

LCIA Notes for Parties

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These guidance notes reference the LCIA Rules (2014). In line with the LCIA Rules (2020) updated guidance notes and other related resources will be available from the LCIA website in due course.

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1. INTRODUCTION

1. The purpose of this note is to provide guidance to parties, and to their representatives, on conducting arbitrations under the LCIA Rules. It addresses, amongst other things, commencement of an arbitration, filing of a Response, appointment of an Arbitral Tribunal (including applications for expedited formation and for the appointment of an emergency arbitrator), presentation of evidence, confidentiality and determination of the costs of an arbitration.
2. This note is by no means intended to provide an exhaustive list of “best practices” in the conduct of arbitration, nor does it supplant or interpret the LCIA Rules. Rather, the note highlights points for parties to consider in the conduct of LCIA arbitrations.
3. Members of the LCIA Secretariat are always available to assist parties with any points of procedure relating to the LCIA Rules, although we cannot engage in any unilateral written correspondence or conversations with parties about matters of substance.
4. Further details about the LCIA, and the services we can provide (including, for example, administration of mediations and of ad hoc arbitrations), can be found on our website, www.lcia.org.
5. If you have any questions about LCIA arbitration or the other services we can provide, please email us at casework@lcia.org.

2. THE LCIA RULES - THE BASICS

6. The LCIA Arbitration Rules are a set of arbitral rules that parties can, by agreement, adopt to provide the framework for the resolution of their dispute by arbitration. If parties choose the LCIA Arbitration Rules, they also receive the benefit of having an institution (the LCIA) to administer their arbitration and to help the process run more efficiently.
7. The LCIA Rules are of universal application, being suitable for all types of arbitrable disputes, regardless of the seat of the arbitration, the nationality of the parties, the language of the arbitration or the substantive law applicable to the dispute. Typically, around 85% of parties who use the LCIA are from outside of the UK (see our reports at www.lcia.org/LCIA/reports.aspx).
8. The LCIA Arbitration Rules presently in force are the LCIA Arbitration Rules 2014, which came into effect on 1 October 2014 (the 2014 Rules). With the exception of the Emergency Arbitrator provisions (discussed below), the 2014 Rules apply to all arbitrations subject to the LCIA Rules commenced on or after 1 October 2014, regardless of when the underlying agreement to arbitrate was concluded.
9. The LCIA Rules effective 1 January 1998 (the 1998 Rules) continue to apply to arbitrations that were commenced before 1 October 2014, as well as to arbitrations where the parties’ agreement expressly refers to the LCIA Rules 1998 or, for example, to “the LCIA Rules in force as at the date of the agreement” (where that date was before 1 October 2014).

10. For ease of reference, and because most principles apply equally to both sets of Rules, this note refers generically to “the Rules”. Where, however, there are substantive differences between the 2014 Rules and the 1998 Rules, these are identified.

11. The Rules offer to parties a state of the art arbitration, including:

- maximum flexibility for parties and Arbitral Tribunals to agree on procedural matters;
- speed and efficiency in the appointment of arbitrators;
- a combination of the best features of the civil and common law systems;
- emergency procedures, including expedited formation of the Arbitral Tribunal (and, under the 2014 Rules, emergency arbitrator);
- an Arbitral Tribunal's power to decide on its own jurisdiction;
- ethical guidelines for the parties’ legal representatives (under the 2014 Rules);
- an Arbitral Tribunal's power to order security for claims and for costs, as well as to grant a range of interim and conservatory measures;
- special powers for joinder of third parties (and, under the 2014 Rules, consolidation);
- waiver of right of appeal, assisting parties to obtain finality;
- costs computed on an hourly basis, rather than as a percentage of the amount in dispute; and
- staged deposits - parties are not required to pay for the whole arbitration in advance.

3. THE LCIA RULES - SCOPE OF APPLICATION

12. Since arbitration is a consensual process, a party who wishes to use the LCIA Arbitration Rules must first agree with the other parties to the transaction or the dispute (most usually at the time of contracting or once a dispute has arisen) that their dispute should be resolved by arbitration under the Rules. If there is no pre-existing agreement and one party wishes to refer a dispute to the LCIA, but the other does not, the LCIA will not be able to assist the parties with their dispute.

13. The LCIA’s recommended dispute resolution clauses are available on our website. You should feel free to contact the LCIA Secretariat (casework@lcia.org) if you have questions about any of our clauses or proposed modification to them.

