arab side, usually a state, such as *Petroleum Development (Trucial Coast) Ltd v Sheikh of Abu Dhabi*. In those cases, European arbitrators gave short shrift to arguments from shariah law.

Phase two saw a turning away from arbitration by parties in the region. Little wonder, perhaps.

But not for long. It turns out that arbitral type processes are at the heart of Arab tribal culture. As Bahraini Minister of Justice, Sheikh Khalid bin Ali Al Khalifa, once explained, “Arbitration harmonises with an Arab’s psychological make-up – which is imbued with sentimentalism and which is more at home with a spirit of peace, goodwill and conciliatory brotherhood.”

So phase three saw a re-embracing and a flowering of local arbitration providers in the region, to the point where – as Reza Mohtashami QC (a GAR editorial board member and Three Crowns partner) noted at one GAR Live – “the tiny island of Bahrain is [now] home to three arbitral centres.”

This current phase shows no sign of abating. In the past few years alone, Saudi Arabia has gained a centre (amid much fanfare) and further providers and seats have emerged; and the UAE has delivered on its aim of adopting the Model Law.

So is the Middle East now a proverbial arbitral paradise?

Not entirely. There’s still a certain tendency for problems to flare up. Not so long ago the UAE (briefly) stripped arbitrators of their immunity and threatened to impound their passports (since clarified and reversed). More recently, Dubai expunged the (very successful) DIFC-LCIA, which has left some questioning its safety as a seat. Time will tell if those wounds will heal.

Judges are the other weak point.

Essam Al Tamimi, one of the UAE’s most revered arbitration specialists, described it thus. There has been, he said, “a persistent lack of certainty” on how courts might respond to an arbitration point. “You will bring the same case you brought last year – and which got a good result – [then] put it back in the same pipeline and get a bad judgment, different from the previous one,” he explained, speaking at a GAR Live: Istanbul event.

Happily, some things are improving, at least vis-à-vis the courts. In the same speech, Al Tamimi noted that arbitration is now part of the core legal syllabus for the Arab League, so “90 per cent of judges will be properly trained in it, not just 10 per cent like now.”

Away from Dubai, other financial special zones are flourishing: the Qatar Financial Centre, the Abu Dhabi Global Market, and those in Bahrain.

More importantly, these financial zones often have their own courts, staffed by senior judges from around the world. These in turn are arguably having an improving effect on their local counterparts. As someone once explained to GAR, it’s like when one house in a somewhat run-down street is renovated and improved – others begin to feel they should follow suit.

So regional arbitration in Middle East should at this point always be considered.

As for Africa – the direction of travel is favourable, but the number of reliable seats still low. There are now two Africa-centric arbitration associations – around which an African arbitration bar is forming (see the Clubs & Associations directory), which should, in turn, raise arbitration literacy and improve local seats. Erring on the side of caution, for now, we include just one African centre in our selections below.

Here, then, are our recommendations for the Middle East and Africa.

White List

- Bahrain Chamber of Dispute Resolution (BCDR) (promoted from Worth a Closer Look)
- Cairo Regional Centre for International Commercial Arbitration (CRCICA)

Worth a Closer Look

- Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)
- Casablanca International Mediation and Arbitration Centre (CIMAC) – new addition
- Common Court of Justice and Arbitration (CCJA)
- Dubai International Arbitration Centre (DIAC)
- Kigali International Arbitration Centre (KIAC)
- Mauritius International Arbitration Centre (MIAC) – was LCIA-MIAC
- Qatar International Centre for Conciliation and Arbitration (QICCA)

White List

Bahrain Chamber of Dispute Resolution (BCDR)

What is it?

Initially it was a partnership between the Bahrain Ministry of Justice and the American Arbitration Association, which launched in 2010 and operates in an “arbitration free zone”.

More recently it has dropped the AAA association and is now known more widely as just the BCDR.

What’s an arbitration free zone?

Parties can nominate the law of any country to govern their arbitration, creating a virtual seat. It means awards can’t be challenged before the local courts.

Why’s it being promoted to the White List?

The BCDR has long been a well-run institution with a growing reputation in the region and the backing of a great board, which includes such luminaries as Stephan Jagusch QC, Reza Mohtashami QC, Elie Kleiman and Jan Paulsson. In particular, it has emerged as a challenger to Cairo’s position as a thought leader and educator for the Arab world.

