

## Global - The new LCIA Arbitration Rules: a quick guide

The LCIA has released its long anticipated revised arbitration rules (the “**new LCIA Rules**”). These make a number of changes to the LCIA’s previous rules, which have been in force since 1998. Whilst retaining the distinguishing features of LCIA arbitration, the new LCIA Rules make a number of amendments which reflect recent developments in international arbitration practice.

### When will the new rules apply?

The new LCIA Rules will apply to all LCIA arbitrations commenced on or after 1 October 2014, unless the parties have agreed otherwise.

### Key amendments

Some of the key changes made by the new LCIA Rules are highlighted below.

### Conduct of parties’ counsel

A much discussed topic in international arbitration has been the desirability of establishing common professional conduct standards amongst legal counsel representing parties. Advocates of such an approach point to the different legal cultures (and regulatory backgrounds) that counsel may come from and argue that common standards would enhance the integrity of the process.

One example of a concrete set of rules which attempts to address this issue is the IBA Guidelines on Party Representation in International Arbitration. The new LCIA Rules now provide a further example as provision is made in them to address such issues. Specifically, under Article 18.5, parties to the arbitration are obliged to ensure that their representatives agree to comply with a set of General Guidelines which appear as an Annex to the new LCIA Rules.

The General Guidelines contain a number of directives intended to promote good conduct; for example legal representatives should not unfairly obstruct the arbitration or make false statements to the tribunal, although they are

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expressly stated to not derogate from the arbitration agreement or other applicable laws or conduct rules.

Article 18.6 provides the arbitral tribunal with the power to impose sanctions on legal representatives for violations of the Guidelines. These include a written reprimand or caution or any other measure necessary to fulfil the general duties of the tribunal to ensure a fair disposition of the proceedings.

## Changes to legal representation

Articles 18.3 and 18.4 of the new LCIA Rules provide the tribunal with greater control over changes to the parties' legal representation during the course of proceedings. These are intended to deal with a particular problem; a well-known example of which arose in the ICSID arbitration of *Hrvatska Elektroprivreda DD v The Republic of Slovenia*. In that case the question arose of what should happen if a party changes its counsel during the course of proceedings but the new representative has links to the tribunal which raise the potential for doubts as to its impartiality or independence.

In order to provide a mechanism to deal with such matters in LCIA arbitrations, Articles 18.3 and 18.4 provide that once the tribunal has been formed, any change or addition to a party's legal representatives must be notified to the other parties, the tribunal and the LCIA Registrar. The change is then subject to the tribunal's approval and the tribunal may withhold consent on the grounds that the change could compromise the composition of the tribunal or the finality of an award.

## Emergency arbitrator provisions

A developing trend emerging from recent revisions of the rules of a number of major arbitration institutions (e.g. the 2012 ICC Rules and the 2013 HKIAC Rules) has been the making of provision for urgent interim or conservatory relief to be granted by a temporary, "emergency", arbitrator in the period before the tribunal has been able to be formed. The rationale behind this is to provide an alternative mechanism for parties to obtain such relief in the event that national courts are unable to assist in this respect or are unsuitable. The new LCIA Rules follow suit with Article 9B providing the mechanism.

In outline, in cases of "emergency", and before the formation (or expedited formation) of the tribunal, a party may apply for the appointment by the LCIA Court of a sole, temporary, arbitrator to decide upon a claim for emergency relief. In relation to arbitration agreements entered into on or after 1 October 2014, these provisions will apply by default (unless the parties agree in writing to the contrary). In contrast, in relation to arbitration agreements concluded before 1 October 2014 they will not apply. (There is provision for parties to agree to 'opt-in' for pre-1 October 2014 agreements but, given that to do so will inevitably raise drafting issues and is of relevance only to arbitration agreements concluded within a relatively short period – to which court interim relief will still, in principle, be available – adopting such a course is likely to raise more issues than it solves).

## Consolidation of arbitration proceedings

Following another recent trend in the updating of institutional rules, the new LCIA Rules make provision for the consolidation of related arbitrations. Articles 22.1 (ix) and (x) confer such a power on the tribunal in two cases, both being subject to the approval of the LCIA Court. Under the first, the tribunal may order the consolidation of an arbitration with one or more other arbitrations into a single arbitration subject to the new LCIA Rules where all the parties to be consolidated agree in writing. Under the second, the tribunal may order the consolidation of an arbitration with one or more other arbitrations subject to the new LCIA Rules commenced under the same or a compatible arbitration agreement between the same disputing parties, provided that no arbitral tribunal has yet been formed for such other arbitrations or, if they have been, they are composed of the same arbitrators. A separate power for exercise by the LCIA Court exists under Article 22.6 which is similar in scope to, albeit slightly narrower than, Article 22.1(x).

## Law applicable to the arbitration agreement

Article 16.4 contains a provision which states that the law applicable to the arbitration agreement shall be the law applicable at the seat of arbitration. This appears to confirm that, uncontroversially, the parties agree to the applicable law of the arbitration clause being that which would be applied at the seat of arbitration once the seat's rules as to the applicable law of an arbitration clause have been applied.

A competing interpretation may, however, be that this article is an express choice in favour of the law of the seat of the arbitration. Although this may not be the better view (the article does not refer to the law *of* the seat, rather the law *applicable at* the seat) there remains a potential ambiguity as to whether such a choice has been expressed. Resolution of this ambiguity therefore provides another reason why, in cases where the governing law of the contract and the seat do not match (i.e. where there is room for debate as to the governing law of the arbitration clause), parties may see fit to make express provision as to the governing law of their arbitration clause in the clause itself.

## General streamlining & modernisation

Throughout the new LCIA Rules, a number of alterations have been made to speed up procedures and to give them a more up to date feel. For example, a number of time limits have been shortened from 30 days to 28 days (see e.g. Articles 2.1, 15 and 27), and the use of electronic means to deliver a request or response to the LCIA is provided for (see Articles 1.2, 1.3, 2.2 and 2.3). Arbitrators are also now obliged to confirm to the LCIA Court that they have sufficient time available to conduct the arbitration expeditiously (Article 5.4) and being unable to do so can lead the LCIA Court to determine that an

arbitrator is unfit (Article 10.2). In a three-member tribunal, the term “chairman” becomes “presiding arbitrator” (Article 6.1).

A copy of the new LCIA Rules can be found [here](#).

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This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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