

# Dispute Resolution Hotline

July 30, 2014

## LCIA ARBITRATION RULES 2014 - TO COME INTO EFFECT FROM OCTOBER 1, 2014

- LCIA Rules 2014 provides for appointment of Emergency Arbitrator, thus bringing LCIA in tune with other comparable institutional rules;
- Clarification has been provided on seat of arbitration and law governing arbitration agreement, in cases where it is not prescribed in the agreement;
- Ethical standards prescribed as Annexure to the new rules will hopefully bring in more transparency and speed to the conduct of arbitration;
- The new rules are a step towards further growth of LCIA as a prominent arbitral institution in the world.

The existing LCIA Arbitration Rules were adopted in 1998 (**LCIA Rules 1998 / earlier rules**) and will be replaced by LCIA Arbitration Rules 2014 (**LCIA Rules 2014 / new rules**), which were released on July 24, 2014 and will come into force on October 1, 2014. The new rules have come after the release of UNCITRAL Arbitration Rules 2010 and the ICC Arbitration Rules 2012 and are in line with amendments made therein. The new rules have brought in some significant changes by promoting procedural efficiency, providing guidance to adhere to ethical standards, and proposing new mechanisms by which parties to LCIA arbitration can address emergency situations. It could be said that the LCIA Secretariat has given effect to such significant changes in an effort to preserve the dominance of LCIA as a world class arbitral institution. Some of the key changes are explained below:

### A. Adoption of Ethical Standards as Annexure to the Rules:

Annexure to the LCIA Rules 2014 (**Annexure**) prescribe guidelines which are applicable to all legal representatives appearing before an LCIA Tribunal (**Tribunal**) and significant sanctions can be imposed by the Tribunal in the event of default. In summary, the guidelines prohibit legal representatives from:

- engaging in activities intended to unfairly obstruct the arbitration or jeopardize the finality of any award (Annexure, paragraph 2);
- knowingly making false statements to the Tribunal or the LCIA Court (Annexure, paragraph 3);
- knowingly procuring and/or relying on false evidence (Annexure, paragraph 4);
- knowingly concealing any document or assisting in the concealment of any document which is ordered to be produced by the Tribunal (Annexure, paragraph 5); and
- initiating or attempting to initiate unilateral contact with any member of the Tribunal or the LCIA Court without disclosure to the other members of the Tribunal, the other party, and the LCIA Registrar (Annexure, paragraph 6).

A Tribunal can impose a sanction in the event of breach which can range from a written reprimand to written caution as to future conduct in the arbitration, or the Tribunal can order for any other measure within its general duties under Article 14.4 (i) and (ii) (Article 18.6).<sup>1</sup>

### B. Appointment of Emergency Arbitrator:

The new rules permit the parties in situations of '*exceptional urgency*' to apply for the expedited formation of the Tribunal (Article 9A). Additionally, the new rules also offer parties the option of applying for the appointment of a temporary sole arbitrator ("**Emergency Arbitrator**") in order to obtain emergency relief (Article 9B). Once appointed, the Emergency Arbitrator will have 14 days to make a decision on the application for emergency relief (Article 9.8). A hearing will not be necessary, but reasons must always be given (Article 9.7 r/w Article 9.9). Any award or order by an emergency arbitrator may be confirmed, varied, discharged, or revoked by the Tribunal (once formed), in whole or in part, by order or award made by the Tribunal upon application by any party or upon its own initiative (Article 9.11).

### C. Seat of Arbitration:

When the parties fail to reach a consensus as to the seat of the arbitration or when the arbitration agreement does not mention the seat, by default, the seat of arbitration governed by LCIA Rules 2014 shall be London. However, the Tribunal has been vested with the power to order an alternate seat after considering the circumstances of the case and providing the parties a reasonable opportunity to make written comments to the Tribunal stating that there lies another arbitral seat which is more appropriate. Importantly, this power is vested in the Tribunal and not the LCIA Court (Article 16.2). Notably, the default seat will be of no relevance to the LCIA Court when appointing arbitrators, which is definitely of some comfort for many who feel that an English law bias may prevail when arbitrating through LCIA.

