

# LCIA Rules 2014 finalised

The LCIA has adopted new rules for arbitration (2014 Rules). Effective on 1 October 2014, this version will apply to all arbitrations commenced on or after that date (unless parties agree otherwise) and will replace the 1998 version of the rules.

The final version of the rules is substantially the same as the last draft circulated in February for public comment save for amendments to the emergency arbitrator mechanism and to the General Guidelines for the Conduct of Parties' Legal Representatives (the Guidelines). We analysed the key changes to the rules in our previous briefing available [here](#). In this briefing, we summarise the most significant features of the 2014 Rules and explain the changes incorporated since February.

## All change

The LCIA is the latest arbitral institution to overhaul its rules. To name a few, the Stockholm Chamber of Commerce (SCC), the International Centre for Dispute Resolution (ICDR), the International Chamber of Commerce (ICC), the Hong Kong International Arbitration Centre (HKIAC), the Japanese Commercial Arbitration Association (JCAA) and the Singapore International Arbitration Centre (SIAC) all introduced updated rules in recent years. The older institutions (for example, the ICC) have taken the opportunity to modernise their rules. Almost all the institutions have sought to address key issues facing the arbitral process and focus on: (1) promoting efficiency and economy; (2) formalising and expanding mechanisms for dealing with multiparty and multi-contract situations; and (3) introducing mechanisms to increase access to arbitration-led interim relief. The 2014 Rules cater for all these issues as well as going further than other institutions by introducing guidance on conduct issues in the form of the Guidelines.

## Efficiency and economy

The ICC Rules 2012 (briefing available [here](#)) emphasise the importance of efficient case management and include an undertaking on the part of the parties and the tribunal to take every effort to conduct the arbitration in an expeditious and cost-effective manner. Similarly, the LCIA has sought

to promote efficiency throughout the proceedings by introducing various new provisions in the 2014 Rules, including:

- Electronic filing of the response and the request (non-mandatory) (Arts. 1.3 and 2.3).
- Confirmation and undertaking from arbitral nominees of availability to run the arbitration expeditiously (Art. 5.4).
- Expectation that parties and the tribunal will be in contact within 21 days of the tribunal's constitution (Art. 14.1).
- Shorter time limits for the default procedure.
- Tighter regulation of the time for rendering an award (Art. 15.10).
- Express power to use costs to sanction parties that cause delay or expense through non-co-operation (Art. 28.4).

The 2014 Rules retain the parties' ability to apply for expedited formation of the tribunal in cases of "exceptional urgency".

## Multiparty and multi-contract situations

As a result of the recent spate of changes, many arbitral institutions now expressly provide for both joinder and consolidation, including the ICC, the HKIAC, and the JCAA (see our previous briefing [here](#)). The detail of the mechanism differs between institutions – some leave the

power of joinder and consolidation solely in the hands of the institution (e.g. ICC), whereas others vest these powers in the tribunal (albeit with the institution's approval). Despite revising their rules, some institutions still do not provide for consolidation (e.g. the SIAC Rules provide for joinder only).

The LCIA Rules 1998 already empowered the arbitral tribunal to effect joinder of third parties (now Article 22.2(viii) of the 2014 Rules). Under Article 22.2 (ix) and (x) of the 2014 Rules, an LCIA tribunal may also order consolidation between one or more arbitrations at a parties' request and with the LCIA Court's approval where:

1. all parties have agreed; or
2. the parties are the same, the arbitration agreements are the same or "compatible", and no other tribunal has yet been appointed (unless all the arbitrators are the same).

The LCIA Court also has limited powers to consolidate arbitrations before *any* tribunal has been appointed if the arbitrations are between the same parties and are all subject to the same arbitration agreement (Art. 22.6).