The only reason it wasn’t on the White List was some uncertainty on our part regarding its case numbers (see below). But that’s now gone away.

Who runs it?

The CEO is Nassib Ziadé. He arrived in 2013 after running the DIAC in Dubai and before that, as de facto head, ICSID (the International Centre for Settlement of Investment Disputes in Washington, DC). He’s Lebanese-Chilean while the registrar is Ahmed Husain, a distinguished local practitioner. So, one international and one Bahraini.

How busy is it?

This was the mystery for many years. The BCDR didn’t seem to like releasing statistics. That’s now changed.

According to the most recent annual report it had 57 new cases between 2020 and 2021 (a big increase on 41 in 2019).

Of those 41 were section one cases – which go to the BCDR Court – and 16 were section two, a big year-on-year increase. In 2019, just four of the new cases were section two.

What's the significance of "section one" and "section two"?

Bahraini law gives the BCDR automatic jurisdiction over all local disputes that exceed US\$1.3 million in value if they feature either a licensed financial institution or the dispute is of an "international commercial nature", which usually means one side is foreign.

These are "section one cases", also known as the BCDR Court.

In section one cases parties haven't "opted in" to arbitration as one usually does. The process is a little different too. In section one cases both wing arbitrators have to be local judges appointed by a judicial committee – only the president of the tribunal is appointed by the BCDR. It's for this reason some suggest the BCDR is more akin to the DIFC or ADGM courts than an arbitral institution.

Does the BCDR hear "ordinary" arbitrations too?

It does – and these are known as "section two". Section two cases are arbitration in the commonly understood sense (ie, based on an arbitration clause).

Over its lifetime the BCDR has heard a lot more section one cases than section two. Of its 350 lifetime cases, only 30 have been section two.

Encouragingly, though, many of the section two cases have been big ticket items. And 20 of them (more than two-thirds) arose in the past two years. So it is finally ratcheting up the experience on section two.

It's in part because of the increase in section two figures that GAR gave the BCDR its coveted "arbitral institution that has impressed award" in March 2022, and that we now "promote" it to the White List.

What does the BCDR say about its relative lack of section two items over the years?

It downplays the distinction. It says that the skills required for both tracks are identical, and that section one cases can be thought of as "the best of both worlds" – arbitration and litigation.

It does mean though that the BCDR is a bit less experienced than one might expect in dealing with arbitrator challenges. It's dealt with around four in its whole 10 years, none requiring a final decision. Of course, one could interpret this as a positive.

One reason for the low incidence is sensible hygiene elements in its rules (a prohibition against double hatting by chairs in section one cases and lists of alternate judges for all those proposed by the judicial committee). Still, it is something to flag as different about the BCDR vis-à-vis other institutions.

On that note, the BCDR is in the process of empanelling a new advisory committee to assist it with its appointment processes.

What does it do away from casework?

The BCDR puts a lot of effort into educational efforts for the wider Arab world. It conducts judicial training (with ICCA) and translates key texts (eg, the ICCA's guide to the New York Convention into Arabic for the benefit of all).

It also has several regular publications, including a much-praised arbitration journal. One trusted GAR source in the region said he is "seriously impressed" with the BCDR's academic output. It also keeps its website immaculately up to date and organises a large pre-Vis-Moot moot, which now has 650+ alumni. And it represents Bahrain at UNCITRAL.

What are the rules like?

The rules are good. They were updated in 2017 by Ziadé, Adrian Winstanley (formerly the director general of the LCIA) and Antonio Parra, former deputy secretary general of ICSID and have most of the modern bells and whistles.

So will Bahrain and the BDCR emerge as a regional hub?

That remains to be seen. Initially there were those who thought Bahrain would (the AAA for instance, who helped to launch the BCDR). Antipathy from parties in the UAE and in particular Qatar (Bahrain's historical rival over many issues) seems to have stopped that coming to pass.

As for the future, much depends on Saudi Arabia, and in particular on its desire to open up. Bahrain's most enduring role has been to play Hong Kong to Saudi's China: the place where Saudi work is really done. If that ceases, the kingdom of Bahrain's aspirations more generally may need a rethink.

Cairo Regional Centre for International Commercial Arbitration (CRCICA)

Why is it on the White List?

CRCICA is the "granddaddy" of Middle Eastern arbitration. It's over 40 years old, has heard 1,000-plus cases, of which a large number are international, and is a general source of inspiration to other providers in the region, and more widely in Africa.

