

**THE LONDON BAR
ARBITRATION SCHEME**

Administered by
The London Common Law and Commercial Bar Association

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THE LONDON BAR ARBITRATION SCHEME

1 Introduction

The London Common Law and Commercial Bar Association ("LCLCBA") has this revised set of rules for its London Bar Arbitration Scheme ("the Scheme"). The Scheme is administered by the LCLCBA, which charges a nominal fee to cover its administrative costs. The barristers whose services are accessible through the Scheme represent a pool of independent and professional arbitrators with experience in many different fields and in a range of different types of dispute resolution. The LCLCBA has set out clear and comprehensive rules (set out below) for the conduct of arbitrations under the Scheme. In selecting barristers for a particular dispute, the Chairman of the LCLCBA will, so far as possible, have regard to the nature and circumstances of the dispute, so that the dispute is dealt with by a tribunal which is suited to each party's needs.

As professional lawyers, the barristers available through the Scheme will be well placed to carry into effect, interpret and apply the provisions of the 1996 Arbitration Act, the expressed aims of which are to ensure a flexible system for the fair resolution of disputes by an impartial tribunal in accordance with the wishes of the parties and without unnecessary delay and expense. The LCLCBA's intention is to ensure that these principles are fulfilled in its arbitrations by providing a fair but flexible set of terms and procedures and by providing access to arbitrators of the highest calibre.

2 The LCLCBA

The LCLCBA is a respected representative organization dating back at least 30 years. Its extensive membership comprises well in excess of 1,000 barristers practising in Common Law and in many other areas, including Admiralty, Commercial, Patent and Revenue matters.

3 Arbitration services

Should parties wish to have their dispute resolved by arbitration rather than litigation the London Bar Arbitration Scheme can offer:

- (1) the appointment of a barrister arbitrator or retired judge to determine the matters in dispute;

- (2) terms of appointment to govern the relationship between the parties and the arbitrator;
- (3) a procedural code for the conduct of the arbitration;
- (4) specimen forms of arbitration agreement, including an agreement for an ad hoc submission and an arbitration clause for inclusion in a wider agreement;
- (5) a specimen wording for an agreement to exclude the right of application or appeal to the Courts in appropriate cases, if desired.

4 **ADR/expert witness/expert determination services**

The LCLCBA also offer services to parties in dispute, whether or not arbitration is contemplated, namely:

- the nomination of a practising barrister or retired judge to act as a **mediator or conciliator** to assist the parties to negotiate a settlement of their dispute. A fee is payable for this service. Written enquiries should be addressed to the Administrator of the Association at the address given on the title page. Such a request should indicate the nature of the dispute, the amount in issue and the stage reached in any negotiations or proceeding which have taken place;
- the nomination of a practising barrister or retired judge to act as an **expert witness** as to the Law of England and Wales in proceedings in foreign jurisdictions. A fee is payable for this service. Written enquiries should be addressed to the Administrator of the Association at the address given on the title page;
- the nomination of a practising barrister or retired judge to act as an expert for the purposes of an **expert determination**. A fee is payable for this service. Written enquiries should be addressed to the Administrator of the Association at the address given on the title page.

THE LONDON BAR ARBITRATION SCHEME

THE RULES

1. Requests for the appointment of an arbitrator

1.1 These rules ("the Rules") govern the conduct of any arbitration commenced under the London Bar Arbitration Scheme on or after 1 March 2004. Any party wishing to commence arbitration under the London Bar Arbitration Scheme shall send to the Administrator of the LCLCBA ("the Administrator") a written request for the appointment of an arbitrator ("the Request"), which shall include, or be accompanied by:

- (1) the names and addresses of the parties to the arbitration, and the names and addresses of their legal advisers (if any). Telephone, fax, and document exchange numbers and email addresses should also be given, where possible;
- (2) copies of any contractual documents in which the arbitration clause is contained or under which the arbitration arises, and/or a copy of any separate submission or reference to arbitration, if applicable;
- (3) copies of any agreement to arbitrate under the London Bar Arbitration Scheme or the Rules;
- (4) a brief statement of the nature and circumstances of the dispute, specifying the amount at stake and the relief claimed;
- (5) a statement of any matters which the parties have agreed regarding the conduct of the arbitration;
- (6) a fee of £100.