14. A clause that refers only to “arbitration in London”, but without any reference to the LCIA, does not provide for LCIA arbitration; instead, it likely provides for ad hoc arbitration, in accordance with the English Arbitration Act 1996. Should parties arbitrating pursuant to such a clause nevertheless wish to adopt the LCIA Rules or to ask the LCIA to administer their ad hoc arbitration, we would be pleased to assist.

15. The LCIA will be able to assist parties under certain other clauses, notwithstanding that the clauses do not refer to the LCIA by name, including, for example, agreements that refer to the “London Court of Arbitration” (which is the name by which the LCIA was formerly known).

16. If a clause refers to an arbitration institution that appears not to exist, and where the Claimant asserts that it was the parties' intention to refer to the LCIA, the LCIA Secretariat may, in consultation with the LCIA Court, register the Request for Arbitration on the understanding that it will be for the Claimant to satisfy the Arbitral Tribunal, in due course, that the clause provides for arbitration under the LCIA Rules and that the Arbitral Tribunal does have jurisdiction.

4. LONDON CHAMBER OF COMMERCE

17. Until 28 November 2016, the LCIA also potentially had a role where an arbitration clause provided for arbitration, or appointment, by the "London Chamber of Commerce", as by-law 6.01 of the London Chamber of Commerce and Industry (the Chamber) provided that references to the rules of the Chamber were deemed to be references to the LCIA Rules, and by-law 6.02 provided that, in the case of a dispute referred to the Chamber for the appointment of an arbitrator, the appointment would, at the discretion of the President of the Chamber, be made either by the President of the Chamber or by the LCIA.

18. As of 28 November 2016, however, the by-laws of the Chamber were amended, with the result that referrals based on arbitration clauses referring to the Chamber, for arbitration or for the appointment of an arbitrator, shall be referred to the Chamber, irrespective of the date of the contract. The LCIA will therefore no longer accept Requests for Arbitration where the clause refers to the "London Chamber of Commerce", but will continue to administer pending cases, which had been registered with the LCIA before 28 November 2016, based on an arbitration clause referring to the Chamber.

5. COMMENCING AN LCIA ARBITRATION

19. To commence an arbitration under the Rules, a party should file with the LCIA a Request for Arbitration (a Request).

20. A party should address its Request to the LCIA Registrar, Sarah Lancaster, and ensure that it includes or encloses all of the information and documentation required by Article 1 of the Rules, including:

- the full names and all contact details of all of the parties;
- the full names and all contact details of the legal representatives of all of the parties;
- the full terms of the written arbitration agreement invoked by the Claimant, together with a copy of any relevant contractual documentation;
- a statement briefly summarising the nature and circumstances of the dispute, its estimated monetary amount or value, and the claim advanced by the Claimant against any other party to the arbitration;
- a statement of any procedural matters for the arbitration upon which the parties have already agreed in writing or in respect of which the Claimant makes any proposal;
- if the arbitration agreement calls for any form of party nomination, the full name and contact details of the Claimant's nominee;

- confirmation that the registration fee has been or is being paid to the LCIA (the Request will be treated as not delivered and the arbitration as not having been commenced unless and until the LCIA receives actual payment); and
- confirmation that copies of the Request (and all accompanying documents) have been or are being delivered to all other parties, with details of the means by which delivery is being effected (to be followed as soon as possible, under the 2014 Rules, by documentary proof of actual delivery).

21. There is no standard form for a Request. The format of any Request is therefore for a Claimant to decide, although it should be careful to ensure that all of the documentation and information required by Article 1 of the Rules has been provided. We would normally expect a Request to be a summary document of around 4 or 5 pages, rather than an extensive written pleading, unless a party intends to elect in due course that its Request stand as its Statement of Case (see further below).

22. You may file your Request online (see further below), in hard copy or by email to casework@lcia.org. If you are filing in hard copy, you should provide two or four copies of your Request (depending on whether the parties' agreement provides for a sole arbitrator or a three-member tribunal), so that we have sufficient hard copies to provide to the Arbitral Tribunal once appointed.

23. It is the responsibility of the Claimant (and not of the LCIA) to deliver a copy of the Request to all Respondents, using any of the means prescribed in Article 4.1 of the Rules. Parties should note, however, that under Article 4.3 of the 2014 Rules, delivery by electronic means (including email and fax) may only be effected to an address agreed or designated by the receiving party.