Who set it up?

CRCICA was founded by the Asian–African Legal Consultative Organization (which has since founded four other regional arbitration centres: the Asian International Arbitration Centre (as it is now known); the Lagos Regional Centre; the Tehran Regional Centre; and the Nairobi Regional Centre.

But of those, the AIAC and Cairo have by far the most traction.

What are its strengths?

It's experienced – it's old enough and busy enough to have seen most situations at least once – and generally well managed.

Who deserves the credit?

CRCICA has had a series of highly respected directors. For many years it was led by Mohamed Aboul-Enein, a charismatic former judge and law professor who was one of the first regional figures to gain celebrity on the international arbitration circuit.

Tragically, Aboul-Enein suffered a fatal car accident in 2008 (en route to an international arbitration event). He was succeeded by Nabil Elaraby (an ex-diplomat and international judge) and (when he was promoted to a ministerial position) by Mohamed Abdel Raouf.

More recently, Ismail Selim has been the director, who, with Dalia Hussein as deputy, has carried the torch ably since.

What's its diet of work?

Critics like to joke that CRCICA's workload consists of small disputes going to three-person tribunals. Like all good jokes, it has a certain truth. But big disputes go there too. It's heard a lot of oil and gas and telecoms matters over the years, worth billions of Egyptian pounds.

The mix of users is genuinely international. Statistics for 2018 show US parties as the most regular foreign users (with nine cases), followed by Saudi Arabia, Lebanon and Russia. It's also served parties from Italy, Belgium, China, Germany, Kuwait, the Netherlands, Sudan and the UK.

How busy is it?

It gets around 70 or 80 new cases a year and has done consistently since 2012. In 2018 it had 77. The best-ever year remains 2016, when it had 91.

In the first six months of 2019 it received 36 new cases.

Who gets appointed as arbitrator?

It tends to appoint arbitrators from around its region, in part because 85% of its cases over the years have been in Arabic. Parties can in theory appoint whomever they like – there's no list system and no need for approval from the centre either.

Does anyone think that more internationals will choose to sit there?

Well, two French lawyers Caline Mouawad and Rocío Digón analysed CRCICA's latest rules for the *International Journal of Arab Arbitration*. Those rules, among other things, increased the rate of pay. They wrote that this development will "certainly persuade more arbitrators to accept appointments, which, in the medium and long term, will help the centre's image and

reputation.” But there’s not a lot of signs that is happening yet.

Is it true it is hoping to attract a lot of African work?

According to CRCICA African work is its future. Sources there say Africans are delighted to visit Cairo, to which there are lots of direct flights. It’s also a lot more affordable for them than obvious other locations.

To that end, in April 2017 it held an “African arbitration week”, partnering with the ICCA.

What else does it do?

CRCICA is pretty good at educational and outreach programmes. It’s partnered with part of the American Bar Association on programmes aimed at newly qualified lawyers since 2009.

More recently, it created four courses, one on each phase of an arbitration, in tandem with the Cairo branch of the Chartered Institute of Arbitrators. From time to time it runs international arbitration advocacy training based on the GAR Guide to Advocacy.

What sorts of cases are particularly suitable to send there?

If local enforcement is expected, then there’s a definite advantage to using CRCICA. The courts respect it. CRCICA’s rules also have some useful elements if one is worried about what might be called local “worst practice” by the opponent’s arbitrator.

What sorts of worst practice?

Article 8/5 anticipates a common problem: the arbitrator who is bent on delaying the process. The centre can reject a proposed appointee for a “past failure to comply with duties”, among other things (ie, a bad track record).

The flip side of this is article 12. This allows the centre to remove an arbitrator who is failing to act or has become incapacitated. Both rules require at least one oral hearing to be held following any such substitution.

What are the rules like?

The centre is extremely proud of its rules. It has gone so far as to describe the rules as an “an original version” of the UNCITRAL package, such is the care with which they transpose certain alien concepts into Arabic.

What’s it working on now?

The centre held its 40th birthday in 2019, which it coordinated with the release of a French version of its rules (as part of its plan to attract work from Africa).

It’s also stepped up its educational output – both in Cairo and the near abroad – with a particular focus on links in Africa.

Worth a Closer Look

The Middle East and Africa region is also home to some other providers that, for matters that fall in their sweet spot, are well worth considering.

Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)

Why’s it worth considering?

The ADCCAC had a monopoly on arbitrations seated in Abu Dhabi for many years – there were no other local providers. Local companies were encouraged to support it, so “cases fell it its lap”.

In 2014, for example, the last time it released statistics, it registered 74 new cases.

What type of cases go there?

It's a mixture, or was, given the difficulty in getting recent statistics. In 2014, it was hearing a mix of smaller real estate cases mixed in with larger case about power projects, infrastructure, joint-venture agreements, etc.

How up to date are the rules?

It's all relative. The rules were last updated in 2013 – so in that sense they're not that up to date. But before that, it was using a set of rules dating from 1993, and the process they described was almost like stepping back in time: for example, there was no scale of fees, so every part of the financials for a case for arbitrator and institution had to be negotiated from scratch. And all fees were non-refundable, even if the case settled. (It was also unclear how you actually initiated arbitration or what should happen if one side didn't show up.)

The 2013 rules ironed out many of those kinks. They're patterned on the UNCITRAL model (and a few other well-known institutions), with the addition of a couple of region-specific features. One explicitly reminds parties that if you're aware that one of the centre's rules is being ignored and don't mention it, you've waived the right. This stops a side from storing up procedural "errors" to use for challenges later (which is something of a local sport). The rules also fill in some other gaps, such as adding a confidentiality provision and immunity for arbitrators and the institution.

Unfortunately, other institutions have moved on considerably in the seven years since 2013. So the ADCCAC is once again starting to look a little out of date, particularly with all the other developments in Abu Dhabi.

What are those other developments in Abu Dhabi?

The ADGM – Abu Dhabi Global Market – has opened, Abu Dhabi's common law free zone and arbitral seat. It not only offers great facilities and rooms but is home to other providers such as the ICC. So you can now have ICC arbitration, administered in Abu Dhabi, with an ADGM seat.

The ADCCAC meanwhile is stuck in somewhat tired facilities, with ageing rules and so forth.

Who sits on ADCCAC arbitrations?

The choice of arbitrators you can realistically choose isn't great. There's freedom to appoint whomever you want, but they have to get themselves added to the ADCCAC's list, which comes with a few hurdles. First it costs around US\$400 a year. More importantly, you have to supply an authenticated "no criminal convictions" certificate from your place of origin or residence. The fees don't really make going through that sort of hassle worthwhile.

Are there any other pitfalls?

It's not a pitfall, exactly, but know that the final award will be delivered in Arabic, even if the language of the arbitration was English. This is standard practice. The centre's administration also leaves something to be desired.

Is it popular?

Despite its quirks it has always had a certain loyalty from the government and state-owned entities, meaning that it used to be quite hard to avoid. That is slowly starting to change, but there will still be contracts out there naming it. It's thought the centre would like to modernise, but problems at the level above (ownership) get in the way. It's owned by the state through the Chamber of Commerce, which of course also owns the ADGM.

Casablanca International Mediation and Arbitration Centre (CIMAC) – new addition

What is it and why are you adding it to Worth a Closer Look?

CIMAC is the arbitral institution for Casablanca Finance City (CFC), a financial free zone governed by common law, created by the government of Morocco. The CFC was created in 2010; and CIMAC was added in 2016.

The government hopes to establish the CFC as the "gateway to Africa", and having a dependable disputes system is viewed as part of that.

After GAR took the (overdue) decision to remove one north African institution from this book, we conducted fresh research to see if another one deserved the spot.

The feedback was that CIMAC was now the class of that particular pack, albeit with a few issues.

Who runs it?

CIMAC's secretary general is Hicham Zegrari, who joined Casablanca Finance City Authority as head of legal affairs in 2010 before moving onto the arbitration centre. Zegrari is the chairman of the organising committee of the Casablanca Arbitration Days.

He's supported by Thomas Granier, a former McDermott Will & Emery practitioner who is now counsel at pan-African firm Asafo & Co, as a special adviser.

There's an oversight body – the court of arbitration – with a number of international names on it.

Who is on the court?

The court's president is Laurent Lévy, the renowned Swiss arbitrator. Jalal "Jil" El Ahdab of Bird & Bird and Jacob Grierson, whom Granier followed from McDermott to Asafo & Co, are vice presidents.

Mohamed S Abdel Wahab, Dorothy Ufot SAN and Ina Popova, of Debevoise & Plimpton, are among the members.

