

The London Court of International Arbitration Releases Updated Arbitration Rules, Emphasizing Efficiency

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The London Court of International Arbitration (“LCIA”) recently released an updated version of its arbitration rules (the “LCIA Rules”), amending the version that had been in place since 2014. The updated rules, which took effect on October 1, 2020, aim to make the arbitral process “*even more streamlined and clear*”¹ and, in line with updates recently adopted by other major arbitral institutions, include several changes emphasizing efficiency – most notably confirmation of the arbitral tribunal’s authority to expedite proceedings and summarily dismiss unmeritorious claims and defenses. The 2020 LCIA Rules also include certain technology-focused changes, including in relation to virtual hearings and electronic communications. This alert memorandum summarizes and comments on the key changes.

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¹ LCIA Press Release, “Updates to the LCIA Arbitration Rules and the LCIA Mediation Rules,” available at <https://www.lcia.org/lcia-rules-update-2020.aspx> (“LCIA Press Release”).
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Summary of Key Changes

1. The Tribunal's Authority to Expedite Proceedings

The 2014 version of the LCIA Rules affords the tribunal “*the widest discretion to discharge*” its duties in relation to the conduct of the proceedings,² but does not elaborate further, including as to the extent to which this provision empowers the tribunal to take specific steps to expedite proceedings.

The 2020 update to the LCIA Rules now directly addresses this issue. It confirms that the tribunal may “*make any procedural order it considers appropriate with regard to the fair, efficient and expeditious conduct of the arbitration,*”³ and lists eight tools for the tribunal to use “*with a view to expediting the procedure to be adopted in the arbitration.*”⁴ These tools include limiting the length and number of written submissions; limiting witness testimony; employing technology to enhance the efficiency of the arbitration; managing the timetable of the arbitration; and, as described below, exercising powers of summary dismissal.⁵

According to the LCIA, which is introducing the rules updates in an ongoing series of podcasts, these changes are not meant to be “*revolutionary,*” but rather a “*reminder*” to tribunals “*to consider procedural directions which increase the efficiency and expedition of proceedings where appropriate.*”⁶

2. Summary Dismissal

Several major commercial arbitral institutions have adopted summary dismissal provisions in recent years, including among others the Singapore International Arbitration Centre (“SIAC”),⁷ the Arbitration Institute of the Stockholm Chamber of Commerce (“SCC”),⁸ the International Chamber of Commerce (“ICC”),⁹ and the Hong Kong International Arbitration Centre (“HKIAC”).¹⁰ The LCIA now joins them, introducing a summary dismissal provision as part of its latest rules updates.

Under the LCIA’s summary dismissal provision, the tribunal is authorized “*to determine that any claim, defence, counterclaim, cross-claim, defence to counterclaim or defence to cross-claim is manifestly outside the jurisdiction of the Arbitral Tribunal, or is inadmissible or manifestly without merit.*”¹¹

² LCIA Rules (2014), Art. 14.5; *see also ibid.*, Art. 14.4.

³ LCIA Rules (2020), Art. 14.5.

⁴ *Ibid.*, Art. 14.6. This list is non-exhaustive. Article 14.6(ix) of the LCIA Rules clarifies that in addition to the tools specifically listed, the tribunal may “mak[e] any other order that the Arbitral Tribunal considers appropriate in the circumstances of the arbitration.”

⁵ *Ibid.*

⁶ LCIA Rules Update 2020 Podcast, Episode 1 (Oct. 1, 2020) (“LCIA Podcast”), at 14:00 – 14:20, available at <https://www.lcia.org/podcast-lcia-rules-update-2020.aspx>. Other updates related to expediting the proceedings include a new requirement that the parties and the tribunal make contact within 21 days after the tribunal is constituted – this step was previously encouraged, but not required – and the insertion of a clause in the provision related to awards requiring the tribunal to “endeavour” to make its final award within three months after the final submission by the parties. *See* LCIA Rules (2020), Art. 14.3, 15.10.

⁷ SIAC Rules, Art. 29.

⁸ SCC Rules, Art. 39.

