On 11 August 2020, the LCIA released an update to its LCIA Arbitration Rules and LCIA Mediation Rules (the Rules). The updates to the Rules will become effective on 1 October 2020, marking six years since the arbitration rules currently in force came into effect. The updates reflect developments in good practice amongst arbitration and mediation practitioners, some of which have accelerated during the COVID-19 pandemic. They also respond to users’ desire for even more streamlined arbitral and mediation processes and for environmentally sustainable procedures as the arbitration community prepares for “the new normal”.

The most significant changes revolve around a focus on the primacy of electronic communication, facilitating electronic signature of awards by arbitrators and refining and expanding the provisions on the use of virtual hearings.

Additional key measures include:

- giving arbitrators enhanced tools to expedite proceedings, including the introduction of an explicit provision allowing for an early dismissal determination;
- expanding the LCIA Court’s and arbitral tribunals’ powers to order consolidation and concurrent conduct of arbitrations; and
- introducing explicit provisions that address the role of tribunal secretaries.

While the COVID-19 pandemic was not the driver behind these changes, the experience of arbitrators, practitioners and users of arbitration in recent months has highlighted the need for practical solutions and allowed the LCIA to incorporate recent best practice into the Rules.

The most significant amendments are considered below.

Virtual hearings

Given the increase in the use of remote hearings, both prior to the pandemic but especially during recent months, it is perhaps unsurprising that the new Rules facilitate the use of virtual hearings by conference calls, video-conference or other communication technology (or a combination of platforms). According to Article 19.2, the arbitral tribunal, in consultation with the parties, has the fullest authority to establish conduct of any such hearing. It also has the power to limit the extent to which issues are addressed at the hearing.
Electronic communication as default

The new Rules mark a push for electronic communication between the parties, the Registrar and the arbitral tribunal. References to the previously identified methods of personal delivery, registered post or courier service have been deleted. In particular, Article 4 provides expressly that all written communication in relation to the arbitration shall be delivered by email or other electronic means (including any electronic filing system operated by the LCIA). This includes the Request for Arbitration and Response – in fact, if a party wants to submit a Request or Response by an alternative method, it has to seek prior written approval from the Registrar.

In addition, Article 26.2 introduces an express provision that allows for the electronic signature of awards, unless the parties agree otherwise, or the arbitral tribunal or the LCIA Court directs otherwise. An award may also be signed electronically and/or in counterparts and assembled into a single instrument.

Given the increased prevalence of electronic communication in arbitration proceedings, issues of data protection and information security are addressed by the new Article 30A on Data Protection, which governs the processing of personal data by the LCIA.

Composite requests for arbitration and consolidation

Article 1.2 of the new arbitration Rules facilitates the commencement of multiple, unrelated arbitrations against one or more respondents and under one or more arbitration agreements by allowing parties to serve composite requests in respect of all such arbitrations. Where a composite Request is served, the Respondent may serve a composite Response in respect of all or any of the arbitrations pursuant to Article 2.2. Each arbitration commenced by way of a composite Request will proceed separately. However, if certain requirements are met, then under Article 22A the arbitral tribunal may order that an arbitration should be consolidated with one or more arbitrations or that two or more arbitrations should be conducted concurrently. The LCIA Court also has a power to consolidate multiple arbitral proceedings into one arbitration prior to the constitution of the arbitral tribunal for any of the arbitrations to be consolidated.

Conduct of the proceedings and general duties and powers of the tribunal

A key development in the new arbitration Rules is the introduction of an express power given to the arbitral tribunal under Article 22.1 to determine, upon a party’s application, whether a specific claim, defence or counterclaim is outside the tribunal’s jurisdiction, is inadmissible or is manifestly without merit, and to issue an early determination to that effect by way of an order or award. Although parties have been able previously to make dispositive applications, the introduction of an express power of early determination in the new Rules may result in an increase in summary applications and orders.

Under the new Rules, arbitral tribunals have a broad discretion to manage the proceedings and ensure that they are conducted in an effective and timely manner. For example, Article 14.6 allows arbitrators to limit the length and content of the parties’ written statements, to limit the written and oral testimony of witnesses, to set an appropriate period of time for any stages or steps to be taken, to decide at which stage of the arbitration and in what order any issues should be determined, to employ technology to enhance the efficiency and expeditious conduct of the arbitration (including any hearing) and to dispense with a hearing altogether (subject to the parties’ right to a hearing under Article 19 of the Rules). Although these powers are arguably not new, the increased emphasis on the tribunal’s powers to manage the proceedings may result in greater time and cost efficiency.

Article 15.10 contains another noteworthy amendment to the Rules, as it encourages the arbitral tribunal to make its final award within three months from receiving the last submission of the parties.

Tribunal Secretary

For the first time, the new arbitration Rules contain an express provision governing the appointment of, and the role and powers of the tribunal secretary. Article 14.10 provides that the tribunal secretary may only assist the arbitral tribunal if they have been approved by the parties, and the parties have agreed the tasks that may be carried out by the tribunal secretary. Article 14.8 stipulates that the arbitral tribunal remains responsible for supervising the secretary and ensuring that all tasks are performed to the standard required by the LCIA Rules. The same provision expressly prohibits any delegation of the arbitral tribunal’s decision-making function to the secretary.
Maximum hourly rates

The maximum hourly rate for arbitrators and mediators will be increased from £450 to £500, in order to better reflect the demands of users in complex disputes with important issues at stake. The hourly rate that can be charged by the LCIA Secretariat for administering the arbitration has also been increased.

Mediation

A number of the changes aimed at streamlining the arbitration process are also reflected in updates to the mediation Rules. For example, the new mediation Rules establish electronic communication (including electronic signing of the settlement instrument) as a default means of communication. In addition, the new mediation Rules:

- promote the use of virtual meetings and efficient conduct of the mediation in general;
- include new provisions on compliance and data protection; and
- introduce changes to the rules on costs.

Comment: Welcome development

The changes introduced by the LCIA are a welcome development as they are likely to further facilitate efficient and streamlined arbitration proceedings by empowering the parties and arbitrators to focus on the key issues at stake. In addition, the embracing of electronic communications and virtual hearings is not only a more environmentally-sustainable approach, but it is also likely to increase cost efficiency.

The LCIA's press release and the new LCIA Arbitration Rules and LCIA Mediation Rules and the updated schedules of costs can be accessed here. The LCIA plans to launch the LCIA Arbitration Rules Update (2020) via a series of events for the international legal community, which will be announced on the LCIA website.

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