

The LCIA Publishes its 2020 Rules: A Light-Touch Update to Meet Modern Needs

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On 11 August 2020 the LCIA unveiled the long-awaited update to its Arbitration Rules (the **2020 Rules**). The 2020 Rules will become effective on 1 October 2020 and will apply to arbitrations commenced from that date onwards. They will supersede the 2014 edition of the LCIA Arbitration Rules (the **2014 Rules**).

The 2020 Rules introduce a number of changes reflecting the best practice of LCIA tribunals to date, as well as bringing the LCIA Arbitration Rules in line with modern international arbitration trends. None of the changes made are dramatic: according to the LCIA's current President, Paula Hodges QC, the drafters of the new rules adopted a "*light touch*" approach.

The main changes to the 2020 Rules are summarised below.

Early determination

One of the most important updates is the introduction of express provisions regarding early determination. Under previous editions of the LCIA Rules it was generally accepted that tribunals had an implicit power of early dismissal in

relation to claims outside their jurisdiction or manifestly unmeritorious (under Articles 14.4(ii) and 14.5 of the 2014 LCIA Rules, which respectively provided the tribunal's "*duty to adopt procedures suitable to the circumstances of the arbitration*" and its "*widest discretion to discharge these general duties*"). The 2020 Rules make this power express in Article 22.1(viii).

This brings the LCIA in line with the general trend towards allowing the early determination of claims. For example, the SIAC Rules have expressly provided for early dismissal of claims and defences since 2016 (SIAC Rules, Rule 29). However, unlike the SIAC Rules (which set out the process for making an application for early dismissal and a deadline for its consideration by the tribunal), the new provisions in the 2020 LCIA Rules are less detailed and give more latitude to tribunals in terms of establishing the process for considering such applications.

The express spelling out of the tribunal's power of early dismissal in the 2020 Rules is a welcome development, which should serve to enhance the efficiency of international arbitration, save costs and protect parties from manifestly unmeritorious claims that would have never seen the light of day in many countries' courts. While tribunals in principle had this power under the previous version of the LCIA Rules, they were all too often reluctant to exercise it. It is hoped that this express new provision will embolden tribunals to deploy this previously underutilised power more frequently.

Multiple proceedings and claims

Another significant development is the broadening of the powers of the LCIA Court and of individual tribunals to order the consolidation and concurrent conduct of arbitrations, in the new Article 22A of the 2020 Rules.

Under the 2014 LCIA Rules, tribunals had the power to order, with the approval of the LCIA Court, the consolidation of several arbitrations into a single arbitration (1) where all the parties to the arbitrations to be consolidated so agree in writing; or (2) where arbitrations were commenced under the same arbitration agreement or any compatible arbitration agreement(s) between the same disputing parties, provided that no tribunal had yet been formed for such other arbitration(s) or, if already formed, that such tribunal(s) was composed of the same arbitrators. The LCIA Court had similar powers to consolidate arbitrations where no tribunal had yet

been appointed.

Under the 2020 Rules, in addition to the situations envisaged under the 2014 Rules, tribunals (or the LCIA Court, if the tribunal has not yet been appointed) will also have the power to order the consolidation of arbitrations commenced under the same arbitration agreement or any compatible arbitration agreement(s) and arising out of the same transaction or series of related transactions – even if the disputing parties are not the same (Article 22.7(ii)). Tribunals also have the power to order that such arbitrations shall be conducted concurrently where the same arbitral tribunal is constituted in respect of each arbitration (Article 22.7(iii)).

This amendment should result in greater efficiency and is in line with the recent trend of broadening the circumstances in which different arbitrations can be consolidated. For example, the SCC Rules (Article 15) and the SIAC Rules (Rule 8) likewise provide for the possibility of consolidating disputes arising out of the same transaction or series of transactions and where there is no identity of parties.

The 2020 Rules also introduce a new provision whereby a claimant wishing to commence more than one arbitration under the LCIA Rules (whether against one or more respondents and under one or more arbitration agreements) may serve a composite request for arbitration in respect of all such arbitrations (Article 1.2). This provision appears to have been introduced as a result of the judgment in A v B [2017] EWHC 3417, which held that the 2014 Rules did not permit a request for arbitration filed by the claimant to include related claims under two contracts and their associated LCIA arbitration agreements (and that the tribunal therefore had no jurisdiction). The amendment in the 2020 Rule means that claimants will no longer need to file multiple requests in such circumstances, which is a more efficient outcome.