⁹ Unlike the LCIA and the other arbitral institutions mentioned in the text, the ICC has included its summary dismissal provision in a guidance note, not the ICC Rules themselves. *See* Note to Parties and Arbitration Tribunals on the Conduct of Arbitration under the ICC Rules (January 1, 2019 update) (the “ICC Note”), ¶¶ 74-79. The ICC recently released a revised version of its rules, which will take effect from January 1, 2021. Like the current version of the ICC Rules, which were last amended in 2017, the 2021 ICC Rules do not expressly refer to summary dismissal – this will presumably remain a feature of the ICC Note, an updated version of which the ICC plans to release ahead of the launch of the 2021 ICC Rules. *See* ICC Press Release, “ICC Unveils revised Rules of Arbitration,” available at <https://iccwbo.org/media-wall/news-speeches/icc-unveils-revised-rules-of-arbitration/>.

¹⁰ HKIAC Rules, Art. 43.

¹¹ LCIA Rules (2020), Art. 22.1(viii). The reference in the LCIA’s summary dismissal provision to “manifestly” meritless claims mirrors the language adopted by the SIAC, the ICC and the HKIAC, all of which also use the term

According to the LCIA, the inclusion of this provision in the 2020 LCIA Rules is meant to “[g]ive tribunals more confidence to determine unmeritorious claims at an early stage.”¹²

Notably, the 2020 LCIA Rules do not address the process and procedure for summary dismissal, leaving this significant question to the tribunal’s discretion. This textual approach differs from the rules adopted by certain other institutions, including the SIAC and the HKIAC, which both specify the time period within which the tribunal must rule on an application for summary dismissal and (in the case of the HKIAC Rules) the mandatory contents of such an application, among other procedural requirements.¹³

3. Virtual Hearings and Electronic Communications

The LCIA finalized its most recent rules updates during the COVID-19 pandemic, which timing prompted the institution to “address explicitly some changes in recent good practice.”¹⁴ This includes a minor amendment to Article 19 of the LCIA Rules to confirm that hearings may be held “virtually by conference call, videoconference or using other

communications technology with participants in one or more geographical places.”¹⁵

The LCIA has also sought to emphasize “*the primacy of electronic communications.*”¹⁶

Accordingly, the updated LCIA Rules now specify that written filings and communications should be submitted in electronic form, rather than in paper form,¹⁷ and that the tribunal is authorized to sign awards electronically.¹⁸

4. Composite Requests and Consolidation

In response to an English court decision holding that the 2014 version of the LCIA Rules does not permit a claimant to file a single arbitration request for related claims under two separate arbitration agreements,¹⁹ the LCIA Rules have been updated to expressly allow a claimant to file a composite request “*whether against one or more Respondents and under one or more Arbitration Agreements.*”²⁰ While this provision will permit a claimant to commence multiple arbitrations at the same time, each arbitration “*shall proceed separately*” unless the LCIA Court or the tribunal determines otherwise.²¹

With respect to consolidation, the LCIA Rules have been updated to permit the tribunal to order the

“manifestly” to describe the standard for dismissal. This language reflects a conscious decision by the LCIA to “reinforce consistency across . . . the arbitration community rather than come up with different wording.” LCIA Podcast, at 15:40 – 15:55.

¹² LCIA Podcast, at 16:05 – 16:15.

¹³ See SIAC Rules, Art. 29.4; HKIAC Rules, Art. 43.4, 43.6.

¹⁴ LCIA Press Release. For more information on the procedural features and practices of leading arbitral institutions during the pandemic, see the Cleary Gottlieb alert memorandum on this topic dated July 10, 2020, available at <https://www.clearygottlieb.com/news-and-insights/publication-listing/international-arbitration-in-the-time-of-covid19>.

¹⁵ LCIA Rules (2020), Art. 19.2. The 2014 version of the LCIA Rules refers to holding hearings by video or telephone conference, but does not specifically refer to “virtual” hearings or reference “other communications technology,” which term is meant to encompass future technological developments. While the LCIA

has placed a greater emphasis on virtual hearings in its updated rules, it has not yet issued specific guidelines for conducting hearings virtually, unlike, among other institutions, the ICC, the SIAC and the HKIAC (all of which have recently issued such guidelines).

