



Summary of Key Changes in New HKIAC Administered Arbitration Rules

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The Hong Kong International Arbitration Centre has adopted new Administered Arbitration Rules that will become effective in arbitrations commenced after November 1, 2013. The provisions in Articles 23.1, 28, 29 and Schedule 4 will apply to arbitrations following arbitration agreements concluded after November 1, 2013. There are at least nine significant features to the New Rules.

- 1. Revised arbitrator terms of appointment and hourly fee cap (Articles 9.2, 10 and Schedules 2 and 3).** The current rules allow calculation of the arbitrator's fees based upon either the sum in dispute or a separate agreement reached between the parties and the tribunal. The New Rules include an agreed hourly rate schedule as Schedule 3. That agreed hourly rate schedule is the default option under the rules. The rate schedule caps the hourly rate at HK\$6,500. The New Rules also include standard terms of appointment of arbitral tribunals. This should enable the parties to appoint the tribunal quicker and get the substantive proceedings underway.
- 2. The HKIAC's prima facie power to proceed with arbitrations (see Article 19.4).** Where there is a question regarding the existence, validity and scope of an arbitration agreement or the jurisdiction of the HKIAC over any arbitration commenced under the New Rules prior to the constitution of an arbitral tribunal, the HKIAC has been given the power to proceed with the arbitration if it is prima facie satisfied that an arbitration agreement under the New Rules may exist. The current rules did not address that contingency.
- 3. Emergency Relief (Article 23.1 and Schedule 4).** The current rules include a provision for emergency relief. The New Rules introduce a procedure (as set out in Schedule 4) for appointing an emergency arbitrator to deal with applications for urgent interim or conservatory relief before the constitution of an arbitral tribunal. That procedure includes provisions relating to an emergency arbitrator's power, effect of his decision and his ability to act. An emergency arbitrator will normally be appointed within 2 days following the HKIAC's acceptance of an application for such appointment. A decision of the emergency arbitrator on the application will normally be made within 15 days from the date on which the emergency arbitrator received the file from the HKIAC.
- 4. Security for costs (see Article 24).** Under the New Rules, an arbitral tribunal may make an order requiring a party to provide security for the costs of the arbitration. The current rules did not explicitly grant this power to the tribunal.
- 5. Joinder of Additional Parties (Article 27).** The New Rules give an arbitral tribunal the power to allow an additional party to be joined to an existing arbitration, provided that the additional party is bound by a valid arbitration agreement under the New Rules. The HKIAC has prima facie power to join an additional party if a request for joinder of such party is submitted before the arbitral tribunal has been constituted. Under the



current rules, the joinder provision is more limited and the tribunal could only join parties with the consent of existing parties to the arbitration.

6. Consolidation of Arbitrations (Article 28). The current rules make no provision for consolidating arbitrations. Under the New Rules, the HKIAC has the power to consolidate two or more HKIAC arbitrations. Where the HKIAC decides to consolidate, the parties to all such arbitrations will be deemed to have waived their right to designate an arbitrator, and the HKIAC may revoke any existing appointment. Consequently, the HKIAC will appoint the arbitral tribunal (i.e. all arbitrators). The parties waive any objection, on the basis of the HKIAC's decision to consolidate, to the validity and enforcement of any award made by the arbitral tribunal.

7. Single arbitration under multiple contracts (see Article 29). The current rules do not address the situation in which claims arise under multiple contracts. Subject to certain provisions in this Article, claims arising out of or in connection with more than one contract may be made in a single arbitration under the New Rules. The parties waive any objection, on the basis of the commencement of a single arbitration, to the validity and enforcement of any award made by the arbitral tribunal.

8. Expedited procedure (see Article 41). Article 38 of the current rules allow application of expedited procedures to claims under US \$250,000. The amount in dispute which can trigger expedited procedure prior to the constitution of an arbitral tribunal has been increased to a sum representing the aggregate of any claim or counterclaim (or any set-off defence) not exceeding HK \$25,000,000. As in the current rules, the award is to be made six months from the date when the HKIAC transmits the file to the arbitral tribunal.

9. Conduct of the Arbitration. Under the current rules, regarding the fairness and efficiency of the arbitration, only the parties were under an obligation to ensure the same: "The parties shall do everything necessary to ensure the fair and efficient conduct of the proceedings." Now, under revised Article 13.5, "The arbitral tribunal and the parties shall do everything necessary to ensure the fair and efficient conduct of the arbitration." Furthermore, Article 13.6 of the New Rules seemingly gives the tribunal the power to govern a party's selection of representation: "The parties may be represented by persons of their choice, subject to Article 13.5." By making Article 13.6 subject to Article 13.5 and the tribunal's responsibility to ensure the fair and efficient conduct of the arbitration, it would appear there is now authority for the tribunal to reject a party's choice of representation. For example, if after the commencement of an arbitration, a party selects new counsel who may cause the disqualification of an arbitrator, the tribunal has the express power to bar the appointment of that counsel.

Conclusion

With an emphasis on matters that can occur early during arbitration, the New Rules are a much welcomed and comprehensive update to the old 2008 rules, reflecting not only the most recent developments in international arbitration but also the HKIAC's eagerness to remain a competitive and an attractive place for international and regional arbitration.

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