New LCIA Arbitration Rules: Embracing Technology, Consolidation and Summary Determination

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Introduction

The London Court of International Arbitration (LCIA) has released an update to the LCIA Arbitration Rules which will take effect on 1 October 2020. This keeps the LCIA current with more recent updates from the ICC, SIAC and HKIAC and in some ways overtakes them on some topical issues.

The updates aim to make the arbitral process more streamlined and clearer for arbitrators and parties, and specifically address changes in practice which have become more pronounced during the Covid-19 pandemic.

Key Changes

The key changes which are aimed at streamlining and enhancing the efficiency of the arbitral process include:

- Article 14.5 and 14.6 provides greater clarity to the wide discretion the Arbitral Tribunal has to make procedural orders it considers appropriate with regard to the fair, efficient and expeditious conduct of the arbitration. These include limiting the length of written statements and oral testimony, employing technology to enhance the efficiency of the arbitration, dispensing with a hearing and significantly, exercising powers of Early Determination under Article 22.

- The Early Determination Power under Article 22.1(viii) states that the Arbitral Tribunal has the power to determine that any claim, defence, counterclaim or cross-claim is manifestly outside the jurisdiction of the Tribunal, or is inadmissible or manifestly without merit, and where appropriate to issue an order or award to that effect. This is a form of summary judgment procedure similar to that provided for in many court systems.

- Article 22.7 expands the power of the Arbitral Tribunal (with the approval of the LCIA Court) to consolidate or order the concurrent conduct of arbitrations where the arbitrations are subject to the LCIA Rules, commenced under the same or a compatible arbitration agreement and are either between the same disputing parties (which was the case under the previous rules) or ‘arising out of the same transaction or series of related transactions’.

The key changes which reflect the increased reliance on and use of technology both before, and particularly during, the pandemic include:

- Article 4.1 now provides that the Request and Response must be submitted by electronic means (either by email or an electronic filing system) and prior written approval needs to be sought for these documents to be submitted by any alternative method. All other written communication in relation to the arbitration must also be delivered by email or electronic communication under Article 4.2 unless prior written approval has been obtained.

- Article 19 now states that a hearing may take place in person, or virtually by conference call, videoconference or ‘using other communications technology with participants in one or more geographic places (or in a combined form)’. This serves to capture the new normal of arbitrations taking place with parties in multiple geographic locations and allows the use of any new communication technologies which may be adopted in the future.

- Article 26 now allows awards to be signed electronically and/or in counterparts and assembled into a single instrument.

It is finally worth noting that the maximum hourly rate chargeable by LCIA arbitrators has been raised from £450/hr to £500/hr. This is said to be in order to allow arbitrators to charge more in large, complex or important arbitrations rather than to signal an across the board inflation of arbitration costs. The LCIA will be under some pressure to ensure that this is borne out in the statistics going forward.
Comment

In our view, the most significant change to the LCIA Rules is the express addition of the Early Determination power, in particular the power to determine that any claim or defence is “manifestly without merit”. Although there was some scope for summary applications under the old rules, the new rules put the matter beyond doubt. This follows the recent adoption of similar procedures by other arbitral institutions such as the SCC and SIAC. The lack of a clear summary determination procedure has long been seen as a disadvantage to arbitration over court litigation and it is encouraging that it is now being made up. It is now up to arbitration counsel and arbitrators to ensure that these procedures are used appropriately and serve overall to shorten arbitrations and lower costs rather than the other way around!

It is also worth noting the changes designed to make LCIA arbitration more compatible with remote technology. In our view, these changes were coming in any event but the timing of the LCIA’s update has helpfully allowed it to take account of the recent leap forward prompted by the Covid-19 pandemic. We have participated in numerous remote arbitration hearings in the last few months and have found that, with a little cooperation between counsel and proactivity from arbitrators, parties have been able to get their cases fully presented to tribunals without complaint. Nevertheless, we welcome the additional flexibility and clarity the new LCIA Rules provide.

In summary, the changes enhance the efficiency of the arbitration process and embrace the use of technology which we expect will continue to make the LCIA one of the most attractive and popular arbitral institutions.

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