24. As mentioned above, a Request should confirm that the Claimant has paid the registration fee. The registration fee, as prescribed by the Schedule of Cost, is presently £1,750, plus VAT of £350 if applicable. VAT will be applicable if the Claimant is based in the United Kingdom (or registered for UK VAT). If the Claimant is based elsewhere within the European Union, VAT will not be charged if the Claimant is in business and has economic outputs. In line with HM Revenue & Customs guidelines, the Claimant should provide its EU VAT registration number as evidence; otherwise VAT will be applicable. If the Claimant is outside of the European Union, no VAT will be payable.

25. A Claimant may pay the registration fee by bank transfer to our account, by cheque payable to "LCIA", or by credit card (using our online filing process or by telephone to our accounts team). If the Claimant wishes to pay by bank transfer, the Claimant should contact the LCIA accounts team (at accounts@lcia.org) to request our bank account details.

26. As mentioned above, in accordance with Article 1 of the Rules, until actual receipt of the registration fee, the Request is treated as not having been received and the arbitration is deemed not to have commenced. If paying by bank transfer, it might therefore be advantageous to effect the transfer before sending to the LCIA your Request.

27. The LCIA will write to the parties to the arbitration within one working day of our receipt of a Request and the requisite registration fee.

6. FILING A REQUEST FOR ARBITRATION, A RESPONSE OR AN EMERGENCY APPLICATION ONLINE

28. From 1 October 2014, a party may file a Request electronically through our new online filing system, available at onlinefiling.lcia.org. It is also possible to file a Response through our online system, as well as an application for the appointment of an Emergency Arbitrator or an application for expedited appointment of the Arbitral Tribunal.

29. In order to use the online filing system, individuals need to complete a simple registration process, which generates a unique username and password and provides access to our various online forms.

30. The online filing system is designed to be user-friendly, requesting, step-by-step, all of the information required by the Rules. In this way, it acts as a useful checklist for parties unfamiliar with LCIA arbitration to ensure that they have included in their Request or Response (or in their application for an Emergency Arbitrator or for expedited formation) all of the information that the Rules require.

31. If a party does not wish to use the inter-active Request form on our online system, it may nevertheless upload a PDF copy of its Request through our online filing system. We recommend that if you have a PDF copy of a Request to upload, you do not also fill out the inter-active form, in order to avoid the risk of inconsistencies in the two versions.

32. Parties submitting a Request or an application for the appointment of an Emergency Arbitrator via our online filing system will be asked to pay the relevant fee by credit card online, thus avoiding the delays that can be caused by raising a cheque or effecting payment by bank transfer.

33. The filing of a Response or of an application for expedited formation does not attract a separate filing fee.

7. RESPONDING TO A REQUEST FOR ARBITRATION

34. If a party receives a Request for Arbitration, the next step is for it to prepare a Response.

35. Article 2 of the 2014 Rules provides that a Respondent shall file any Response to a Request within 28 days of the date that the arbitration commenced (namely, within 28 days of the date on which the LCIA received the Request and registration fee). This is a change from the 1998 Rules, which provide that a Response should be sent within 30 days of receipt by the Respondent of the Request, rather than being dependent on the date that the Request was filed with the LCIA.

36. Failure to deliver a Response (or any part of a Response) would not by itself preclude a Respondent from denying a claim, nor from advancing any defence or cross-claim in the arbitration. If, however, the parties have agreed on party nomination of arbitrators, then failure to deliver a Response in time (or to otherwise nominate an arbitrator) would constitute an irrevocable waiver of that party's opportunity to nominate or propose an arbitrator.

37. Article 2 of the Rules sets out the information and documentation any Response should include. As with a Request, there is no prescribed form for a Response, although we would usually expect a Response to be only a few pages in length (unless the party intends for its Response to stand as its Statement of Defence). A Respondent may, therefore, decide on the format of its Response, but should be careful to include all information required by the Rules.

38. Under the 2014 Rules, the LCIA Court has a discretion to extend the deadline for service of a Response on the application of a party: the LCIA Court might consider it appropriate to extend the deadline where, for example, there has been a lengthy delay between commencement of the arbitration and delivery by the Claimant of the Request to the Respondent.

8. APPOINTMENT OF ARBITRATORS

39. Unless the parties have agreed express timing, the LCIA Court will take steps to appoint the Arbitral Tribunal promptly after receipt of the Response or, if no Response is received, after 7 days from the date on which the Response was due.

