**LCIA Reference No. 152914, Decision Rendered 5 August 2015**

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<th>Challenge to sole arbitrator’s appointment pursuant to Article 10.3 of the LCIA Rules 2014, based on Article 10.1 (justifiable doubts as to arbitrator’s independence and impartiality)</th>
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<td><strong>Division/Court member:</strong></td>
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<td><strong>Summary:</strong></td>
<td>A tribunal’s interpretation of a party’s request under a particular rule, where a party has not cited any rule, does not constitute grounds for disqualification or evidence of partiality.</td>
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### 1 Background

1.1 The underlying dispute arose out of a partnership and cooperation agreement. The agreement was governed by English law and contained an LCIA arbitration clause. The seat of the arbitration was London and the language was English.

1.2 The arbitration was commenced by a Request for Arbitration on 30 January 2015 by a law firm on behalf of two claimants (the “Claimant Law Firm”).

1.3 On 12 March 2015, and in response to requests from the LCIA for proof of delivery of the Request on the Respondents, the Claimant Law Firm advised that the Request had been delivered to the Respondents’ address of record in the agreement, that it had also emailed the Request to the email addresses of the Respondent and that fax transmission had been attempted, but was unsuccessful.

1.4 On 20 March 2015, the Second Respondent asserted that there was no proof of proper delivery of the Request on the Respondents, the Claimant Law Firm lacked authority to represent the First Claimant as it had been placed under provisional administration of the authorities as of 2 March 2015, and the authority to act on behalf of the First Claimant was vested in the administrator by operation of law. The Second Respondent requested that the LCIA require the Claimant Law Firm to provide written proof of its authority to represent the Claimants in the arbitration and a 28-day extension for him to file the Response, starting from the date on which written proof of authorization is provided.

1.5 On 23 March 2015, the LCIA invited the Claimants’ and First Respondent’s comments on the Second Respondent’s requests.

1.6 The Claimant Law firm responded on behalf of the Claimants by letter dated 27 March 2015, stating that the Second Respondent had been duly and timely served with all relevant documents, the LCIA Rules do not require Claimants’ legal representatives to provide proof of authority upon filing the Request, and the Second Respondent was not prejudiced by the lack of such document in filing his Response.
1.7 In the same letter, the Claimant Law Firm advised that the Second Claimant had instructed it to file a Request for Arbitration on behalf of the Second and First Claimant on January 2015, when the First Claimant was not under the control of the temporary administration and that before the temporary administration the First Claimant had assigned all the rights and obligations under the agreement to another company (the “Assignee Company”). The Claimant Law Firm provided a copy of the deed of assignment as well as the Assignee Company’s power of attorney, dated 20 March 2015 authorising the Claimant Law Firm to represent the Assignee Company against the Respondents in connection with the agreement.

1.8 By email of 1 April 2015, the LCIA advised the parties that the LCIA Court had decided not to grant the Second Respondent’s request for an extension of time to file the Response and that the Court would proceed to appoint a sole arbitrator.

1.9 On 16 April 2015, the LCIA notified the parties that it had appointed the Sole Arbitrator.

1.10 On 20 April 2015, the Sole Arbitrator issued initial directions to the parties to establish a timetable for submissions, set a date for the preliminary hearing and request the parties to confirm their contact information for communications and submissions.

1.11 On 20 April and 7 May 2015, the Second Respondent objected to the appointment of the Sole Arbitrator on the basis that the Claimant Law Firm had not provided valid proof of authority to represent the Claimants and the LCIA lacked jurisdiction and stated that the arbitration could not continue until valid proof of authority had been provided by the Claimant Law Firm.

1.12 On 14 May 2015, the Claimant Law Firm stated, inter alia, that neither the Arbitration Act 1996 nor Articles 1 and 2 of the LCIA Rules required a party to submit formal evidence of a party’s legal representation. The Claimant Law firm asserted again that the First Claimant had assigned all the rights and obligations under the agreement to the Assignee Company before it was placed into temporary administration and attached the power of attorney dated 20 March 2015. It also advised that it would provide a power of attorney in respect of its representation of the Second Claimant the following week, and attached a copy of a legal services agreement with the Second Claimant.

1.13 On 15 May 2015, the Sole Arbitrator issued Procedural Order No. 1 which, inter alia, noted that the LCIA Rules did not require the submission of a power of attorney for the party representative upon filing of a Request for Arbitration. He also noted that the Second Respondent did not assert that the First Claimant’s administration would deprive the Second Respondent of its right to appoint the Claimant Law Firm as its counsel either before or after 3 March 2015.

