Registrar’s report 2014

Introduction of the LCIA Rules 2014


The LCIA Rules 2014 apply to all arbitrations commenced on or after 1 October 2014 (save for the provisions on emergency arbitrator, which apply only if the relevant arbitration clause was entered into on or after 1 October 2014, or if the parties agree), unless the parties’ arbitration agreement provides for the application of the LCIA Rules 1998.

The LCIA Rules 2014 improve upon the LCIA Rules 1998, retaining many of their features (such as the procedure for expedited formation of the Tribunal), while introducing new and innovative measures (including provisions on the conduct of legal representatives and parties).

The first arbitration under the new LCIA Rules 2014 was filed on 1 October 2014.

Caseload

The LCIA saw a further slight increase in its casework in 2014, reaching a new all-time high in the number of referrals.

In 2014, a total of 296 arbitrations were referred to the LCIA, in addition to 6 Requests for Mediation or some other form of ADR, bringing the total to 302 – one ahead of 2013.

The 296 arbitrations included 232 arbitrations under the LCIA Rules. The balance were arbitrations under the UNCITRAL Rules, in which the LCIA acted as appointing authority or in respect of which the LCIA provided full administration services, or other UNCITRAL or ad hoc cases in which the LCIA provided fundholding services.

The 603 disputes referred during the most recent biennial monitoring period (2013/2014) represent an increase of just over 4% as compared to the previous 24 month period (2012/2013), in which a total of 578 disputes were referred to the LCIA.
Nature of contracts

The nature of the contracts, and the industry sectors, out of which referrals arose in 2014 remained diverse, including agreements relating to: mining; offshore oil and gas; sale and purchase of business assets and shares; joint ventures; construction and engineering; shipbuilding; telecommunications; loan and other financial arrangements; partnerships; insurance; culture, media and sports; sale and purchase of commodities; and consultancy and other professional services.

The Parties

The international nature of the LCIA's caseload and profile remains evident in the nationalities of the parties to arbitrations commenced under the LCIA Rules in 2014, as the following chart shows.

Sums in issue

In 2014, 43.1% of Requests for Arbitration filed under the LCIA Rules sought declaratory relief and/or specific performance (declaratory relief was sought in 29.3% of Requests, specific performance in 1.7%, and both declaratory relief and specific performance in 12.1%).

In 52% of those cases, the Claimant also sought monetary relief, with Claimants advancing claims for both monetary and non-monetary relief against Respondents in 22.4% of the Requests for Arbitration filed with the LCIA in 2014.

Unquantified sums were claimed by Claimants in 23.7% of the Requests filed in 2014.

The breakdown of sums claimed in 2014, where a Claimant specified an amount in its Request, is as follows:

1 The UK figures shown in the table include 8 purely domestic arbitrations with a total of 16 parties. Some of the nationality figures appear higher than they otherwise might due to a number of related arbitrations (with the same or related parties) having been commenced in 2014.
As in previous years, some of the quantified claims were accompanied by a claim for unquantified damages, with the result that the above breakdown will almost certainly underrepresent the real amounts sought.

Further, and unlike the LCIA’s costs and duration analysis\(^2\), which considers claims presented in submissions such as the Statement of Case and Statement of Defence, the above figures represent a snapshot of the claim at the time the Request is filed.

Accordingly, many of the sums shown above were substantially increased by the value of counterclaims by Respondents and/or by a Claimant subsequently amending its claim in the Statement of Claim.

### The Tribunals

#### Key figures

During the course of 2014, the LCIA made a total of 420 appointments of 238 different arbitrators.

Some key figures about these appointments are presented immediately below, with expanded analysis under the subsequent sub-headings.

Of the 420 appointments:

- 346 were to three-member tribunals in 116 arbitrations under the LCIA Rules (including three replacement arbitrators)\(^3\);
- 71 were of sole arbitrators in arbitrations under the LCIA Rules (including one replacement arbitrator);
- three were appointments in UNCITRAL or other ad hoc arbitrations;
- 205 (or 49%) were of candidates selected by the parties;
- 159 (or 38%) were of candidates selected by the LCIA Court;
- 56 (or 13%) were of candidates selected by the co-arbitrators;
- 49 (or 11.7%) were of female arbitrators; and
- 56 (or 13.33%) were of candidates not previously appointed by the LCIA.\(^4\)

Over 70% of the Tribunals appointed in 2014 were for arbitrations commenced in 2014, with almost all of the balance relating to arbitrations commenced in 2013.

In 2014, there were a total of 4 challenges to arbitrators appointed in arbitrations under the LCIA Rules.

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\(^3\) The discrepancy between the 346 and the 116 tribunals is explained by replacement arbitrators being appointed to tribunals in which the other members were also appointed in 2014 and/or by only two members of the tribunal having been appointed in 2014.