### Interim relief and emergency arbitrator

One of the most prevalent amendments across the arbitral rules is the introduction of an emergency arbitrator mechanism. Generally speaking, this mechanism seeks to provide parties to arbitral proceedings with recourse to relief on an urgent and interim basis before the arbitral tribunal has been appointed. Without it, between commencement of the arbitration and the appointment of the tribunal, the parties must rely on the courts to provide such relief (which may not always be available).

The "emergency arbitrator" was first introduced by the ICDR in 2006, although its ancestral roots trace back to 1990 when the ICC's "pre-arbitral referee" sought to address a similar issue. The inclusion of this provision in the LCIA Rules was the subject of debate in May 2014. The final agreed version differs from the February draft and has the following features:

- Relief is available prior to the formation of the tribunal.
- A request / response for arbitration must be filed with the application together with a special fee for the services and all parties must be notified of the application.
- The LCIA Court will appoint a temporary arbitrator within 3 days (or as soon as possible) and all the requirements regarding independence and impartiality will apply to the arbitrator.

- The decision may take the form of either an order or an award, but must contain reasons and be rendered within 14 days of the arbitrator's appointment.
- The decision may be confirmed, varied, discharged or revoked in whole or in part by the arbitral tribunal once appointed.
- The parties' rights to seek interim relief from the courts are expressly reserved.

These provisions will apply to all arbitrations commenced on or after 1 October 2014 unless parties expressly opt-out. However, if the arbitration agreement underlying the reference was concluded before that date, the parties must expressly opt-in to these provisions for them to apply.

The emergency arbitrator (or a similar mechanism) is now provided for in the arbitral rules of a number of institutions including the ICC, the JCAA, the HKIAC, the SIAC, the SCC and the World Intellectual Property Organization Arbitration and Mediation Centre as well as in the new Paris Arbitration Rules 2013 (which can be adopted in ad hoc arbitrations). Compared to the other institutions, the time frame for rendering a decision is similar to the ICC Rules and the HKIAC Rules (15 days) but longer than the SCC Rules (5 days). In other key respects, the mechanism is similar to that available under other institutional rules. The concept of an "emergency arbitrator" is relatively new and untested and its use is likely to increase. The introduction of this tool puts the services that the LCIA offers on a par with other leading arbitral institutions.

### Conduct of legal representatives

The most discussed feature of the 2014 Rules is the Guidelines which we discussed in detail in our previous briefing. In summary, all legal representatives appearing by name before the tribunal must comply with the Guidelines. The Guidelines do not derogate from any mandatory laws and conduct rules applicable to those legal representatives. The 2014 Rules expressly give the tribunal the power to police the violation of the Guidelines through any or all of a series of specified sanctions, namely: (1) a written reprimand; (2) or a written caution as to future conduct of the legal representatives; and (3) any "*other measures necessary...*" (Art.18.6). An additional sanction - to refer the legal representative to his or her regulatory body – appeared in the February draft but has not been included in the final version.

### "Balanced" rules

The 2014 Rules contain many detailed changes to the LCIA Rules 1998 that warrant close review for users of LCIA arbitration. The LCIA's new Director General, Jacomijn van

Haersolte-van Hof, described the new rules as "*balanced*".<sup>1</sup> The 2014 Rules seek to cater for the major issues currently facing the arbitral process today. In doing so, the Rules are innovative in some respects, but do not depart significantly from the approach taken by most institutions. Importantly, they retain the characteristics distinctive to LCIA arbitration, such as time-based fees and charges. In 2013, the LCIA received a record number of references (290 referrals in total); nearly one-fifth of those requests claimed amounts in dispute of USD 20 million or more.<sup>2</sup> The LCIA continues to be a "go-to" institution for users – their arbitrations will be well-supported by these modernised and comprehensive rules.

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<sup>1</sup> LCIA Website, News: "*LCIA Arbitration Rules, effective 1 October 2014*" available at <http://www.lcia.org/News/lcia-arbitration-rules-effective-1-october-2014.aspx> (last accessed 7 August 2014).

<sup>2</sup> LCIA, Registrar's Report 2013.

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