

HONG KONG INTERNATIONAL
ARBITRATION CENTRE

HKIAC ADMINISTERED ARBITRATION RULES
- CONSULTATION PAPER -



香港國際仲裁中心
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HKIAC Administered Arbitration Rules Consultation Paper

The HKIAC is considering whether revisions should be made to its Administered Arbitration Rules (the “Rules”), which came into force on 1 September 2008.

A wholesale revision of the Rules is not being contemplated, as the overall view of the Council is that the Rules are working well. However, certain modifications to the Rules might usefully be made in the light of what is now a little more than three years' experience of their usage.

Views from users are invited on whether and to what extent the following provisions should be changed by **28 February 2012**. The HKIAC then intends to hold a series of consultations before taking a final decision as to the timing and form of any amendments to the Rules. Please send your comments to the HKIAC Rules Revision Committee at rules@hkiac.org.

(Please click the following link for a copy of the Administered Rules: [HKIAC Rules](#))

Provision <i>Title of the Rules</i>	Issue
	Is the current title sufficient, or would it make sense to simplify it, for example to "HKIAC Rules"? Would such a change risk confusion with the HKIAC's other sets of rules, such as the Domestic Arbitration Rules (1993) which are currently also being revised?
Sub-article 1.1	Are the circumstances of the scope of application of the Rules under sub-article 1.1(b) sufficiently clear? i.e. The provision which applies the Rules where the words "administered by the HKIAC" or "words to similar effect" are used.
Sub-article 2.2	Should this sub-article be amended to clarify the meaning of the words "date when it is delivered"? Does this create confusion where delivery to the same party is made by more than one method?
Sub-article 2.3	Does the extension of time-limits for official holidays or non-business days at the place of receipt cause confusion and need to be clarified?
Sub-articles 4.2/4.3	If the HKIAC do not receive the requisite number of copies of the Notice of Arbitration, should this impact on the commencement of the arbitration and affect the date the Answer is due?
Sub-article 4.5	Should this sub-article be amended to provide that the Request shall be submitted in the agreed language of the arbitration or failing that in the language in which the agreement to arbitrate is alleged to have been concluded (or if it is alleged to have been concluded in more than one language, in any one of those

languages)? Sub-article 5.2 would also have to be amended accordingly.

Sub-article 4.6 Is there merit in requiring the Claimant to nominate its arbitrator in the Request in the case of a three member tribunal and to propose one or more names of a sole arbitrator in the case of a single member tribunal? To do so is currently optional. Sub-article 5.3 which relates to the Response would have to be amended accordingly, as would the nomination provisions in article 8.

Is the option to include the Statement of Claim with the Notice of Arbitration commonly exercised in practice? Should this option be retained?

Sub-article 4.7 Should the consequences of a failure to remedy any defects in a Notice of Arbitration be stated at the end of this sub-article?

Sub-article 5.1 Are the words "to the extent possible" a disincentive to the Respondent to plead a full Response?

Sub-article 5.8 Is the distinction between representation and assistance helpful? Should a provision be added requiring a party to produce a written resolution or other proof designating its legal or other representatives? Should a provision also be added allowing the tribunal to exclude representatives whose conduct threatens to disrupt the fair and expeditious conduct of the arbitration?

Sub-article 8.2 Does this provision require simplification? It could simply say that in the case of multi party disputes requiring three arbitrators if the parties can agree that one group constitutes claimant and the other group constitutes respondent then each can nominate an arbitrator. Otherwise, and in the case of default, the HKIAC would appoint the arbitral tribunal.

Article 9 Is this provision otiose given the provisions of sub-article 3.2 and given that appointments are confirmed by the HKIAC Council?

Article 11 Does this provision, which deals with independence, disclosure and challenges require amendment? In particular, should the HKIAC require arbitrators to sign a document confirming their independence and impartiality and disclosing any circumstances that could give rise to justifiable doubts?

Article 14 Should this list of General Provisions be updated? In particular, would it be helpful to provide that the tribunal shall adopt suitable procedures for the conduct of the arbitration "having regard to the complexity of the issues and the amount in dispute"? Should it make express that the tribunal may take the initiative in identifying relevant issues of fact and law?

Is there merit in including a list of case management techniques intended to illustrate appropriate measures for controlling time and costs?

Should any provision on joinder of parties or consolidation of arbitration proceedings be included? The current rules contain a limited joinder of third party provision.

**Sub-articles
17.2, 17.3, 18.2
and 23.2**

Should these sub-articles be amended? As currently the presumption is that evidence will follow the Statements of Claim and Defence, whereas in many international arbitrations evidence is served with the written statements. The provisions could be amended to place both options on an equal footing.

Sub-article 17.3

Provides for the Claimant to annex to its Statement of Claim and the documents on which it relies. Should express provision be made to confirm that both parties may rely on documents which are produced later in the arbitration, if those documents are admitted by the tribunal? If this change is desired, a consequential change may be necessary to sub-article 18.2.

Article 20

Is the provision on jurisdiction sufficient? Does sub-article 20.3 need to be amended to make it clear that jurisdictional pleas are irrevocably waived if not made by the Statement of Defence at the latest?

Sub-article 23.3

Does this provision contain sufficient guidance on the question of disclosure? In particular, should it be made clear that only documents which are both relevant and material to the issues in dispute may be requested and disclosed? Should the procedure for requesting and responding to requests for disclosure of documents be laid out? Should guidance regarding the production of electronic documents be included?

Article 24

Is this sufficient guidance or does provision for interim measures need to be made in greater detail? It might also be desirable to bring this provision into line with Sections 35 and 36 of the Arbitration Ordinance (which incorporate articles 17 and 17A of the Model Law).

Should it be clarified that the interim measures jurisdiction includes the jurisdiction to grant security for costs, given the provisions of Section 56(1)(a) of the Ordinance, or state that the power to order security for costs is a separate power?

Sub-article 36.2

Does this sub-article require amendment to make it work better in practice? In particular, should the parties be permitted to decide how the tribunal's fees should be determined? Should the parties be given the option of applying the fee schedule or an hourly rate?

The sub-article currently states that the method of determining fees should be notified to the HKIAC Secretariat within 30 days "from the date of the Notice of Arbitration". Is any change required to clarify whether this is the date that appears on the Notice itself or the date on which the HKIAC Secretariat delivers it to the Respondent under sub-article 4.8?

Sub-article 36.5 Should specific mention be made of the tribunal's power to limit in advance the amount of recoverable costs of the arbitration? (See Section 57 of the Ordinance).

Sub-article 38.1 Is the amount in dispute that triggers the expedited procedure too low (i.e. US\$250,000)? Should this figure be increased?

Possible additions Should the Rules include an emergency arbitrator procedure? The procedure would allow a party to apply to the HKIAC for appointment of an emergency arbitrator at the outset of a matter whose sole remit would be to consider applications for interim relief. The emergency arbitrator would be able to act in the window between service of the Notice of Arbitration and constitution of the tribunal.

Alternatively or concurrently, should the Rules include provisions for expedited formation of a tribunal?

Should a provision be added to make express the duty of the tribunal (and by extension the HKIAC) to do everything possible to ensure that the award is enforceable?

Finally, are any additional modifications necessary or appropriate following the coming into force of the new Arbitration Ordinance (Cap 341)?