

**A COMMENTARY
ON THE LCIA
ARBITRATION
RULES 2014**

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A Commentary on the LCIA Arbitration Rules 2014

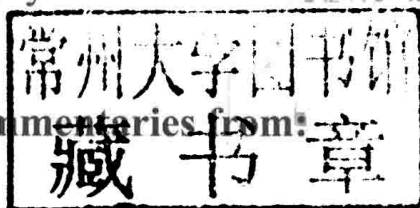
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Published in 2015 by
Thomson Reuters (Professional) UK Limited
trading as Sweet & Maxwell
Friars House, 160 Blackfriars Road, Southwark, London, SE1 8EZ
(Registered in England & Wales, Company No 1679046.
Registered Office and address for service:
2nd Floor, Aldgate House, 33 Aldgate High Street, London, EC3N 1DL)

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Typeset by LBJ Typesetting Ltd of Kingsclere
Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon, CR0 4YY
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A CIP catalogue record for this book is available from the British Library.

ISBN 978-1-847-03560-8

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PREFACE

This book sets out to provide arbitration practitioners and parties interested in LCIA arbitration with a practical and user-friendly, but also in-depth, guide to the LCIA and its new Arbitration Rules, which came into effect on October 1, 2014. The authors bring many decades of experience in international arbitration, as practising arbitrators, as Counsel to parties and as a former Registrar and Deputy Director General of the LCIA. This range of experience allows the authors to provide the reader with a balanced perspective and an understanding of the background and context needed to interpret the Rules in the situations that they may be faced with in practice. Where helpful, comparisons are drawn between the present Rules, their predecessors and other international arbitration rules.

Over the last few years there has been a wave of revisions to arbitration rules and, as a result, a great deal of discussion in the arbitration community as to what arbitration rules should contain and the best approaches to take. This has allowed those responsible for drafting the new LCIA Rules to fashion them in light of the views expressed, and has also provided a wealth of material for our commentaries. The result, we hope, is a comprehensive analysis of the issues of practical importance for those using, or considering, the LCIA Rules.

We extend our thanks to all those whose assistance and support has made this book possible, including: the authors of the chapters on the DIFC-LCIA (Robert Karrar-Lewsley), LCIA India (Ciccu Mukhopadhyaya SC) and LCIA-MIAC (Duncan Bagshaw); LCIA staff who have kindly answered queries and provided information; our colleagues in the arbitration groups at Latham & Watkins, in particular, Oliver Browne and, for her secretarial support, Shelley Levett, and Stephenson Harwood; the publishing team at Sweet & Maxwell; and, for their long-suffering and patience, our families: Samantha, Lucy and Peter Clifford, Idit Albert, Ella, Tal and Mia Albert-Wade and Kate, Nicholas and Emma Clanchy.

We have sought to state the relevant law and LCIA practice as at October 1, 2014. All views expressed in this book are the authors' own, as are any errors which it might contain.

Finally, we dedicate this book to the memory of Stephen York, whose enthusiasm for the practice of international arbitration was an inspiration to his many friends and colleagues.

Shai Wade, Philip Clifford and James Clanchy
December 2014

FOREWORD

In the best of all possible worlds, there would be no necessity for any arbitration rules. In such a world, however, there would be no disputes and no need for arbitration at all, still less an ancient arbitral institution such as the LCIA. Unfortunately, such a Panglossian world does not yet exist.

Today, for transnational parties to an arbitration operating in the real world, there remains a basic need for international arbitration rules so as to avoid the imposition of a paramount legal culture or repeated ad hoc studies in comparative legal procedures at the beginning of each arbitration. An institution's arbitration rules seek to provide a level playing-field for all users, practitioners and arbitrators, with settled expectations and, insofar as possible, no surprises.

From 1985 onwards, the LCIA's successive rules have attempted to meet this basic need. Under the guidance of the LCIA Court, comprising a majority of non-English specialists, the LCIA issued its New Rules on October 1, 2014. These New Rules retain the distinctive features of LCIA arbitration. The LCIA's emphasis remains on referring the parties' dispute to the arbitral tribunal as quickly as possible, with the early appointment of arbitrators, the immediate reference to the tribunal of any questions of jurisdiction or admissibility, and the fullest freedom of the parties to tailor their arbitration's procedure under the LCIA Rules to the particular characteristics of their dispute. These features are intended to avoid many of the delays that can often follow the commencement of an international arbitration. Thereafter, the conduct of the arbitration lies largely with the tribunal in consultation with the parties, subject to essential procedural safeguards and those rules governing the roles of the tribunal, the LCIA Court and the LCIA Registry. During the arbitration, the LCIA Court (with the LCIA Registry) operates "administration-lite" functions, save for the appointment (and removal) of arbitrators, the adjustment of time-limits and the interim payment of arbitral fees and expenses. At the end of the arbitration, the LCIA Court fixes the costs of the arbitration (i.e. the tribunal's fees and the LCIA's own administrative charges); but the LCIA Court plays no part in reviewing the tribunal's award.

There is by now much accumulated experience contained in the LCIA Rules. Each phrase bears the imprint of one or more forensic fables. Many are the result of one or more user's war-story. There is, however, no official LCIA commentary on the interpretation of the LCIA Rules; nor should there be. The LCIA Rules should stand alone. However, it has become increasingly useful for users, practitioners and arbitrators to study commentaries on the LCIA Rules as a guide to the different possibilities offered by these arbitration rules.

This work is the first to be published on the LCIA 2014 Rules. Its three authors are well qualified to explain the function of these rules: one the former LCIA Registrar and the other two well-known London arbitration practitioners. I am delighted to commend this work, as a useful and practical guide to LCIA arbitration. Of course, not all may agree with every aspect of this commentary. That,

however, only demonstrates the flexibility of the LCIA Rules and the different choices available to parties in their application.

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December 4, 2014

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