

New Arbitration Rules of the Hong Kong International Arbitration Centre (HKIAC) Enter into Force

5 June 2024

Introduction

On 1 June 2024, the 2024 Hong Kong International Arbitration Centre administered arbitration rules (the “2024 HKIAC Rules”) entered into force. This is the first revision of the HKIAC Rules since the introduction of the 2018 HKIAC Rules on 1 November 2018.

The 2018 HKIAC Rules contained several innovations aimed at increasing the efficiency and cost-effectiveness of HKIAC arbitrations (see our previous update [here](#)). Following an extensive public consultation process, the 2024 HKIAC Rules include revised and additional provisions aimed at further improving procedural efficiency and reducing costs in arbitration. In addition, there are several new provisions intended to protect the integrity of proceedings and discourage abusive procedural tactics. The 2024 HKIAC Rules should lead to more streamlined proceedings and benefit parties who take advantage of the new mechanisms they contain.

Applicability of the 2024 HKIAC Rules

The 2024 HKIAC Rules apply by default to arbitrations commenced on or after 1 June 2024 pursuant to arbitration agreements that either provide (a) that the HKIAC Rules apply, or (b) for arbitration administered by the HKIAC or words to similar effect. If the arbitration agreement references a specific version of the HKIAC Rules (e.g., the 2018 HKIAC Rules or the 2013 HKIAC Rules), then that version of the Rules will apply.

Previous versions of the HKIAC Rules contained various carve-outs in respect of arbitration agreements entered into before the date on which the relevant rules came into force. This ensured that parties were not caught by surprise by certain innovations in the rules that did not exist when the parties entered into their arbitration agreement. This also meant that certain provisions on consolidation, early determination

procedures, and emergency arbitration were not applicable if the arbitration agreement pre-dated the relevant rules.

However, the 2024 HKIAC Rules no longer contain these carve-outs. This simplifies the position such that the framework for the conduct of HKIAC arbitrations under the 2024 HKIAC Rules is the same, regardless of whether the arbitration agreement pre-dates or post-dates the introduction of the rules.

New Powers for the HKIAC to Maintain Oversight of Arbitrators

The 2024 HKIAC Rules introduce a new power for the HKIAC to take any measure necessary to preserve the efficiency or integrity of the arbitration. This includes, in exceptional circumstances, revoking the appointment of an arbitrator. For the HKIAC to take this step, it must first consult with the parties and the tribunal, and conclude that the arbitrator is prevented from discharging, or has failed to fulfil, their functions.

This power sits alongside the existing rights of parties to challenge arbitrators. Parties may occasionally be apprehensive about pursuing challenges in full view of the relevant arbitrator. The ability of the HKIAC to take these steps on behalf of the parties creates a new avenue for challenges where parties should feel less exposed. This provision should encourage arbitrators to ensure they move proceedings along and meet the HKIAC's expectations.

The HKIAC is also now empowered to suspend or cease its administration of an arbitration prior to the constitution of the tribunal where deposits for costs are not paid in full by the parties. In addition, the HKIAC is empowered to review and adjust the fees and expenses of the tribunal. This will enable the HKIAC to scrutinize inappropriate fees and expenses and address any concerns raised by the parties.

New Powers for Tribunals to Avoid Conflicts of Interest

During the course of proceedings, parties may on occasion decide to change their legal representation. A dilemma is faced when this change creates a conflict of interest with an arbitrator—if a party is denied their change of legal representation, they may complain that this violates their due process rights. On the other hand, the resignation of an arbitrator to avoid such a conflict would lead to disruption in the proceedings. The 2024 HKIAC Rules address this dilemma by expressly permitting tribunals (after consulting with the parties) to exclude proposed new party representatives from participating in the proceedings to avoid any such conflicts of interest.

New Powers for Emergency Arbitrators

Emergency arbitration has become an increasingly popular option for parties to seek urgent interim relief without recourse to domestic courts whilst awaiting the constitution of the tribunal. On occasion, emergency arbitrators may consider it is appropriate to issue preliminary or interim orders pending their final decision on the need for emergency relief. The 2024 HKIAC Rules clarify that emergency arbitrators have the power to do so.