¹⁶ LCIA Press Release.

¹⁷ See LCIA Rules (2020), Art. 4.

¹⁸ *Ibid.*, Art. 26.2.

¹⁹ A v B [2017] EWHC 3417 (Comm). It remains to be seen whether the LCIA or any other arbitral institution will introduce rules in response to a more recent and noteworthy ruling by the U.K. Supreme Court, *Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb* [2020] UKSC 38, to clarify the scope of the tribunal’s authority to decide what law should apply to the arbitration agreement in the absence of an explicit agreement or indication from the parties or the relevant contract on this important issue.

²⁰ LCIA Rules (2020), Art. 1.2.

²¹ *Ibid.*

consolidation of arbitrations commenced under the same arbitration agreement or under any compatible arbitration agreement provided the arbitrations arise out of the same transaction or series of related transactions, even if the parties are not the same.²²

This provision represents an expansion of the consolidation powers of the tribunal, which were previously limited to circumstances where all parties to the arbitrations agreed to consolidation in writing or the arbitrations involved the same parties (in addition to the same arbitration agreement or a compatible arbitration agreement).²³

5. Other Notable Changes

Other notable changes in the 2020 LCIA Rules include the introduction of a new Article 30A addressing data protection. It specifies that any processing of personal data by the LCIA is subject to applicable data protection legislation.²⁴ It also requires the tribunal, in consultation with the parties, to consider whether it is appropriate to adopt measures to address information security and data protection.²⁵ Notably, the LCIA is the first major arbitral institution to adopt such a requirement.²⁶

The 2020 LCIA Rules also include new provisions related to the role of tribunal secretaries. Thus they confirm that the tribunal may not delegate its decision-making function to the tribunal secretary²⁷ and that the parties must agree on the tasks to be carried out by the tribunal secretary.²⁸ In addition, the LCIA has updated the schedule of costs, increasing the maximum hourly rate of arbitrators from £450 to £500.²⁹

²² See LCIA Rules (2020), Art. 22.7(ii)

²³ See LCIA Rules (2014), Art. 22.1(ix), (x).

²⁴ LCIA Rules (2020), Art. 30.4.

²⁵ *Ibid.*, Art. 30.5.

²⁶ See LCIA Podcast, at 19:32 – 19:38.

²⁷ LCIA Rules (2020), Art. 14.8.

²⁸ *Ibid.*, Art. 14.10.

²⁹ See LCIA Schedule of Arbitration Costs, available at https://www.lcia.org/Dispute_Resolution_Services/schedule-of-costs-lcia-arbitration-2020.aspx.

³⁰ LCIA Press Release.

Comment

Described as “*light touch*” updates by the LCIA,³⁰ the recent rules changes serve to confirm the existing authority of arbitrators to take steps to ensure the efficient, cost-effective administration of LCIA arbitrations, including where appropriate by adopting time-saving procedural measures and, notably, summarily dismissing unmeritorious claims. At the same time, should these “*light touch*” updates encourage tribunals to more frequently take steps to expedite proceedings and eliminate dilatory tactics – something that recently both parties and practitioners have broadly said that they desire³¹ – then the 2020 LCIA Rules may indeed prove to be a welcome, even potentially far-reaching upgrade, responsive to the perceived and voiced needs of the international arbitration community which avails itself of the LCIA.

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³¹ Parties and practitioners frequently cite the lack of speed of international arbitration as amongst its least attractive characteristics, and in a leading survey suggested that “*arbitrators need to adopt a bolder approach to conducting the proceedings*” to eliminate dilatory tactics. See Queen Mary University of London, “2018 International Arbitration Survey: The Evolution of International Arbitration,” at 7-8, 27, available at [http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey--The-Evolution-of-International-Arbitration-\(2\).PDF](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey--The-Evolution-of-International-Arbitration-(2).PDF).