Practice Note on Appointment of Arbitrators

Effective 1 November 2018

1 Scope of Application and Interpretation

1.1 This Practice Note sets out HKIAC’s general practice of appointing arbitrators in:

(a) arbitrations administered by HKIAC under its Administered Arbitration Rules;
(b) arbitrations administered by HKIAC under the UNCITRAL Arbitration Rules;
(c) ad hoc arbitrations under the Hong Kong Arbitration Ordinance (Cap. 609) (“Arbitration Ordinance”), the UNCITRAL Arbitration Rules, or any arbitration rules issued by HKIAC other than the Administered Arbitration Rules; and,
(d) any other arbitration in which the parties agree that this Practice Note shall apply.

1.2 This Practice Note applies, mutatis mutandis, to HKIAC’s appointment of emergency arbitrators.

1.3 HKIAC may interpret the terms as well as the scope of application of this Practice Note as it considers appropriate.

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

2 Appointment Process

2.1 HKIAC appoints arbitrators through its Appointments Committee. Members of the Appointments Committee are not eligible for appointment by HKIAC; however, a member’s designation as arbitrator by a party or the co-arbitrators in an arbitration may be confirmed by HKIAC.

2.2 HKIAC normally appoints arbitrators from a panel or list of arbitrators published on HKIAC’s website. In appropriate circumstances, HKIAC may appoint an arbitrator from outside of its panel or list of arbitrators.

2.3 HKIAC considers a wide range of factors when appointing an arbitrator. Those factors include, but are not limited to, the following:
(a) any qualifications agreed by the parties;
(b) any qualifications or candidates suggested by any of the parties;
(c) the identity of the parties, counsel and co-arbitrators (if any);
(d) the nationality of the parties;
(e) the nationality of the arbitrator;
(f) the place of residence of the arbitrator;
(g) the availability of the arbitrator;
(h) the proposed fees of the arbitrator;
(i) the nature and complexity of the dispute;
(j) the amount in dispute;
(k) the governing law of the contract(s);
(l) the seat of arbitration;
(m) the language of the arbitration and underlying contract(s);
(n) the number of previous appointments of the arbitrator in HKIAC cases; and
(o) HKIAC’s previous experience with the arbitrator and any party feedback.

24 Where HKIAC is to appoint an arbitrator under the Arbitration Ordinance, it will consult with at least three members of the Appointment Advisory Board (the “AAB”) and must consider their advice but is not bound by it. The AAB includes members nominated by eleven Hong Kong professional and interest groups.

25 In all cases where HKIAC is to appoint an arbitrator, it will first propose at least one candidate to the parties and set a time limit for comments. If no party objects to or raises any justifiable concerns about the proposed candidate, HKIAC will generally proceed to appoint that candidate.

3 Nationality of Sole or Presiding Arbitrators

31 In accordance with international practice and subject to paragraphs 3.2 to 3.3 below, where the parties are of different nationalities, HKIAC generally will not
appoint a sole or presiding arbitrator of the same nationality as any of the parties unless the parties expressly agree otherwise.

32 In appropriate circumstances and where no party objects within a time limit set by HKIAC, HKIAC may appoint a sole or presiding arbitrator of the same nationality as any party.

33 Considering Hong Kong’s status as a Special Administrative Region with a legal system separate from that of Mainland China, in cases in which at least one party is from Mainland China, the holder of a Hong Kong passport may be appointed as sole or presiding arbitrator, provided that none of the parties object within a time limit set by HKIAC.

34 HKIAC adopts the practice referred to at paragraphs 3.1 to 3.3 above whether or not the applicable rules contain an express nationality restriction as regards the appointment of sole and presiding arbitrators.

4 Diversity of Qualified Arbitrators

41 As part of HKIAC’s commitment to promoting diversity in arbitrator appointments, HKIAC will include, wherever possible, qualified female candidates and qualified candidates of any age, ethnic group, legal or cultural background among those it considers for arbitrator appointments.