

What's new in the "final draft" LCIA Arbitration Rules?

The Drafting Committee of the LCIA Court has circulated a "final draft" of the much anticipated new Arbitration Rules (Draft Rules) for consideration by the LCIA Court at the LCIA's Tylney Hall symposium on 9 May 2014. It is anticipated that the new LCIA Rules will be finalised shortly after. The new rules, once finalised, will apply to arbitrations commenced after the date of promulgation, unless the parties agree otherwise. The existing rules have been in effect since 1998. The Draft Rules come after the release of the new UNCITRAL Arbitration Rules (2010) and the ICC Arbitration Rules (2012) and are in line with amendments to these rules.

In summary, the Draft Rules retain the familiar light administrative touch and can be seen to be more simple refinements, rather than wholesale change – nevertheless, the changes are significant and act to modernise the Rules.

The key changes contained in the Draft Rules are as follows:

Key Features	Changes and significance
Speed	A new provision provides that the Arbitral Tribunal should render the award " <i>as soon as reasonably possible</i> ". Further, the Arbitral Tribunal should set and notify the parties, and the Registrar, of a timetable for this purpose – Article 15.10.
Procedure/ Timetable	The parties and the Tribunal must now meet to discuss the conduct of the proceedings no later than 21 days after notification that the tribunal has been constituted – Article 14.1.
Default seat	Unless otherwise agreed by the parties, the default seat (which remains London, England) will apply up to and until the formation of the Arbitral Tribunal. Thereafter, the Arbitral Tribunal (and not the LCIA Court) may order that a different seat of arbitration is more appropriate, after seeking written comments from the parties – Article 16.2.
The Arbitration Agreement	Under the preamble to the Draft Rules "Arbitration Agreement" is now a defined term that incorporates both the arbitration agreement itself and the LCIA Rules. A significant change is introduced by Article 16.4 which expressly provides that, unless the parties provide otherwise, the law of the Arbitration Agreement (as well as the law of the arbitration) shall be that of the " <i>seat</i> " of the arbitration. The law of the Arbitration Agreement continues to be a matter of debate in recent case law which is now clarified by the Draft Rules.
Formation of the Arbitral Tribunal	The declarations to be provided by arbitral candidates now includes a statement as to whether the candidate is " <i>ready, willing and able to devote time, diligence and industry to ensure the expeditious conduct of the arbitration</i> " – Article 5.4. The Draft Rules now allow the LCIA Court, in exceptional circumstances, to appoint a Tribunal of more than three arbitrators – Article 5.8. Unless the parties agree otherwise, no party can nominate a sole arbitrator or a chairman unilaterally – Article 7.3.
Emergency relief	As mentioned above, one of the most significant changes introduced by the Draft Rules is the proposal of a mechanism whereby the parties may apply to the LCIA for the urgent appointment of an arbitrator (always a sole arbitrator), before the formation of the Arbitral Tribunal – Article 9B. This provision is available in circumstances of " <i>exceptional urgency</i> " and on a " <i>temporary</i> " basis – Article 9.4. The Emergency Arbitrator shall decide the claim for emergency relief no later than 20 days following the Emergency Arbitrator's appointment - Article 9.7. The Emergency Arbitrator is not required to hold any hearing with the parties and may decide the claim for emergency relief on any available documentation – Article 9.8. Once the Arbitral Tribunal has been constituted, interim measures that may be available from a court may only be sought in " <i>exceptional cases</i> " with the Tribunal's authorisation – Article 25.3.

Consolidation	<p>The Draft Rules introduce a provision that the Tribunal may order consolidation, where the parties have agreed to this in writing, and with the approval of the LCIA Court – Article 22.1(ix).</p> <p>Further, where there are multiple arbitrations involving the same parties and only one Tribunal has been appointed (or the Tribunal appointed in the different arbitrations is the same), the Tribunal can order consolidation. In such circumstances, while the parties’ agreement is not necessary, the Tribunal should still seek the parties’ views and the agreement of the LCIA Court is still required – Article 22.1 (x).</p>
Conduct of legal representatives and parties	<p>Parties must now notify all other parties, the Arbitral Tribunal and the Registrar if there are any changes or additions to the parties’ legal representatives and such changes are conditional on the Tribunal’s approval – Article 18.3.</p> <p>The Tribunal’s approval may be withheld if the change or addition compromises the composition of the Tribunal or the finality of the award – Article 18.4.</p> <p>The Draft Rules contain an Annex which contains general conduct guidelines that apply to all legal representatives appearing by name before the Tribunal.</p> <p>The Tribunal has express powers to rule on whether or not the guidelines have been violated and has a number of express sanctions that may be imposed directly on the legal representative for any such violation – Article 18.6. As to the scope of any such sanctions; this remains open for further discussion by the LCIA Court.</p>
Costs	<p>It is proposed that unilateral communications with the Arbitral Tribunal are prohibited, unless such contact has been disclosed in writing – Article 13.4.</p> <p>The Arbitral Tribunal now has an express power to take the parties’ conduct into account when awarding costs Article 28.4.</p>

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