Has it had any cases yet?

It has, but not very many. As of March 2022, the centre was administering two arbitrations, one with an international party.

What are the issues you alluded to earlier?

There are mutterings that CIMAC isn't paying enough attention to the MENA-side of its equation. It's presenting itself, as one person put it, as an "elitist place for foreign investors only".

Among other things, these critics point to the composition of the court. Rather than seeing a surprisingly international-looking body, they complain there are 10 European or American court members and only six from the MENA region. It may be that this particular assessment is a tad unfair.

Still, all centres do need local buy-in, to fly. So to that extent, enfranchising local opinion-makers more sounds like a good idea.

Common Court of Justice and Arbitration (CCJA)

Why's it Worth a Closer Look?

The CCJA is the supreme court for all disputes under OHADA law. It's also, however, an arbitral institution for arbitrations under the CCJA rules. As well as confirming and appointing arbitrators and administering those cases it also acts as the supervisory court for arbitrations conducted under its banner.

What's it like?

It's a hybrid between a supreme court and an arbitration centre. The "court" part consists of 13 judges selected by the OHADA council of ministers, for seven-year terms (non-renewable). The judges are organised into three chambers.

The arbitration centre consists of the court plus a – small – secretariat. They were both established in 1998 and made their first decisions in 2001.

It's not the ICC, but it's no start-up either.

Any pitfalls?

The arbitration centre shares the same space as the OHADA court, so arbitral tribunals have to work around the OHADA court's schedule. Tribunals often choose to sit away from Abidjan for that reason.

It's also a very francophone organisation – not always comfortable working in English. Staff can be a bit unresponsive – and there always seems to be too few. But the issue that's made the most headlines over the years is fees.

What headlines have there been about arbitrators' fees?

First of all, the CCJA's official arbitrator rates are phenomenally low for the type of work required. The fee scale hasn't changed in 16 years.

Because of that, some arbitrators had started to develop workarounds. And those led to what's known as the *Getma* affair, where the CCJA set aside an award because the tribunal had negotiated a side deal with the parties for more pay (the arbitrators described the official pay for the case – €60,000 – as tantamount to "charity").

Is OHADA aware of the problem?

It is, and the *Getma* decision helped it to modernise. It commissioned an audit by PwC, which led to two disciplinary proceedings against senior members. One, Marcel Sérékoisse-Samba, president of the court, was suspended; he admitted, among other things, to failing to keep account of money paid to the court for arbitrations. But he denied any actual dishonesty, and the suspension was temporary. He later returned and completed his term.

Are there any other quirks?

It's a bit more than a quirk, actually. In a fairly radical departure from the norm, the CCJA is both the arbitral body and the court of the seat. Thus, it can play a role setting up a case – resolving challenges to arbitrators, fixing fees and taking other essential decisions, etc – and at the end, hearing complaints about due process or other sacraments of arbitration. In between, it may review the award for technical strength (similarly to the ICC).

It's a strange amalgam and looks a lot at first blush as if it is sitting in judgment on itself.

The CCJA is aware of this criticism so takes steps to ensure different people take over at each stage. Nevertheless, it remains an atypical approach and may come as a shock.

What sort of cases would fit best there?

Anything that turns on OHADA law – the suite of business laws adopted by 17 west and central African countries, with the aim of harmonising commercial law locally. The CCJA is a creature of the OHADA system. A number of OHADA states now write CCJA clauses into their commercial contracts. Thus, CCJA arbitration is often in effect "imposed".

What are the rules like?

The current rules are from 2018. They fixed a number of problems that had emerged in the earlier version – especially around impartiality and the process for appointments, and encouraging more ethical behaviour by the parties. They also gave arbitrators expanded powers to consolidate and suspend proceedings.

Any pitfalls?

As the *Getma* case showed, there are various ways that OHADA member states can influence the composition of the court (much as the EU member states do over the bench for European courts). At times this may make the court feel insufficiently independent.

It may also be worth remembering several of the OHADA states have yet to sign the New York Convention.

Dubai International Arbitration Centre (DIAC)

Why's it only in Worth a Closer Look?

The DIAC was riding high around the time of the global financial crisis. Alas, since that heyday things have slipped. Case numbers are down, and it hasn't had a proper chief executive since 2013.

