

# New LCIA Rules Encourage Streamlined Proceedings and the Use of Technology

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On 11 August 2020, the London Court of International Arbitration (“LCIA”) announced updates to its [Arbitration Rules](#) and [Mediation Rules](#) (the “Revised Arbitration Rules” and “Revised Mediation Rules”, respectively), as well as to its [Schedule of Arbitration Costs](#) and [Schedule of Mediation Costs](#). The updates will take effect on 1 October 2020 and apply to arbitration and mediation proceedings commenced after that date. The Arbitration and Mediation Rules were last updated in 2014 and 2012, respectively.

The LCIA’s stated aim in updating the Rules is to “make the arbitral and mediation processes even more streamlined and clear for arbitrators, mediators and parties alike”. The amendments provide welcome clarification to existing provisions and incorporate a number of new provisions, including in relation to the role of tribunal secretaries, and regulatory and data protection issues.

The Revised Arbitration Rules reflect important recent developments in relation to virtual hearings and electronic communication (which have become the norm during the COVID-19 pandemic), and reflect a number of best practices designed to improve the efficient conduct of arbitral proceedings, for example, by allowing early determinations of key issues, and clarifying and expanding the powers to consolidate or coordinate related proceedings. Some of these revisions mirror our own efforts to promote efficiency and protect against cybersecurity threats in the sphere of international disputes, for example through our [Efficiency Protocol](#) and our [Protocol to Promote Cybersecurity in International Arbitration](#).

We offer a summary of salient updates to the Revised Arbitration Rules and the Revised Mediation Rules below.

**Case Management Powers.** The 2014 version of the LCIA Arbitration Rules made clear that the tribunal has “the widest discretion to discharge [its] general duties” and that “the Arbitral Tribunal may, subject to the LCIA Rules, make any procedural order it considers appropriate with regard to the fair, efficient and expeditious conduct of the arbitration”. The Revised Arbitration Rules clarify that this broad discretion includes the power to limit the content, length or number of pleadings; limit written and oral

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testimony; employ technology to enhance efficiency; decide at what stage of the arbitration and in what order any issue(s) will be determined; and dispense with a hearing. The Revised Arbitration Rules also state explicitly that the tribunal has the power to make an “Early Determination”, *i.e.*, “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” (**Articles 14.6; 22.1, Revised Arbitration Rules**).

***Virtual Hearings and Mediations.*** In line with the increased use of video technology, which has become the prevailing medium for hearings and mediations during the COVID-19 pandemic, the Rules have been expressly updated in various places to explicitly permit the conduct of virtual procedural conferences and hearings (**Articles 9.7; 14.3; 16.3; 19.2, Revised Arbitration Rules; Article 6, Revised Mediation Rules**).

***Electronic Communication.*** Electronic filing and communication will be the default means of transmission under the Revised Arbitration Rules (**Article 4, Revised Arbitration Rules; Article 3, Revised Mediation Rules**), whether by email or other electronic means, including any LCIA-operated electronic filing system. References to paper filings have been deleted from the Revised Arbitration Rules, and non-electronic methods of filing or communication will require the approval of the LCIA Registrar or the Tribunal.

***The Role of Tribunal Secretaries.*** The Revised Arbitration Rules contain a new provision regarding Tribunal secretaries (**Article 14A, Revised Arbitration Rules**). While the Revised Arbitration Rules explicitly permit the use of a tribunal secretary, they make clear that the Tribunal may not delegate its decision-making function and that all tasks carried out by the secretary shall be carried out “on behalf of, and under the supervision of, the Arbitral Tribunal”. The secretary and the tasks assigned to them must be approved by all parties (**Article 14.10(i), Revised Arbitration Rules**) as must any expansion of that remit (**Article 14.11, Revised Arbitration Rules**).

***Multi-Party and Multi-Contract Arbitrations.*** The Revised Arbitration Rules also contain updated provisions regarding multi-party and multi-contract arbitrations. A party wishing to commence more than one arbitration, whether that is against more than one Respondent or under more than one arbitration agreement, will be able to serve a composite request for arbitration in respect of all such arbitrations (**Article 1.2, Revised Arbitration Rules**). The Revised Arbitration Rules make clear that “[e]ach arbitration so commenced shall proceed separately and in accordance with the LCIA Rules, subject to the LCIA Court or the Arbitral Tribunal determining otherwise”. A Respondent to a composite request for arbitration will be able to serve a composite

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response in respect of any or all of the arbitrations (**Article 2.2, Revised Arbitration Rules**).

A corollary of these provisions is the clarification and expansion of the Tribunal's and the LCIA Court's power to consolidate and concurrently conduct arbitration proceedings. While consolidation provisions were included in the 2014 Arbitration Rules, the Revised Arbitration Rules clarify that, upon the application of a party, the Tribunal (subject to the LCIA Court's approval) or, depending on the circumstances, the LCIA Court, will have the power to consolidate arbitration proceedings. The Tribunal will, additionally, be able to order that two or more arbitrations, under the same or a compatible arbitration agreement, and between the same parties or arising out of the same or a series of related transaction(s), be conducted concurrently, where the same Tribunal is constituted in respect of each arbitration (**Article 22A, Revised Arbitration Rules**). The power to concurrently conduct arbitration proceedings is a new feature of the Revised Arbitration Rules.

***Data Protection, Cybersecurity and Compliance Issues.*** The Revised Arbitration Rules also contain a new provision explicitly providing that any processing of personal data by the LCIA is subject to applicable data processing legislation. The Tribunal must also consider, at an early stage of the arbitration, whether to adopt specific information security measures and measures to ensure that any personal information exchanged during the arbitration complies with the applicable data protection legislation (**Article 30A, Revised Arbitration Rules; Article 13, Revised Mediation Rules**). The amendments also contain new provisions regarding compliance with applicable requirements relating to bribery, corruption, terrorist financing, fraud, tax evasion, money laundering, and economic or trade sanctions (**Article 24A, Revised Arbitration Rules; Article 10, Revised Mediation Rules**).

***Schedules of Arbitration and Mediation Costs.*** Finally, the Revised Arbitration Rules and Revised Mediation Rules also provided the LCIA with "an opportunity for re-evaluating the maximum hourly rate for arbitrators and mediators as well as the hourly rates for the LCIA Secretariat". Notably, the £450 maximum hourly rate that can be charged by LCIA arbitrators will be increased to £500. The LCIA states that this is "better to reflect the demands of users in certain cases involving complex and significant disputes".

We are closely connected to the LCIA, including through our Partner Natalie Reid who sits on the LCIA's Board of Directors. Partners David W. Rivkin and Mark W. Friedman have sat on the LCIA Court or led various LCIA task forces and councils covering a range of issues. Our lawyers are regularly instructed as counsel, and appointed as arbitrators, in LCIA cases. Please do not hesitate to contact us with any questions.



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