- 1.2 The party wishing to commence arbitration may, in its Request, nominate named barristers and/or retired judges as possible choices for an arbitrator. If it does so, its Request should include a notice giving the other parties the opportunity to give the Administrator, within at least 7 days of the Request, the names of barristers and/or retired judges as possible choices for an arbitrator.
- 1.3 A copy of the Request (including all accompanying documents) shall be sent to all the other parties.
- 1.4 The date of receipt by the Administrator of the Request shall be deemed to be the date upon which the arbitration has commenced.
- 1.5 Where an arbitration agreement, submission or reference provides for an arbitrator or umpire to be chosen by or on behalf of the Chairman of the LCLCBA (“the Chairman”), any party wishing such an appointment to be made shall send to the Administrator a written Request in accordance with paragraph 1.1 above.
- 1.6 After accepting the Request, the Chairman or his representative will select and appoint a practising barrister or retired judge as arbitrator or umpire (as appropriate) to determine the dispute and will notify the parties of the appointment.
- 1.7 If the selected arbitrator or umpire dies, fails or refuses to conduct the proceedings or becomes mentally or physically unable to conduct the proceedings, or there are justifiable doubts as to his capacity to do so (or in the circumstances provided for in paragraph 2.10 below) the Chairman will, upon request by a party, appoint another arbitrator or umpire to act in his place.
- 1.8 In selecting arbitrators and umpires, the Chairman will, so far as possible, have regard to the nature and circumstances of the dispute.
- 1.9 Every agreement, submission or reference providing for arbitration by one or more arbitrators or umpires (alone or with others) to be appointed by or on behalf of the Chairman shall be deemed to be an agreement, submission or reference to arbitration under the London Bar Arbitration Scheme.

- 1.10 Neither the LCLCBA, nor any officer, representative, servant nor agent thereof shall be liable to any party for any act or omission whatsoever in connection with this Scheme or any arbitration conducted under it.
- 1.11 In submitting to arbitration under the London Bar Arbitration Scheme, the parties agree that the seat of the arbitration will be England and Wales.

2. **Appointment of arbitrators**

- 2.1 Henceforth in these Rules any references to arbitrators are intended to apply equally to umpires.
- 2.2 Unless the arbitrator concerned expressly agrees in writing to the contrary, all arbitrators appointed under the London Bar Arbitration Scheme accept such appointment subject to the following terms (or such amended terms as the LCLCBA may have adopted to take effect before the commencement of the arbitration).
- 2.3 In appointing an arbitrator, the Chairman shall be deemed to be acting as agent of the parties and the parties shall (notwithstanding any awards or directions of the arbitral tribunal as to the liability of the parties amongst themselves for such costs or expenses) be jointly and severally liable to the arbitrator so appointed for the fees and expenses charged and incurred by him in connection with the arbitration.
- 2.4 The fees of an arbitrator so appointed will be calculated by reference to work done in connection with the arbitration (including any administrative work done by or on his behalf) and will be charged at rates appropriate to the particular circumstances of the case including its complexity, the amount at stake and the standing of the arbitrator.
- 2.5 Expenses incurred by an arbitrator in connection with the arbitration (e.g. for travel, subsistence, hire of arbitration rooms, postage, telephone, copying, recording and transcribing of proceedings, reports of experts etc.) will be charged at cost.
- 2.6 The parties shall notify the arbitrator immediately if the case is settled or otherwise terminated, or if any hearing is adjourned or cancelled:

- (1) Where a case is settled or otherwise terminated prior to an award being made, or where an arbitrator resigns, the arbitrator shall be entitled to payment for work done and for expenses incurred up to that time.
- (2) In their settlement agreement the parties shall make provision for payment of the arbitrator's fees and expenses.
- (3) Where an arranged hearing is adjourned or cancelled, the arbitrator or umpire shall be entitled to payment of a reasonable cancellation fee in addition to fees for work done and expenses incurred.

2.7 An arbitrator shall be entitled to require any or all of the parties to the arbitration from time to time:

- (1) to pay a reasonable sum or sums on account of expenses incurred or to be incurred by him in connection with the arbitration;
- (2) to pay (at intervals of not less than 6 months) all fees due for work done by him in connection with the arbitration to date;
- (3) except where a Solicitor admitted in England and Wales and holding a current practising certificate accepts in writing personal liability for his fees and expenses) to give security in a manner acceptable to the arbitrator or umpire for payment of his fees and expenses;

and, if default is made in complying with any such requirement, the arbitrator or umpire shall be entitled to refuse to proceed further with the reference and/or to resign.

2.8 Value Added Tax will be added to fees and expenses where appropriate.

2.9 In accordance with the law of England and Wales, an arbitrator appointed under these Rules shall have a lien for his reasonable fees and other charges on the award and submissions, and on any memoranda or valuations obtained by him from other persons in connection with the reference.

