LCIA trailblazer with introduction of new ethical code of conduct in 2014 Arbitration Rules

The London Court of International Arbitration has adopted new arbitration rules, which will apply to all arbitration proceedings commenced on or after 1 October 2014, unless the parties agree otherwise. The Annex to the LCIA Rules contains detailed guidelines on the conduct of the parties’ legal representatives, and arbitral tribunals have a broad range of enforcement powers to ensure compliance with these guidelines. Further significant additions to the previous rules include expanded provisions for an emergency arbitrator procedure and provisions for the consolidation of arbitrations. Parties envisaging dispute resolution under the LCIA Rules on or after 1 October 2014 should be aware of the changes in the new Rules, and in particular of the guidelines on the conduct of parties’ legal representatives.

What is new?

Guideline for parties’ legal representatives

As compared to the recently revised rules of other leading arbitration institutions, the most striking difference in LCIA’s new Arbitration Rules is the introduction of detailed guidelines on the conduct of the parties’ legal representatives. These guidelines apply to the named legal representatives of the parties, but do not derogate from any mandatory rule of law, professional rule or code of conduct applicable to such legal representatives. In 2013, the International Bar Association (IBA) released its Guidelines on Party Representation in order to give parties the option to adopt a uniform standard code of conduct to govern legal representatives in international arbitration (see also In Context 13 January 2014).

However, this is the first time that an arbitral institution includes provisions on the conduct of counsel in its own rules. Also, there is a significant difference between the IBA Guidelines and the LCIA Rules: under the new LCIA Rules, parties are required to ensure that their named legal representatives appearing in an LCIA arbitration agree to comply with the guidelines, while the IBA Guidelines provide a voluntary code of conduct, which only governs the conduct of counsel if all parties have opted in. An arbitral tribunal in an LCIA arbitration now has the power to determine whether any of the guidelines have been violated by a party representative and, if so, to impose sanctions. The sanctions range from written reprimands, written warnings as to future conduct in the arbitration, and any other measure necessary for the arbitral tribunal to fulfil its general duties.
Emergency arbitration

The new LCIA Rules provide for the appointment of an emergency arbitrator, which allows parties to seek emergency relief from a sole arbitrator prior to the constitution of the arbitral tribunal. Recourse to an emergency arbitrator is available in circumstances of exceptional urgency and on a temporary basis. This new procedure complements the LCIA’s existing mechanisms for the expedited formation of the arbitral tribunal and the expedited appointment of a replacement arbitrator and brings the 2014 LCIA Rules in line with the rules of other international arbitration institutions, such as the International Chamber of Commerce (ICC), the Hong Kong International Arbitration Centre (HKIAC) (see also In Context 13 January 2014), and the Singapore International Arbitration Centre (SIAC) (see also In Context 13 January 2014).

Consolidation

The new LCIA Rules also contain modern rules for handling complex multi-party and multi-contract disputes. As under the 2012 ICC Rules and other institutional rules, the arbitral tribunal is now expressly empowered to order the consolidation of an arbitration with one or more other arbitrations into a single arbitration where the parties have so agreed, no arbitral tribunal has been constituted in the other arbitrations (unless it consists of the same arbitrators) and the LCIA Court approves of consolidation. With the approval of the LCIA Court, consolidation is also possible where one or more arbitrations subject to the LCIA Rules are commenced under the same arbitration agreement between the same disputing parties, provided that no arbitral tribunal has been constituted.

Number of arbitrators

In contrast to the ICC Rules, which provide that “disputes shall be decided by a sole arbitrator or by three arbitrators” (Article 12(1) of the ICC Rules), the LCIA Court may now exceptionally appoint an arbitral tribunal that consists of more than three arbitrators.

LCIA or ICC?

Like the ICC Rules, the LCIA Rules are suitable for arbitrations conducted under different governing laws and in various languages. Both institutions administer the arbitrations, assist with appointing the arbitral tribunal and resolve any challenges that a party may make against an arbitrator. A comparison between the rules of these two institutions shows that they are broadly similar and that both sets of rules leave a considerable degree of flexibility to the parties and the arbitral tribunal. However, two major differences between the LCIA and the ICC Rules are noteworthy – the degree of administration and the fee structure.

Under the ICC Rules, the procedure is more actively administered by the ICC. This involves an extra procedural step which is not provided for in the LCIA Rules: the preparation of the Terms of Reference, a document which defines the scope of the arbitration by setting out the basic claims and defences, the relief sought and the issues to be addressed. Importantly, any award to be rendered in an ICC arbitration is scrutinised by the ICC International Court of Arbitration, and no award can be issued until it has been approved by the ICC International Court of Arbitration. On the other hand, the LCIA Rules do not foresee the establishment of Terms of Reference, and the LCIA Court does not scrutinise the arbitral awards that are being issued by arbitral tribunals sitting in LCIA arbitrations.
Further, the LCIA charges fees according to the time spent on the matter by the LCIA and the arbitrators, whereas the fees charged by the ICC and arbitral tribunals sitting in ICC arbitrations are primarily related to the amount in dispute. In general, the ICC requires the payment of an advance on the estimated fees and costs at the start of arbitral proceedings. In high value disputes, this requires parties to pay substantial sums up front. The LCIA, on the other hand, may direct the parties, in terms of proportion and time as it deems appropriate, to make one or more advance payments to the LCIA on account of the arbitration costs.

When envisaging international arbitration, parties should always take into consideration that the suitability of a certain arbitration institution, as for example LCIA or ICC, will vary in each case and according to several factors, such as the amount in dispute and the time taken and effort required by arbitrators to resolve the parties’ disputes.