1.14 To the extent that the Assignee Company power of attorney was offered to validate the Claimant Law Firm’s authority to act for the First Claimant, the Sole Arbitrator rejected the contention, explaining that:

‘As to [the First Claimant], the Tribunal takes note that [the Assignee Company] has given power of attorney to [the Claimant Law Firm] with respect to representing [the Assignee Company]’s interest as the [First Claimant]’s assignee under the Agreement. However, [the Assignee Company] power of attorney relates only to [the Assignee Company] and cannot be construed as power given by or on behalf of [the First Claimant]. Absent an application on behalf of [the
Assignee Company] to join this arbitration as a Party Claimant, the existence of this power is therefore irrelevant for present purposes.’

1.15 By letter of 2 June 2015, the Claimant Law Firm responded to the Sole Arbitrator’s Procedural Order No 1. The letter attached a power of attorney issued by the Second Claimant dated 15 May 2015 and a Statement of Case on behalf of the Second Claimant and the Assignee Company. In the letter, the Claimant Law Firm stated that it did not represent the First Claimant following the appointment of an administrator on 3 March 2015, confirmed that it was authorised to represent the Second Claimant and the Assignee Company and stated that the First Claimant had assigned all its rights and benefits under the agreement to the Assignee Company on 13 February 2015. Further, the Claimant Law Firm requested leave to substitute the Assignee Company as a claimant in place of the First Claimant, effective since 15 February 2015 (the date of issuance of the deed of assignment).

1.16 On 3 June 2015, the Sole Arbitrator acknowledged receipt of the Statement of Case and ruled that the First Claimant shall no longer be a claimant in the arbitration on the basis that the Claimant Law firm had not presented proof of its authority to represent the First Claimant but instead requested the First Claimant be replaced by the Assignee Company. Further, the Sole Arbitrator stated that he considered the request made by the Claimant Law Firm to substitute the Assignee Company for the First Claimant as a further claimant in this arbitration to be an application made on behalf of the Second Claimant, pursuant to Article 22.1(viii) of the LCIA Rules, to allow a third person to be joined in this arbitration as a party. The Sole Arbitrator invited the Respondents to submit their views on the application by 8 June 2015.

1.17 On 5 June 2015, the Second Respondent objected to the deadline and on the same day the Sole Arbitrator extended the deadline until 12 June 2015.

1.18 On 12 June 2015, the Second Respondent objected to the joinder of the Assignee Company and submitted a letter challenging the appointment of the Sole Arbitrator pursuant to Article 10.1 of the LCIA Rules, requesting that he be removed as arbitrator.

1.19 By email of 13 June 2015, the Sole Arbitrator stated that he did not intend to withdraw as arbitrator and temporarily suspended the further conduct of the proceedings.

1.20 By letter of 19 June 2015, the Claimant advised, inter alia, that it did not agree to the challenge.

1.21 On 26 June 2015, the Sole Arbitrator confirmed his position that he did not intend to withdraw as arbitrator.

1.22 On 7 July 2015, the LCIA notified the parties that, pursuant to Article 10.6 of the LCIA Rules, and paragraph D.3(b) of the Constitution of the LCIA Court, the LCIA Court had appointed a former Vice President of the LCIA Court to determine the challenge.

1.23 The former Vice President issued his decision on the challenge on 5 August 2015.
II  The Grounds Alleged for Challenge

29. The thrust of the challenge is based on the Sole Arbitrator’s statement of 3 June 2015 that he regarded the application to substitute [the Assignee Company] for [the First Claimant] as an application by the Second Claimant [...] to join a new party in the arbitration.

30. The Second Respondent argues that such action should be viewed against the backdrop of the proceedings to date, in which according to the Second Respondent, the Sole Arbitrator had previously favoured the claimants. [...] 

31. That background included the Sole Arbitrator’s alleged assistance to the Claimants by way of a supposed ‘hint’ given in the May 15th Procedural Order in which the Sole Arbitrator declared that ‘[a]bsent application on behalf of [the Assignee Company] to join this arbitration as a Party Claimant, the existence of this power is therefore irrelevant for present purposes’.