2.10 The arbitrator shall exercise all reasonable dispatch in conducting the proceedings and in making an award.

(1) If an arbitrator appointed under these Rules is unable to offer a date for the hearing of the matter within a reasonable time having regard to the circumstances, he shall inform the parties that he is unable to act and that he proposes to resign unless all parties request him not to do so. In the absence of such a request, he shall resign (without incurring liability to any party by reason thereof) and the Chairman shall promptly appoint another arbitrator in his place.

(2) If in the Chairman's view an arbitrator fails to comply with his obligations under this paragraph, the Chairman may on the request of a party remove him and appoint another arbitrator in his place.

3. Procedures

3.1 Unless otherwise agreed by the parties or directed by the tribunal, every arbitration commenced under the London Bar Arbitration Scheme shall be conducted in accordance with the procedures contained in these Rules (or such amended Rules as the LCLCBA may have adopted to take effect before the commencement of the arbitration).

3.2 Unless otherwise agreed by the parties the tribunal shall have jurisdiction and power to direct the procedure in the arbitration as may be necessary to ensure the just expeditious economical and final determination of the dispute; and to that end, the tribunal may disapply or vary any of (or any aspect or part of) the procedures contained in paragraphs 4 to 7 of these Rules in any particular arbitration to such extent as the tribunal in its discretion shall think fit.

4. Powers of the tribunal

4.1 By submitting to arbitration under the London Bar Arbitration Scheme, the parties shall be deemed to have conferred upon the tribunal, *inter alia*, the following powers, to be exercised by the tribunal so far as English law allows, namely:

(1) to rule on its own substantive jurisdiction, that is, as to whether there is a valid arbitration agreement, whether the tribunal is properly constituted, and what matters have been submitted to arbitration in accordance with the arbitration agreement;

- (2) to determine questions of law or fact arising in the course of the arbitration;
- (3) to decide all procedural and evidential matters;
- (4) to order that other parties (with the express consent of those parties and of the existing parties) be joined in the arbitration and to make combined awards in relation to all parties;
- (5) to order consolidation of the arbitral proceedings with other arbitral proceedings;
- (6) to order that concurrent hearings of the arbitral proceedings and other arbitral proceedings shall be held;
- (7) to appoint experts or legal advisers to report to it and the parties or appoint assessors to assist it on technical matters, and to allow any such expert, legal adviser or assessor to attend the proceedings;
- (8) to order a claimant to provide security for the costs of the arbitration in accordance with s.38(3) of the Arbitration Act 1996;
- (9) to give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings;
 - (i) for the inspection, photographing, preservation, custody or detention of the property by or on behalf of the tribunal, an expert or a party, or
 - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property;
- (10) to direct that a party or witness shall be examined upon oath or affirmation, and for that purpose to administer any necessary oath or take any necessary affirmation;

- (11) to give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control;
- (12) to order on a provisional basis any relief which it would have power to grant in a final award;
- (13) to make any order or direction mentioned in these Rules;
- (14) to make an award dismissing a claim where the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant and that the delay:
 - (i) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or
 - (ii) has caused, or is likely to cause, serious prejudice to the respondent;
- (15) to continue proceedings in the absence of a party or, as the case may be, without written evidence or submissions on his behalf and to make an award on the evidence before it, in circumstances where such a party:
 - (i) fails to attend or be represented at an oral hearing of which due notice was given; or
 - (ii) (where matters are to be dealt with in writing) fails after due notice to submit written evidence or make written submissions; or
 - (iii) fails to comply with these Rules, or with the tribunal's orders and directions;
- (16) to make a peremptory order to the same effect as any order or directions with which a party has failed to comply (without showing sufficient cause), prescribing such time for compliance with it as the tribunal considers appropriate;

- (17) to make an award dismissing a claim if a claimant fails to comply with a peremptory order of the tribunal to provide security for costs;
- (18) where a party fails to comply with any peremptory order of the tribunal;
 - (i) to direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
 - (ii) to draw adverse inferences from the act of non-compliance as the circumstances justify;
 - (iii) to proceed to an award on the basis of such materials as have been properly provided to it;
 - (iv) to make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.
- (19) To make more than one award at different times on different aspects of the matters to be determined;
- (20) To make a declaration as to any matter to be determined in the proceedings;
- (21) To order the payment of a sum of money, in any currency;
- (22) (Insofar as the courts of England and Wales have such powers):
 - (i) to order a party to do or refrain from doing anything;
 - (ii) to order specific performance of a contract (other than a contract relating to land);

(iii) to order the rectification, setting aside or cancellation of a deed or other document.