Nevertheless, it remains a well-known organisation with a decent caseload and a hard-working staff. Recent events (discussed below) may mean that its best days lie ahead. But for now, it isn't the force it was. So Worth a Closer Look fits.

What was going so right 10 years ago?

The DIAC was benefiting from a confluence of things. Few people in Dubai had much regard for the local courts, and they used the DIAC to fill their dispute resolution gap. It received everything from trivial landlord–tenant disputes to big international cases.

When the financial crisis hit, things got a bit out of hand. The DIAC received 478 new claims, which was almost too many. The powers that be responded sensibly – heading out into the international transfer market and hiring a big-name manager: Nassib Ziadé, formerly of the ICSID, at the World Bank (now of the BCDR in Bahrain). Under his tutelage, the DIAC went from strength to strength. Then – rather suddenly – in 2013 he moved on (heading to Bahrain). He hasn't ever been replaced, and the DIAC seems to have gone into decline around the same time.

What's happened to suggest that?

Case numbers have waned while complaints have been on the rise (arbitrators saying they haven't been paid, users saying it takes too long to get tribunals in place). For a while there were issues with the rules, which contained gaps and were different in Arabic and English.

Why wasn't Ziadé replaced?

We don't know. It's thought that they came close on two occasions. The more recent candidate would have been an internal promotion (someone who by all accounts, has been largely running the place) but money seems to have been a problem. Allegedly, the DIAC's owner, the Dubai Chamber of Commerce, is being less than helpful on that score.

If this all sounds a bit negative, it should be stressed that people love the counsel and other staff who work there, and think they do a great job. The complaints are all aimed at those higher up.

How busy is it?

Things are looking up a bit on the case front. The DIAC has just had its best year for a while in 2019 – 208 new cases in 2019 (the most recent statistics available). That was 47 higher than the year before, if still a long way below the 300 or so it was averaging for a while.

It also has new rules, as of late 2019, which fix all the various problems.

What does the future hold?

That's the million-dollar question.

You may have heard that in early 2022, the rules of Dubai “cancelled” the DIAC's big local rival – the DIFC-LCIA which in recent years had arguably been “eating the DIAC's lunch”, to take a slightly simplistic view of the world, and which this guide had on its White List. It operated from the Dubai International Financial Centre, an autonomous jurisdiction with its own commercial laws (where the DIAC now also has an office).

In September 2021, Dubai's ruler Sheikh Mohammed bin Rashid Al Maktoum issued a shock decree abolishing the DIFC's Arbitration Institute (DAI) – under whose auspices DIFC-LCIA cases were administered.

The decree transferred all of the DAI's property, staff and cases to DIAC. It did the same with another local centre, the Emirates Maritime Arbitration Centre (EMAC).

So once again the DIAC is the only game in town.

What was the rationale?

There remains an element of mystery to it all.

You can find a series of articles explaining the rationale by Essam Al Tamimi and Sara Koleilat-Aranjo of Al Tamimi & Company, which sets out one rationale (with some force). They argue it will be better for Dubai in the long term.

What was the reaction?

It is fair to say that around Dubai it caused profound shock. Even people one would expect to know a little in advance, didn't. Many feel it's fixed a problem that didn't exist.

The purpose of the decree may have been to try and unite what could have been seen as a fragmented arbitral landscape within the emirate, although one many practitioners thought was working perfectly well.

An eminent London-based QC described the move as a "a colossal own goal" by the emirate. Another source said that by abolishing the DAI without notice the Dubai government had shown a "lack of respect" and "total disregard for the rule of law".

In the short term few see any upside. Dubai already has a problem with guerrilla tactics owing to various grey areas over the years in how different systems interact. This is only likely to give more fodder.

How has the DIAC responded to the decree?

As one might expect, it's been galvanised, up to a point.

In 2022, it issued new arbitration rules and created a new arbitration court, to handle all of the oversight and case-management decisions including setting arbitrator's fees.

Given the importance of the relaunch, the composition of the court may seem to some a little underwhelming. It comprises mostly local practitioners, none particularly associated with international arbitration. The sole international name is Graham Lovett, a British partner with Akin Gump Strauss Hauer & Feld (formerly with Gibson Dunn & Crutcher) in Dubai. The president of the court is Ahmad Bin Hezeem Al Suwaidi, senior partner at BSA Ahmad Bin Hezeem Advocates & Legal Consultants in Dubai and a former director general of the Dubai courts.