32. As noted, the Second Respondent classifies his allegation about the allegedly improper ‘hint’ as ‘background’ for the June 12th challenge. A direct challenge based on the alleged ‘hint’ in the May 15th procedural order would be time-barred, given that Second Respondent was aware of those grounds for more than 14 days without asserting them (May 15 Order and June 12 challenge). LCIA Article 10.3. The undersigned thus takes the ‘hint’ allegation into account by way of background, as requested.

33. Having done so, the undersigned finds the alleged ‘hint’ does not lend any extra force or weight to the claim of bias. At the time, the Sole Arbitrator was deciding the authority of [the Claimant Law firm] to act in the case. A power of attorney to represent someone not a party to the arbitration ([the Assignee Company]) was irrelevant for purposes of the question before the Sole Arbitrator (as noted, [the Claimant Law Firm]’s authority to act in this case). The Sole Arbitrator’s observation that a power issued by [the Assignee Company] was ‘irrelevant for present purposes’ was accurate. His observation that there was not ‘an application on behalf of [the Assignee Company] to join this arbitration as Party Claimant’ was a rational explanation of his statement that the power issued by [the Assignee Company] was ‘irrelevant for present purposes’. Thus, the Sole Arbitrator’s May 15th procedural order reflected proper legal analysis of the Power of Attorney and the case’s procedural posture.

34. The [Assignee Company] Assignment of Deed from [the First Claimant] expressly empowered [the Assignee Company] to enforce rights assigned¹, and the [the Assignee Company] Power of Attorney expressly authorized the firm to act against the Respondents and specifically

¹ The Deed of Assignment from [the First Claimant] to [the Assignee Company] reads:

1.4 Accordingly, as from and after the date hereof:
(a) the Assignee shall be entitled to all of the rights, remedies and benefits of the Assignor under or arising out of the Investment Agreement, including to the right to demand the repayment of any investments and for receipt of any benefits, and to enforce the same against the Group or its beneficial owners in accordance with the provisions of the Investment Agreement.

Emphasis added.
included authority to act before arbitral tribunals. Both of these documents were filed as part of the 14 May 2015 submission by [the Claimant Law Firm]. So it was readily foreseeable that the [Assignee Company] power in question, although irrelevant in the state of the record at that moment, could soon not be irrelevant if and when [the Assignee Company] sought to enforce its rights as [the First Claimant]’s purported assignee.

35. Had the Sole Arbitrator made an unqualified statement that the power was ‘irrelevant’ (that is, without the clarification that the irrelevance was based on the then state of the record [namely, without [the Assignee Company] being in the case]) that could have cast doubt or uncertainty about the validity of the power for purposes of any future and quite foreseeable request that [the Assignee Company], the alleged assignee and successor to [the First Claimant], be made part of the case.

36. Moreover, the Second Respondent has not cited any authority to the effect that an arbitrator must not express any comment in the course of a case from which one of the counsels might draw a conclusion or derive guidance as to some procedural step to take. However, in contrast to Second Respondent’s contention that the Sole Arbitrator was biased is the fact that the Sole Arbitrator in fact sustained the Second Respondent’s objection and upheld its contention that the [Assignee Company] Power of Attorney did not empower [the Claimant Law Firm] to act for any of the parties in the case. In fact, the Sole Arbitrator ordered the Claimants to submit documents confirming [the Claimant Law Firm]’s authorization to commence arbitration in January 2015 and for the period after 3 March 2015. […]

37. The Second Respondent’s principal complaint that the Sole Arbitrator allegedly favoured the Claimants by sua sponte treating a request to substitute one company ([the Assignee Company]) for an existing party ([the First Claimant]) as a request to join a party pursuant to LCIA Article 22.1(viii) is similarly unfounded.

38. This arbitration had been commenced in the name of [the First Claimant] and [the Second Claimant] as Claimants. In its 2nd June letter, [the Claimant Law Firm] affirmed that it did not represent [the First Claimant] as of 3 March 2015. Throughout its letter, [the Claimant Law Firm] made clear it was purportedly acting on behalf of the ‘Claimants’. The accompanying Statement of Case was filed on behalf of the Second Claimant […] and a non-party, [the Assignee Company], and dropped the claims that had been (purportedly) filed on [the First Claimant]’s behalf.

39. At the time [the Assignee Company] was not a party to the arbitration. While the request for leave stated that ‘[the Assignee Company], therefore requests the Tribunal for leave to substitute [the First Claimant] as the First Claimant in the present arbitration,’ that request was made in the context of a letter written on behalf of both Second Claimant […] and [the Assignee Company].