40. The time it takes to complete the appointment process varies from case to case, depending on a number of factors, including: the number of arbitrators to be appointed; the time it takes for a candidate arbitrator to return his/her statement of independence and availability; any disclosure made by a candidate arbitrator; any mechanism agreed between the parties for the selection of the Arbitral Tribunal (such as a list procedure) and the timeframes under that mechanism.

41. The default position under the Rules is that the LCIA Court will select the arbitrators. If parties wish to have a right to nominate an arbitrator, they should therefore agree this with the other parties, either by including appropriate wording in their arbitration agreement or by agreeing to party nomination at the time that the dispute arises.

42. If the parties have not agreed to party nomination, but wish to be involved in the selection of the Arbitral Tribunal, the LCIA is happy to provide to the parties (where all parties have agreed that we should do so) a list of suitable candidates for them to discuss and from which they may, as appropriate, agree a nominee or separately rank the individuals in order of preference.

43. Alternatively, the parties might submit to the LCIA details of any attributes or qualifications they consider the arbitrator(s) should possess.

44. Under the Rules, the LCIA Court is the body that formally appoints an arbitrator, whether or not there is party nomination. This provision ensures that the LCIA can, before confirming the appointment of the Arbitral Tribunal, check with each candidate arbitrator that he / she is independent and impartial and, under the 2014 Rules, has the requisite availability to proceed expeditiously with the arbitration.

45. Where it falls to the LCIA Court to select an arbitrator or to provide a shortlist of candidates, it is well-placed to do so, drawing from the vast experience of the senior members of the Court and of the Secretariat, and from our extensive internal database of neutrals.

46. In all cases, whether or not the parties have nominated arbitrators, the basic LCIA procedure for the appointment of arbitrators is as follows (save that steps d, e and g are omitted in the case of party nomination):

a) the LCIA Secretariat reviews the Request and accompanying contractual documents, and the Response (if any);

b) a résumé of the case is prepared;

c) key criteria for the qualifications of the arbitrator(s) are established;

d) the criteria are entered into the LCIA's database of arbitrators; an initial list is then drawn from the results and from the Secretariat's own extensive knowledge;

e) the Secretariat is not restricted to the database and, as appropriate, other sources are consulted for further recommendations;

f) the résumé, the relevant documentation, and the names and CVs of the potential arbitrators are forwarded to a senior member of the LCIA Court (the President or a Vice President);

g) the senior member of the LCIA Court advises which arbitrator(s) the Secretariat should contact (who need not be, but often will be, from among those put forward by the Secretariat) to ascertain their availability and willingness to accept appointment and the Court confirms the maximum hourly rate that is appropriate for the particular case;

h) in the case of party nomination, the LCIA Court advises whether it considers the nominee(s) suitable, subject to conflicts checks;

i) the Secretariat sends the candidate(s) an outline of the dispute and asks if each candidate is willing and able to accept appointment;

j) when the candidate(s) have confirmed their availability, independence and impartiality, and agreed to the maximum fee rate set by the LCIA Court (with the maximum the Court could set currently standing, under the Schedule of Costs, at £450 per hour), the Secretariat prepares a form of appointment; and

k) the senior member of the LCIA Court formally appoints the Arbitral Tribunal and the Secretariat notifies the parties of the appointment.

47. Where the parties have jointly requested that the LCIA provide a list of candidate arbitrators, from which they may endeavour to select the Arbitral Tribunal (whether in straightforward negotiation, or by adopting an UNCITRAL-style list procedure), the selection process described above is carried out in respect of all candidates to be included on the list, so that any candidate(s) selected by the parties have already confirmed their willingness and ability to accept appointment and have been pre-approved for appointment by the LCIA Court before the list is sent to the parties.

48. At the same time as being concerned that each arbitrator should be appropriately qualified as to experience, expertise and language, the LCIA is also mindful of any other criteria specified by the parties in their agreement and/or in the Request and Response.

49. The LCIA is keen to ensure the right balance of experience, qualifications and seniority on a three-member tribunal; in particular, what qualities the third and presiding arbitrator should have to complement those of his/her co-arbitrators. The LCIA is mindful also of any particular national and/or cultural characteristics of the parties to which it should be sensitive, so as to minimise conflict, and will always have regard to the nature of the case (including sum in issue, nature of relief sought, technical and legal complexity).

50. The LCIA strives to maintain strong diversity (in all its guises) among the candidates selected. This includes, wherever possible and where appropriate in the particular case, widening the pool of arbitrators through first time appointments.

