

LCIA EMBRACES TECHNOLOGY IN UPDATE TO ARBITRATION RULES

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On 11 August 2020, the London Court of International Arbitration (LCIA) announced its revised set of Arbitration Rules (the “Rules”), which will come into force on 1 October 2020. This is the first update to the Rules since 2014 and, although not a radical rewrite, the new Rules nevertheless make important changes to streamline proceedings and ensure that LCIA arbitration continues to meet the needs of users both now and in the future.

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The release of the revised Rules also makes the LCIA the first major international arbitration institution to enact changes following the onset of the Covid-19 pandemic. The new Rules were initially expected to be published in 2019 and so the pandemic cannot be said to have been the main driver behind the changes. Nevertheless, updates concerning the increased use of virtual hearings and the primacy of electronic communication will no doubt be welcomed by parties and arbitration practitioners alike.

In line with the LCIA's push for greater procedural efficiency, noteworthy amendments to the Rules also include the creation of additional tools aimed at expediting proceedings, such as the possibility of a claim being dismissed by way of “early determination”, as well as the widening of circumstances in which arbitrations may be consolidated or heard concurrently.

USE OF TECHNOLOGY AND PRIMACY OF ELECTRONIC COMMUNICATION

The new Rules emphasise the primacy of electronic communication, encouraging parties, the tribunal and Registrar to correspond by electronic means. Indeed, the new Rules now stipulate that the Request for Arbitration and the Response must be submitted in electronic form unless prior written approval has been obtained from the Registrar for submission by an alternative method.

Meanwhile, Article 14 grants the tribunal express powers to employ technology to enhance the efficiency and expeditious conduct of the arbitration. Article 19.2 in turn provides the tribunal with extensive powers in relation to the conduct of hearings, and specifically provides that hearings may take place virtually by conference call, video conference, or using other communications technology, with participants in one or more geographical places. This flexible approach is part of the overarching push for efficiency and flexibility in the new Rules and, as well as ensuring the smooth running of arbitrations whilst lockdown measures are still in place, should prove permanently useful.

Another notable amendment is found in Article 26.2, which provides that awards may be signed electronically, subject to any contrary agreement by the parties or direction by the tribunal or LCIA Court. However, notwithstanding this provision, which will be of particular assistance where tribunals are comprised of arbitrators located in disparate locations around the world, in order to avoid challenges to enforcement parties should be mindful of requirements under the New York Convention and in jurisdictions where the award may be ultimately enforced.

EXPEDITION OF PROCEEDINGS

A key feature of the new Rules is the explicit power conferred on the tribunal by Article 22.1(viii) to issue an order or award for early determination of a claim or defence, either following an application by a party or on its own initiative. This provision, which brings the LCIA into line with the rules of the Singapore International Arbitration Centre and the Hong Kong International Arbitration Centre, enables the tribunal to determine that a case is manifestly outside its jurisdiction, or is inadmissible or manifestly without merit. This represents a marked improvement over the previous set of rules. Although such an order had arguably been open to tribunals under the 2014 Rules, it is hoped that this new express power to order early determination will give tribunals greater confidence to dismiss patently unmeritorious defences or claims outright, reducing costs and increasing the efficiency of arbitral proceedings.

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In further changes aimed at improving the efficiency and pace of LCIA proceedings, Article 14.6 now provides the tribunal with a wide discretion to make any procedural order targeted at expediting the arbitral procedure, including limiting the length or content of, or dispensing with, written statements; limiting the written and oral testimony of witnesses; dispensing with a hearing; and abridging time periods. In addition, the Rules now require a tribunal to endeavour to make its final award within three months of the last submission by the parties.

MULTI-PARTY ARBITRATIONS

The new Rules now also broaden the powers of the LCIA Court and tribunals to order consolidation or the concurrent conduct of arbitrations. As well as retaining the power under the 2014 Rules to consolidate where the parties agree, or in circumstances where multiple arbitrations have been commenced under the same or compatible arbitration agreements between the same disputing parties, under Article 22A the new Rules provide for consolidation or the concurrent hearing of arbitral proceedings where multiple arbitrations arising out the same or compatible agreements also arise out of the same transaction or series of related transactions.

In addition, under the new rules it will now be possible for a claimant to issue a “composite” Request for Arbitration in circumstances where it wishes to commence more than one arbitration under the LCIA Rules (be it against one or more respondents or under one or more arbitration agreements). However, each arbitration commenced pursuant to any such composite Request will proceed independently unless and until an order is made for consolidation.

OTHER NOTEWORTHY AMENDMENTS

Other sensible amendments to the Rules include Article 14A, which concerns the role of tribunal secretaries. The Rules now clearly state that there can be no delegation of the tribunal’s decision-making functions to a tribunal secretary and also require a tribunal secretary candidate to sign a written declaration confirming that they are not aware of any circumstances likely to give rise to any justifiable doubts as regards their impartiality or independence.

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New provisions concerning data security and cybersecurity have been added under Article 30A, requiring the tribunal to consider, in consultation with the parties, whether it is appropriate to adopt specific information security measures or to address the processing of personal data produced or exchanged in the arbitration. Article 24A contains express reference to the LCIA’s compliance obligations concerning bribery, corruption, terrorist financing, fraud, tax evasion, money laundering and/or economic or trade sanctions.

In addition, the obligation to maintain confidentiality is extended under the new Rules, with a requirement that the parties seek undertakings to maintain confidentiality from all those involved in the arbitration, including witnesses, representatives and experts or service providers.

Finally, the revised Schedule of Costs has increased the maximum hourly rates chargeable by arbitrators, mediators and the LCIA Secretariat to £500, enabling the

LCIA to attract high profile arbitrators and to better reflect the demands of users in complex and high value disputes.

MEDIATION

The LCIA has published revisions to its Mediation Rules. Many of the changes mirror the changes to the Arbitration Rules designed to streamline procedure in a digital world, including provisions that electronic communication shall be the default means of communication between the parties and mediator, that the mediation may take place virtually and that settlement agreements may be signed electronically.

COMMENT

Albeit ‘*light touch*’, as the LCIA has described them, the updates are welcome in their efforts to bring greater procedural and cost efficiency. They maintain the LCIA at the forefront of industry best practice and consolidate London’s role as the centre for international arbitration.

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