Practice Note on Challenges to Arbitrators

Effective 11 March 2019

1 Scope of this Practice Note

1.1 This Practice Note shall govern a challenge to an arbitrator (the “Challenged Arbitrator”) under any of the following arbitrations:

(a) arbitrations administered by HKIAC under the HKIAC Administered Arbitration Rules;
(b) arbitrations administered by HKIAC under the UNCITRAL Arbitration Rules;
(c) arbitrations under any other rules issued by HKIAC which designate HKIAC to decide challenges to arbitrators; and
(d) any other arbitration in which the parties agree to apply this Practice Note.

1.2 This Practice Note shall also govern a challenge to an emergency arbitrator appointed by HKIAC in accordance with the HKIAC Administered Arbitration Rules.

1.3 In the event of any discrepancy or inconsistency between this Practice Note and any provision of (a) the arbitration agreement or (b) any applicable arbitration rules or law, that provision shall prevail.

1.4 An arbitrator may be challenged on any grounds specified in the applicable arbitration rules or law.

2 Procedure for Filing a Challenge

2.1 A party wishing to challenge an arbitrator shall submit, within 15 days after the confirmation or appointment of the arbitrator has been notified to the challenging party or within 15 days after that party became aware of the circumstances giving rise to the challenge, a Notice of Challenge and any accompanying documents to HKIAC (the “Notice of Challenge”). The Notice of Challenge shall at the same time be communicated to all other parties to the arbitration, the Challenged Arbitrator and, where applicable, the other members of the arbitral tribunal. In respect of a challenge to an emergency arbitrator, the foregoing time limits shall be shortened to three days.

2.2 The Notice of Challenge shall:

(a) be in writing and shall state the reasons for the challenge; and
(b) be accompanied by payment of a non-refundable Challenge Registration Fee of HKD 50,000 on account of HKIAC’s fees and expenses. If the challenging party fails to pay
the Challenge Registration Fee within a time limit set by HKIAC, the challenge will be dismissed.

2.3 HKIAC may, at any time during the challenge proceedings, require the challenging party to deposit a further sum to meet HKIAC’s additional fees and expenses, taking into account, inter alia, the nature of the case and the amount of work performed by HKIAC. If the challenging party fails to pay the further sum within a time limit set by HKIAC, the challenge may be dismissed.

2.4 Unless the Challenged Arbitrator withdraws or the non-challenging party agrees to the challenge, HKIAC shall determine the challenge.

2.5 The grounds of a challenge shall, in principle, be limited to those set out in the Notice of Challenge. The challenging party may amend or supplement the grounds of challenge only if HKIAC considers it appropriate to allow such amendment having regard to the circumstances of the case and having consulted with the non-challenging party and the Challenged Arbitrator.

2.6 Following receipt of a Notice of Challenge pursuant to paragraph 2.1 above, each other party to the arbitration and the Challenged Arbitrator may submit an Answer to the Notice of Challenge (the “Answer”), within a time limit set by HKIAC.

2.7 The challenging party shall thereafter be given, within a time limit set by HKIAC, an opportunity to comment on any Answer submitted pursuant to paragraph 2.6.

2.8 Copies of any Answer and comments made thereon shall be submitted to HKIAC, all other parties to the arbitration, the Challenged Arbitrator and, where applicable, the other members of the arbitral tribunal.

2.9 HKIAC shall determine the challenge on the basis of written submissions and evidence alone, unless it decides that it is appropriate to hold one or more hearings.

3 HKIAC’s Determination of the Challenge

3.1 The Proceedings Committee of HKIAC shall determine the challenge. In making its determination, the Proceedings Committee may appoint the Secretariat or a panel of one or three members (the “Panel”) to consider a challenge made to an arbitrator or an emergency arbitrator and to make a recommendation to the Proceedings Committee as to the merits of the challenge, which shall be accompanied by reasons and shall not be binding on the Proceedings Committee (the “Recommendation”). The Panel may be drawn from members of HKIAC’s Council, International Advisory Board, Proceedings Committee and Appointments Committee, and/or, where appropriate, individuals whom the Proceedings Committee considers to have substantial experience in international arbitration. The Proceedings Committee will determine the challenge following receipt of the Recommendation.
3.2 HKIAC’s determination of the challenge shall be communicated to the parties, the Challenged Arbitrator and, where applicable, the other members of the arbitral tribunal in writing.

3.3 It is HKIAC’s usual practice to provide reasons to the parties for its determination of the challenge although it is not bound to do so.

3.4 Notices, documents and decisions submitted or produced in accordance with this Practice Note shall be communicated to all parties, the arbitral tribunal, any emergency arbitrator, and HKIAC in accordance with any method specified in the arbitration agreement or in any applicable arbitration rules or law.