Changes reflecting the impact of the global pandemic on international arbitration

The LCIA Rules were the first major international arbitration rules to be updated after the start of the COVID-19 global pandemic. As explained in the announcement accompanying the release of the 2020 Rules, “*while the pandemic did not necessitate any change of direction or focus, it allowed the LCIA to address explicitly some changes in recent good practice, notably the increased use of*

virtual hearings and the primacy of electronic communication across the board." In particular:

- The 2020 Rules address **virtual hearings** in greater detail than the 2014 Rules. While the latter did provide for the possibility of hearings being held by video, the 2020 Rules (Article 19.2) spell out that "*a hearing may take place in person, or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places (or in a combined form).*"
- The 2020 Rules establish the **primacy of electronic communications**. Under the 2020 Rules the request for arbitration, as well as the response to it, shall be submitted in electronic form only (either by email or other electronic means *g.* the LCIA's electronic filing system), and can only be submitted in paper form with the LCIA Registrar's prior written approval (Article 4.1). This contrasts with the 2014 Rules, which provided that the request for arbitration and response could be submitted in electronic form, in paper form or in both forms (the latter being most commonly used in practice). In addition to making arbitrations easier to manage during a pandemic, the use of electronic communications by default will help save costs and also reduce the LCIA arbitrations' environmental impact. However, LCIA users should be mindful of enforcement considerations in jurisdictions where courts take a formalistic view of the evidence that due notice of the arbitration proceedings was given under Article V(1)(b) of the New York Convention.
- **E-awards**. Article 26.2 of the 2020 Rules now expressly provides that "*any award may be signed electronically and/or in counterparts and assembled into a single instrument*". This is unless the parties agree otherwise, or the tribunal or LCIA Court directs otherwise; for example, departure from this default provision could be envisaged when the formalities at the seat of arbitration so require, or where enforcement of the award will be sought in a jurisdiction where there is a risk that courts would not accept a copy of an e-award as a "duly authenticated original award" in the meaning of Article IV(1)(a) of the New York Convention.

Other changes

The 2020 Rules introduce a number of changes designed to maximise the efficiency of the proceedings. In particular:

- Tribunals are now given a three-month deadline from the last submission by the parties to issue the final award (Article 15.10).
- The tribunal and the parties are now required (and not just “encouraged” as in article 14 of the 2014 LCIA Rules) to make contact within 21 days of the tribunal’s appointment (Article 14.3).
- Certain steps that a tribunal can take to expedite the procedure (such as limiting the length or content of written submissions, limiting the written and oral testimony of witnesses or employing technology) are expressly spelled out in Article 14.6.

Additionally, the 2020 Rules address certain data protection (Article 30.A) and compliance (Article 24.A) issues that could arise in the LCIA’s practice. The 2020 Rules also contain express provisions governing the role of tribunal secretaries, folding section 8 of the 2017 LCIA Guidance Notes for Arbitrators into the 2020 Rules (Article 14A).

Finally, the LCIA’s Schedule of Costs has also been updated, increasing the maximum hourly rate to be charged by arbitrators to £500 (from the current £450). While potentially leading to an increase of costs in some arbitrations, this should help the LCIA to continue to attract the most experienced and highly qualified arbitrators to resolve complex and high-value commercial disputes.

Conclusion

While the 2020 Rules might not be ground-breaking, the update strikes a balance between meeting the needs of modern arbitration users and maintaining the stability and predictability of the LCIA Rules. As emphasised by the LCIA’s Director General Jacomijn van Haersolte-van Hof, “*a stable rules framework is important for users,*” but this consideration has to be balanced with the need to ensure “*that rules continue to reflect best practice.*” The amendments reflect practices first pioneered by other arbitral institutions that have proven effective (such as early determination and broader consolidation powers) and the best practices of the LCIA itself. The reform of the 2020 Rules should thus help the LCIA maintain its leading global position in resolving international commercial disputes.