51. Under the Rules, there is a presumption in favour of a sole arbitrator unless the parties have agreed in writing otherwise, or unless the LCIA Court decides that the circumstances of the case demand three arbitrators.

52. By Article 6.1 of the Rules, if the parties are of different nationalities, a sole arbitrator or the third and presiding arbitrator may not be of the same nationality as one of the parties, unless the other parties agree.

9. URGENT CASES - EXPEDITED FORMATION OF THE ARBITRAL TRIBUNAL

53. As explained above, the LCIA Court takes steps in all cases to appoint an Arbitral Tribunal promptly after delivery of a Response or expiry of the deadline for delivery of a Response.

54. In rare cases, however, there is such exceptional urgency that a party requires immediate appointment of an Arbitral Tribunal. In such a case, a Claimant or a Respondent may apply to the LCIA Court, at the same time as, or after, the filing of the Request, for the constitution of the Arbitral Tribunal on an expedited (i.e. urgent) basis.

55. A party making an application for expedited formation under Article 9 of the Rules must set out the specific grounds of exceptional urgency that require the expedited formation of the Arbitral Tribunal. There is no prescribed list of what would, or would not, constitute exceptional urgency, but it might include, for example, that the applicant would suffer some irreversible harm if an Award or order on some issue is not made by some date (see further our Emergency Procedure Guidance Note). It is common, although not necessary, for an application for expedited formation to be accompanied by an application for urgent interim relief under Article 25 of the Rules.

56. The provisions on expedited formation and Emergency Arbitrator are not mutually exclusive – meaning that a party might, in an appropriate case, decide to make an application for both expedited formation of the Arbitral Tribunal and, in the interim, for the appointment of an Emergency Arbitrator (see further below).

57. On receipt of an application for expedited formation, the Secretariat will consult a senior member of the LCIA Court, whose usual practice is to invite the other parties to the arbitration to respond within a short timeframe. The LCIA Court is not, however, obliged to seek comments and may proceed with an expedited appointment notwithstanding the absence of comments by a responding party.

58. If the senior member of the LCIA Court accepts the applicant's contention that there is exceptional urgency, the LCIA Court will appoint an Arbitral Tribunal as expeditiously as possible. The senior member consulted may also decide to abridge the time for service of any Response or for nomination of an arbitrator.

59. Once appointed, the Arbitral Tribunal will address with the parties the procedure to be adopted in the arbitration. Although there is no obligation on an Arbitral Tribunal to follow an expedited procedure in a case where it has been appointed on an expedited basis, it may decide to do so.

60. Further information about expedited formation is available in our Emergency Procedure Guidance Note.

10. URGENT CASES - EMERGENCY ARBITRATOR PROCEDURE UNDER THE 2014 RULES

61. The 2014 Rules introduced a new Emergency Arbitrator procedure, which complements the existing expedited formation provision.

62. The Emergency Arbitrator procedure, contained in Article 9B of the 2014 Rules, applies only to arbitration agreements concluded on or after 1 October 2014 (rather than, like the balance of the 2014 Rules, to arbitrations commenced on or after that date). Parties to an arbitration agreement concluded before 1 October 2014 may nevertheless expressly agree that this provision should apply to their arbitration.

63. Unlike expedited formation, the Emergency Arbitrator procedure allows a party to seek the appointment of a temporary sole arbitrator, whose role is confined to addressing a request for urgent interim relief pending formation of the Arbitral Tribunal that will

determine the merits of the dispute. In its application, a party must set out the specific grounds requiring, as an emergency, the appointment of an Emergency Arbitrator and the specific claim, with reasons, for emergency relief.

64. A party wishing to apply for the appointment of an Emergency Arbitrator should use the online form available at onlinefiling.lcia.org and ensure that it pays the Special Fee specified by the Schedule of Costs (presently £28,000, plus VAT if applicable), which may be paid by credit card online.

65. If the LCIA Court grants the application for the appointment of an Emergency Arbitrator, there are short time-limits for the LCIA to appoint a candidate and for the Emergency Arbitrator to then issue his/her decision, which may take the form of an order or Award.

66. Article 9B of the 2014 Rules expressly clarifies that the Emergency Arbitrator provision does not prejudice a party's right apply to a state court for any interim or conservatory measure should it wish to do so.

