

Insights

HKIAC RELEASES UPDATED 2024 ADMINISTERED ARBITRATION RULES

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SUMMARY

On 1 June 2024, the latest update to the HKIAC's administered rules, the 2024 Administered Arbitration Rules ("2024 Rules") of the Hong Kong International Arbitration Centre ("HKIAC") came into effect.

The 2024 Rules introduce a number of amendments to the 2018 Administered Arbitration Rules ("2018 Rules"), with the overall aim to improve time and cost efficiency of HKIAC administered arbitrations. The HKIAC has emphasised that the 2024 Rules are not a complete rework of the 2018 Rules, but rather a "refinement" of the 2018 Rules, given that the 2018 Rules have been well-received by users.

KEY AMENDMENTS

The key amendments introduced in the 2024 Rules broadly can be categorised into the following categories:

DIVERSITY IN ARBITRATOR APPOINTMENTS, INFORMATION SECURITY AND ENVIRONMENTAL IMPACT

The first category of amendments relates to the HKIAC's general aim to reflect in the 2024 Rules the advancing of social norms and technological developments, in particular to confirm HKIAC's commitment to greener arbitrations and to increase the diversity of arbitrators.

- Under the new **Article 9A** of the 2024 Rules, parties and co-arbitrators are encouraged to, and the HKIAC (when exercising its authority to appoint arbitrators) must, take into account considerations of diversity when choosing arbitrators.
- **Article 13.1** of the 2024 Rules adds new requirements for an arbitral tribunal to have regard to "*information security*" and "*environmental impact*" in adopting suitable procedures to avoid

unnecessary delay or expense, in addition to the pre-existing requirements to consider “*the complexity of the issues, the amount in dispute, the effective use of technology*” under the 2018 Rules.

- Under **Article 34.4(f)** of the 2024 Rules, “*any adverse environmental impact arising out of the parties’ conduct in the arbitration*” may be taken into account by an arbitral tribunal in its determination of the costs of the arbitration.
- Under **Article 45A** of the 2024 Rules, an arbitral tribunal has the power to give directions to protect the information security, and to make a decision, order or award in respect of a breach of information security measures agreed by the parties or directed by the arbitral tribunal.

EFFICIENCY AND INTEGRITY OF THE ARBITRATION

The second category of amendments relates to improving the efficiency and preserving the integrity of HKIAC administered arbitrations.

- As regards the conduct of the arbitration, **Article 13.10** of the 2024 Rules provides the HKIAC with the general power that it “*may, after consulting with the parties and the arbitral tribunal, take any measure necessary to preserve the efficiency or integrity of the arbitration*”. Such power includes, in particular, the power to revoke an arbitrator’s appointment “*in exceptional circumstances*”, where the HKIAC considers that the arbitrator is prevented from or has failed to fulfil their functions.
- In addition to the existing early determination procedure under Article 43 of the 2018 Rules, **Article 13.6** of the 2024 Rules empowers an arbitral tribunal to “*adopt procedures to decide the case efficiently*”, including to determine preliminary issues, bifurcate the proceedings, conduct the arbitration in sequential stages, and decide the stage of the arbitration at which any issue(s) shall be determined.
- Under the 2018 Rules, a party only was required to communicate to the arbitral tribunal, other parties and their legal representatives about any “actual” change in its party representation. **Article 13.8** of the 2024 Rules has been amended to require that any “proposed” change or addition must be communicated. Under the new **Article 13.9** of the 2024 Rules, the HKIAC can, after consulting with the parties, take any measure necessary to avoid a conflict of interest arising from a change in party representation, including to exclude the proposed new party representatives from participating in the arbitration.
- As regards closure of proceedings, under **Article 31.1** of the 2024 Rules, an arbitral tribunal is required to declare the proceedings or the relevant phase of the proceedings closed, if it is satisfied that the parties have had a reasonable opportunity to present their case, within 45 days from the last directed substantive oral or written submissions (excluding submissions of costs). It is expected that this amendment would lead to arbitral awards being rendered more

expeditiously. (The requirement under the 2018 rules, that an arbitral tribunal must render its award within three months of the closure of proceedings, is unchanged under the 2024 Rules).

- Article 29 of the 2018 Rules provides that claims arising out of or in connection with multiple contracts may be made in a single arbitration if certain criteria are met. The 2024 Rules add a new sub-provision **Article 29.2** which provides that once the HKIAC decides that an arbitration involving multiple contracts has been properly commenced, the parties will be deemed to have waived their rights to designate an arbitrator, and the HKIAC will appoint the arbitral tribunal. This is consistent with the scenario where the HKIAC consolidates arbitrations under Article 28 - the parties will be deemed to have waived their rights to designate an arbitrator once the HKIAC decides to consolidate arbitrations.

OTHER CHANGES

- Under the new **Article 3.1(f)** of the 2024 Rules, any written communications pursuant to the 2024 Rules can now be made through any form of electronic communication that the parties have agreed to use, subject to approval by HKIAC and the arbitral tribunal. This is an aptly needed amendment from the old Article 3.1 of the 2018 Rules which only allowed communications through post, fax, emails and secured online repositories.
- Under the old Article 34.4 of the 2018 Rules, an arbitral tribunal may take into account any third party funding arrangement in determining the costs of arbitration. Under the new **Article 34.4** of the 2024 Rules, an arbitral tribunal may take further factors it considers relevant, including the relative success of the parties, the scale and complexity of the dispute, the conduct of the parties (including any adverse environmental impact caused) and any outcome related fee structure agreement.
- Under **paragraph 5.1 of Schedule 2** of the 2024 Rules, the HKIAC has a new power to review an arbitral tribunal's fees and expenses.

CONCLUSION

The amendments in the 2024 Rules highlight the HKIAC's commitment to improving efficiency, integrity, diversity in the selection of arbitration, and to staying in touch with the latest technological advancements. This is to be expected of HKIAC as one of the world's premier arbitration institutions.

Practitioners and parties intending to adopt the HKIAC administered rules should keep abreast of the latest amendments in 2024 Rules. In particular, it should be noted that the entirety of the 2024 Rules applies to the relevant arbitrations which are commenced from 1 June 2024, unless otherwise agreed. The 2024 Rules no longer contains carve-outs in the 2018 Rules which disapplied certain

important provisions (e.g. on emergency arbitration, consolidation and single arbitration involving multiple contracts) if an arbitration agreement was concluded before a certain date.

RELATED CAPABILITIES

- Litigation & Dispute Resolution
- Business & Commercial Disputes
- International Arbitration

MEET THE TEAM



Glenn Haley

Hong Kong SAR

glenn.haley@bclplaw.com

[+852 3143 8450](tel:+85231438450)



Ian Cheng

Hong Kong SAR

ian.cheng@bclplaw.com

[+852 3143 8455](tel:+85231438455)

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