

The new HKIAC Administered Arbitration Rules: updates to facilitate efficient, secure, diverse and environmentally conscious arbitrations

Dispute Resolution Newsletter

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The Hong Kong International Arbitration Centre (“**HKIAC**”) has updated its Administered Arbitration Rules with a new 2024 version. The 2024 HKIAC Administered Arbitration Rules (“**New Rules**”) will take effect on 1 June 2024 with the aim of increasing time and cost efficiencies while advancing social norms and technological developments.¹

What's changed?

1. HKIAC's and Tribunal's powers to increase efficiency and reduce cost

1. In line with the main aim of the New Rules to increase efficiency,² HKIAC has, through Article 13.10, been given the power to take “*any measure necessary to preserve the efficiency and integrity of the arbitration*” subject to consultation with the parties and the arbitral tribunal. This includes an exceptional power to revoke the appointment of an arbitrator where HKIAC considers that the arbitrator is prevented from or has failed to fulfil his or her functions in accordance with the New Rules or time limits prescribed thereunder.
2. In this vein, stricter time limits have been imposed under Article 31.1 of the New Rules. Once a tribunal is satisfied that the parties have had a reasonable opportunity to present their case, and no later than 45 days after the last directed substantive oral or written submissions, the tribunal shall declare the proceedings closed. As under the 2018 Administered Arbitration Rules (“**2018 Rules**”), tribunals under the New Rules must render awards within three months of closing proceedings unless agreed otherwise by the parties or, in “appropriate circumstances,” determined by HKIAC.³ The new 45-day deadline closes a loophole which previously allowed tribunals to buy time by delaying the closing of proceedings and thus triggering the three-month deadline to render the award.
3. By contrast, the expedited procedure deadline for rendering awards has been somewhat softened. Under the expedited procedure, the award shall be communicated to the parties within six months from the date when HKIAC transmitted the case file to the arbitral tribunal. The HKIAC may now,

¹ HKIAC releases 2024 Administered Arbitration Rules (effective 1 June 2024). [HKIAC releases 2024 Administered Arbitration Rules \(effective 1 June 2024\) | HKIAC](#).

² *Ibid.*

³ Article 31.2 of the 2018 Rules.

pursuant to Article 42.2(e) of the New Rules, extend this six-month deadline in “appropriate” rather than “exceptional” (2018 Rules) circumstances.

4. HKIAC’s appointment powers have been broadened to bring Article 29 regarding “Single Arbitration under Multiple Contracts” in line with Article 28 regarding the “Consolidation of Arbitrations”. Pursuant to the New Rules’ Article 29.2, HKIAC has the power to appoint a tribunal without regard to any party’s designation. This could streamline complex appointment processes and lead to time and cost savings while avoiding conflicts of interest or set-asides in jurisdictions following the “Dutco doctrine”.
5. The avoidance of conflicts of interest have been addressed in Articles 13.8 and 13.9 of the New Rules, which respectively require that changes to legal representation must be promptly communicated, and that the tribunal, after consulting the parties, can take any measure necessary to avoid a conflict of interest arising from a change in party representation, including by excluding the proposed new party representatives from participating in the arbitral proceedings.
6. Cost reductions have also been envisaged in the New Rules by giving HKIAC the power to determine, review, and adjust the tribunal’s fees and expenses through paragraph 5 of Schedules 2 and 3 of the New Rules. In addition, Article 41.4 of the New Rules gives HKIAC the power to suspend or cease to administer arbitrations, where the tribunal has not been constituted, if deposits requested by HKIAC have not been fully paid within 30 days.
7. The New Rules provide for more efficiency by widening tribunals’ powers to rule on preliminary issues. Under the 2018 Rules, Article 43 sets out an early determination procedure which must be initiated at the request of a party. Article 13.6 of the New Rules allows the tribunal to determine preliminary issues in its discretion after consulting with the parties. Such determination may allow the tribunal to dispose of all or part of the case, bifurcate the proceedings, conduct the arbitration in sequential stages, and decide the stage of the arbitration at which any issue or issues shall be determined, or otherwise adopt procedures to decide the case efficiently. While this arguably has always formed part of a HKIAC tribunal’s procedural discretion, the explicit empowerment may encourage tribunals to strive for even greater efficiency in shaping the proceedings.
8. In a similar way, the New Rules in paragraph 10 of Schedule 4, confirm the express power of emergency arbitrators to make preliminary or interim orders before issuing the final award referred to as the “Emergency Decision.”