67. Further information about the Emergency Arbitrator provision is available in our Emergency Procedures Guidance Note.

11. SETTING A TIMETABLE FOR THE ARBITRATION

68. The LCIA will write to the parties once an Arbitral Tribunal has been appointed by the LCIA Court. The Secretariat will also write to the Arbitral Tribunal to provide to them any relevant background held by the LCIA about the arbitration and to invite the Arbitral Tribunal to make contact with the parties as soon as practicable to discuss the future conduct of the arbitration.

69. In accordance with Article 14 of the 2014 Rules, the Arbitral Tribunal and the parties are encouraged to make contact within 21 days of the appointment of the Arbitral Tribunal. The parties may agree on joint proposals for the conduct of their arbitration and the Arbitral Tribunal may exercise its discretion to set a timetable appropriate for the particular case, bearing in mind its duty to act fairly and impartially and to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute.

70. If the parties have not made any proposals, and the Arbitral Tribunal has not made any alternative orders, then the default timetable set out in Article 15 of the Rules will apply. The first step in this default timetable is for a Claimant, within 28 days of written notification from the LCIA of the formation of the Arbitral Tribunal (30 days under the 1998 Rules), to deliver its written election to have its Request treated as its Statement of Case or to deliver its written Statement of Case. The Statement of Case should set out in sufficient detail the relevant facts and legal submissions, as well as details of the relief claimed, and should attach all essential documents.

71. The adoption of a clear timetable (whether tailor-made or the default under Article 15) allows the LCIA to monitor and ensure the efficient progress of an arbitration. This is also true of the preparation of Awards where, under the 2014 Rules, the Arbitral Tribunal

must notify the parties and the LCIA of its estimated timing for the Award (see further below).

12. USE OF WRITTEN EVIDENCE

72. A party should file, with its Statement of Claim or its Statement of Defence, copies of all essential documents.

73. If a party wishes to rely on witness evidence to support its case, then it should inform the Arbitral Tribunal. The Arbitral Tribunal may request that a party present the testimony of any witness in written form, whether as a signed statement or otherwise and, in accordance with Article 20.3 of the Rules, the Arbitral Tribunal may decide the time, manner and form in which that written testimony should be exchanged between the parties and presented to the Arbitral Tribunal.

74. As highlighted in the Annex to the 2014 Rules, a party's legal representative should not knowingly procure or assist in the preparation of any false evidence, nor knowingly conceal or assist in the concealment of any document.

75. The Arbitral Tribunal has a discretion under the Rules to refuse or limit both the written and oral testimony of witnesses (whether witnesses of fact or experts).

13. THE RIGHT TO AN ORAL HEARING

76. Under Article 19 of the LCIA Rules, any party has the right to request a hearing before the Arbitral Tribunal at any appropriate stage of the arbitration unless the parties have agreed in writing upon a documents-only arbitration.

77. The Arbitral Tribunal has discretion as to the conduct of a hearing, including as to any time-limits to be applied and as to the date, time and geographical location of any hearing.

78. Unless otherwise agreed in writing by the parties, all hearings of LCIA arbitrations are held in private.

14. REPRESENTATION IN AN LCIA ARBITRATION

79. Although many parties choose to instruct lawyers to advise them and to represent them in arbitral proceedings, it is not a requirement that a party must be represented by a lawyer in an LCIA arbitration.

80. Instead, in accordance with Article 18 of the Rules, a party may be represented by anyone who is lawfully authorised to represent that party. The LCIA or the Arbitral Tribunal may ask any party to provide proof of the authority granted to its representative.

81. The 2014 Rules introduce new provisions on representatives. Article 18.5 of the 2014 Rules requires each party to ensure that all of its named legal representatives have agreed to comply with the guidelines contained in the Annex to the Rules. The guidelines are

intended to promote the good and equal conduct of the parties' representatives and provide, for example, that a party's representative should not engage in activities intended unfairly to obstruct the arbitration or to jeopardise the finality of any Award.

82. If a party complains that another party's representative has violated the guidelines, the Arbitral Tribunal may, if it considers the complaint to be well-founded, issue a written reprimand, issue a written caution as to future conduct in the arbitration, or take any other measure necessary to fulfil the Arbitral Tribunal's duties to act fairly and impartially and to adopt procedures suitable to the arbitration, so as to avoid unnecessary delay and expense.

