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Recent Developments in the Arbitration Rules of Lima Chamber of Commerce

Mijail Cienfuegos Falcón (Universidad Nacional Mayor de San Marcos, Faculty of Law) · Monday, January 23rd, 2017

In January 2017 the new Lima Chamber of Commerce Arbitration Rules (the “new LCC Rules”) will come into force. These rules seek to provide a better regulatory framework and improve the efficiency of arbitration by taking into consideration the world’s leading international arbitration institutions’ rules. Numerous key changes have been made to ensure the quality of arbitration as the preferred method of private parties to settle their disputes. This article will review several new or changed provisions in the new LCC Rules that are of great importance to arbitration practitioners, students and users alike.

Joinder and Consolidation

In the arbitration context, the term *joinder* relates to a third party which is carried into an arbitration to participate in its proceeding upon the request of one of parties to that arbitration. *Consolidation*, on the other hand, allows two or more separate arbitrations, pending or to be initiated, to be unified into a single arbitration proceeding.

The new LCC Rules provide that before the tribunal is constituted, a party to an arbitration may request by an application to the Arbitration Center of LCC (the “Center”) the joinder of additional parties to that arbitration (the “Request for Joinder”). The Higher Council of Arbitration of Center (the “Council”) may approve or not that application (Rule 8.1).

After the tribunal is constituted, the joinder is allowed only if all involved parties, included the additional parties, agree and the tribunal accepts the application (the “Joint Request for Joinder”). The tribunal makes a decision based on the necessity or convenience that the disputes with the additional party be resolved within the same arbitration, the status of the arbitration proceeding and other circumstances that it deems relevant (Rule 8.4).

In the consolidation, the Council may allow to merge two or more separate arbitration into one single proceeding when all parties agree or one of them requests it (the “Request for Consolidation”) in the following cases (Rule 9.1), where:

- a) all of the claims in separate arbitrations are brought under the same arbitration agreement; or
- b) the claims are brought under more than one arbitration agreement, if the following requirements are met:

- i. the different agreements are mutually compatible, or;
- ii. these related to the same legal relationship; and
- iii. the parties in the separate arbitrations are the same.

The Council may take into consideration any circumstance that it deems important, including whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations and, if so, whether the same or different persons have been confirmed or appointed (Rule 9.2).

After the tribunal is constituted, the consolidation of one single arbitration proceeding of two or more separate arbitrations only proceeds if the parties to these arbitrations submit a request by mutual agreement in the arbitration which commenced first and those separate arbitrations are to be subject to the same tribunal (Rule 9.5).

Appointment of Arbitrators in Multi-party Disputes

The new LCC Rules cover the appointment of arbitrators in proceedings in which there are more than two parties, that is, in multi-party proceedings.

In cases involving multi-party disputes, the tribunal shall be constituted in accordance with the parties' agreement (Rule 13.1). If the parties have not agreed on the method to constitute the tribunal, the Center shall set a certain period of time for the claimant or for the group of claimants and, respectively for the respondent or for the group of respondents to appoint an arbitrator (Rule 13.2). Where an additional party has been joined and the dispute is to be referred to three arbitrators, the additional party may, jointly with the claimant or with the respondent, appoint an arbitrator (Rule 13.3). Where a party or group of parties fails to nominate an arbitrator, the Center shall appoint all of the arbitrators, including the presiding arbitrator (Rule 13.4).

Emergency Arbitrator and Expedited Arbitrations

The new LCC Rules introduce to the legal framework two new and innovative arbitration figures: emergency arbitrator and expedited arbitrations.¹⁾ Both figures were incorporated with the aim of granting a more time effective proceeding for resolving disputes in specific situations.

Emergency Arbitrator provisions seek to provide an urgent interim decision for a party which cannot await the constitution of a tribunal. On the other hand, Expedited Arbitrations provisions apply for arbitration claims in which the dispute concerns a limited amount of money.

Before the tribunal is constituted, any of the parties that apply for emergency preventive measures can request a procedure be initiated before an emergency arbitrator (Rule 35.1). This procedure is established in the Appendix I of the new LCC Rules and is called the Emergency Arbitrator Rules (the "EmAr Rules"). The competence of the Arbitrator ends when the tribunal is constituted (Rule 35.3).

In the following situations, the EmAr Rules do not apply (Rule 35.5):

- a) if the arbitration agreement is subscribed before the entry into force of the EmAr Rules;

- b) if the parties to arbitration agreement have excluded previously and expressly the application of EmAr Rules; or
- c) if the State is a party to the arbitration and there is no express submission in the arbitration agreement to Emergency Arbitrator proceedings, to EmAr Rules or to the Center.

The Council appoints the Emergency Arbitrator two days after the receipt of the application (Article 3.1 of EmAr Rules). The decisions of the Emergency Arbitrator are binding for the parties (Rule 35.2).

Once the proceeding ends, the Emergency Arbitration's urgent interim order can lose its binding character in the following cases (Article 8.7 of EmAr Rules):

- a) Non presentation of the request for arbitration within the next ten days after receipt of the request for urgent measures, unless the Emergency Arbitrator determines that a longer period is required.
- b) The acceptance by the Council of the Emergency Arbitrator's challenge.
- c) Withdrawal of the request for arbitration or termination of the arbitration before the final award is rendered.

Expedited Arbitrations are appropriate for disputes concerning limited amounts of money, taking into account the claim amount and the possible counterclaim, does not exceed the limit established for these purposes in the Table or Tariffs to the Center or when the parties agree regardless the amount in dispute with the later confirmation of the Center. The scope of application and the proceedings' regulation are established in Appendix II, called Expedited Arbitrations Rules (the "ExAr Rules").

The Expedited Arbitrations are faster proceedings than the usual arbitration proceedings by providing for the settlement of the disputes in less than 4 months.

The arbitral tribunal has been granted the power to decide the disputes based on written pleadings and the evidence which accompanies them; unless the parties agree to hold a hearing on the merits. The tribunal holds a single hearing (Article 2(e) of ExAr Rules). The tribunal must issue the award within a period of 3 months from the date on which it was constituted (Article 2 (f) of ExAr Rules).

Conclusion

The changes highlighted above are not the only changes introduced by the new LCC Rules, but show the desire to offer a better institutional framework which ensures the quality of arbitration proceedings. Inspired by the rules of leading international arbitration institutions, the recent arbitration developments adopted by the new LCC Rules facilitate the effective and efficient settlement of disputes and seek to position the Center as an arbitration institution with international standards.

The growing number of disputes where with complex maze of contracts, which often involved more than two parties, would find their best way of settlement in a single arbitration. Addressing this issue, the new LCC Rules adopted provisions which govern several aspects of multiparty arbitration proceeding: the joinder, the consolidation and the procedure for the appointment of

arbitrators – but not the intervention. Unlike article 4(2) of the 2012 Swiss Rules, the new LCC Rules do not permit a third party that wishes to participate voluntarily to join a pending arbitration proceeding (intervention). On the other hand, emergency arbitrator and expedited arbitration provisions adopted by the new LCC Rules are important provisions which allow obtaining quick and effective protection for the parties in the specific circumstances mentioned above.

In a nutshell, the new rules make the LCC a pioneer in Latin America by introducing relevant provisions that major international arbitration institutions have adopted.


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References

In Latin America, the LCC is one of the first Arbitration Centers to incorporate both figures. In 2009, the Mexico Arbitration Center Rules only introduced the emergency arbitrator in article 30 bis.

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