(23) To award simple or compound interest in accordance with section 49 of the Arbitration Act 1996;

(24) To make an award allocating the costs of the arbitration as between the parties, and to determine the recoverable costs of the arbitration;

(25) To direct that the recoverable costs of the arbitration, or any part of the arbitral proceedings, shall be limited to a specified amount.

4.2 The tribunal shall, in addition to the powers set out in 4.1 above, have all such further jurisdiction and powers as may be allowed to it by any contract between the parties or by the laws of England and Wales.

5. **Statements of Case**

5.1 Within 28 days of being notified of the appointment of the tribunal the Claimant shall send to the tribunal and every other party a Statement of Claim setting out in sufficient detail the facts and contentions of law upon which he relies and the relief that he claims.

5.2 Within 28 days of receipt of the Claimant's Statement of Claim the Respondent shall send to the tribunal and to every other party a Statement of Defence setting out in sufficient detail which of the facts and contentions of law in the Statement of Claim he admits or denies, on what grounds, and upon what other facts and contentions of law he relies.

5.3 The Claimant may if he wishes send to the tribunal and to every party a Statement of Reply within 28 days of receipt of the Statement of Defence.

5.4 Where there is a counterclaim, it shall be set out in the Statement of Defence as if it were a claim and in relation thereto a Statement of Defence shall be served, and a Statement of Reply may be served in response, in accordance with 5.2 and 5.3 above and 5.5 below.

5.5 All Statements of Claim, Defence and Reply shall be accompanied by:

- (1) copies of the essential documents (not exceeding 100 pages in all) upon which the party serving Statement relies;
- (2) a list of the principal authorities upon which the party serving the Statement relies for any proposition of law for which authority is likely to be necessary;
- (3) samples, if appropriate and practicable.

6. Preliminary meeting

- 6.1 After the time for submitting all Statements of Case has expired, the tribunal shall give directions for the future conduct of the arbitration and may for that purpose:
 - (1) invite written representations as to the directions to be given;
 - (2) call a preliminary meeting to consider the future conduct of the arbitration.

7. Hearing

- 7.1 Unless the tribunal should otherwise direct, no expert witness shall give evidence unless a copy of his statement or report has been served on the tribunal and on the other party not less than 30 days before the beginning of the hearing.
- 7.2 Unless the tribunal should otherwise direct, no other witness shall give evidence until at least 48 hours after his statement has been delivered to the tribunal and to the other parties.
- 7.3 All meetings and hearings shall be in private. Parties may, if they wish, be represented at any meeting or hearing by a barrister, solicitor or other professional adviser, provided that they have given no less than 3 clear days written notice to every other party of their intention to be so represented.

8. **The Award**

- 8.1 (1) The tribunal shall give reasons for the award.
- (2) Nevertheless, unless the parties otherwise agree in writing prior to the making of the award, the parties agree to exclude any right of application or appeal to the English Courts in connection with any question of law arising out of the award.
- 8.2 If the tribunal determines that all or any part of the costs of the arbitration shall be paid by any party other than a party who has already paid such costs, the party who has paid such costs shall have the right to recover the appropriate amount from the other party.

SPECIMEN ARBITRATION CLAUSE

Parties who wish to have any dispute referred to arbitration under the London Bar Arbitration Scheme are recommended to include in the contract an arbitration clause in the following form:

"Any dispute or difference of any kind whatsoever arising out of or in connection with this agreement shall be referred to arbitration in London under the rules of the London Bar Arbitration Scheme for determination in accordance with the law of England and Wales by a single arbitrator to be appointed by or on behalf of the Chairman for the time being of the London Common Law and Commercial Bar Association."

SPECIMEN “AD HOC” SUBMISSION AGREEMENT

BY THIS AGREEMENT

(1)of (“the Claimant”)

AND

(2)of (“the Respondent”)

HEREBY AGREE TO REFER

all disputes or differences between them arising out of or in connection with
... [*e.g. a contract between them dated.....; a road traffic accident which
occurred on.....at.....between.....*]

TO ARBITRATION

in London under the rules of the London Bar Arbitration Scheme for determination in accordance with the law of England and Wales by a single arbitrator to be appointed by or on behalf of the Chairman for the time being of the London Common Law and Commercial Bar Association.

Signed Date

SignedDate