

Modernisation of the LCIA Rules: A “light-touch” update

KEY ELEMENTS OF THE LCIA RULES UPDATE

Executive Summary

- The LCIA recently released an update of its Arbitration (and Mediation) Rules (the **LCIA Rules**) which shall apply to arbitrations starting on or after 1 October 2020.
- Following the LCIA President Paula Hodges QC’s own words, although this update (only) constitutes a “light-touch”¹ update, it aims, however, at upgrading the LCIA Rules by integrating recent good practice.
- Being finalised in the middle of a global pandemic, the **LCIA Rules 2020** are not only designed to generally render the proceedings more efficient, cost-effective and structured but also to take into consideration the current pandemic situation and facilitate future proceedings being affected by the impacts of this pandemic.

A. Overview

Even though the current COVID-19 pandemic was not yet foreseeable when the LCIA (London Court of International Arbitration) undertook to update its current set of Arbitration Rules (the **LCIA Rules 2014**), their awaited modernisation was nevertheless also influenced by the impacts of the pandemic on ongoing and future arbitration proceedings. The updated set of rules can be found on the LCIA homepage ([click here](#)).

¹ <https://www.lcia.org>: “Updates to the LCIA Arbitration Rules and the LCIA Mediation Rules” (2020)

The main amendments to the **LCIA Rules 2014** mainly focus on **(i)** strengthening the position of the Arbitral Tribunal, **(ii)** generally providing arbitration users with a more pragmatic and easier approach to arbitration and **(iii)** designing a more precise timeframe for the conduct of arbitration proceedings. This GSK Update seeks to outline these amendments to provide guidance for future LCIA arbitration proceedings and analyse to what extent these amendments meet the needs of modern arbitration users whilst maintaining the previous stability of the Rules.

1. A more powerful Arbitral Tribunal for a more efficient and cost-effective proceeding

The new version of the **LCIA Rules** introduces several measures designed to strengthen the role of the Arbitral Tribunal, in particular with regard to the conduct of the proceedings, which, in turn, may result in the conduct of arbitral proceedings in a more efficient, time- and cost-effective manner.

One of the new key measures in this respect is the Arbitral Tribunal’s express power of “**Early Determination**” (Article 22.1 **(viii)**). According to this provision, the Arbitral Tribunal may use this express power on its own initiative to dismiss any of the Parties’ outside-of-jurisdiction, inadmissible or unmeritorious submission. To that end, Article 22.1 **(viii)** provides that the Arbitral Tribunal will either render an “**Early Determination**” award or issue an “**Early Determination**” order.

Article 22.1 **(viii)** states: “*The Arbitral Tribunal shall have the power, upon the application of any party or (save for sub-paragraph **(x)** below) upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to*



costs and otherwise) as the Arbitral Tribunal may decide: 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; and where appropriate to issue an order or award to that effect (an “Early Determination”).

Although the Arbitral Tribunal already had an implicit power of “**Early Determination**” under the LCIA Rules 2014 (Articles 14.4 (ii) and 14.5), the new Article 22 (viii) makes that power express and in doing so, promotes a cost- and time-effective as well as expeditious proceeding as the said claims “**manifestly without merit**” may already be dismissed at a very early stage.

In addition, the **LCIA Rules 2020** expressly spell out the steps an Arbitral Tribunal may take to expedite the proceedings (Articles 14.5/14.6), such as limiting the length or content of any written submission or any written or oral testimony as well as dispensing with a hearing. These measures may enhance the efficiency of the proceedings and save considerable time.

Likewise, the powers of the Arbitral Tribunal to order consolidation and to conduct concurrently multiple arbitration proceedings are expanded (Article 22A). Indeed, under the **LCIA Rules 2014**, the consolidation and concurrent powers of the Arbitral Tribunal already existed (Article 22 (ix-x)) but merely covered one case-scenario according to which the arbitrations ought to have been commenced under the same arbitration agreement(s) and between the same Parties. However, under the **LCIA Rules 2020**, a second case-scenario is now provided: The Arbitral Tribunal may also order such consolidation or conduct concurrently such arbitrations provided that the said arbitrations have been commenced under the same arbitration agreement(s) and have arisen out of the same transaction or series of transactions. Therefore, the identity of the parties is not systematically required, especially in the presence of an arbitration arising out of the same transaction or series of transactions. Nonetheless, both case-scenarios will still only be possible provided that either the Arbitral Tribunals in the other arbitrations have not yet been constituted or that their

composition is the same in all the other arbitration proceedings.

2. A more pragmatic and pandemic-oriented procedure for all users

In addition to the empowerment of the Arbitral Tribunal, the updated Rules also contain new provisions with regard to the filing and handling of the arbitration proceedings. These provisions do not only have the potential to facilitate the conduct of arbitration proceedings but also reflect recent social and technological developments. In this regard it must be noted that although the **LCIA Rules** update was not directly triggered by the current Covid-19 pandemic, the **LCIA Rules 2020** still reflect and take into account the challenges brought along by the global pandemic.

