Arbitration in the LCIA

New LCIA Rules

Introduction

The new LCIA Rules come into effect on 1 October 2014 and will replace the existing rules which have been in effect since 1 January 1998. The new Rules are available on the LCIA website at www.lcia.org. The new rules follow the release of new arbitration rules by various institutional bodies including the ICC (2012), SIAC (2013) and HKIAC (2013) and the aim of the changes is to bring the LCIA Rules up to date with current practice and procedure.

The new rules will apply where an agreement (including agreements that were entered into prior to 1 October 2014) provides for arbitration under the rules of the LCIA, the London Court of International Arbitration, the London Court of Arbitration or the London Court. The exception to this is Article 9B, the Emergency Arbitrator provisions, which will not apply if the parties concluded their arbitration agreement before 1 October 2014, unless the parties agree in writing to “opt in” to Article 9B.

It is important to review the new rules carefully as most of the articles have been redrafted. This update highlights some of the key changes introduced by the new rules.

Electronic communications

The new rules expressly provide for the submission of documents in electronic form (for example Articles 1.2, 1.3, 2.2 and 2.3). Delivery by electronic means may only be effected to an address agreed or designated by the receiving party for that purpose or ordered by the tribunal (Article 4.3). A communication sent by electronic means shall be treated as having been received on the day it is transmitted, the time of transmission to be determined by reference to the recipient’s time zone (Article 4.4).

Time limits

In general, the time limits set out in the rules have been shortened by a couple of days to improve procedural progress. For example, the time limit for the service of a response to a request for arbitration has been shortened from 30 days to 28 days (Article 2.1), the time for challenging the nomination or appointment of an arbitrator has been shortened from 15 to 14 days (Article 10.3), and the time for delivery of written statements of case has been shortened from 30 days to 28 days (Article 15).

The new rules prevent the parties from delaying the formation of the tribunal (Article 5.1) and, once constituted, the tribunal and the parties are required to make contact to discuss the conduct of the proceedings within 21 days of the formation of the tribunal (Article 14.1).

The new rules also introduce a declaration from potential arbitrators being considered for selection 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). The rules also provide that the tribunal should render an award “as soon as reasonably possible following the last submission from the parties” (Article 15.10).
Emergency Arbitrator

The new rules introduce new provisions for the appointment of an Emergency Arbitrator. These provisions supplement the provisions for the expedited formation of the arbitral tribunal (Articles 9.1 to 9.3) and for the expedited appointment of a replacement arbitrator (Articles 9.13 to 9.15).

Article 9B provides that, in the case of emergency at any time prior to the formation or expedited formation of the Arbitral Tribunal, any party may apply to the LCIA Court for the immediate appointment of a temporary sole arbitrator to conduct emergency proceedings pending the formation or expedited formation of the Arbitral Tribunal (Article 9.4).

The application must be made in writing with the Request for Arbitration or the Response to the Request and must be accompanied by written confirmation that the applicant has paid or is paying the Special Fee in the amount prescribed in the Schedule of Costs (Article 9.5).

The appointment (where appropriate) must be made within 3 days of the receipt of the application or as soon as possible thereafter (Article 9.6). The Emergency Arbitrator must decide the claim for emergency relief as soon as possible but no later than 14 days following his/her appointment (Article 9.8). This deadline may only be extended by the LCIA Court in exceptional circumstances or by the written agreement of all parties.

The Emergency Arbitrator may conduct the proceedings in any manner he/she deems appropriate in the circumstances, is not required to hold a hearing, and may decide the claim for emergency relief on the available documentation (Article 9.7).

An order must be made in writing and with reasons (Article 9.9). Any order or award made by the Emergency Arbitrator may be confirmed, varied, discharged or revoked in whole or in part by an order or award made by the Arbitral Tribunal (Article 9.11).

Article 9B will not apply to arbitration agreements concluded before 1 October 2014 unless the parties agree in writing to “opt in”. Parties may also agree in writing at any time to “opt out” of Article 9B (Article 9.14).

