

Sanctions for misconduct by legal representatives under new LCIA Arbitration Rules*

Amanda Lee, FCI Arb of Seymours

The London Court of International Arbitration's ("LCIA") highly anticipated new Arbitration Rules ("the Rules") came into effect on 1 October 2014. The Rules will apply to arbitrations commenced thereafter, save where the parties agree otherwise.

Replacing arbitration rules that have been in force since 1 January 1998, this welcome modernisation of the LCIA's arbitration rules places particular emphasis on the importance of fairness and efficiency. Of particular significance is the introduction of sanctions for misconduct by parties' legal representatives.

Conduct of legal representatives

Article 18 of the Rules addresses conduct of the parties' legal representatives. This is accompanied by an Annex entitled "General Guidelines for the Parties' Legal Representatives", which provide that legal representatives should not knowingly make false statements to, conceal any document or part thereof from, or procure or assist in the preparation of any false evidence for the Arbitral Tribunal or the LCIA Court. Unilateral contact with the Arbitral Tribunal or the LCIA Court is also generally prohibited, together with engagement in activities intended to unfairly obstruct the arbitration or jeopardise the finality of any award, including the making of unfounded challenges to the appointment, jurisdiction or authority of the Arbitral Tribunal.

Paragraph 1 of the General Guidelines expressly states that they do not derogate from mandatory laws, rules of law, professional rules or codes of conduct applicable to a legal representative appearing under the Rules. The lack of an express prohibition in the General Guidelines will not, therefore, prevent a complaint being made if such conduct is otherwise prohibited.

Crucially, Article 18.5 requires parties to ensure that their named legal representatives have agreed to comply with the Annex as a condition of their representation and accordingly adherence to the guidelines is mandatory for those appearing by name before the Arbitral Tribunal. This is in contrast to the IBA Guidelines on Party Representation in International Arbitration ("the IBA Guidelines"), which apply only where and to the extent that the parties have so agreed.

Power to impose sanctions

Article 18.6 enables the Arbitral Tribunal to impose sanctions in the event of a complaint of inappropriate conduct, including a written reprimand, a written caution as to future conduct of the arbitration and any other measure necessary to enable the Arbitral Tribunal to fulfil its general duties. The power to refer legal representatives to their regulatory bodies, present in the draft Rules, has been removed from the Rules as promulgated.

In contrast, the IBA Guidelines make a wider range of remedies for misconduct available to the Arbitral Tribunal at Guidelines 26 and 27, including the onerous ability to draw appropriate inferences in assessing the evidence or legal arguments relied upon. Such wider remedies, although not explicitly provided for in the Rules, may arguably be available to the Arbitral Tribunal under Article 18.6(iii) should such measures be considered 'necessary' to enable the Arbitral Tribunal to fulfil its general duties.

While it remains to be seen whether practical difficulties will arise as a result of the differing professional obligations of legal professionals worldwide, the introduction of the Arbitral Tribunal's power to impose sanctions in the Rules clearly emphasises the vital importance of fairness in arbitration and is a welcome and significant step by the LCIA.

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