\(^4\) Some of these candidates might, of course, have previously been appointed by other institutions or in ad hoc cases.
Nationality of arbitrators

The nationalities of arbitrators appointed in 2014, other than UK, included Australian; Austrian; Bahraini; Belgian; Brazilian; Brunei; Canadian; Chinese; Cypriot; Dutch; Egyptian; French; German; Greek; Indian; Irish; Lebanese; Malaysian; New Zealand; Nigerian; Pakistani; Polish; Russian; Singaporean; South African; Spanish; Swedish; Swiss; Tunisian; Turkish; Ukrainian and US.

Preference of three-member tribunals over sole arbitrators

The appointments made in 2014 reflect a preference for three-member Tribunals (62%) as compared to sole arbitrators (38%).

By way of comparison, in 2009, the ratio was two thirds three-member tribunals to one third sole arbitrator; in 2010, the ratio was almost precisely 50/50; in 2011, the ratio tipped back slightly in favour of three-member panels; in 2012, it swung back to 54% in favour of sole arbitrators; and in 2013, it again reverted to 54% in favour of three-member tribunals.

Break-down of who selects the arbitrators

Under the LCIA Rules, the default position is that the LCIA will select the members of the Tribunal, unless the parties have agreed otherwise (whether by their arbitration clause or by later agreement).

The LCIA therefore tends to select more candidate arbitrators than many other institutions.

In 2014, parties reached agreement in many cases that they would nominate arbitrators: as stated above, of the 420 individual appointments, 206 or 49% were selected by the parties, 162 or 39% by the LCIA Court and 55 or 13% by the co-arbitrators.

As compared to 2013, this shows a small increase in the percentage of arbitrators selected by the parties (from 43% to 49%).

Gender diversity of candidates

As stated above, in 2014, of the 420 individual appointments, 49 or 11.7% were of female arbitrators.

Of those 49 female arbitrators:

32 (or 65.30%) were selected by the LCIA Court;
9 (or 18.36%) were selected by the parties; and
8 (or 16.3%) were selected by the parties' nominees.

Putting the above into context, in 2014:

of the 162 appointees selected by the LCIA Court, 19.8% were women;
of the 206 appointees selected by the parties, 4.4% were women; and
of the 55 appointees selected by the nominees, 14.5% were women.

As compared to 2013, this represents a notable increase in the number of female candidates selected by nominees, but a decline in the number of female candidates put forward by parties (the 2013 figures were 19.8%, 6.9% and 0% for the LCIA Court, parties and nominees, respectively).
**First-time appointees**

Further, as stated above, of the 420 individual appointments, 56 (or 13.33%) were of candidates not previously appointed by the LCIA.

Of these 56 first-time appointees:

- 18 (or 32.14%) were selected by the LCIA Court;
- 31 (or 55.35%) were selected by the parties; and
- 7 (or 12.5%) were selected by the nominees.

**Challenges to arbitrators**

In 2014, a total of 4 challenges were made to arbitrators who had been appointed in arbitrations under the LCIA Rules.

Of those 4 challenges:

- the LCIA Court upheld one;
- the LCIA Court rejected one; and
- two were superseded, because the arbitrator in each case resigned following the relevant challenge.

**Applications for expedited appointment under Article 9 of the Rules**

In 2014, there were a total of 10 applications under Article 9 of the Rules, including an application for the expedited appointment of a replacement arbitrator.

Of the 10 applications, a total of 3 were granted, 6 were rejected and 1 was not decided.

This compares to a total of 17 applications in 2013 and 17 applications in 2012.

The LCIA did not receive any applications in 2014 for the appointment of an emergency arbitrator under Article 9B of the LCIA Rules 2014.

**Applications for joinder or consolidation**

In 2014, 6 applications were made in arbitrations under the LCIA Rules for the joinder of a third person.

Two of those applications were granted by the relevant Tribunal (one with the parties’ agreement) and one was rejected. Of the remainder, one was withdrawn and two were not decided, as the arbitration settled in the interim.

There were also 2 applications for consolidation under the new provisions in the 2014 Rules. One of the applications was granted by the relevant Tribunal, with the approval of the LCIA Court, pursuant to Article 22.1(ix) of the Rules. The second application concerned a request for consolidation of two arbitrations between A and B and one arbitration between A and C. The LCIA Court approved consolidation of the two arbitrations between A and B, pursuant to Article 22.6 of the Rules; the Tribunal subsequently ordered consolidation of that consolidated arbitration with the arbitration between A and C, pursuant to Article 22.1(ix), with the approval of the LCIA Court.
The dates of the contracts in dispute in arbitrations under the LCIA Rules filed in 2014 (where known), and the parallel dates for 2013, are shown in the following two charts: