

# LCIA Arbitration 2020 Rules: New Rules for the Changed World

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On August 11, 2020, the London Court of International Arbitration ("LCIA") revised its arbitration rules ("LCIA 2020 Rules"). These Rules will come into force on 1 October 2020. The Rules supersede the 2014 edition of the LCIA Arbitration Rules ("LCIA 2014 Rules").

The changes introduced by the LCIA reflect the recent developments in good practice amongst arbitration and mediation

practitioners during the COVID-19 pandemic. LCIA 2020 Rules also address the users' desire for even more streamlined arbitral and mediation processes. In this article, the authors have highlighted the key changes in the LCIA 2020 Rules and how does these affect the LCIA Arbitrations.

### **Commencement of Arbitration**

LCIA 2020 Rules allow a party to use a single, composite request for arbitration to commence more than one LCIA arbitration, whether against one or more respondents or under one or more arbitration agreements.

Under Article 1.2 of the LCIA 2020 Rules, a claimant wishing to commence more than one arbitration under the LCIA Rules (whether against one or more respondents and under one or more arbitration agreements) may serve a composite request for arbitration in respect of all such arbitrations. This change means that claimants will no longer need to file multiple requests.

### **Early Determination**

Under LCIA 2014 Rules, it was accepted that arbitral tribunals had an implied power of early dismissal in relation to claims outside their jurisdiction or claims which are manifestly unmeritorious.

In the LCIA 2020 Rules, the provision of early determination has been introduced. This brings LCIA in line with general trend towards allowing for express powers of early determination of claims to the arbitral tribunal, which was started by SIAC (Singapore International Arbitration Centre) in 2016 and then followed by the institutions like SCC (Stockholm Chamber of Commerce) in 2017 and HKIAC (Hong Kong International Arbitration Centre) in 2018.

### **Consolidation & Concurrent conduct of Arbitrations**

The new Article 22A of the LCIA 2020 Rules broadens the power of the LCIA Court and the tribunal to order for consolidation and concurrent conduct of the arbitration proceedings. Even in cases where parties have not agreed in writing for such consolidation, the LCIA Court or the arbitral tribunal can order for consolidation if (a) the arbitration has been commenced under the same arbitration agreement or any compatible arbitration agreement/s, and (b) either the arbitration agreement exists between the same disputing parties or the disputes have arisen out of the same transaction or series of related transactions.

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### Use of Technology

The LCIA 2020 Rules makes it clear that all requests for arbitration and responses must be submitted in electronic form, and parties will require prior permission to file documents in any other form.

The LCIA 2020 Rules address virtual hearings in greater detail. The LCIA 2014 Rules provided for the possibility of hearings being held by video, the LCIA 2020 Rules in Article 19.2 state 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 geographical places (or in a combined form).”

The changes in virtual hearing rules also includes clarification that, if a hearing takes place otherwise than in person, it will nonetheless be treated as being conducted at the arbitral seat (this mirror and supplements the existing provisions for in person hearings held at locations other than the seat). Moreover, Article 26.2 of the LCIA 2020 Rules provides for electronic signature of the award.

### Data Protection

In the age of virtual hearings and electronic filings, data protection becomes significant. Under Article 30.4 of the LCIA 2020 Rules, it is stated that any processing of

personal data by the LCIA is subject to applicable data protection legislation. Further, after due consultation with the parties or the LCIA, a tribunal can also adopt (a) any specific information security measures to protect the physical and electronic information shared in the arbitration; and (b) any means to address the processing of personal data produced or exchanged in the arbitration in light of applicable data protection or equivalent legislation.

### Role of Tribunal Secretary

The international arbitration community has seen a rise in the appointment of tribunal secretaries. With the incorporation of Article 14A into the LCIA 2020 Rules, the process of approval and appointment of a tribunal secretary, its role and involvement in the arbitration proceedings have been envisaged as a binding provision. The LCIA 2020 Rules also mandate a disclosure from the tribunal secretaries as to their independence and ability to devote time in the case.

### Nationality of Parties

To deal with the issue of determination of nationality,

Article 6 of the LCIA 2014 Rules is revised to require parties to give information on their nationality, and to clarify how nationality is to be determined. This will aid in the timely appointment of sole and presiding arbitrators (who must be of different nationality to the parties).

The LCIA 2020 Rules have set out a detailed framework for determination of nationality. The LCIA 2020 Rules explain the process of determination of nationality both in case of a natural person and in case of a legal person. As far as a natural person is concerned, nationality under the LCIA Rules means citizenship, acquired by birth or

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