83. Under Articles 18.3 and 18.4 of the 2014 Rules, a party must notify to the Arbitral Tribunal any intended change or addition to its named representatives, and the Arbitral Tribunal may withhold approval of that intended change or addition where the change or addition could compromise the composition of the Arbitral Tribunal or the finality of any Award (on the grounds of possible conflict or similar).

84. In deciding whether or not to grant approval, the Arbitral Tribunal will have regard to the particular circumstances before it, including the general principle that a party may be represented by a legal representative chosen by that party, the stage which the arbitration has reached, the efficacy of maintaining the composition of the Arbitral Tribunal and any likely wasted costs or loss of time resulting from the proposed change or addition.

15. CONDUCT OF THE ARBITRAL TRIBUNAL

85. Before an arbitrator is appointed, the LCIA will ask him/her to complete a statement of independence, impartiality and availability.

86. If a party feels that an arbitrator is not acting fairly or impartially during the arbitration, that party may challenge the arbitrator under Article 10 of the Rules.

87. Any challenge by a party must be made within 14 days of the formation of the Arbitral Tribunal or (if later) within 14 days of becoming aware of any circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence (15 days under the 1998 Rules).

88. The challenge should be made by way of written statement to the LCIA Court, the Arbitral Tribunal and all other parties, detailing the reasons for the challenge.

89. Unless all the parties agree to the challenge or unless the challenged arbitrator resigns within 14 days of the written statement, the LCIA Court shall decide the challenge and will provide to the parties and the Arbitral Tribunal reasons for its decision.

16. THE COSTS OF AN LCIA ARBITRATION

90. The LCIA's charges, and the fees charged by the Arbitral Tribunals it appoints, are calculated by reference to hourly rates. This is because the LCIA is of the view that a substantial monetary claim (and/or counterclaim) does not necessarily mean a technically

or legally complex case and that arbitration costs should be based on time actually spent by administrator and arbitrators alike.

91. Details of the LCIA's charges are contained in our Schedule of Costs, which is available on our website. The current maximum hourly rate, at or below which any arbitrator must set his or her fees, is £450. However, in every case, the LCIA Court will make a recommendation, having regard to the nature and the circumstances of the case and the amount in dispute, as to what the maximum hourly rate should be in that particular case, and may (and often does) recommend that the maximum hourly rate be capped to an amount lower than £450.

92. Unlike other arbitral institutions, the LCIA does not direct the parties to pay the full costs of the arbitration upfront. As the LCIA adopts time-based charges, the full costs of arbitration cannot be predicted at the outset. The LCIA will, therefore, direct the parties to lodge staged deposits, the first of which is normally directed following the appointment of the Arbitral Tribunal. The amount of the deposit directed is not fixed, and will be decided by the LCIA in consultation with the Arbitral Tribunal, having regard to the dispute at hand, the hourly rate being charged by the Arbitral Tribunal, and the anticipated timetable for the conduct of the proceedings.

93. Both the LCIA Secretariat and the LCIA Court monitor the charges levied by arbitrators in arbitrations under our Rules. Arbitrators are required to provide fee notes, which must include, or be accompanied by, details of the time spent on a case. The LCIA notifies the parties of payments on account of arbitrators' fees in advance. If a party wishes to know the costs of an arbitration at a particular time, it may call for a financial summary.

94. Under the Rules, the LCIA Court must determine the costs of each arbitration. At the conclusion of the arbitration (or at the time of a partial Award), the Secretariat will therefore provide to a senior member of the LCIA Court a financial dossier, including a complete financial summary of sums lodged by the parties, sums paid to the arbitrators, outstanding fees and expenses, and interest accrued on deposits. The dossier also includes a copy of the original confirmation to the parties of the arbitrators' fee rates, a copy of the arbitrators' accounts, a copy of the LCIA's own time and disbursements ledger, a copy of directions for deposits and a copy of all notices given to the parties of payments made from deposits.

95. The senior member of the Court then reviews the dossier and, if necessary, calls for any further information, or initiates any investigation it may require to satisfy itself that the costs are reasonable and are in accordance with the LCIA Schedule of Costs, before notifying the Secretariat of the amount to be notified to the Arbitral Tribunal for inclusion in the Award.

96. If a party raises a dispute regarding administrative charges or the fees and expenses of the Arbitral Tribunal, that dispute will be determined by a different senior member of the LCIA Court than the one who determined the costs.

