

BRIEFING NOTE

LCIA Arbitration Rules 2020 – Major Development for Arbitration Users?

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Introduction

The London Court of International Arbitration (“**LCIA**”) recently updated its arbitration rules (“**LCIA Rules 2020**”), which will be effective from 1 October 2020. Arbitrations commenced after this date will be governed by the LCIA Rules 2020.

In this briefing note, we discuss the key updates and share our views on how these developments will impact arbitration users.

Consolidation and Joinder

The LCIA Rules 2020 clarifies the tribunal’s power to consolidate arbitration proceedings.

- Currently, tribunals may consolidate multiple proceedings: (a) where all parties agree in writing; and (b) where arbitrations between the same parties are commenced under the same arbitration agreement or compatible arbitration agreements (provided that the tribunal has not been formed or formed of the same arbitrators). Given the discretionary nature of this power, tribunals may have been slow to initiate consolidations unless requested by the parties.
- From October 2020, tribunals shall be empowered to consolidate multiple proceedings on the grounds mentioned above, as well as proceedings arising out of the same transaction or series of related transactions even if not all the parties are the same (Article 22.7(ii)). Given the mandatory nature of this power, it is envisioned that tribunals may seek consolidation more proactively in the future.

These updates to the LCIA Rules 2020 bring it in line with best practices adopted by other arbitration institutions (notably, the Singapore International Arbitration Centre (“**SIAC**”). Clearer provisions for consolidation will avoid duplicity of proceedings, thereby ensuring consistency of outcomes and facilitating cost savings.

There are no updates to the joinder provisions. Like the previous version, the LCIA Rules 2020 contain a brief provision for joinder of third parties when they have expressly consented to joinder. This should be contrasted with arbitration institutions such as the International Chamber of Commerce (“**ICC**”) and the SIAC, which have detailed guidelines with the application procedures and deadline for joinder of third parties to the proceedings.

Early Determination

The LCIA Rules 2020 clarifies the tribunal's power to make early determinations.

- Currently, this power is not expressly stated but is implied from the tribunal's duty to provide a fair, efficient and expeditious means for dispute resolution.
- From October 2020, the tribunal may make an early determination on issues that are unmeritorious or outside its jurisdiction (Articles 14.6(vi) and 22.1(viii)).

This update to the LCIA Rules 2020 brings it closer to, but not yet in line with, international best practices (for e.g., the arbitration rules of the SIAC). Even with an express provision for early determinations, tribunals may be reluctant to exercise this discretion unless parties request so. Unlike the arbitration rules of the SIAC, the LCIA Rules 2020 do not have clear guidelines on whether and how parties may request for early determinations. It remains to be seen whether early determinations will be a key feature of LCIA arbitrations.

Modern Conduct of Proceedings

As the first arbitration institution to update its rules amidst the current pandemic, it comes as no surprise that there are updates for electronic submissions and remote conduct of arbitration proceedings in the LCIA Rules 2020. From October 2020:

- Applications, submissions (including the request and response to arbitration) and other written communications, whether with the LCIA Registrar or between parties, must be made electronically. Further, arbitral awards may be signed and disseminated electronically (Article 26). Given the current pandemic has shown that global logistic chains can be disrupted, the push to electronic documents is much welcomed.
- Hearings may be conducted remotely by conference call, videoconference or other communications technology with participants in various geographies (Article 19.2). This is much welcomed by the arbitration community, who is familiar with having to set hearing dates far into the future to accommodate the competing schedules of tribunals, counsels and witnesses. With an express option for remote (or hybrid) hearings, there may be less cost and time delay in arbitration hearings.

These additions offer a sneak peak of what to expect from other arbitration institutions. Both the ICC and SIAC rules are due for an update and are expected to adopt similar, if not more forward-thinking, provisions in the conduct of arbitration proceedings.

Next Steps

Despite the developments to the LCIA Rules 2020, the ICC and SIAC rules may be preferred by those in the construction, insurance and oil & gas industries. These industries often experience multi-party and multi-contract disputes; they would benefit from the comprehensive consolidation and joinder provisions of the ICC and SIAC rules. These industries also often experience a significant number of claims/disputes and would benefit from clear provisions for early dismissal of claims under the SIAC rules.

As arbitration specialists, we assist clients with drafting arbitration clauses and acting as lead counsel in arbitrations. We focus on achieving a cost-effective result that advances our client's commercial objectives. To find out how we may assist with the process of referring disputes to arbitration, or the arbitration process itself, feel free to contact any member of our team.

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