Legal representatives

Changes or additions to legal representatives

Following the formation of the Arbitral Tribunal, the parties must notify all other parties, the Arbitral Tribunal and the Registrar of any intended change or addition to the parties’ legal representatives and such changes are subject to the approval of the Arbitral Tribunal (Article 18.3).

The Arbitral Tribunal may withhold approval if the change or addition could compromise the composition of the tribunal or the finality of any award (Article 18.4). The aim of this provision is to give the tribunal more control and to avoid conflicts of interest caused by changes or additions to the parties’ legal representatives.

Conduct of legal representatives

Unilateral contact with the Arbitral Tribunal is prohibited unless disclosed in writing prior to or shortly after the contact to all other parties and all members of the Arbitral Tribunal (Article 13.4).

The parties’ legal representatives must comply with the general guidelines set out in the Annex to the new rules (Article 18.5) as a condition of appearing before the Arbitral Tribunal. The guidelines include a general prohibition on activities intended to unfairly obstruct the arbitration or to jeopardise the finality of any award or the making of any false statement or presenting of false evidence.

In the event that the Arbitral Tribunal decides that a legal representative has violated the general guidelines, the Arbitral Tribunal may order: (i) a written reprimand; (ii) a written caution as to future conduct in the arbitration; and (iii) any other measure necessary to fulfil within the arbitration the general duties required of the Arbitral Tribunal (Article 18.6).

Consolidation of multi-party arbitration

The new rules give the Arbitral Tribunal the express power to order, with the approval of the LCIA Court:

• the consolidation of multiple arbitrations into a single arbitration where all the parties to the arbitrations to be consolidated agree to this in writing (Article 22.1(ix)).
• the consolidation of multiple arbitrations commenced under the same arbitration agreement or any compatible arbitration agreement(s) between the same parties, provided no arbitral tribunal has yet been formed or, if already formed, the tribunals are composed of the same arbitrators (Article 22.1(x)).

In circumstances where no arbitral tribunal has yet been formed, the LCIA Court also has the power to determine that multiple arbitrations, commenced under the same arbitration agreement between the same disputing parties, be consolidated into a single arbitration (Article 22.6).
**General provisions**

**Request for Arbitration**

The Request for Arbitration must include a statement of the estimated monetary amount or value of the dispute (Article 1.1 (iii)) and the claimant must provide documentary proof of actual delivery of the Request to all other parties (Article 1.1 (vii)). Similar provisions apply in relation to the Response (Article 2.1 (iii) and (vi)).

**Nationality of Arbitrators**

Under the 1998 Rules, legal persons incorporated in British Overseas Territories, including Bermuda, the BVI and Cayman, were treated as having British nationality. This precluded the appointment of a British arbitrator as a sole or presiding arbitrator in an arbitration involving a party from those territories without the written agreement of the parties.

The new rules provide that a person who is a citizen of a State’s overseas territory shall be treated as a national of that territory not that State; and a legal person incorporated in a State’s overseas territory shall be treated as such and not (by that fact alone) as a legal person incorporated in that State (Article 6.3).

**Law applicable to the Arbitration Agreement**

The new rules provide that the law applicable to the Arbitration Agreement and the law applicable to the arbitration shall be the law applicable at the seat of the arbitration unless the parties have agreed otherwise in writing (Article 16.4).

**Form of hearings**

The new rules provide that a hearing may take place by video, or telephone conference, or in person, or a combination of all three (Article 19.2).

**Costs**

The LCIA has not yet published a Schedule of Costs to accompany the new rules. This will be available in due course on the LCIA website. The Schedule of Costs will include the Special Fee for the appointment of an Emergency Arbitrator (Article 9.5).

The Arbitral Tribunal now has the express power to take into account the parties’ conduct in the arbitration, including any co-operation in facilitating the proceedings and any non-co-operation resulting in undue and unnecessary expense (Article 28.4).
Getting in touch
If you would like to talk through your project or discuss solutions to your legal needs, please get in touch.

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