17. DURATION OF AN LCIA ARBITRATION

97. There is no such thing as an “average” arbitration. Sums in issue, and technical and legal complexity, may vary greatly between one case and another, as may the volume of evidence, oral and written, that may be required to determine the dispute. The LCIA carefully monitors the conduct of the proceedings, and the time taken by the Arbitral Tribunal to write its award.

98. The LCIA takes a proactive and robust approach throughout an arbitration, in order to minimise any unnecessary delay on the part of the Arbitral Tribunal. Our ability to do so is enhanced under the 2014 Rules, which contain additional obligations on an Arbitral Tribunal, including to:

- confirm in writing, before appointment, that each arbitrator is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration (Article 5.4);
- consult with the parties promptly after the Arbitral Tribunal’s appointment to set an appropriate procedure, avoiding unnecessary delay and expense (Article 14.1);
- seek to make its final Award as soon as reasonably possible following the last submission from the parties, in accordance with a timetable notified to the parties and the LCIA (Article 15.10); and
- inform the LCIA and the parties, as soon as it establishes a time for what it contemplates shall be the last submission from the parties, of the time the Arbitral Tribunal has set aside for deliberations (Article 15.10).

99. The LCIA does not formally scrutinise Awards and, consequently, subject to the LCIA holding sufficient funds to release the award, there is no delay caused by a formal scrutiny process. However, if the Secretariat is requested by an Arbitral Tribunal to review a draft for typographical and similar errors, we are happy to do so.

18. PROCEDURE FOR SMALL CLAIMS

100. The LCIA does not presently have a separate set of rules for the arbitration of small claims. We are, however, happy to provide to parties suggested wording providing for a fast-track process under the LCIA Rules. Any enquiries in this regard should be directed to casework@lcia.org.

19. CONFIDENTIALITY AND PUBLICATION OF AWARDS

101. Confidentiality is still generally regarded as one of the primary underpinnings of arbitration and this is reflected by Article 30 of the Rules.

102. The LCIA will not provide to anyone, who is not a proper party to an arbitration or a legal representative of a party, any information about pending or completed LCIA arbitrations. Our response to any such request will be that we cannot comment, irrespective of whether we have any knowledge of the matter about which we are being asked.

103. All LCIA awards are confidential. By virtue of Article 30 of the Rules, the LCIA does not publish Awards, or parts of Awards, even in redacted form.

104. The LCIA may publish abstracts of decisions by the LCIA Court on challenges to arbitrators, as well as sanitised statistical information about cases referred to us.

20. SANCTIONS, RESTRICTIVE MEASURES AND ABILITY TO PARTICIPATE

105. The LCIA is often asked whether current sanctions impact our ability to administer arbitrations.

106. Particular concern has been expressed as to what extent the Russian sanctions affect LCIA arbitration. Accordingly, in August 2015, the LCIA, together with the SCC and the ICC, therefore published a joint note addressing some of the most commonly asked sanctions questions. A copy of the note can be found on the LCIA's website at <https://www.lcia.org//News/the-potential-impact-of-the-eu-sanctions-against-russia-on-inter.aspx> (in both Russian and English).

107. In summary, the sanctions do not impose a general prohibition for parties to seek arbitration before the LCIA, and listed parties are not treated differently from other parties. Moreover, in practice, the LCIA has not experienced a significant impact on its ability to administer arbitrations involving listed parties, sanctioned regimes or contracts, although a limited number of administrative steps have been added to the case management process, so as to ensure that any necessary exemption application can be made to the relevant authorities.

108. With this in mind, when the LCIA first writes to parties about a matter, it will always ask the parties (of all nationalities) and their representatives promptly to advise the LCIA of any issues of which they are aware that might impact the ability of any party to pay deposits when directed or otherwise to participate in the arbitration. In particular, the parties and their representatives will be asked, having duly investigated the issue, to advise us of any restrictions, sanctions or embargoes that affect any party, whether directly or indirectly (including financial sanctions, by which any funds or other economic resources belonging to, held by or controlled by them, or an associated entity or body, have been frozen or which provide that no funds or economic resources shall be made available to them, or any sectoral sanctions).

21. IMPORTANT NOTE

109. The LCIA is a neutral and independent arbitral institution, providing administrative services only, and neither practices law, nor renders legal services. Neither parties, nor legal representatives, nor arbitrators should, therefore, interpret, or rely upon, these notes as any form of legal advice. Rather, these notes are drafted only with a view to explaining LCIA arbitration to those unfamiliar with our Rules and to facilitating the diligent and timely conduct of arbitrations under the LCIA Rules.

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