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THE LONDON COURT OF INTERNATIONAL ARBITRATION TAKES ROOT IN INDIA
AND ENCOURAGES GROWTH IN COMMERCIAL MARKETS

By
Julia Rabich*

I. THE LONDON COURT OF INTERNATIONAL ARBITRATION IN INDIA

The London Court of International Arbitration (“LCIA”), a renowned international commercial arbitral institute, launched the LCIA India on April 18, 2009, as “the first independent overseas office” of the LCIA.¹ The LCIA India consists of its own “Board of Directors, the Arbitration Court, and the Secretariat.”² The Board of Directors manages the business aspects of the LCIA India, including its operation and development.³ The Arbitration Court oversees the application of the LCIA India Arbitration Rules (“Rules”), and ensures that the arbitral procedure is followed accordingly.⁴ The Secretariat handles the administrative duties arising from the disputes that are arbitrated in the LCIA India.⁵ The LCIA India is premised on providing the same services that are provided by the LCIA office in London.⁶ According to LCIA, it aims to provide a neutral and efficient system through the enforcement of its Rules, which are applicable to arbitration proceedings beginning on or after April 17, 2010.⁷

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¹ LCIA India, The Launch of LCIA India, *available at* http://www.lcia-india.org/News_Launch.aspx (last visited Feb. 27, 2011).

² LCIA India, About Us, *available at* http://www.lcia-india.org/About_Us.aspx (last visited Feb. 27, 2011).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ About Us, *supra* note 2; LCIA India ARB. RULES (Apr. 17, 2010) *available at* <http://www.lcia-india.org/Arbitration.aspx>.

II. DISTINCT FEATURES OF THE LCIA INDIA ARBITRATION RULES

The Rules, which consist of thirty-two articles and a section of recommended clauses, are implicated if an agreement or written reference exists, stating that the dispute be arbitrated under the Rules of LCIA India.⁸ The Rules also apply to a dispute submitted to the LCIA India.⁹ In general, the Rules provide for a standard arbitral procedure. Step-by-step guidelines and timelines for arbitrating a dispute are provided, and would likely serve to enable the parties and arbitrators to reach a resolution that is timely and fair.¹⁰ The Rules maintain a structure for arbitrating a dispute, and also demonstrate structural flexibility through the recurring reference to practicability and reasonability.¹¹ Additionally, certain provisions provide a glimpse of the connection between the procedure and the tribunal's intent to achieve efficiency and neutrality.¹²

Although the formation of the Arbitral Tribunal may be expedited when circumstances are urgent,¹³ in the absence of an atypical situation, Article 5 will govern the tribunal's formation.¹⁴ Article 5.1 calls for the abandonment of masculine and feminine pronouns, and demands the use of neutral pronouns, such as "it" and "its."¹⁵ Article 5.2 requires that the arbitrator perform its duties in an impartial and independent manner.¹⁶ Consequently, the arbitrator is prohibited from acting as an advocate for the interested parties.¹⁷ Further, Article 5.2 prohibits

⁸ See generally LCIA India ARB. RULES (2010) ("Where any agreement, submission or reference provides in writing and in whatsoever manner for arbitration under the rules of LCIA India, the parties shall be taken to have agreed in writing that the arbitration shall be administered by LCIA India . . .").

⁹ *Id.*

¹⁰ See e.g., LCIA India ARB. RULES art. 4.

¹¹ See e.g., LCIA India ARB. RULES arts. 5.4, 10.2, 15.7, 19.2 & 22.

¹² See e.g., LCIA India ARB. RULES art. 14.

¹³ LCIA India ARB. RULES art. 9.

¹⁴ LCIA India ARB. RULES art. 5.

¹⁵ *Id.* at art. 5.1.

¹⁶ *Id.* at art. 5.2.