It also includes a serving judge from the DIFC court, who is in charge of the arbitration division of the court – Justice Shamlan Al Sawaleh. Few that GAR spoke to could see the point of his inclusion, since he will have to recuse himself so often.

The rules, however, have been well received by international practitioners.

What is happening with the remaining DIFC-LCIA cases?

They were stuck in limbo for a long time, while the DIAC and the LCIA negotiated over who should run them.

Finally, a deal was reached that the LCIA will administer all cases filed under DIFC-LCIA rules before 20 March 2022 from London. That also meant funds that were beyond anyone's ability to reach have now been unlocked and arbitrators, et al paid.

All told 100-plus cases were stalled for at least six months.

Anything else to note?

All this takes place against the background of a much-improved seat. Dubai is seen as a much better place to arbitrate thanks to the UAE's new arbitration law. There's no longer a requirement for all the hearings to take place locally, or for arbitrators to fly in just to sign every page of the award. The DIFC has only added to that.

Kigali International Arbitration Centre (KIAC)

Why's it Worth a Closer Look?

Rwanda is seeking to establish itself as business hub for East Africa. The KIAC is its capital's arbitration institution. Launched in 2012 it got off to a fast start and has kept its case numbers up.

What's its caseload like?

The KIAC has had surprisingly strong case numbers for a "baby" institution, from the start. It managed to get a very impressive 24 cases in its first three years. Since then, it's continued to draw consistent numbers and has handled 192 cases all told. It had 28 new cases between 2020 and 2021, which is broadly average for it over the past five years.

What's driving that?

It's done an excellent job of promoting itself, and arbitration locally. Indeed, the government now writes KIAC into its contracts, so there's a good chance that if you are dealing with a local state entity it may be suggested. On its fifth birthday it hosted an event attended by Rwanda's chief justice.

It's also managed to pull in cases from the near abroad. African entities that are nervous of going to Europe are starting to think of Kigali as somewhere that will do the job.

It's been keeping up its capacity-building efforts. In 2020 it helped to launch a Rwandan chapter of the CI Arb. It's affiliated with all the new African arbitration conferences and associations.

How international is the work?

It's doing well on that score. As of this year it's helped parties from more than 20 countries. It had one matter recently where both sides were Chinese.

On average around a third of cases seem to have a foreign element.

Is it independent of the government?

Yes, it's a private institution. Although the government does send work there, nobody has flagged any concerns about its independence (and the government has often lost there).

Any pitfalls?

There's a bit of an issue with funding. The grants it benefited from in its first few years have expired but it can't replace them with higher case fees because, well, it needs to keep arbitration affordable. So it's starting to charge for other things – events, training, inclusion in its list of arbitrators. None of this should be begrudged.

There's also a question mark about what would happen if the government decided not to comply with a KIAC award. So far it always has. But if needed, would the local courts enforce? Admittedly this isn't within the control of the KIAC per se, but it could one day affect demand.

Mauritius International Arbitration Centre (MIAC)

What is it?

A relaunched international arbitration centre in Mauritius, backed by the government.

Wasn't the government backing another centre for a while

Yes, the LCIA–MIAC. It closed its doors in 2018, shortly after the ruling party unexpectedly changed. It's thought the two developments are linked.

But the desire to make MIAC an arbitral hub survived the change of administration – and now MIAC is carrying the torch. All LCIA–MIAC clauses have been redirected to MIAC.

Who are the names to know?

It has an advisory board led by prominent French practitioner Emmanuel Gaillard that also includes Lucy Reed and Gabrielle Kaufmann-Kohler. The co-registrars are Susan Kimani and Ashwita Ambast. The Permanent Court of Arbitration acts as the appointing authority.

Does MIAC have its own rules?

Yes, they're from 2018 and are essentially UNCITRAL.

Will it be busy?

The LCIA–MIAC, which it replaces, wasn't at the time of its closure. It had heard one case and had two others in the pipeline.

MIAC hasn't released any case numbers since opening in 2019. It did announce that it had held its first hearing at its hearing facilities in Port Louis, in July 2020. So things are going on.

And lots of Asian investments into Africa are routed through it.

What's Mauritius like as a seat?

It has a modern – and innovative – arbitration law. For instance, the law expressly envisages treaty arbitration (not many others do). Unusually for a common law seat, it has “the negative effect of competence-competence” (no court shall touch an arbitration matter until an arbitrator has ruled).

