

Kluwer Arbitration Blog

Public Consultation Paper on Proposed Amendments to the 2013 HKIAC Administered Arbitration Rules

Joe Liu (Hong Kong International Arbitration Centre) · Sunday, September 17th, 2017 · HK45

The HKIAC Rules Revision Committee (the “Committee”) is considering amendments to the current version of the [HKIAC’s Administered Arbitration Rules](#), which came into force on 1 November 2013 (the “2013 Rules”).

The 2013 Rules, while maintaining the “light touch” approach of the 2008 Administered Arbitration Rules, made important contributions to international arbitration by introducing unprecedented provisions on multi-party and multi-contract arbitrations (including joinder, consolidation and single arbitration under multiple contracts). The 2013 Rules have been well-received by users and are widely recognised as one of the market-leading sets.

Considering that the number of arbitrations brought under the HKIAC Administered Arbitration Rules has grown significantly since 2013, and the 2013 Rules have been working well in practice, the Committee does not contemplate a wholesale revision. However, drawing upon HKIAC’s experience implementing the 2013 Rules for almost four years, and in light of the latest arbitration developments in Hong Kong and globally, the Committee nevertheless considers that certain amendments might usefully be made.

This [Consultation Paper](#) outlines the **major** amendments proposed by the Committee at this stage, which include the following:

Online Document Repository

Provide for use of secured online repositories to store any written communications submitted in an arbitration upon all parties’ agreement. Add provisions to recognise written communications uploaded to the online repository as an alternative means of service. The Committee seeks views on whether this should be a repository established and maintained by HKIAC, or whether the Rules should permit the parties to use their own online repositories (e.g. by using systems hosted by one party’s law firm), upon all parties’ agreement and subject to HKIAC’s approval. See *Articles 2.1(c), 2.2 and 2.3*.

Alternative Means of Dispute Settlement (e.g. “Arb-Med-Arb”)

Include a provision to allow expressly parties to pursue other means of dispute settlement after the commencement of the arbitration and resume arbitration upon a party’s request. Stipulate that an

arbitrator or emergency arbitrator may not participate in the other dispute settlement process if he or she may be privy to *ex parte* communications with any party, except with the express consent of all parties. See *Article 13.9*.

Multilingual Procedures

Introduce a set of default procedures on the conduct of arbitral proceedings in two or more languages, such as the language(s) to be used by the arbitral tribunal, the parties and other participants at hearings and conference calls, as well as the language(s) of all written communications. See *Article 15.4 and Schedule 5*.

New Grounds for Joinder

Introduce new grounds to permit the joinder of (i) an additional party that is not bound by the arbitration agreement giving rise to the arbitration, provided that all parties, including the additional party, expressly agree; and (ii) an additional party that is bound by a different arbitration agreement under the Rules, provided that a common question of law or fact arises, the rights to relief claimed arise out of the same transaction or a series of related transactions, and the arbitration agreements are compatible. See *Article 27.1(b) and (c)*.

Expanded provisions for single arbitration under multiple contracts

Add a provision permitting parties to commence a single arbitration under multiple contracts, even where there is not complete identity of parties to each relevant contract. This would allow a claimant to commence one arbitration to resolve disputes arising under, for example, a head contract and related sub-contracts. See *Article 29*.

Concurrent Proceedings

Incorporate a provision to state expressly that the same arbitral tribunal and (possibly) different arbitral tribunals may hear multiple proceedings at the same time, or one immediately after another, or suspend any of those proceedings until after the determination of any other of them, in situations where a common question of law or fact arises and the arbitrations have not been consolidated under the Rules. See *Article 30*.

Third Party Funding

Add a new provision on disclosure of third party funding (“TPF”) and amend the confidentiality provisions to allow disclosure of information to a third party funder, having regard to the TPF amendments to the Arbitration Ordinance (Cap. 609). The Committee seeks views on whether an express provision should be added to allow the arbitral tribunal to award costs of third party funding as part of costs of arbitration? See *Articles 34.1(d), 44 and 45.3(e)*.

The Committee seeks views on whether **express provisions** should be introduced in relation to the following:

Investment Treaty Arbitrations

Whether HKIAC should issue a set of rules suitable for both international commercial and investment treaty arbitration, with provisions applicable to investment treaty arbitration possibly

contained in a new schedule. The Committee invites views on what provisions should be included.

Early Determination Procedure

Whether a procedure should be introduced to allow the arbitral tribunal to determine one or more issues of fact or law in a preliminary or a separate phase, and in a summary fashion.

Please click [here](#) for a copy of the Rules which incorporates all proposed amendments. If you wish to obtain a track-change copy of the Rules reflecting amendments to the 2013 Rules, please send a request to rules@hkiaac.org.

Users are invited to submit comments on the proposed amendments to rules@hkiaac.org by **Monday, 2 October 2017**. The Committee then intends to consult further before making a final decision as to the timing and form of any amendments to the Rules.

HKIAC Rules Revision Committee, Current Members: Nils Eliasson (Chair), Matthew Gearing QC, Cameron Hassall, Briana Young, Sarah Grimmer, Joe Liu.

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