EMERGENCY ARBITRATOR PROCEDURES UNDER THE 2013 HKIAC RULES

COMMENCEMENT OF ARBITRATION
(claims arising out of more than one contract may be made in a single arbitration)

Claimant
Files Notice of Arbitration with Registration Fee

HKIAC Secretariat
30 days Answer to Notice of Arbitration

Respondent

Parties pay deposit for costs of arbitration to cover initial procedural steps

Does a party want Emergency Relief on an urgent basis that cannot await the constitution of the Tribunal?

Yes
Party Application for the appointment of an Emergency Arbitrator and payment of Application Deposit

HKIAC grants Application

HKIAC rejects Application

Emergency Relief not available

No

Emergency Arbitrator Procedure Applies

HKIAC appointment of Emergency Arbitrator

Have the parties agreed on the seat of arbitration?

Yes
Agreed seat of arbitration is seat of Emergency Relief proceedings

No
Seat of Emergency Relief proceedings is Hong Kong

The Emergency Arbitrator conducts the proceedings in the manner the Emergency Arbitrator considers appropriate, taking into account the urgency inherent in the Emergency Relief Proceedings and ensuring that each party has a reasonable opportunity to be heard

Emergency Decision binding on the parties

Has the Emergency Decision been modified, suspended or terminated by the Emergency Arbitrator or the Tribunal (once constituted) following a reasoned request by a party?

Yes

No

Has the Emergency Arbitrator or the Tribunal decided the Emergency Decision is no longer binding?

Yes

No

Has the Tribunal rendered a final award and not expressly decided the Emergency Decision remains binding?

Yes

No

Have all claims been withdrawn or the arbitration terminated before the rendering of a final award?

Yes

No

Have 90 days passed from the date of the Emergency Decision and the Tribunal has not yet been constituted?

Yes

No

Emergency Decision ceases to be binding

Tribunal (which may not include the Emergency Arbitrator, unless otherwise agreed by the parties) designated and confirmed in accordance with the usual procedure

Remainder of proceeding conducted in accordance with the usual procedure

Tribunal declares proceedings closed

Award

HKIAC fixes Tribunal’s fees (where the schedule of fee applies) and HKIAC administrative fees

HKIAC Transmits the Case File

Within 2 days

Challenge possible within 3 days of confirmation or of becoming aware of grounds for challenge

HKIAC Transmits the Case File

Within 15 days unless extended by agreement of the parties or, in appropriate circumstances, by HKIAC

HKIAC

Yes

No

Has the Tribunal rendered a final award and not expressly decided the Emergency Decision remains binding?

Yes

No

Has the Emergency Arbitrator or the Tribunal decided the Emergency Decision is no longer binding?

Yes

No

Has the Emergency Decision been modified, suspended or terminated by the Emergency Arbitrator or the Tribunal (once constituted) following a reasoned request by a party?
Art. 4: The Emergency Arbitrator Procedures are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time (see Sch. 4. Para. 22). Unless otherwise agreed by the parties, the Emergency Arbitrator Procedures only apply to arbitrations commenced in accordance with an arbitration agreement entered into after 1 November 2013 (see Art. 1.4). Other procedures, such as for the joinder of additional parties, outlined in the flowchart “The Steps in an HKIAC Administered Arbitration”, apply to the proceedings, unless otherwise stated.

The requirements which must be satisfied for claims under multiple contracts to be brought in the same proceedings are set out in Art. 29. Unless otherwise agreed by the parties, Art. 29 will only apply to arbitrations commenced in accordance with an arbitration agreement entered into after 1 November 2013 (see Art. 1.4).

See Sch. 4. Para. 2, and 4: two copies of the Application must be submitted to HKIAC. It must also be served on all other parties (see Sch. 4 Para. 2(i)). It should have certain content (see Sch. 4 Para. 2) but may also contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application (see Sch. 4 Para. 3). The Application must be accompanied by payment of the Application Deposit (see Sch. 4 Para. 6 and Schedule of Fees) which consists of HKIAC’s administrative expenses and the Emergency Arbitrator’s fees and expenses.

See Sch. 4 Para. 5. The Emergency Arbitrator Procedures only apply to arbitrations commenced in accordance with an arbitration agreement entered into after 1 November 2013 or where the parties have expressly agreed to the application of the Emergency Arbitrator provisions, either within the matrix contract or separately (see Art. 1.4).

If HKIAC determines that it should accept the Application, HKIAC will seek to appoint an Emergency Arbitrator within two days after receipt of both the Application and the Application Deposit (see Sch. 4 Para 5).