The law also allows local courts to give arbitration priority scheduling (useful for interim measures request) and to make more parts of cases private. Last, all arbitration cases go to a standing panel of six judges – to build consistency and expertise.

Is the PCA also part of the setup?

The PCA is a backstop to most of this system. The law makes it the default appointing authority – a very international move – not local courts. MIAC's rules also continue to refer questions to the secretary general of the PCA. To make sure this works, the PCA now has a permanent representative there.

Have there been any recent developments?

As of May 2021 it has a new registrar: Clémence Assou. She combines the role with her work as counsel at the PCA.

Qatar International Centre for Conciliation and Arbitration (QICCA)

What is it?

QICCA is Qatar's regional arbitration provider.

It's been around since 2006, although compared with some it remains fairly unknown outside the Gulf. For many years it was ably led by the well-respected Egyptian lawyer and academic, Minas Khatchadourian (1958–2021).

Why is it Worth a Closer Look?

Even before Khatchadourian arrived and put his stamp on it, QICCA was a popular choice for Qatari government entities in international contracts. It was the first institution in the Gulf to use the UNCITRAL Rules and gets good reviews for its casework. A source who's had several first-hand experiences with the centre describes its work as "very impressive".

Is it busy?

It's not great at putting out annual statistics, but it appears to get around 40 to 50 new cases per year – and that number is increasing. In 2016, the centre said it was having to expedite the training of arbitrators to keep on top of the caseload.

Is it doing anything to grow its appeal beyond Qatar?

Khatchadourian was a professor and a respected regional arbitrator when he took the job. So his arrival in itself raised its profile. He was a regular at regional events and took steps to make QICCA more palatable to outsiders, such as expanding its roster of arbitrators to include more international figures.

What is Qatar like as a seat?

It's getting better but from a low starting point. Before 2017 it didn't have a stand-alone arbitration law. Before that local courts would often produce arbitration-unfriendly decisions (even if usually reversed on appeal). In one notable example an award was set aside because it failed to say it was "made in the name of Emir Sheikh Tamim bin Hamad Al Thani (the ruler)", a requirement for the decisions of courts, but, strictly speaking, not applicable to arbitration awards.

More recently, arbitrators have been sentenced to prison terms for deciding they had jurisdiction over a case.

The new law of 2017 has cut down the courts' ability to interfere, but some scope remains.

How has the diplomatic row between Qatar and its neighbours affected QICCA?

It's had a big effect. For a long period of time eight states severed diplomatic ties with Qatar, causing huge disruption travelling there. What used to be a 40-minute flight from Dubai to Doha would now require six hours, and various changes in Oman or Kuwait if it could even be done. It was more likely to require 48 hours because this wasn't a trip anyone ever thought would be done so the schedules didn't tend to match.

QICCA has done its best to move cases to more convenient places (in one instance, Brussels!). The upside, if there is one, is it may generate some work.

Is it non-profit?

It's non-profit and part of the Qatar Chamber of Commerce and Industry.

Can I appoint whoever I want as arbitrator?

In theory parties have a free hand. In practice, you'll need an arbitrator who knows the relevant laws of the Gulf Cooperation Council simply because of the contracts that tend to be at stake. For those needing help, the centre does maintain a list – 150 individuals – but it is "indicative only".

Will I be able to appoint an international arbitrator, if I want?

It pays reasonably. So for a big case, you could well interest an international name who sits elsewhere in the Gulf. Smaller matters might be problematic.

How big is the secretariat?

Three case managers and a full-time secretary, who can work in English and Arabic.

Aside from problems with the local courts, are there any downsides?

Qatar has a rule that arbitrators must be physically present for all hearings and similar acts of authority. This includes signing every page of the award in the kingdom.

There are also some quirks in the rules. The default setting is that arbitrators should decide ex aequo et bono unless parties agree otherwise; and all correspondence has to be in writing until after the tribunal is constituted (and then email is only allowed if all parties agree), which is tiresome. It's also harder than it ought to be to get an extension on your time to file a response.

QICCA's aware of these complaints and has said it will draft new rules. It's been saying that though for many years.

Earlier this year it promised they would be out by April 2022. When they do arrive, they're expected to be based on the UNCITRAL rules.

It's very sad that when they do finally emerge, Minas Khatchadourian won't be around to celebrate. Alas he died in mid-2021, during covid. A replacement hasn't yet been announced.