

Kluwer Arbitration Blog

HKIAC: What Will The New Arbitration Rules Change?

Stephan Balthasar (Linklaters) · Monday, September 30th, 2013

Hong Kong is one of the major hubs for international arbitration in Asia. Its position was strengthened when, in 2012, India added Hong Kong to the list of so-called “gazetted” states: only arbitral awards rendered in these states will be recognised and enforced in India under the New York Convention. The inclusion of Hong Kong was a “golden opportunity” for it as a seat and venue of arbitration (see Tom Lidstrom’s [post](#) of 25 April 2012). The Hong Kong International Arbitration Centre (“HKIAC”) is now making arbitration in Hong Kong even more attractive by streamlining its arbitration rules: On 1 November 2013, the new “HKIAC Administered Arbitration Rules (2013 Edition)” will enter into force. They can be downloaded on the [homepage](#) of HKIAC.

So what are the essential changes under the new HKIAC Rules? Following a major trend in international arbitration, they introduce rules for emergency relief (Article 23) and provisions dealing specifically with multi-party and multi-contract arbitrations (Articles 27–29). In addition, they extend the scope for expedited procedures (Article 41). There are also new rules for the relationship between the parties and the arbitral tribunal, in particular for the remuneration of the arbitrators (Schedules 2 and 3). Last but not least, the new rules include various provisions to make the arbitration process more efficient.

Under Article 23.1 of the new rules, a party may apply for urgent interim or conservatory relief prior to the constitution of the arbitral tribunal. Under Schedule 4, HKIAC will then appoint an emergency arbitrator within two days from receipt of the application, and the emergency arbitrator shall make his decision within another 15 days. The decision of the emergency arbitrator can be enforced under the new sections 22A and 22B of the Hong Kong Arbitration Ordinance (in force since 19 July 2013 under Ordinance No. 7 of 2013, see [here](#)). The emergency arbitration complements interim relief before state courts, which remains available under most arbitration laws, notwithstanding an arbitration agreement between the parties (see Articles 9 and 17H of the UNCITRAL Model Law).

The new rules with regard to multi-party and multi-contract disputes reflect the “growing complexity of commercial disputes”. Under the old rules, the arbitral tribunal could only join parties with the consent of the existing parties, and, under many other institutional rules, the principle remains that, once the tribunal is appointed, joining a third party requires the consent of all parties (e.g., Article 7.1 of the ICC Rules 2012). By contrast, the new Article 27.1 of the HKIAC Rules 2013 allows the arbitral tribunal to join a party whenever the additional party is bound by an arbitration agreement under the new rules giving rise to the arbitration. While the old

rules remained silent on consolidating arbitrations, HKIAC now has the power to consolidate two or more arbitrations, not only where the parties so agree, but also where all claims are raised under the same arbitration agreement, or where the arbitrations give rise to a common question of law or fact and where the arbitration agreements are compatible (Article 28.1). Similarly, claims arising in connection with more than one contract may be arbitrated in a single arbitration under the conditions set out in Article 29.1 of the HKIAC Rules 2013.

The new rules also improve the expedited procedure (Article 41). While this procedure was available as of right only in cases with an amount in dispute of up to US\$250k, the relevant threshold is now moved up to HK \$25m (Article 41.1(a)), which is currently the equivalent of US\$3.2m. Where the amount in dispute is in excess of HK\$25m, parties may still apply for expedited procedure when both parties agree and, more importantly, in situations of exceptional urgency (Articles 41.1(b) and (c)). Ordinarily, the expedited arbitration will be decided by a sole arbitrator who will render an award within six months from the date where HKIAC transmitted the file to the arbitral tribunal (Article 41.2(f)).

Finally, the new rules streamline the arbitrator appointment process by providing standard terms and conditions (Schedules 2 and 3). The default option is remuneration of the arbitrators on an hourly basis. HKIAC publishes a cap on hourly rates on its homepage, which stands currently at HK\$6,500, the equivalent of US\$840 (for updates, see [here](#)). Failing an agreement between the parties, the hourly rate is fixed by HKIAC (Article 10.2). Instead of hourly fees, the parties can agree that the fees of the tribunal are calculated on the basis of a schedule of fees, depending on the amount in dispute (Article 10.1(b)).

The new rules will be applied to all HKIAC-administered proceedings, provided the notice of arbitration is submitted on or after 1 November 2013 (Articles 1.1 and 1.3). However, the new provisions relating to emergency relief, consolidation of arbitrations and multi-party arbitrations only apply if the arbitration agreement was concluded after the entry into force of the new rules. By contrast, the new rules on expedited procedure will apply to old arbitration agreements as well, and parties are well-advised to make use of this option in order to make sure their arbitration is as speedy and cost-efficient as possible. Speed and efficiency are also supported by other changes in the rules, which allow HKIAC to proceed with an arbitration if it is prima facie satisfied that an arbitration agreement may exist (Article 19.4) and which allow the tribunal to exclude a party's representative if this would disrupt the fair and expeditious conduct of the arbitration (Articles 13.5 and 13.6).

Many of the changes in the new rules address general concerns in the arbitration community about the efficiency of arbitration as a dispute resolution mechanism and are therefore to be welcomed. Inevitably, the new rules will also give rise to a number of complex legal questions. For example, it is unclear whether a decision of an emergency arbitrator could be enforced outside Hong Kong: in particular, Article 17(1) of the UNCITRAL Model Law only allows the enforcement of orders of "the arbitral tribunal". However, under the new HKIAC Rules, the "emergency arbitrator" is not normally identical with "the arbitral tribunal" deciding the case (Schedule 4, Clause 21), so the emergency arbitrator's order may not fall under Article 17(1) of the UNCITRAL Model Law. Enforcement under the New York Convention may also prove difficult, as any award made by the emergency arbitrator remains subject to review by the tribunal and so lacks the finality required for the enforcement of awards under the New York Convention.

Multi-party arbitration is a similarly complicated issue. For example, it is unclear whether an

award could be enforced against a party that was joined to the arbitration against its will by the arbitral tribunal: in these circumstances, the party joined to the arbitration had no possibility to influence the composition of the tribunal, and, in some jurisdictions, this may be seen as problematic (e.g., in France and Germany) and create problems in the enforcement process. Given the increasing number of cases administered by HKIAC, it will only be a matter of time until answers to these questions will have to be found.

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