

CLIENT ALERT

The New 2020 LCIA Rules

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On 11 August 2020 the London Court of International Arbitration published its updated Arbitration Rules, which will replace the existing rules (the 2014 Rules) for any arbitrations commenced on or after 1 October 2020.

The LCIA has described the 2020 Rules as an “update” rather than a wholesale rewrite. Broadly speaking, the 2020 Rules serve to modernise and expand the 2014 Rules.

The 2020 Rules point to the overall strategic thinking of the LCIA and serve as a steer for Tribunals appointed under its auspices to expeditiously manage the conduct of arbitrations. In addition, they provide for new (or newly emphasised) powers, including the ability to consolidate arbitrations and the early determination of issues.

Ethos and approach

The 2020 Rules are marked by an embracing of modern technology and of global trends and developments. For instance, whilst hardly a new practice, the 2020 Rules expressly provide that written communications, including the arbitral award itself, shall be made in electronic form unless otherwise agreed (Article 4). They also provide that hearings can be held by videoconference (Article 19.2) – something that has been commonplace in the COVID era.

Further, and unique among the major arbitral institutions, language has been introduced to stipulate the LCIA’s compliance with applicable data protection legislation (Article 30A) and compel dealings between the parties and the LCIA to comply with applicable laws in relation to bribery, corruption, money-laundering, tax evasion, fraud, terrorist financing and sanctions (Article 24A).

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Tribunal powers and “Early Determination”

The language outlining a Tribunal’s discretionary powers has been updated in the 2020 Rules. These changes go further than simple drafting amendments; by articulating their abilities, the 2020 Rules should embolden Tribunals to deploy powers previously underused.

Departing from the 2014 Rules, the 2020 Rules explain what Tribunal discretion can mean in procedural terms: among other things, the Tribunal is expressly permitted to limit the length of pleadings, shorten timescales, dispense with hearings, and limit written or oral testimony where it is appropriate to do so (Article 14.6).

Significantly, the 2020 Rules allow for the early determination of any claim if it is “manifestly outside of the jurisdiction of the Arbitral Tribunal, or is inadmissible or manifestly without merit” and permits Tribunals to issue an order or award to that effect (Article 22.1).

The provision for early determination brings the LCIA in line with other major arbitral institutions such as the ICC and the SIAC, both of which have promoted summary procedures for unmeritorious claims in their respective institutional rules.

Consolidation of proceedings and concurrent proceedings

The circumstances in which the Tribunal may consolidate multiple LCIA arbitrations into a single set of proceedings have been expanded under the 2020 Rules.

Much of the language remains the same as in the 2014 Rules: the arbitrations must have been commenced under the same or a compatible arbitration agreement and be between the same disputing parties. However, the 2020 Rules now also provide that the Tribunal has a broader power to consolidate arbitrations, and can do so for arbitrations that were commenced under the same or compatible arbitration agreements and that arise “out of the same transaction or series of related transactions” (Article 22.7).

In addition to the Tribunal, the LCIA Court is able to consolidate proceedings (Article 22.8). Whether it is the Tribunal or the LCIA Court exercising power to consolidate, these powers can be utilised only when the Tribunal for the arbitration merger target has not yet been formed, or when the Tribunal members across both sets of arbitrations are the same.

The Tribunal also has the power to order that arbitrations fulfilling the above criteria be conducted concurrently where the arbitrations involve the same Tribunal members.

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Further changes

Further changes include a fortification of the confidentiality obligations and the provision of a fixed deadline for the release of arbitral awards.

Where the 2014 Rules stipulated that the award should be released “as soon as reasonably possible”, Tribunals are now given a three-month deadline from the last submission by the parties to issue the final award (Article 15.10).

Parties to arbitrations, who were under a duty to keep confidential all awards and materials produced in the arbitration in the 2014 Rules, are now required to seek the same undertaking from others involved in the arbitration, including witnesses of fact, experts and service providers (Article 30).

The 2020 Rules also stipulate that Tribunals cannot delegate their decision-making powers to a Tribunal secretary (Article 14.8).

Summary

The 2020 Rules have been updated with a light touch to reflect modern arbitral practices. Whilst there are few truly new changes, by deciding to expressly articulate certain existing Tribunal powers, the LCIA has given them emphasis and explicitly encouraged their use.

The amendments reflect sound arbitration practice. Furthermore, the provision for early determination may make LCIA arbitrations more accessible to users that would typically prefer court proceedings due to the availability of strike out and summary judgment. In addition, the provisions on consolidating proceedings are now more broadly drafted and could help to reduce the often unnecessary complexity caused by multiple proceedings.

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