

# ClientAlert

## International Arbitration

July 2014

### LCIA introduces new arbitration rules



On Friday 25 July 2014, the LCIA Court formally adopted its new arbitration rules (the “**2014 Rules**”). The 2014 Rules will come into force on 1 October 2014 and shall apply to any LCIA arbitration commenced from that date.

The changes made to the LCIA Rules follow similar revisions made to the ICC Arbitration Rules in 2012 and UNCITRAL Arbitration Rules in 2010, and have been made in response to user demand. The amendments are for the most part to be welcomed, and represent a tightening up and modernisation of the rules in a way that should reduce cost and increase the efficiency of LCIA arbitrations.

The 2014 Rules have made changes to three areas of procedure in particular. These are:

- (a) Measures to make case management more efficient, including consolidation of related arbitrations, and the imposition of diligence requirements on arbitrators;
- (b) Setting conduct requirements for legal representatives, and giving the Tribunal the power to sanction legal representatives and parties if these standards are violated; and
- (c) Provision for the appointment of emergency arbitrators.

The 2014 Rules also include various gap-filling amendments designed to deal with any omissions in the arbitration agreement (for instance, specifying that where the governing law of the arbitration agreement has not been chosen, it shall be that of the seat). The new rules should be taken into account by LCIA users when considering the drafting of their arbitration clauses, and when participating in an LCIA arbitration commenced from 1 October 2014.

#### Overview of some of the key changes

##### A. Efficiency in case management

The 2014 Rules provide a greater degree of regulation of LCIA arbitration procedures with the aim to make those procedures more transparent, fair and efficient. For example:

- Article 14.1 now requires that the Tribunal conduct a teleconference with the parties within 21 days of its formation, to begin clarifying the issues in dispute and setting out the procedure.
- Timeframes have been shortened throughout and moved to a weekly basis (e.g., 30 day periods being replaced with 28 day periods).

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- Parties may now file and deliver documents electronically (Article 4.3), removing the delay and expense of sending paper copies.
- Articles 15.2 and 15.3 also allow Claimants and Respondents to shorten the procedure by electing to have the Request or Response treated as their Statement of Case or Defence respectively.
- Articles 22.1(ix)-(x) and 22.6 provide for the Tribunal or the LCIA Court to consolidate arbitrations that arise under the same arbitration agreement and between the same parties, either on its own volition or where the parties agree.

The 2014 Rules also target arbitrator efficiency. Article 5.4 now provides that candidates for the Tribunal must sign a declaration stating that they are “ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration”. The LCIA Court may now revoke an appointment on its own initiative if an arbitrator fails to meet this standard (Articles 10.1 and 10.2). There is now a requirement (Article 15.10) that a Tribunal make its final award “as soon as reasonably possible” after the last submission, and that the Tribunal must notify the parties and Registrar of its timetable for considering, drafting and issuing the award.

### B. Conduct guidelines for legal representatives

A particularly novel feature of the 2014 Rules is the inclusion of an Annex that sets out guidelines for the conduct of legal representatives, which all such representatives are required to sign in order to appear before the Tribunal (Article 18.5).

These guidelines include obligations not to seek to engage the Tribunal in *ex parte* communication, or to knowingly mislead the Tribunal, procure false evidence or conceal evidence, or to engage in activities intended to obstruct the arbitration, such as repeated challenges to an appointment or to the jurisdiction or authority of the Tribunal where these challenges are known to be unfounded by that legal representative.

Any breach of these provisions can attract sanctions under Article 18.6, including written reprimands or cautions by the Tribunal, and potentially adverse costs orders against the party or its legal representatives. The LCIA is the first international arbitration institution to include express provisions in its procedural rules which invest Tribunals with the power to sanction inappropriate counsel conduct in this way.

In addition to the Guidelines in the Annex, Article 18 provides other methods for preventing abuse of process by or through legal representatives. For example, Article 18.3 provides that

any change of legal representatives must be notified promptly to other parties, and requires the consent of the Tribunal. This prevents parties from obstructing proceedings by repeatedly appointing new counsel and demanding a delay in the timetable as a result. Article 28.4 also provides costs consequences for obstructive conduct by parties.

### C. Emergency arbitrators

Another significant addition in the 2014 Rules is Article 9B, which provides for the appointment of emergency arbitrators. Any party may apply for the appointment of a temporary sole arbitrator pending the formation of the Arbitral Tribunal to conduct emergency proceedings (Article 9.4). The application is subject to a special fee which shall be subject to the terms of the Schedule of Costs (Article 9.5). It is not yet clear what this fee will be. It does appear that, while the applicant would pay the special fee initially, it would form part of the arbitration costs (Article 9.10) to be apportioned between the parties as the Tribunal decides.

The LCIA Court is empowered to determine the application for an emergency appointment, and if it is granted, appoint the arbitrator within three days (Article 9.6). The emergency arbitrator then has up to 14 days to decide the claim for emergency relief (Article 9.8). Any order made by the emergency arbitrator may be later confirmed, varied, discharged or revoked by the Arbitral Tribunal (Article 9.11).

Importantly, this provision for appointing an emergency arbitrator is in addition to (and not instead of) a party’s continuing right to apply to the court of the seat for emergency interim measures (Article 9.12). Further, Article 9B shall only apply where the parties concluded their arbitration agreement after 1 October 2014 (or where parties decide to “opt in” to Article 9B). Going forward, LCIA Rules users may also decide to “opt out” of Article 9B.

### Impact of 2014 Rules on drafting of arbitration clauses

In drafting a LCIA arbitration clause, parties should consider the increased gap-filling in the 2014 Rules. Article 16.4 provides that the default law of the arbitration agreement (where a law is not chosen) will be the law of the seat of the arbitration. This means that parties must expressly choose a governing law of the arbitration agreement if they do not want to default to the law of the seat. Parties must also consider whether or not to “opt out” of the emergency arbitrator provisions in Article 9B.