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LONDON COURT OF INTERNATIONAL ARBITRATION MODERNISES PROCEDURE

London Court of International Arbitration modernises procedure

One of the leading and oldest arbitration institutions, the London Court of International Arbitration ("LCIA"), brought into force the new Arbitration Rules on 1 October 2014.

Arbitration has become the forum of choice for dispute resolution by international investors in energy and mining infrastructure projects.

In the last few years, there has been a clear rise in the use of arbitrations involving African parties in the extractive industries. In particular, in 2013, the percentage of new LCIA arbitration cases involving African parties was 10%, against 5.5% in 2012 and 4% in 2009. In 2013, LCIA arbitration referrals in the energy and resource sector (excluding oil & gas) constituted 7% and the oil & gas sector represented 15% of new cases.

The new LCIA Arbitration Rules ("New Rules"), will apply to all LCIA arbitrations commenced on or after 1 October 2014. Cases commenced under the regime of the previous version of the Rules, which date back to 1998, ("Old Rules") will be completed under these Old Rules.

The key changes in the New Rules relate to:

- Increased speed and procedural efficiency;
- A new Emergency Relief procedure;
- Consolidation of Arbitrations; and
- Conduct guidelines for the parties' legal representatives.

The New Rules seek to provide a more effective and less expensive process, including simplified online filing procedures, a default rule and rescue clause in relation to the seat of the arbitration and the arbitration agreement and costs sanctions.

Increased speed and procedural efficiency

Articles 1.2, 1.3, 2.2 and 2.3 provide for the submission of the Arbitration Request and the Response by email or on standard electronic forms, although such forms have not yet been provided.

Article 5.4 – Arbitrators will have to declare that they are independent and impartial and “ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration”.

Article 15.10 – Tribunals shall set aside adequate time for their deliberations after the last submissions and to provide to the parties a timetable for delivery of their final award, which shall be made as soon as reasonably possible following the parties’ final submissions.

Multi – Party Arbitrations

Article 22.1(ix) and (x), and Article 22.6) – These provisions enable consolidation of two or more arbitrations into a single arbitration. The tribunal may order, with the approval of the LCIA Court, the consolidation of the arbitration with one or more other arbitrations in two circumstances:

- (i) all parties agree in writing; or
- (ii) in disputes between the same disputing parties as long as no tribunal has been formed for the other arbitration(s) (except where any such tribunal is composed of the same arbitrators), and the arbitrations have been commenced under the same or compatible arbitration agreement(s).

In addition, the LCIA Court may also order consolidation of its own initiative, after giving the parties a reasonable opportunity to state their views, that two or more arbitrations subject to the LCIA Rules and commenced under the same arbitration agreement between the same disputing parties, are to be consolidated, prior to tribunals for otherwise separate arbitrations being formed.

Emergency Relief

Article 9B enables parties to quickly apply for emergency proceedings in order to obtain emergency relief prior to the formation of the tribunal. The LCIA Court should within 3 days, or as soon as possible thereafter, appoint a temporary sole arbitrator, who in turn should decide the claim for emergency relief as soon as possible, but not more than 14 days of the appointment.

The emergency arbitrator has broad discretion in the conduct of the emergency proceedings and may decide the application with or without a hearing, and by way of either an order or an award, but needs to make the award in writing with reasons.

The emergency relief award may be confirmed, varied, discharged or revoked by the fully constituted Arbitration Panel.

Conduct Guidelines

Article 15.10 specifically requires Tribunals to provide a timetable for delivery of their final award and to deliver down the award as soon as reasonably possible following the parties’ final submissions.

Article 18.3 and 18.4 provide that any changes or additions to a party’s legal representatives are conditional on the Tribunal’s approval. Approval may be withheld if the change compromises the composition of the Tribunal or the finality of the award.

Article 18.5 and 18.6 provide that parties shall ensure that their named legal

representatives have agreed to comply with the general conduct guidelines contained in an Annex to the Rules (not yet finalised). In case of an alleged breach of the guidelines, the Tribunal has express powers to rule on whether or a breach has taken place and if so, may impose sanctions.

Costs

Article 28.4 – The general principle remains that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues. In addition, the Arbitral Tribunal may now also take into account the parties' conduct in the arbitration, including any co-operation in facilitating the proceedings as to time and cost and any non-co-operation resulting in undue delay and unnecessary expense. Decision on costs shall be made with reasons.

Overall, the new LCIA Arbitration Rules have received very positive feedback from the international arbitration community and should be welcomed by arbitration users including African parties active in the mining industry.

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