

# Kluwer Arbitration Blog

## Key Changes in the LCIA's new Arbitration Rules

Khaled Moyeed and Clare Montgomery (Clyde & Co. LLP) · Friday, August 29th, 2014 · Clyde & Co.

The London Court of International Arbitration (LCIA) has recently adopted a new set of arbitration rules, which will come into effect on 1 October 2014. The new rules aim to ensure an effective, efficient and fair process. The LCIA reports that its new Director General, Dr Jacomijn van Haersolte-van Hof, thanked those who contributed to 'the meticulous and thoughtful drafting process, which has led to a balanced set of Rules.' This piece will discuss some of the main changes introduced by the new rules.

### Emergency Arbitrator

The new rules provide that in case of emergency, a party can apply for the appointment of a temporary sole arbitrator in advance of the formation of the tribunal. Specific grounds for requiring the emergency appointment must be set out, and, if the party's application is successful, the LCIA Court will appoint the emergency arbitrator within three days from receipt of the application.

The emergency arbitrator will then decide the claim as soon as possible, but no later than 14 days after his appointment. He is not required to hold a hearing and can decide the claim on the basis of the documents available if he deems this appropriate. The new rules have reinforced the procedures for the expedited formation of the tribunal and a replacement arbitrator.

Emergency arbitrator provisions bring the LCIA into line with many other arbitral institutions, which have introduced similar provisions in recent years. LCIA users no longer need to resort to local courts for emergency relief before the formation of the tribunal.

### Counsel and Party Conduct

An explicit provision has been added to the new rules that from the tribunal's formation onwards, no party shall initiate contact relating to the arbitration or the parties' dispute with any member of the tribunal or the LCIA Court (excluding the Registrar), unless this has been disclosed in writing to all other parties, all members of the tribunal and, where appropriate, the Registrar.

Under the new rules, where a party wishes to change or add to its counsel after formation of the tribunal, the approval of the tribunal is required. This approval may be withheld where the change or addition could compromise the composition of the tribunal, or the finality of any award. Factors such as the stage the arbitration has reached, and the likely wasted costs or loss of time resulting from the change will be considered.

General guidelines for the parties' legal representatives have been added to the new rules as an annex. Counsel must comply with the guidelines as a condition of appearing by name before the tribunal. If a legal representative is found to have breached the guidelines, the tribunal can issue a written reprimand; a written caution as to future conduct in the arbitration; or take any other measure necessary to maintain the general duties of the tribunal.

Given the often international scope of LCIA arbitrations, these guidelines will serve as a common denominator in circumstances where the parties originate from countries that do not have similar obligations in an applicable professional code. The International Bar Association's Guidelines on Party Representation were published in May 2013, but the LCIA is the first arbitral institution to propose a set of guidelines for party representatives. A [comparison of the both sets of guidelines](#) shows how this aspect of international arbitration is developing.

### **Powers of the Tribunal**

Whereas previously, parties were permitted to agree on the conduct of their arbitral proceedings, wider powers have now been granted to the tribunal, and the parties can now only agree on 'joint proposals' for consideration by the tribunal.

In other areas, the tribunal's power has been reinforced. The new rules provide that the parties can agree in writing the seat of the arbitration at any point prior to the formation of the tribunal, however after this point, the prior written consent of the tribunal is needed.

### **Costs**

The tribunal has the power to decide that all or part of the legal or other expenses incurred by a party be paid by another party. The parties can no longer agree otherwise, unless they agree before the dispute arises that one or more parties shall pay the whole or any part of the costs, in which case the agreement must be confirmed in writing by the parties after the commencement date (i.e. the date when the tribunal received the Request for Arbitration).

The tribunal will base its costs decision on the parties' relative success and failure in the arbitration – the parties can no longer agree otherwise – and may also take into account the parties' conduct. The latter provision was implicit in the old rules; however, by making the conduct consideration explicit, the LCIA may improve the efficient conduct of its arbitrations, as parties will seek to avoid being penalised on costs.

### **Procedural Rules**

Several procedural changes have been made to modernise the rules, for example, allowing the Request and Response to be submitted to the Registrar in electronic form, and to ensure that arbitrations are dealt with in a more time and cost efficient manner. The LCIA Court can now proceed with the arbitration notwithstanding that the Request is incomplete or the Response is missing, and the parties and the tribunal are encouraged to make contact as soon as practicable but no later than 21 days from receipt of the Registrar's written notification of the formation of the tribunal.

Many time periods have been shortened, for instance from 30 to 28 days, however the parties retain the flexibility of agreeing in writing alternative deadlines for the written stage of the arbitration and its procedural timetable.

Further improving efficiency, arbitrations can be consolidated into a single arbitration under the new rules, and inactive arbitrations can be discontinued if they have been abandoned by the parties or where all claims have been withdrawn, provided that no party objects within a given period of time.

## Conclusion

The new rules seek to improve efficiency in the conduct of the arbitration, to be achieved both through new provisions such as the appointment of an emergency arbitrator, and through other changes to the rules such as the tightening of time limits or allowing documents to be served electronically. While a number of arbitral institutions have revised their rules in recent years, the LCIA is the first to include mandatory provisions on party representation and conduct – perhaps setting a trend, which others will follow in years to come.

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