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The 2014 LCIA Rules

By [Philip Clifford](#) and [Alanna Andrew](#)

Philip Clifford has recently co-authored the first book on the new Rules entitled "A commentary on the LCIA Arbitration Rules 2014", which is available to purchase [here](#).

The modernised and improved LCIA rules offer greater efficiency and flexibility and include some entirely new provisions.

The 2014 Rules include some completely new provisions, with no equivalent in the previous (1998) Rules, such as an Emergency Arbitrator procedure, ethical guidelines for legal representatives and rules for determining the governing law of the arbitration agreement. However, in many respects they simply represent an improved and modernised version of the previous Rules, having been amended to promote even greater efficiency and flexibility in the arbitral process, or to reflect advances in technology.

This article explains when the 2014 Rules will apply and highlights some of the more interesting changes that have been introduced.

When will the 2014 Rules apply?

The 2014 Rules apply to LCIA arbitrations commenced on or after 1 October 2014, save that, unless the parties agree otherwise, the Emergency Arbitrator provisions (discussed below) will not apply where the arbitration agreement was made before 1 October 2014.

How does the Emergency Arbitrator procedure work?

If the need for urgent interim relief arises before a tribunal has been appointed and the procedure is available, a party may apply to the LCIA Court for an Emergency Arbitrator.

The application must be in writing (preferably submitted electronically) and be accompanied by the Request for Arbitration (if made by the Claimant) or Response (if made by a Respondent) and be copied to the other parties. The applicant must confirm that it has paid (or is paying) the £8,000 application fee and £20,000 Emergency Arbitrator's fee.

If the application is granted, an Emergency Arbitrator will be appointed within three days of the application. He or she may call a hearing or decide the request for interim relief without a hearing.

The Emergency Arbitrator's award must be made in writing, with reasons, as soon as possible and within 14 days of his or her appointment. The award is binding but may be varied, discharged or revoked by the tribunal subsequently appointed for the arbitration.

Governing law of the arbitration agreement

The 2014 Rules provide that the governing law of the arbitration agreement shall be the law of the seat of the arbitration unless otherwise agreed in writing.

Unless the parties have agreed in writing on another seat before the tribunal is appointed or the tribunal orders otherwise, the seat shall be London. If the parties wish to agree upon a seat after the tribunal has been appointed, they must obtain the tribunal's prior written consent.

Ethical Guidelines for Counsel

For the first time, the 2014 Rules contain "General Guidelines for the Parties' Legal Representatives" (the Guidelines) which are intended to promote a good, uniform, standard of behaviour among the parties' legal representatives. The Guidelines have been much anticipated since the need for "self-regulation" was aired at the XXth International Council for Commercial Arbitration (ICCA) Congress in Rio de Janeiro in 2010 and are consistent with Guidelines on Party Representation in International Arbitration issued by the International Bar Association in 2013.

The Guidelines prohibit:

- Activities intended unfairly to obstruct the arbitration or jeopardise the award
- Knowingly making false statements to the tribunal or the LCIA Court
- Knowingly using false evidence
- Knowingly concealing documents which are to be produced
- Unilateral communication with any member of the tribunal unless this contact is disclosed to the parties, the tribunal and the registrar

If parties violate the Guidelines, the tribunal may decide whether to give a written reprimand, a written caution or to take any other measure necessary to allow the tribunal to fulfil its duties.

How will the Guidelines affect the parties?

The parties must ensure that their representatives adhere to the Guidelines. If parties do not, their credibility before the tribunal may be damaged, adverse inferences could be drawn in relation to the evidence and they may be penalised in costs.

Wide ranging sanctions for failure to comply with the Guidelines were considered during the consultations on the 2014 Rules, which provoked considerable debate. The most controversial proposal would have given the tribunal the power to report any offending legal representative to his or her regulator. This power was subsequently removed following an outcry from practitioners.

The potential punishments may now appear somewhat weaker, but in reality parties who permit or encourage their legal representatives to act contrary to the Guidelines may substantially risk their cases by alienating the tribunal.

Consolidation

Tribunals may now, on the application of a party, consolidate proceedings commenced under the same or compatible arbitration agreements between the same disputing parties, provided the same tribunal is sitting in both arbitrations or no tribunal has yet been appointed in the other arbitration(s).

Efficiency of procedure

A number of provisions are intended to create a more efficient and streamlined process, and to encourage communication and engagement between the parties at an early stage. For example:

- Arbitrator candidates must provide a statement as to their readiness and ability to devote sufficient time to the arbitration
- The Guidelines stipulate that the parties' legal representatives must not *"engage in activities intended unfairly to obstruct the arbitration or to jeopardise the finality of any award"*
- Submitting documents in electronic format is encouraged
- Hearings via telephone or videoconferencing are now specifically provided for

The tribunal must make its final award *"as soon as reasonably possible"* following the last submission of the parties.

Conclusion

The 2014 Rules are in many respects a new and improved version of the previous Rules, although they do contain some specific new provisions to ensure that the LCIA remains competitive with other arbitral institutions and addresses the concerns of its users. The timing of the 2014 Rules has allowed the LCIA to consider the various revisions to the other major international rules (such as the 2010 UNCITRAL Arbitration Rules and the 2012 ICC Rules). We therefore anticipate that the more substantive changes made in the 2014 Rules will strike the right balance for those who adopt them.

It is expected that DIFC-LCIA (Dubai), LCIA-India and LCIA-MIAC (Mauritius) will soon amend their respective rules in line with the new LCIA Rules 2014.