It is also possible that the tribunal may be constituted whilst an emergency arbitration remains ongoing. The 2024 HKIAC Rules stipulate that an emergency arbitrator may continue with the proceedings where this occurs and proceed to issue their decision within the time frame permitted under the rules (which is 14 days from the date on which the HKIAC transmits the case to the emergency arbitrator).

Multi-Contract Scenarios

Where a transaction involves multiple contracts, parties may encounter difficulties consolidating proceedings into a single arbitration. Several arbitration rules, including the HKIAC Rules, contain provisions aimed at enabling the streamlining of arbitrations in these scenarios. Where a single arbitration is permitted to proceed, parties may complain that this unfairly restricts their rights to nominate arbitrators under separate arbitration agreements. The 2024 HKIAC Rules provide that where the requirements for a single arbitration to proceed are satisfied, parties will be deemed to have waived their rights to nominate an arbitrator, and the HKIAC is empowered to proceed to constitute the tribunal with or without party input.

Environmental Impact and Information Security

The 2024 HKIAC Rules contain new provisions aimed at reducing the environmental impact of proceedings and protecting information security. Tribunals must now have regard to both issues when deciding procedural matters. This should encourage the adoption of virtual hearings, the electronic filing of submissions, and the safe storage of data. In deciding the costs of the arbitration, tribunals are also now expressly empowered to consider any adverse environmental impact arising out of a party's conduct in the arbitration.

Appointment and Diversity of Arbitrators

There has been a growing movement in international arbitration to improve diversity amongst arbitrators. The 2024 HKIAC Rules require the HKIAC to take considerations of diversity into account when appointing arbitrators, and suggest that co-arbitrators and parties should do likewise when nominating arbitrators. Several other arbitral institutes have already included similar language in their rules. Alongside this, the HKIAC is expressly required to take into account considerations of efficiency and integrity when confirming the appointment of arbitrators.

Arbitration agreements often specify the number of arbitrators to determine a dispute (typically one or three). Where the agreement is silent, this decision falls to the relevant arbitral institute. The 2024 HKIAC Rules expressly require the parties to provide reasons when proposing the number of arbitrators to be empaneled in such situations. In practice, many parties were already doing so but stipulating this requirement will ensure there is a level playing field when the HKIAC comes to decide this issue.

Codification of Established Practices

Arbitration rules are not intended to be comprehensive. Generally, they confer flexibility on tribunals to adopt procedures deemed appropriate for the circumstances of the case. To remove any uncertainty, the 2024 HKIAC Rules expressly empower tribunals to adopt several procedures already widely used in arbitration. These include conducting the proceedings in sequential stages (i.e., determining separately jurisdiction, liability, and quantum), determining preliminary issues, and adopting other procedures that may assist in the efficient determination of the case.

Conclusion

The 2024 HKIAC Rules are at the forefront of international arbitration practice and procedure. The new rules do not represent mere tweaking of the 2018 HKIAC Rules but include significant innovations.

The 2024 HKIAC Rules contain new powers and duties—and extend existing powers and duties—both for the HKIAC and tribunals. These new provisions impact the manner in which parties should conduct HKIAC arbitrations. In addition, codification of several established practices reduces uncertainty as to the appropriateness of those practices, which in turn reduces the scope for argument over their use. Overall, we

expect to see greater efficiency in the conduct of HKIAC arbitrations, and less tolerance for parties seeking to delay proceedings. Parties to arbitration agreements selecting the HKIAC Rules should be familiar with these changes to ensure they are best placed to take advantage of them.

Many parties rely on boilerplate arbitration agreements to include in their contracts when selecting arbitration as a dispute resolution mechanism. Well-drafted arbitration clauses can save costs and time at the inception of a dispute, facilitate a more efficient arbitration, and even deter breaches of the agreement by providing an effective dispute resolution mechanism. Boilerplate HKIAC arbitration agreements should be reviewed to ensure compatibility with the 2024 HKIAC Rules. It bears emphasis that no single arbitration clause is suitable for all contracts, and our checklist of issues to consider in drafting an arbitration clause, with suggested text, is available in our [Debevoise Arbitration Clause Handbook](#).

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