

Kluwer Arbitration Blog

HKIAC's New Administered Arbitration Rules

Kim M. Rooney (White & Case LLP) · Wednesday, May 27th, 2009 · White & Case

On 1 September 2008, the Hong Kong International Arbitration Centre (the “**HKIAC**”) adopted a new set of arbitration rules, entitled the Hong Kong International Arbitration Centre Administered Arbitration Rules (the “**Administered Rules**”). In a press release in January 2009, the HKIAC announced that it had already received cases under the Administered Rules.

The Administered Rules supersede the old HKIAC Procedures for the Administration of International Arbitration in accordance with the UNCITRAL Arbitration Rules (the “**Old Procedures**”).

The Administered Rules set out a comprehensive framework for HKIAC administered arbitration and it is the HKIAC's intention that all parties wishing to agree to arbitration administered by the HKIAC should use the Administered Rules. This is evidenced by Article 1.3 of the HKIAC Rules which states:

“...1.3 These Rules supersede the HKIAC Procedures for the Administration of International Arbitration adopted with effect from 31st March 2005 (the “Procedures”) save to the extent that the parties have agreed to adopt the Procedures in an agreement made prior to 1st September 2008. Where an agreement to arbitrate made after these Rules have come into effect provides for arbitration under the UNCITRAL Rules administered by the HKIAC, the HKIAC shall be the appointing authority and the HKIAC Secretariat shall invite the parties in such a case to agree to the application of these Rules....”

The Administered Rules are designed for use by parties who seek the formality and convenience of an administered arbitration and are based on the UNCITRAL Arbitration Rules. The HKIAC have stated that they were inspired by the “light touch” administered approach of the Swiss International Rules of Arbitration and that during the drafting process of the Administered Rules references were made to the arbitration rules of different institutions around the world.

Main features of the Administered Rules include:

- The use of more user-friendly language;
 - The allowance of more party autonomy in individual cases;
 - The Administered Rules are designed especially with Chinese-foreign disputes in mind and are issued in Chinese and English versions;
 - All appointments of arbitrators are subject to confirmation by the HKIAC;
 - If the parties to an arbitration are of different nationalities, neither the sole arbitrator nor the chairman of a three-member arbitral tribunal shall have the same nationality as any party unless specifically agreed otherwise by all parties in writing;
 - The arbitral tribunal is given a broad discretion as to how to conduct the proceedings;
 - The arbitral tribunal have the power to, upon the application of a party, allow one or more third persons to be joined in the arbitration as a party, provided that such third person or persons and the applicant party have consented to such joinder in writing;
 - The arbitral tribunal is to prepare a provisional timetable for the proceedings at an early stage;
- and

· If there is no majority, the award shall be made by the presiding arbitrator alone.

Interestingly, there is a provision in the Administered Rules (Article 26) dealing with default by the parties. In addition to the more usual provision giving the tribunal power to proceed with the arbitration despite a party's failure to attend and present its case, there is also express provision for a kind of "default award" procedure. Under Article 26.1, if the Claimant fails to submit its Statement of Claim by the deadline set by the tribunal, and does not show sufficient cause for such failure, the tribunal 'shall' order the termination of the proceedings. The only situation where this may not happen is where the Respondent has brought a counterclaim and wishes the arbitration to continue.

There are also detailed provisions (at Article 36) regarding how the tribunal should determine the costs of the arbitration. In particular, Article 36.1 sets out an exhaustive list of items that are regarded as the "costs" to be determined by the tribunal in its award. Article 36.4 states that such costs should in principle be paid by the unsuccessful party, although the tribunal may make whatever apportionment it considers reasonable.

Articles 36.2 and 36.3 deal with the fees of the tribunal - in summary, the parties can choose whether the arbitrators should be compensated on the basis of agreed rates or in accordance with a fee schedule (providing for fees ranging, depending on the amount in dispute, from US\$2,000 to 0.06% of the sum in dispute, per arbitrator). If the parties choose the fee schedule, the arbitrators' fees will be fixed by the HKIAC Council in accordance with the schedule, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case. In this regard, Article 36.3 expressly states that, in general, the Chairman will receive 40% of the total fees, while each of the other arbitrators will receive 30%.

With reference to the above, parties intending to submit a dispute to the HKIAC under the Administered Rules should ensure that they have reached some agreement in advance on how the arbitrators' fees should be dealt with, otherwise there is a risk that the constitution of the tribunal may be delayed.

By Kim Rooney, Alex Charter and Dave Lau

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