

HKIAC Administered Arbitration: New Rules for the New Lunar Year

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The HKIAC has launched a consultation process to consider modifications to its Administered Arbitration Rules, which came into force on 1 September 2008 (the "Rules").

Users of the Rules have been invited to comment on proposed amendments outlined in a HKIAC consultation paper dated 15 December 2011. A copy of the consultation paper can be found [here](#).

A number of firms and individuals have already submitted comments as part of this process, which is a welcome move to ensure that the Rules continue to reflect the best of modern practice, in keeping with HKIAC's status as one of the world's pre-eminent arbitration institutions.

The Council's overall view is that the existing Rules are working well, but the HKIAC has asked if useful modifications might be made, now that users have over three years' practical experience of using the Rules. As such, the consultation paper does not propose a wholesale revision of the Rules, but suggests amendments to clarify and simplify existing rules, codify existing practices and deal with the growing complexity of arbitration disputes. The Rules are based on the Swiss Rules of International Arbitration, which are also under revision, with the new version expected to come into force later this year.

Some of the issues raised for discussion, particularly in relation to case

management and the appointment of emergency arbitrators, are reminiscent of the latest version of the ICC Rules, which came into force on 1 January 2012 and have been warmly welcomed.

Proposed amendments include:

- Amending Article 4.2 (*Notice of Arbitration*) so that if the HKIAC does not receive the correct number of copies of the Notice of Arbitration (as per Article 4.3) it will affect the commencement date of the arbitration (and consequently the date the Answer is due).
- Amending Article 4.6 to require the Claimant to nominate its arbitrator in the Notice of Arbitration. To do so is currently optional. This proposed amendment aims to increase certainty and expedite the process of appointing arbitrators. If the proposed amendment were adopted, the 30 days for the Respondent to nominate its arbitrator would run from the date of the Notice of Arbitration as per Article 8.1(a) (*Appointment of Arbitral Tribunal*).
- Simplifying the Article 8.2 procedure for appointing arbitrators in a multi-party arbitration.
- Requiring that arbitrators formally confirm their independence and impartiality in a signed document, and disclose any other circumstances that might give rise to justifiable doubts (Article 11).
- Several provisions in relation to case management, intended to make the HKIAC arbitration process more cost-effective and efficient. These include: (i) updating Article 14 (*General Provisions*) to require the tribunal to adopt suitable procedures for the conduct of the arbitration “*having regard to the complexity of the issues and the amount in dispute*”; (ii) expressly allowing the tribunal to take the initiative in identifying relevant issues of fact and law; and (iii) including a list of case management control techniques in Article 14 to illustrate appropriate measures for controlling time and costs.
- Expanding the provisions in Article 14 regarding joinder, and including some guidance on consolidation of proceedings. The Rules currently contain a limited joinder of third party provision, but no express provision on consolidation.
- Amending Article 20 (*Jurisdiction of the Arbitral Tribunal*) to clarify that

jurisdictional pleas are irrevocably waived if not made in the Statement of Defence at the latest.

- Expanding Article 24 (*Interim Measures of Protection*) to give more guidance on the interim measures an arbitral tribunal is able to grant. Proposals include either (i) clarifying that the jurisdiction to order interim measures includes the jurisdiction to grant security for costs, (given that section 56 of Hong Kong's new Arbitration Ordinance empowers the tribunal to order a Claimant to give security for the costs of the arbitration); or (ii) stating that the power to order security for costs is a separate power of the arbitral tribunal. The HKIAC also suggested bringing Article 24 into line with sections 35 and 36 of the Ordinance, which incorporate Articles 17 and 17A of the UNCITRAL Model Law as revised in 2006, regarding the power of the arbitral tribunal to order interim measures, including the conditions for granting such measures.
- Clarifying that only documents that are both relevant and material to the issues in dispute may be requested and disclosed under Article 23.3 (*Evidence and Hearings*), and expanding Article 23.3 to include specific provisions for document production procedures and guidance regarding the production of electronic documents.

The proposals also include a number of new provisions, for example:

- A procedure for appointing an emergency arbitrator. This echoes recent changes to the ICC Rules, although it differs, in that the proposals envisage that the emergency arbitrator would only consider applications for interim relief between the service of the Notice of Arbitration and the constitution of the tribunal. Under the ICC Rules, the appointment of an emergency arbitrator is available even before the Request for Arbitration is filed. Whichever formulation may ultimately be embraced, this proposal reflects the trend of arbitral institutions responding to users' need to deal with urgent situations, frequently before the constitution of the tribunal.
- Provisions for expedited formation of a tribunal (in addition or in the alternative to the procedure for appointment of an emergency arbitrator described above).
- Conferring an express duty on the tribunal (and by extension on the HKIAC) to do everything possible to ensure that the award is enforceable.

- Any further changes required in the light of the Arbitration Ordinance.

The HKIAC intends to hold a series of consultations – the first of which is at the end of February – before making any final decisions as to the timing and form of any amendments to the Rules.

If any users have not yet expressed their views regarding the proposed amendments, the HKIAC welcomes such comments before the end of the month. Comments should be addressed to the HKIAC Rules Revision Committee at rules@hkiac.org.

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