### D. Arbitration Agreement:

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Arbitration Agreement has been defined in the preamble of the new rules to incorporate both the Arbitration Agreement and the LCIA Rules. Article 16.4 of the LCIA Rules 2014 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.

## E. Procedural Changes:

- In order to expedite procedure/timetable, the new rules prescribe a hearing in person, telephone conference call, video conference or exchange of correspondence as soon as practicable, but no later than 21 days from the date of the constitution of the Tribunal (Article 14.1).
- Further, to bring speed in the adjudication process, the new rules provide that the Tribunal should render an award 'as soon as reasonably possible'. Further, the Tribunal has the obligation to set and notify the parties, and the Registrar, of a timetable for this purpose (Article 15.10).
- The candidates for appointment as arbitrators are required to declare that they are 'ready, willing and able to devote sufficient time, diligence and industry to ensure expeditious conduct of the arbitration' (Article 5.4). Once appointed, the Tribunal has a continuing duty under Article 14.4 (ii) to adopt procedures to ensure not only fair proceedings, but also those that are 'efficient and expeditious' by 'avoiding unnecessary delay and expense'.
- New rules allow the LCIA Court, in exceptional circumstances, to appoint a Tribunal of more than three arbitrators (Article 5.8).
- Unless the parties agree otherwise, no party can nominate a sole arbitrator or a chairman unilaterally (Article 7.3).
- The new rules prescribe that if a party wishes to change its legal representation it must notify all the parties, the Tribunal and the LCIA Registrar. Such change is conditional on the approval of the Tribunal, which may be withheld if the Tribunal considers it could compromise the composition of the Tribunal or the finality of the Award (Articles 18.3 and 18.4).
- Interestingly, additional powers under the existing rules (Articles 22 and 25 of LCIA Rules 1998) have been revised, and parties are no longer at liberty to curtail such additional powers by agreement (including but not limited to opting out of the provision to order interim and conservatory measures).

## F. Costs:

The conduct of the parties will also come under scrutiny by the Tribunal when determining costs, *"including any co-operation in facilitating the proceedings as to time and cost and any non-cooperation resulting in undue delay and unnecessary expenses"* (Article 28.4).

## G. Consolidation of Cases:

Under the new rules, provision for multi-party arbitration has been made which is similar to those found in other institutional rules. The provision stipulates that the Tribunal has the right to join third parties to the arbitration provided that the applicant and the third party both consent (Article 22.1 (viii)).

## ANALYSIS:

The modifications in the new rules are timely and at par with amendments carried out by other comparable arbitral institutions. For all practical purposes, parties desirous of continuing with the LCIA Arbitration Rules to resolve their dispute might want to review their arbitration clauses and, if need be, modify them to suit their specific needs.

The adoption of the ethical code as Annexure, the availability of an emergency arbitrator, and the focus on procedural efficiency (which in turn will affect the costs of an LCIA Arbitration) are all positives coming out of the new rules. Needless to say, adoption of the provision for Emergency Arbitrator has brought the new rules in line with similar provisions in the ICC, SIAC and HKIAC Rules, and the other key changes (notably the new ethical standards) offer a point of difference and will hopefully give LCIA a strategic advantage over other comparable arbitral institutions. Once in force, the new rules will help to make the LCIA an even more attractive institution for prospective parties. Arguably, the provisions pertaining to ethical conduct share similarities with the IBA guidelines on party representative ethics, however, LCIA is the first major arbitral institution to propose such rules and it might soon be a trend for arbitral institutions to impose strict ethical standards.

Similarly, for consolidation of cases, comparable provisions exist under the ICC, SIAC and HKIAC Rules. The new rules come at a time when arbitral institutions are under stiff competition due to growth of arbitration and the prevalence of regional institutions in the last decade. It is expected that the new rules will be well received by the international arbitration community; however, their effective implementation and the further growth of LCIA as a prominent arbitration institution will only be seen once these rules come into operation.

— Alipak Banerjee & Vyapak Desai

You can direct your queries or comments to the authors

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<sup>1</sup> Save as otherwise indicated a reference to Article will mean reference to LCIA Rules 2014.

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