¹⁷ *Id.*

the arbitrator from advising the parties “on the merits or outcome of the dispute.”¹⁸ The arbitrator must affirm its impartiality and independence through a signed declaration.¹⁹

Numerous factors exist that may influence the appointment of an arbitrator; the duty of making such an appointment belongs to the LCIA Court.²⁰ Considerations include the nature and circumstances of the dispute, qualifications that the arbitrator must fulfill to satisfy the parties’ agreement, the number of parties involved in the dispute, the location of the parties, and the parties’ nationalities and languages.²¹ The language used in the Arbitration Agreement is determinative of the language in which the arbitration will be conducted.²² The parties may agree to utilize another language in the proceedings so long as the agreement is in writing.²³ If the Arbitration Agreement contains two or more languages, the LCIA Court is authorized to determine which language “shall be the initial language of the arbitration.”²⁴ After the Arbitral Tribunal is formed, but prior to a resolution of the language of the arbitration, the Arbitral Tribunal must provide the parties with an opportunity to submit a “written comment” concerning a language preference.²⁵

The nationality of the arbitrator or arbitrators is discussed in Article 6.²⁶ If the nationalities of the parties differ, the sole arbitrator or the Arbitral Tribunal’s chairman must not be of the same nationality as either party.²⁷ The Rules seem to assume that a risk of bias exists where an arbitrator shares the same nationality as an interested party. To avoid the risk, the Rules encourage the arbitrator to be neutral. The parties may agree to the contrary in writing, and permit the

¹⁸ *Id.*

¹⁹ LCIA India ARB. RULES art. 5.3(d).

²⁰ *Id.* at art. 5.5.

²¹ *Id.*

²² LCIA India ARB. RULES art. 17.1.

²³ *Id.*

²⁴ *Id.* at art. 17.2.

²⁵ *Id.* at 17.3.

²⁶ LCIA India ARB. RULES art. 6.

²⁷ *Id.* at art. 6.1.

appointment of an arbitrator with the same nationality as one of the parties.²⁸ In determining nationality, it is important to be aware that Article 6.3 considers a party to be a national of all states to which the party is a citizen.²⁹ If the party is a corporation, the nationality of the corporation's principal or its' controlling shareholders is considered.³⁰

Article 14 requires certain conduct intended to promote fairness throughout the arbitral proceedings.³¹ The arbitrator must deal with all interested parties in a fair and impartial manner.³² Interested parties must be afforded a reasonable opportunity to set forth their case.³³ The arbitrator must also be aware of all circumstances relating to the arbitral proceeding and adopt procedures befitting the circumstances in order to avoid undue delay or expense.³⁴ Additionally, parties must "do everything necessary" to allow the arbitration to proceed fairly, efficiently, and in an expeditious manner.³⁵

III. CONCLUSION: ASSESSING THE ACHIEVEMENTS OF THE RULES

By enacting the LCIA India Arbitration Rules, the LCIA India, "the first independent overseas office" of the London Court of International Arbitration,³⁶ seeks "to ensure the expeditious, cost effective and totally neutral administration of arbitration . . ."³⁷ The use of timelines to guide the parties and arbitrators to effectuate a speedy resolution of the dispute serves to ensure such efficient arbitral proceedings. For example, the LCIA India allows for an expedited formation of the

²⁸ *Id.*

²⁹ *Id.* at art. 6.3 (2010).

³⁰ *Id.* at art. 6.2 (2010).

³¹ LCIA India ARB. RULES art. 14 (2010).

³² *Id.* at art. 14.1(i) (2010).

³³ *Id.*

³⁴ *Id.* at art. 14.1(ii) (2010).

³⁵ *Id.* at art. 14.2 (2010).

³⁶ The Launch of LCIA India, *supra* note 1.

³⁷ About Us, *supra* note 2.

Arbitral Tribunal under certain circumstances.³⁸ By limiting the circumstances that warrant an expedited formation of the Arbitral Tribunal, with the related reduction in notice and other procedural protections, the Rules appear to continue to promote procedural fairness. Fairness is a theme throughout the Rules, with numerous Articles referencing the need for arbitrators to be impartial and independent.³⁹ Both the arbitrator and the parties to the arbitration are obligated to act in a manner that is consistent with, and which furthers the goal of fairness in the arbitration.⁴⁰ Neutrality is also highlighted in the Rules' abandonment of gendered pronouns; the use of neutral pronouns complements the goal of procedural neutrality.⁴¹ Though the ultimate effect of the creation of the LCIA India and its Rules is still unknown, the doors to India are now wide open for parties to conduct business and settle commercial disputes. The availability of an international commercial dispute resolution forum in India, namely one that strives to be fair and neutral, is likely to welcome an influx of commercial activity into the country.

³⁸ LCIA India ARB. RULES art. 9 (2010).

³⁹ *See supra* Part II; *see also* sources cited *supra* notes 10-12.

⁴⁰ *See supra* Part II.

⁴¹ *See supra* Part II.