

New LCIA Rules come into force on 1 October 2014

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As of the 1st October 2014, the London Court of International Arbitration adopts the new version of its rules. This is a welcome modernisation of the previous arbitration rules which had been in place since 1998, and arrives hot on the heels of the other new rules which have been adopted by many of the other key arbitral institutions over the last 2 years, including the International Court of Arbitration in Paris ('ICC') and the International Centre for Dispute Resolution ('ICDR').

The wording of the rules has been thoroughly reworked, with at least cosmetic changes to most paragraphs. In general, the rules have been expanded and made more detailed. For instance, there are now clearer provisions on the permitted methods of delivery of documents to parties in Article 4 (the word 'service' which may cause confusion by its implied reference to Court procedures has been removed).

There are also some more substantive changes which, on the whole, make the rules more user-friendly and flexible. The aim seems to be to reduce procedural costs by removing uncertainty and to promote efficiency.

The change which has been most discussed after the publication of the draft of the new rules, is the addition of ethical guidelines for legal counsel. These are included in an annex to the rules and comprise what are essentially the basics of an English solicitor's or barrister's duty to the Court in litigation, that is, not to make false statements, conceal documents, knowingly prepare false evidence, or try to influence the arbitrators (on the last point see also Article 13). To English eyes these matters are standard, but, possibly in view of the fact that there are no restrictions on the rights of audience before an arbitral tribunal (ie a wide variety of lawyers may be involved), the LCIA have decided to spell these matters out. However, the draft provision which expressly permitted the LCIA to report legal advisors who infringed this code to any relevant professional body has not survived into the final version. Instead, the LCIA may issue a written reprimand, a written caution and impose 'any other measure necessary to fulfil within the arbitration the general duties required of the Arbitral Tribunal' to conduct the arbitration fairly, expeditiously, impartially and efficiently.

The new rules impose slightly shorter deadlines on the parties – 28 day periods instead of 30 day periods (which on a practical level should mean that deadlines will now not fall on non-business days) and 14 days where 15 days was previously permitted (which again should have the same effect). On the other hand, the calculation of deadlines now expressly takes into account the difference between time zones. Various provisions deal in more detail with the diligence required of arbitrators and ways of dealing with arbitrators that are not carrying out their responsibilities.

The rules now include an ability to appoint an emergency arbitrator before the tribunal is constituted (even if it is constituted in an expedited manner). This mirrors a change recently adopted in the ICC, the ICDR and the Stockholm Chamber of Commerce rules. However, given the wide use in England of interim relief from the Courts in support of impending arbitration proceedings, it remains to be seen whether parties will elect to use these provisions instead.

There are other important changes, such as the fact that late objections to jurisdiction and claims that the Tribunal has exceeded its powers are permitted if there is a good reason, and also that the choice of seat is deemed to be London in the absence of express agreement, and the ability to appoint more than 3 arbitrators. Article 16.4 expressly provides that, unless the parties provide otherwise, the law of the arbitration agreement (as well as the law of the arbitration) shall be that of the 'seat' of the arbitration. The number of amendments means that the document repays careful study.

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