

## **LCIA RELEASE REVISED DRAFT ARBITRATION RULES**

### **Introduction**

The London Court of International Arbitration (“LCIA”) has released its final draft of the revised arbitration rules (dated 18 February 2014), following the release of revised arbitration rules by both UNCITRAL (2010) and the ICC (2012). These revised draft are due to be considered by the LCIA Court at its symposium on 9 May 2014.

### **Key changes**

The revised draft rules include changes to a number of areas, including:

- Law applicable to the arbitration (Article 16.4 provides that the law applicable to the Arbitration Agreement and the arbitration shall be the law applicable at the seat of the arbitration, unless and to the extent that the parties have agreed otherwise);
- Formation of tribunal (including the ability of the LCIA Court to, in exceptional circumstances, appoint a tribunal of more than three arbitrators (Article 5.8));
- Duties of arbitrators (revised Rules include a new far-reaching requirement that potential arbitrators must confirm that they are “ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious conduct of the arbitration”(Article 5.4));
- Conduct of arbitrations (various articles, including those on written statements, have been amended to ensure that the arbitrations proceed speedily, along with costs consequences for parties who negatively impact on this);
- Multi-party arbitrations and consolidation (including the ability of both the arbitral tribunal and the LCIA Court to consolidate two or more arbitrations in certain circumstances);and
- Costs (including the prospect of costs consequences for parties who cause undue delay or unnecessary expense – Article 28).

### **Emergency arbitrator procedure**

Article 9B of the revised Rules includes a new “emergency arbitrator” procedure, which would provide the arbitrating parties with the option to seek emergency relief from an arbitrator before the arbitral tribunal has been constituted. This would represent an additional option for parties, who can also seek such relief from the English courts, or who can apply for the expedited formation of the arbitral tribunal. Similar procedures exist in other sets of arbitration rules, including the ICC Rules (2012) and the Singapore International Arbitration Centre Rules.

Under the emergency arbitration procedure (available only in exceptional urgent circumstances), a party can apply for the appointment of a temporary sole arbitrator pending the formation of the tribunal. The LCIA Court shall, if it agrees, appoint the emergency arbitrator within three days, and the emergency arbitrator shall then decide the claim for emergency relief as soon as possible and no later than 20 days after appointment. The emergency arbitrator is not required to hold any hearing with the parties, and can decide the claim on the available documentation. The decision of the emergency arbitrator will lapse automatically unless confirmed by the arbitral tribunal no more than 21 days after its formation.

At present, the “emergency arbitrator” provisions are included in the current draft in parenthesis, indicating that this proposal is to be discussed in greater detail by the LCIA Court once feedback has been received from practitioners.

### **Guidelines for legal counsel**

The issue of guidelines for arbitration counsel is a hotly disputed topic. While lawyers are typically subject to codes of conduct and standards imposed by the legal institutions in their own jurisdiction, there have been various attempts to impose a transnational code applicable to lawyers engaged in international arbitration. The most recent of these was the adoption by the International Bar Association of the “Guidelines on Party Representation in International Arbitration” (2013) which cover issues such as communication with arbitrators, submissions to the arbitral tribunal, information exchange and disclosure, and witnesses and experts; and also provided for remedies for misconduct.

The LCIA has now taken its own step in this area, with the Annex to the revised LCIA Rules setting out “General Guidelines for the Parties’ Legal Representatives”.

The Guidelines are intended to promote generally the good and equal conduct of the parties’ legal representatives, and as with the IBA Guidelines, do not seek to undermine any legal representative’s primary duty of loyalty to his client, or displace any mandatory laws, rules of law, professional rules or codes of conduct.

In the event of any potential breaches, Article 18.6 provides that the arbitral tribunal has the power to decide whether a legal representative has violated the Guidelines and, if so, how to exercise its discretion to impose any or all of the sanctions listed in Article 18.6, which include:

- a written reprimand;
- a written caution as to future conduct in the arbitration;
- a reference to the legal representative’s regulatory and or professional body; and
- any other measure necessary to maintain the general duties of the Arbitral Tribunal.

It remains to be seen whether the Guidelines will be included in the final draft of the revised LCIA Rules, and if so, in what form. While there is a growing movement calling for

increased regulation of parties representatives (for example, at the Halsbury's Law Exchange debate on "Ethics in International Arbitration" attended by a number of solicitor and barrister practitioners, 80% of attendees concluded that ethics in international arbitration did require further regulation), any such Guidelines will necessarily be the subject of much discussion between the LCIA and arbitration practitioners.

### **LCIA – Recent Statistics**

According to the most recent LCIA Registrar's Report, in 2012, a total of 265 arbitrations (representing an increase of 18.3% on the figures for 2011) were referred to the LCIA, in addition to 12 requests for mediation or some other form of alternative dispute resolution.

The subject matter of the referring contracts was diverse, with the most common disputes arising from:

- commodity transactions (16% of 2012 referrals (13% in 2011));
- loan or other financial agreements, including guarantees (11% of 2012 referrals (17.5% in 2011)); and
- joint ventures and shareholders' agreements (9% of 2012 referrals (compared to 13% in 2011)).

Other significant areas in 2012 included oil and gas (8%), legal and other professional services (8%) and construction, projects and infrastructure (also 8%).

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