First and foremost, the **LCIA Rules 2020** introduce the possibility to combine several arbitrations in one proceeding. Indeed, the Claimant is given the option to file a “**composite Request**” allowing it to file a single Request for Arbitration consisting of several claims against one or more Respondents instead of having to file multiple requests in a consecutive manner (Article 1.2). This provision is mirrored on the Respondent’s side: the Respondent may file a “**composite Response**” when answering the Claimant’s composite Request (Article 2.2). The introduction of these provisions may have been entailed by the A v. B [2017] EWHC 3417 judgment which forbade – at the time – the filing of a one-request-for-arbitration containing several related claims under different contracts. These composite Request and Response are a much welcome and very pragmatic addition that facilitates the introduction of arbitration proceedings on both the Claimant and Respondent’s sides.

Second, and particularly important in light of the current pandemic situation, the LCIA Rules 2020 now set up the primacy of electronic communications (Article 4.1). Although electronic means of communication between the Arbitral Tribunal and the Parties were already possible under the **LCIA Rules 2014**, the Parties were systematically given a choice between paper form, electronic means or both. That is not the case anymore. Under the



LCIA Rules 2020, electronic means of communication become the default rule. From 1 October 2020 onwards, the Request for Arbitration, the Response and all future communications must be sent via electronic means. All in all, this provision is a perfect fit having regard to the current pandemic situation: It facilitates the management of Arbitrations whilst saving costs and being, on top, environmentally-friendly.



Furthermore, the **LCIA Rules 2020** address, in a more extensive manner, the possibility already offered under the **LCIA Rules 2014** to resort to virtual hearings (Article 19.2). Such hearings may take place in person, via conference call, videoconference and through the use of other communications technology or a combination of all those means. It may therefore be of particularly significant aid with regard to the recent lockdown situations and may also contribute to the overall facilitation and effectiveness of arbitration proceedings.

Finally, to reinforce the aforementioned measures, the **LCIA Rules 2020** introduce the concept of “**E-awards**” (Article 26.2) according to which awards may be signed electronically and/or in counterparts and assembled afterwards into a single document. This provision, in line with the foregoing new measures, should be of significant use having regard to the COVID-19 situation.

3. A tighter framework for more structure, certainty and stability

Furthermore, the **LCIA Rules 2020** contain several updated or newly introduced provisions aiming at offering more stability and certainty to the Parties through the implementation of a tighter framework by means of deadlines.

On the one hand, the **LCIA Rules 2020** impose to the Parties and the Arbitral Tribunal to make their first contact within 21 days from the receipt of the Registrar’s written notification of the formation of the Arbitral Tribunal (Article 14.3). This tightens the proceedings as, under the **LCIA Rules 2014**, the Parties and the Arbitral Tribunal were merely “**encouraged**” to make contact within the 21-day time period.

On the other hand, the **LCIA Rules 2020** impose a 3-month deadline on the Arbitral Tribunal, following the last submission of the Parties, for the making of its final award (Article 15.10) whereas under the **LCIA Rules 2014**, the Arbitral Tribunal was only required to make its final award “**as soon as reasonably possible**”.

In clarifying and tightening these deadlines, the **LCIA Rules 2020** are expected to bring more structure, stability and certainty to the arbitral proceeding and, as a result, improve the **quality** of the Rules and make the proceeding more efficient as well as attractive.

4. Other Changes

Besides, the **LCIA Rules 2020** Update has also introduced amendments to the Rules in order to adapt them, **inter alia**, to the use of modern technologies.

The **LCIA Rules 2020** newly introduced, for instance, a compliance provision (Article 24A). According to this provision, the LCIA will deal with any party on the understanding that it is complying requirements such as bribery, corruption or fraud. As a result, the Parties will be required to provide the LCIA with any information or documents requested by the LCIA.



In addition, the **LCIA Rules 2020** also firstly introduce data protection measures (Article 30A (30.5)) according to which the LCIA may consider, where appropriate, adopting any specific information security measures to comply with data protection regulations when processing personal data.

Furthermore, the **LCIA Rules 2020** finally clarified the role of Tribunal Secretaries (Article 14A). The new provision is very prescriptive and sets the record straight as to their role, appointment and tasks: Tribunal Secretaries may never be delegated the Arbitral Tribunal's decision-making power and their appointment as well as the perimeter of their tasks must always be approved by all Parties.

Finally, the **LCIA Rules 2020** also refer to an updated schedule of costs displaying an increase in costs, in particular, the Registration Fee to GBP 1,950 (instead of GBP 1,750) and the Arbitral Tribunal hourly rate to GBP 500 (instead of GBP 450).

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