2 Information security

9. HKIAC has long been a proponent of reflecting technological advancements in its rules.⁴ This was a major aspect of the 2018 Rules. The New Rules cover an additional aspect of technology use through insertion of a requirement in Article 13.1 that tribunals and parties adopt procedures for the conduct of the arbitration that take information security into account. Going beyond this, Article 45A

⁴ 2018 Administered Arbitration Rules - 1 November. [2018 Administered Arbitration Rules - 1 November | HKIAC](#).

has been inserted into the New Rules to give tribunals, after consulting with the parties, powers to make directions and order sanctions for breaches of information security.

3 Diversity in arbitrator appointments

10. In 2023 HKIAC appointed 172 arbitrators, 60 (34.9%) of which were female.⁵ HKIAC's practice of promoting diversity has now been enshrined in Article 9A of the New Rules, whereby HKIAC arbitrators and parties are encouraged to take diversity into account when appointing or designating arbitrators.

4 Environmental impacts

11. Article 13.1 has been amended in the New Rules to include a reference that tribunals and parties should consider environmental impacts when adopting procedures for the conduct of the arbitration. This consideration is expanded in Article 34.4(f), to empower tribunals to take into account adverse environmental impacts arising out of the parties' conduct in the arbitration when allocating costs.

5 New model clause

12. The New Rules include a new model clause option which allows parties to determine in their arbitration agreement whether the fees of the arbitral tribunal will be calculated *ad valorem* or based on an hourly rate.

Impacts for users

13. While HKIAC indicated that the New Rules are intended to ensure that HKIAC continues to provide a light touch approach to case administration,⁶ the New Rules bring many changes.
14. New powers granted to tribunals and HKIAC are likely to improve efficiency resulting in reduced time and costs for the parties. Delay, which *inter alia* arises where arbitrators are unable to fulfill their duties, where proceedings remain open for an extended period of time, and which can be a consequence of conflicts of interest, will be reduced. Confirming arbitrators' power to determine preliminary issues could result in more efficient processes and reduce the time until an award is issued. Giving HKIAC wider powers to review and determine fees and costs should provide an added layer of scrutiny and control to ensure that fees and cost remain reasonable.
15. Beyond the powers provided by the New Rules to HKIAC and tribunals, many of the amendments codify existing HKIAC practice.⁷ For example, the encouragement to consider diversity in arbitration appointments reflects HKIAC's signing of the Equal Representation in Arbitration Pledge in 2016,

⁵ HKIAC Releases Statistics for 2023. [HKIAC Releases Statistics for 2023 | HKIAC](#).

⁶ *Op. Cit.* 1.

⁷ *Ibid.* Toby Fisher, *HKIAC releases new rules*, 9 May 2024, Global Arbitration Review. [HKIAC releases new rules - Global Arbitration Review](#).

while the consideration of environmental impacts reflects HKIAC's membership in the Campaign for Greener Arbitrations.⁸

16. Users should welcome HKIAC's recognition that information security is of growing importance as online hearings and document cloud storage become increasingly common. HKIAC might have been even more at the technology forefront had it decided to address issues surrounding artificial intelligence in the New Rules – but maybe the time is not yet ripe.
17. In sum, the New Rules provide a modernized framework that will allow HKIAC to remain one of the market leaders for administered arbitrations in Asia. Japanese disputing parties can rest assured that, particularly in disputes involving one or more contracting parties from Hong Kong or Mainland China, HKIAC should remain one of the arbitral institutions of choice for them.

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⁸ HKIAC signs Green Pledge & supports Green Protocols. [HKIAC signs Green Pledge & supports Green Protocols | HKIAC](#).