

NEW LCIA RULES IN EFFECT FROM 1 OCTOBER 2014

Introduction

Following formal adoption by the LCIA Court and the LCIA Board of Directors, the new LCIA Arbitration Rules will come into effect on 1 October 2014.

Notable changes in the new Rules include provisions on consolidation and on conduct of legal representatives and parties, as well as expanded provisions on emergency relief.

The new Rules are available on the LCIA website at www.lcia.org. Schedules of Costs, Notes for Arbitrators, translations of the Rules, and other related resources will be available from the LCIA website in due course.

Summary of key changes

The new Rules are in substantially similar form to the draft released by the LCIA in February 2014.

The revised draft rules include changes to a number of areas, including:

- Law applicable to the arbitration (Article 16.4 provides that the law applicable to the Arbitration Agreement and the arbitration shall be the law applicable at the seat of the arbitration, unless and to the extent that the parties have agreed otherwise);
- Formation of tribunal (including the ability of the LCIA Court to, in exceptional circumstances, appoint a tribunal of more than three arbitrators (Article 5.8));
- Duties of arbitrators (new Rules include a new far-reaching requirement that potential arbitrators must confirm that they are “ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration”(Article 5.4));
- Conduct of arbitrations (various articles, including those on written statements, have been amended to ensure that the arbitrations proceed speedily, along with costs consequences for parties who negatively impact on this);
- Multi-party arbitrations and consolidation (including the ability of both the arbitral tribunal and the LCIA Court to consolidate two or more arbitrations in certain circumstances); and
- Costs (including the prospect of costs consequences for parties who cause undue delay or unnecessary expense – Article 28).

Emergency arbitrator provisions

Article 9B of the new Rules provides for a new “emergency arbitrator” procedure, which would provide the arbitrating parties with the option to seek emergency relief from an arbitrator before the arbitral tribunal has been constituted. This would represent an additional option for parties, who can also seek such relief from the English courts, or who can apply for

the expedited formation of the arbitral tribunal under Article 9A. Similar procedures exist in other arbitration rules, including the ICC Rules (2012) and the Singapore International Arbitration Centre Rules. Under the new Rules, parties may opt out of the Article 9B process in writing at any time.

Under the emergency arbitration procedure (available only in exceptional urgent circumstances), a party can apply for the appointment of a temporary sole arbitrator pending the formation of the tribunal. The LCIA Court shall, if it agrees, appoint the emergency arbitrator within three days, and the emergency arbitrator shall then decide the claim for emergency relief as soon as possible and no later than 14 days after appointment. The emergency arbitrator is not required to hold any hearing with the parties, and can decide the claim on the available documentation. The emergency arbitrator may also make an order adjourning the consideration of all or any part of the claim for emergency relief to the proceedings conducted by the Arbitral Tribunal (when formed).

Any order or award of the Emergency Arbitrator (apart from any order adjourning to the Arbitral Tribunal, when formed, any part of the claim for emergency relief) may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal upon application by any party or upon its own initiative.

Guidelines for legal counsel

A key change is that each party shall ensure that all its legal representatives have agreed to comply with the general guidelines contained in the Annex to the LCIA Rules, as a condition of such representation.

The Guidelines are intended to promote generally the good and equal conduct of the parties' legal representatives, and as with the IBA Guidelines, do not seek to undermine any legal representative's primary duty of loyalty to his client, or displace any mandatory laws, rules of law, professional rules or codes of conduct.

In the event of any potential breaches, Article 18.6 provides that the arbitral tribunal has the power to decide whether a legal representative has violated the Guidelines and, if so, how to exercise its discretion to impose any or all of the sanctions listed in Article 18.6, which include:

- a written reprimand;
- a written caution as to future conduct in the arbitration; and
- any other measure necessary to maintain the general duties of the Arbitral Tribunal.

The specific ability to make a reference to the legal representative's regulatory and or professional body, which was included in the February 2014 draft, has been removed.

12th August 2014