

CLIENT ALERT

The New LCIA Arbitration Rules - Progress Despite 2020!

December 4, 2020

The London Court of International Arbitration (the **LCIA**) released an update to its Arbitration Rules, which took effect on October 1, 2020 (the **2020 Rules**). While the LCIA has characterised the 2020 Rules as a “light touch”¹ update on the 2014 edition of the rules (the **2014 Rules**), there are some notable developments which bring the 2020 Rules in line with modern practice and other institutions’ rules.

The 2020 Rules reflect the LCIA’s effort to make the arbitration process more efficient and streamlined² and, on the face of it, the drafters appear to have fulfilled their brief (although, only time will tell whether they will have their intended effect in practice). Of particular interest are the new rules governing early determination of claims, the ability to bring multiple arbitrations under one request, consolidating disputes, and the increased use of technology in proceedings, which are dealt with in more detail below.

Early Determination

The LCIA have introduced an express provision dealing with the early determination of claims. Article 22.1(viii) grants tribunals the power to determine that any claim, defence, counterclaim, cross-claim, defences to counterclaims or cross-claim is “*manifestly outside the jurisdiction of the [tribunal], or is inadmissible or manifestly without merit.*” Tribunals may issue an order or award to this effect. The addition of this new rule is unsurprising given other institutions already provide for summary dismissal (*e.g.* HKIAC and SIAC). However, it should entice parties who are keen on having summary judgment in their dispute-resolution arsenal to agree to submit disputes to LCIA arbitration, such as financial institutions, who previously may have favoured the court process or other arbitral bodies over the LCIA.

Multiple Arbitrations, One Request

The changes to Article 1.2 allow for composite Requests for Arbitration to be issued to commence multiple arbitrations simultaneously (under certain circumstances). Pursuant to the amendments to Article 2.2, Respondents, in turn, may file a composite Response (which could include a request for consolidation, albeit consolidation is not automatic).

These changes appear to be in response to the decision of the English Court in *A v B* [2017] EWHC 3417 (Comm) (21 December 2017), where the court ruled that the 2014 Rules did not permit a party to commence a single arbitration in respect of disputes under multiple contracts. The court’s decision meant the LCIA seemed to be at odds with parties’ expectations, so the LCIA have rightly cleared this up.

Consolidating Proceedings

The 2020 Rules significantly expand a tribunal’s ability to consolidate proceedings. New Article 22A: “Power to Order Consolidation/Concurrent Conduct of Arbitrations” evidences this approach, and of particular note are:

- Article 22.7(ii), which allows the tribunal to consolidate proceedings under compatible arbitration agreements between “*the same disputing parties or arising out of the same transaction or series of related transactions*”; and
- Article 22.8(ii) which allows the consolidation of proceedings prior to constitution of the tribunal, in similar circumstances to those under 22.7(ii).

These updates should allow the parties a greater degree of flexibility, especially when used in conjunction with composite Requests/Responses.

Virtual hearings and electronic communications

Article 14.6 now expressly permits tribunals to make procedural orders to expedite the procedure being adopted during an arbitration and specifically mentions “*employing technology*”: a nod towards holding virtual or telephone hearings where necessary (or a combination of virtual and in person). This addition is no doubt a response to the pandemic striking just as the 2020 Rules were being drafted, helping to futureproof the 2020 Rules.

Similarly, electronic communication is now the default method of communication in LCIA (farewell fax machines). Requests for arbitration and responses must be filed electronically and awards can now be signed electronically too (Article 26.2). Special dispensation is now required to file a request or response by an alternative method (Article 4.1).

With the 2020 Rules now in force, the LCIA has positioned itself as an institution responsive to the needs and expectations of disputing parties, and aware of the evolving landscape in which arbitrations will proceed in the future.

¹ Paula Hodges QC, President of the LCIA – Updates to the LCIA Arbitration Rules and the LCIA Mediation Rules (2020), <https://www.lcia.org/lcia-rules-update-2020.aspx>.

² Updates to the LCIA Arbitration Rules and the LCIA Mediation Rules (2020), <https://www.lcia.org/lcia-rules-update-2020.aspx>.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Gordon McAllister

Partner – London

Phone: +44.20.7413.1311

Email: gmcallister@crowell.com

Robert Weekes

Partner – London

Phone: +44.20.7413.1320

Email: rweekes@crowell.com

Laurence Winston

Partner – London

Phone: +44.20.7413.1333

Email: lwinston@crowell.com

Edward Norman

Counsel – London

Phone: +44.20.7413.1323

Email: enorman@crowell.com

Edmund Northcott

Associate – London

Phone: +44.20.7413.1351

Email: enorthcott@crowell.com