40. To bring a third party in under LCIA Rules 22.1(viii), the third party must consent. Rule 22.1(viii) provides that the tribunal can: ‘(viii)... allow one or more third persons to be joined in the arbitration as a part provided any such third person and the applicant party have consented to such joinder in writing’.

41. The June 2nd request by [the Assignee Company] for leave to substitute it for [the First Claimant] satisfied the requirement of consent by the third party under the rules, and what remained was for another party – in this case [the Second Claimant] – to request the joinder.
42. Because [the Assignee Company] was not yet a party to the arbitration, and [the Claimant Law Firm] did not cite any particular rule in support of its request, there is nothing extraordinary in the arbitrator’s particular interpretation of the contents of the June 2nd letter as a request under the provisions of Article 22.1(viii) by the Second Claimant [...] that was already a party to the arbitration and for whom [the Claimant Law Firm] was also writing.

43. The Second Respondent has not cited any authority to the effect that an arbitrator’s interpretation that a party’s request fits under a particular rule not cited by the party is grounds for disqualification or evidence of partiality.

44. Second Respondent has failed to carry its burden of showing grounds to disqualify.

IV. Conclusion

45. In this case no ‘circumstances exist that give rise to justifiable doubts as to that arbitrator’s impartiality or independence’ as required by Article 10.1 for disqualification.

46. The undersigned considered all grounds asserted by Second Respondent in its submissions. Any grounds not addressed did not merit express discussion in the undersigned’s view.

47. For the foregoing reasons, the application to disqualify the Sole Arbitrator is not well-founded. The application is denied.

48. The allocation of costs and fees arising from the Application, whether the charges of the undersigned or of the LCIA, or the legal or other costs of the parties, are left for determination by the Sole Arbitrator.”

2 By way of additional grounds, the Second Respondent asserts that the Sole Arbitrator showed a lack of impartiality by proceeding with the arbitration even though: (i) there no was valid proof that the First Respondent received notice of the Request for Arbitration, and (ii) there was no valid proof that [the Claimant Law firm] had authority to act on behalf of either of the two Claimants. As well, Second Respondent complains that the Sole Arbitrator decided to allow [the First Claimant] to not be a party and the arbitration to continue with [the Second Claimant] as the only Claimant without providing the Respondents with an opportunity to comment. Several of the Second Respondent’s arguments assume that its view of contested issues of fact is the correct one. With respect to the Second Respondent’s first point (no valid proof that First Respondent received notice of the arbitration), there is simply a difference of opinion as to whether the First Respondent did in fact receive notice of the arbitration. Moreover, the Second Respondent has failed to explain why a decision as to whether First Respondent has or has not received notice is evidence of bias or lack of impartiality towards him. Similarly, its contention that the Sole Arbitrator’s decision to proceed with the case despite the alleged lack of proof of the [Claimant Law Firm]’s authority to act for Claimants is groundless. As noted in Procedural Order no 1, the rules do not require the presentation of a power of attorney for a law firm to prosecute arbitration. Proof of that power can be required, and in fact the issue of the [Claimant Law Firm]’s authority was being aired in the proceedings as evidenced by the Sole Arbitrator’s Procedural Order No. 1, which required the Claimants to present signed documents evidencing the firm’s authority. [...] Thereafter, based on the papers filed by [the Claimant Law Firm], the Sole arbitrator concluded that ‘[t]he authority of [the Claimant Law Firm] to represent [the Second Claimant] has, in my opinion, been adequately confirmed and the arbitration has been properly commenced and pursued by [the Claimant Law Firm] in the [Second Claimant]’s name.’ [...] A decision is not biased or partial because a party believes the facts or law are contrary to the arbitrator’s conclusions. Nothing in that decision can be said to be biased or partial. Second Respondent’s claim that the Sole Arbitrator decided to allow [the First Claimant] to not be a party and the arbitration to continue with [the Second Claimant] as the only Claimant without providing the Respondents with an opportunity to comment is also unfounded. See Sole Arbitrator’s communication of 3 June 2015: ‘Before ruling on this Application, the Tribunal invites Respondents to submit their views on the Claimant’s Application by 8 June 2015.’ The Second Respondent in fact took advantage of the opportunity and submitted two responses, one on 12 June 2015 and another on 25 June 2015.