

SOFTIC Symposium 2002

“DISPUTE RESOLUTION MECHANISM IN THE IT AGE”

Tokyo – 15 November 2002

A view from
the London Court of International Arbitration
(LCIA)

Profile of the modern LCIA

International Credentials

- “Ancient and modern”
- Universally known and recognised as “LCIA”
- Worldwide administration
- Current rules introduced January 1998

Profile of the modern LCIA

The Organisation

- The Company
- The Arbitration Court
- The Secretariat

Profile of the modern LCIA

The Company

- Not-for-profit
- Limited by guarantee
- Concerned with business development
- No active role in casework administration

Profile of the modern LCIA

The Arbitration Court

- 35 members – many jurisdictions
- Final authority for proper application of Rules
- Principal functions:
 - appointment of Tribunals
 - determining challenges
 - control of costs
- No Court scrutiny of Awards

Profile of the modern LCIA

The Secretariat

- Based at International Dispute Resolution Centre (IDRC)
- Principal function administration of casework – LCIA and UNCITRAL
- Also educational function
- Role of Users' Councils

Profile of the modern LCIA

Flexible Administration

- Computer monitoring/variable level of control
- Accessible secretariat
- On-going advice and support service for LCIA and non-LCIA enquiries

Profile of the modern LCIA

Extensive Administration Services

- UNCITRAL (admin. not just appointing)
- ad hoc
- Scheme-specific/tailor made (also drafting)
- Worldwide

Profile of the modern LCIA

Location

- London base no bar to administering anywhere in the world
- London's importance as a financial and commercial centre
- Wealth of arbitration and ADR expertise – as seat or for hearings only

Profile of the modern LCIA

English Arbitration Act 1996

- Underwrites flexibility and party control
- Supports institutional rules
- Awards only challenged on very limited grounds
 - lack of substantial jurisdiction
 - serious irregularity

Profile of the modern LCIA

Arbitration Casework

- Wide range of subject matter
- Wide range of nationalities

Profile of the modern LCIA

Charges

- Not based on sums in issue
- Registration fee £1,500
- Hourly rates for Secretariat and Tribunals
- Parties earn interest on sums deposited
- Unused deposits refunded
- Transparency

Profile of the modern LCIA

Mediation Procedure

- Introduced 1999
- “One-stop shop”

Choosing Dispute Clauses

- Dispute resolution procedures driven by users
- Increasing number of options
- Enforceability, neutrality, confidentiality, cost-effectiveness, speed
- Think also flexibility

Choosing Dispute Clauses

Options

- Early neutral evaluation
- Dispute review boards
- Expert determination
- Mediation
- Adjudication
- Arbitration
- Litigation...
- ...or a combination of these

Choosing Dispute Clauses

Criteria

- Is a binding decision required (enforcement/insurance)?
- Is an expert opinion sufficient?
- Is time of the essence?
- To what extent is an investigation required?
- Should the procedures track the project?
- How many contracting parties/how many separate contracts?

The Administered Arbitration Option

Certainty in Drafting

- Proven set of terms and conditions, regardless of seat
- Less scope for uncertainty, less opportunity for delay
- *Ad hoc* clauses may be inadequate or over-complex

The Administered Arbitration Option

Taking care of the fundamentals...

- Mechanism and timeframe for appointment of tribunal
- Determining challenges to arbitrators
- Default provisions for the seat and language
- Interim and conservatory measures
- Control of costs

The Administered Arbitration Option

.....without recourse to the Courts

- Procedural law may provide for these
- But time-consuming, costly to invoke jurisdiction of Courts at every procedural impasse
- Court intervention may jeopardise confidentiality

The Administered Arbitration Option

Professional administration...

- Professional administrative services, which an *ad hoc* tribunal frequently cannot adequately provide

The Administered Arbitration Option

...Cost-effective administration

- *Ad hoc* arbitrations do not run themselves
- Add the institution's costs....
-but save opportunity and financial cost (parties, tribunal, lawyers)
- More efficient and cost-effective administration by specialists

The Administered Arbitration Option

Controlled costs

- A framework of charges for administrative services and for arbitrators

The Administered Arbitration Option

Administration of Funds

- Institution as secure and independent fundholders
- Interest accrues to the parties' account

The Administered Arbitration Option

Testing the water

- Forcing/crystallising settlement discussions
- A quicker and cheaper way to demonstrate earnest

The Administered Arbitration Option

Knowledge of Arbitrators

- Detailed knowledge of, and access to, best qualified arbitrators
- A greater pool of talent and expertise

The Administered Arbitration Option

Keeping the Process Moving

- Monitoring the process
- Lending support to parties, counsel and arbitrators
- Giving the occasional judicious nudge
- Informal soundings

The Administered Arbitration Option

Balance of Relationships

- Two sides to a dispute
- Inequality of knowledge and experience
- Ensure due process
- Safeguard the process and the outcome

The Administered Arbitration Option

Ad-hoc more likely to mimic litigation

- *Ad hoc* mimics the Courts?
- Institutional provides separate and distinct culture and procedure

The Administered Arbitration Option

The Imprimatur of the Institution

- Greater respect?
- Greater weight?
- Greater confidence?

The Administered Arbitration Option

Permanent Information Service

- Institution not just for use “in anger”
- Permanent source of information and support

LCIA Rules

Commencing the Arbitration (Article 1)

- Quick and inexpensive
- Brief Request for Arbitration
- Statement of Case comes later
- “Testing the Water”

LCIA Rules

The Response (Article 2)

- Brief Response to Request
- Not mandatory
- Statement of Defence/Counterclaim comes later

LCIA Rules

Three or More Parties (Article 8)

- Joint Claimants identify themselves as one side by submitting a single Request and jointly nominating an arbitrator
- Joint Respondents may deny commonality of interest and object to jointly nominating one arbitrator.
- If so, the LCIA Court will appoint tribunal without regard to any nomination

LCIA Rules

Expedited Formation of the Tribunal (Article 9)

- Expedited appointment in cases of "exceptional urgency"
- Often used with application for urgent injunctive relief

LCIA Rules

Challenges to Arbitrators (Article 10)

- Globalisation means more frequent conflict
- Vital role for institutions

LCIA Rules

Majority Power to Continue Proceedings (Article 12)

- If one arbitrator refuses to participate, remaining two may proceed to an Award, without non-participating arbitrator

LCIA Rules

Additional Powers of the Tribunal (Article 22)

- Useful and extensive check-list of powers
- Article 22.1(h) – joinder

LCIA Rules

Interim and Conservatory Measures (Article 25)

- Range of powers for interim relief
- Article 25.1(c) power to order provisionally anything that may be determined in an award

LCIA Rules

The Award (Article 26)

- No scrutiny/no delay

LCIA Rules

Correction of Awards (Article 27)

- Not only typographical/clerical corrections
- Also additional Award(s) if matters missed by tribunal

LCIA Rules

Arbitration and Legal Costs (Article 28)

- Arbitration costs determined by LCIA Court
- Transparent accounting

LCIA Rules

Confidentiality (Article 30)

- Principle of confidentiality expressly provided in LCIA rules