

Kluwer Arbitration Blog

HKIAC Introduces New Rules

Joe Liu (Hong Kong International Arbitration Centre) · Monday, October 22nd, 2018 · HK45

In August 2017, the Hong Kong International Arbitration Centre (“**HKIAC**”) launched a rules revision process to consider amendments to the 2013 HKIAC Administered Arbitration Rules (“**2013 Rules**”), having regard to the latest trends in international arbitration, feedback from users and HKIAC’s past case management experience.

The 2013 Rules have been widely regarded as one of the market-leading set of rules with a number of innovative provisions, such as the availability of two options to pay arbitrators’ fees, leading HKIAC to receive a nomination for a GAR award in 2014. Notwithstanding this, after multiple rounds of public consultation, HKIAC considers that it is time to update the 2013 Rules with certain amendments that might benefit its users.

HKIAC has announced several new provisions to add to the 2018 Administered Arbitration Rules (“**2018 Rules**”), which are intended to improve the procedural certainty and cost-efficiency of HKIAC arbitration. These provisions address primarily the following areas:

Use of technology

It is inevitable that technology will transform the conduct of arbitration and be increasingly used to address the constant demand for cost and time-effectiveness of arbitration. In recognition of this, HKIAC encourages the use of technology to manage proceedings and to deliver documents.

There are new provisions to recognise the uploading of documents onto a secured online repository as a valid means of service. Parties may agree to use their own repositories or a dedicated repository provided by HKIAC. The 2018 Rules will also identify the effective use of technology as a factor for an arbitral tribunal to consider when adopting suitable procedures for an arbitration.

Multi-party and multi-contract disputes

HKIAC is at the forefront of developing effective provisions for disputes involving multiple parties and/or contracts. It is known for its comprehensive and far-reaching provisions on joinder, consolidation and single arbitration under multiple contracts. These set the market standard at the time of their introduction in 2013.

In the 2018 Rules, HKIAC further expands those provisions in, among other things, allowing a party to commence a single arbitration under multiple agreements even though these are between different parties. This feature is not available in the 2013 Rules. Further, HKIAC has added

provisions to allow expressly the same arbitral tribunal to run multiple arbitrations concurrently with, for example, common procedural timetables and pleadings, concurrent or consecutive hearings, and separate awards, provided that a common question of law or fact arises in all the arbitrations. This new mechanism is intended to enhance efficiency and reduce costs in multiple proceedings, where consolidation is not possible or desirable.

Third party funding

With the imminent implementation of the legislative amendments to permit the use of third-party funding in arbitration and associated proceedings in Hong Kong, the 2018 Rules include express provisions to address the issues of disclosure, confidentiality and costs of third-party funding.

Under these provisions, a funded party is required to disclose the existence of a funding arrangement and the identity of the funder, as well as any changes to these details that occur after the initial disclosure. The confidentiality provisions have been amended to allow a funded party to disclose arbitration-related information to its existing or potential funder for the purposes of obtaining or maintaining funding. In addition, a provision has been added to confer discretion on an arbitral tribunal to take into account any funding arrangement when fixing or apportioning costs of arbitration.

Early determination of points of law or fact

There appears to be a trend among major arbitral institutions to include summary determination procedures in their rules in response to the common criticism that arbitration has no equivalent to the summary judgment or striking-out procedure in court litigation, thereby allowing a party to advance a meritless claim or defence through a full procedure. This trend also reflects users' demand, as shown in the 2018 Queen Mary and White & Case International Arbitration Survey ("**2018 Survey**") where over 20% of respondents selected summary determination procedures as an innovation that would make international arbitration more appealing for the banking, energy, construction and technology sectors.

The 2018 Rules introduce an Early Determination Procedure expressly to empower an arbitral tribunal to determine a point of law or fact that is manifestly without merit or manifestly outside of the tribunal's jurisdiction, or a point of law or fact that, assuming it is correct, would not result in an award being rendered in favour of the party that submitted such point. The tribunal must decide whether to proceed with a request for early determination within 30 days from the date of the request. If the request is allowed to proceed, the tribunal must issue an order or award, which may be in summary form, on the relevant point within 60 days from the date of its decision to proceed. These time limits may be extended by HKIAC or party agreement. Pending the determination of the request, the tribunal may decide how to proceed with the underlying arbitration.

Procedural certainty

Commercial parties want certainty. 43% of respondents to the 2018 Survey considered "greater certainty" as a factor that would have the most significant impact on the future evolution of international arbitration. To that end, HKIAC has introduced a series of provisions to achieve greater procedural certainty.

HKIAC's Emergency Arbitrator Procedure has been updated to confirm the timing of filing an application for emergency relief, the test for issuing such relief and the maximum fees payable to

an emergency arbitrator. The procedure has been expanded to allow a party to file an application before, concurrent with or after the submission of a Notice of Arbitration, but prior to the constitution of an arbitral tribunal. All time limits under the procedure have been shortened and an emergency arbitrator's fees are subject to a maximum amount. A new provision has been added to clarify, among other things, that the granting of emergency arbitrator relief is subject to the same test applied by an arbitral tribunal when deciding whether to issue an interim measure.

In its regular procedure, HKIAC has introduced for the first time a default three-month time limit for rendering an arbitral award after the closure of the proceedings or the relevant phase of the proceedings (as opposed to the overall six-month time limit for issuing an award in the expedited procedure). There is also a requirement that, after the proceedings are declared closed, the tribunal must notify the parties and HKIAC of the anticipated date of delivering an award. All these requirements bring certainty as to when parties can expect to receive a decision on their dispute.

Coming into force

With the above provisions and many others, the 2018 Rules provide a procedural framework under which parties and arbitral tribunals can conduct proceedings seamlessly with an unrivaled range of mechanisms to resolve disputes through a highly efficient, cost-effective and procedurally certain process.

The 2018 Rules have been selected for the next [Willem C. Vis International Commercial Arbitration Moot](#) in 2019. It will be interesting to see how some of the new provisions are used to address the Moot problem.

The 2018 Rules will come into force on 1 November 2018 and the full text is available at www.hkiac.org.

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