See Sch. 4 Para. 5. The Emergency Arbitrator’s fees will be determined by HKIAC by reference to his or her hourly rate subject to the terms set out in Schedule 2 (see Sch. 4 Para. 6 and Sch. 2). HKIAC may, at any time during the Emergency Relief proceedings, decide to increase the Emergency Arbitrator’s fees or HKIAC’s administrative expenses, taking into account, inter alia, the nature of the case and the nature and amount of work performed by the Emergency Arbitrator and HKIAC. If the party which submitted the Application fails to pay the increased fees and/or expenses within the time limit fixed by HKIAC, the Application will be dismissed.

Sch. 4 Para. 7: once the Emergency Arbitrator has been appointed, HKIAC will so notify the parties to the Application and will transmit the file to the Emergency Arbitrator. Thereafter, all written communications from the parties must be submitted directly to the Emergency Arbitrator with a copy to the other party to the Application and HKIAC. A copy of any written communications from the Emergency Arbitrator to the parties must also be copied to HKIAC.

See Sch. 4 Para. 8 and Art. 11. Article 11 of the Rules regarding the qualifications and challenge of the Tribunal will apply to the Emergency Arbitrator, except that the time limits set out in Art. 11.7 and 11.9 are shortened to three days.

Sch. 4 Para. 10: if the parties have agreed on the seat of arbitration, such seat will be the seat of the Emergency Relief proceedings. Where the parties have not agreed on the seat of arbitration, without prejudice to the Tribunal’s determination of the seat of arbitration pursuant to Art. 14.1 of the Rules, the seat of the Emergency Relief proceedings will be Hong Kong.

See Sch. 4 Para. 11. The Emergency Arbitrator has the power to rule on objections that the Emergency Arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause(s) of or of the separate arbitration agreement(s), and will resolve any disputes over the applicability of Schedule 4. The Emergency Arbitrator is also entitled to order the provision of appropriate security by the party seeking Emergency Relief (see Sch. 4 Para. 17).

Sch. 4 Para. 13: a decision, order or award of the Emergency Arbitrator on the Application (the “Emergency Decision”) may be made even if in the meantime the file has been transmitted to the Tribunal. Emergency Decisions will be in writing, fix the costs of the Emergency Relief proceedings (subject to the power of the Tribunal to finally determine the apportionment of costs in Art. 33 of the Rules) and provide summary reasons on which the Emergency Decision is based (see Sch. 4 Para. 14 and 15). Any Emergency Decision has the same effect as an interim measure granted pursuant to Art. 23 of the Rules and is binding on the parties when rendered. By agreeing to arbitration under the Rules, the parties undertake to comply with any Emergency Decision without delay (see Sch. 4 Para. 16).

Sch. 4 Para. 12: any decision, order or award of the Emergency Arbitrator must be made within fifteen days from the date on which HKIAC transmits the file to the Emergency Arbitrator. This period of time may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

Sch. 4 Para. 18: any Emergency Decision may, upon a reasoned request by a party, be modified, suspended or terminated by the Emergency Arbitrator or the Tribunal (once constituted).

Sch. 4 Para. 19 sets out the additional circumstances in which an Emergency Decision ceases to be binding.

See Art. 7, 8, 9, 10 and 11. See also flowchart “The Steps in an HKIAC Administered Arbitration.” Aside from rendering the Emergency Decision, the Emergency Arbitrator has no further power to act once the Tribunal is constituted (see Sch. 4 Para. 20). The Emergency Arbitrator may not act as arbitrator in any arbitration relating to the dispute that gave rise to the Application and in respect of which the Emergency Arbitrator has acted, unless otherwise agreed by the parties to the arbitration (see Sch. 4 Para. 21).

Art. 5.6: once the Tribunal has been confirmed, HKIAC will transmit the case file to the Tribunal.

See flowchart “The Steps in an HKIAC Administered Arbitration.”

Art. 30.1: when it is satisfied that the parties have had a reasonable opportunity to present their case, the Tribunal will declare the proceedings closed. Thereafter, no further submission or argument may be made, or evidence produced. The Tribunal may re-open the proceedings before the award is made in exceptional circumstances (see Art. 30.2).

See Art. 10.3 and Schedule 1. HKIAC and the Tribunal have a lien over any awards issued by the Tribunal to secure the payment of their outstanding fees and expenses, and may accordingly refuse to release any such awards to the parties until all such fees and expenses have been paid in full (see Paragraph 7 of Schedules 2 and 3).

Art. 34: awards will be in writing and are final and binding on the parties (see Art. 34.2); by agreeing to the HKIAC Administered Arbitration Rules parties undertake to comply without delay with any award or order of the Tribunal (see Art. 34.3). Any award will state the reasons upon which it is based unless the parties have agreed that no reasons are to be given (see Art. 34.4).