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HKIAC ADMINISTERED ARBITRATION 50 QUESTIONS & ANSWERS



香港國際仲裁中心
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About the HKIAC Administered Arbitration Rules

1. What are the HKIAC Administered Arbitration Rules?

In September 2008, HKIAC first issued its Administered Arbitration Rules (the “2008 Rules”). The 2008 Rules provide for a “light touch” approach to the administration of arbitrations. To reflect the latest trends and best practice in international commercial arbitration and to further strengthen HKIAC’s service to users, the 2008 Rules were subsequently revised. The new rules have come into force as of 1 November 2013 (the “2013 Rules”).

The 2013 Rules apply to arbitrations where an arbitration agreement provides for these rules to apply, or provides for arbitration “administered by HKIAC” or words to similar effect.

2. Can parties apply the 2013 Rules if the arbitration agreement was concluded before 1 November 2013?

Yes. As a general rule, the 2013 Rules shall apply to all arbitrations in which the Notice of Arbitration (the “Notice”) is submitted on or after 1 November 2013 irrespective of the date on which the arbitration agreement was concluded, unless the arbitration agreement specifically refers to the 2008 Rules. If the arbitration agreement was concluded before 1 November 2013, the provisions contained in Articles 23.1 (Emergency Relief), 28 (Consolidation), 29 (Single Arbitration under Multiple Contracts) and Schedule 4 (Emergency Arbitrator Procedures) shall not apply, unless otherwise agreed by the parties.

3. Can parties opt to apply the 2008 Rules even if the Notice is submitted on or after 1 November 2013?

Yes, parties remain free to agree to adopt the 2008 Rules. If the parties do not agree, the applicability of the 2008 Rules will depend on the language of the arbitration agreement.

Commencement of Arbitration

4. Is it possible to commence one arbitration on the basis of more than one contract?

Yes. If the arbitration agreement was entered into after 1 November 2013, or if the arbitration agreement was entered into before 1 November 2013, but the parties have so agreed, claims arising out of or in connection with more than one contract may be made in a single arbitration if the following criteria are met: (a) all parties to the arbitration are bound by each arbitration agreement giving rise to the arbitration; (b) a common question of law or fact arises under each arbitration agreement giving rise to the arbitration; (c) the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions; and (d) the arbitration agreements under which the claims are made are compatible.

5. When is an arbitration deemed to commence?

An arbitration is deemed to commence on the date on which a copy of the Notice is received by HKIAC.

If an additional party is subsequently joined to the arbitration, the date on which the Request for Joinder is received by HKIAC is deemed to be the date on which the arbitration in respect of the additional party commences.

6. What is included in a Notice?

The Notice must satisfy the requirements specified in Article 4.3 of the 2013 Rules. Article 4.3 includes new provisions, requiring the Claimant to propose a sole arbitrator or designate the first arbitrator of a three-member arbitral tribunal, as the case may be, and to confirm that copies of the Notice of Arbitration and any exhibits included therewith have been or are being served simultaneously on all other parties. Additionally, the Notice must be accompanied by payment of the Registration Fee in the amount specified in the Schedule of Fees, currently fixed at HK\$8,000. The Claimant may at its option include the Statement of Claim in the Notice.

7. What is the consequence of filing a Notice which does not comply with Article 4.3?

If the Notice is incomplete or if the Registration Fee is not paid, HKIAC may request the Claimant to remedy the defect within an appropriate period of time. If the Claimant complies with such directions within the time limit, the arbitration shall be deemed to have commenced on the date the initial version was received by HKIAC. If the Claimant fails to comply, the Notice shall be deemed not to have been validly submitted and the arbitration shall be deemed not to have commenced without prejudice to the Claimant's right to submit the same claim at a later date in a subsequent Notice.

8. When is the Answer to the Notice due?

The Answer to the Notice of Arbitration (the "Answer") is due within 30 days from receipt of the Notice by the Respondent.

9. In what language should the Notice and the Answer be submitted?

The Notice and the Answer shall be submitted in the language of the arbitration as agreed by the parties. If no agreement has been reached between the parties, they shall be submitted in either English or Chinese.

10. Can arbitration still proceed if any question as to the existence, validity or scope of an arbitration agreement or to the competence of HKIAC to administer an arbitration is raised prior to the constitution of the arbitral tribunal?

Yes. HKIAC may decide that the arbitration shall proceed if it is prima facie satisfied that an arbitration agreement may exist. Any jurisdictional objections shall be decided by the arbitral tribunal once constituted.

Emergency Arbitrator Procedures

11. When can an application for emergency relief be made?

If the arbitration agreement was entered into after 1 November 2013, or if the arbitration agreement was entered into before 1 November 2013, but the parties have so agreed, a party requiring interim or conservatory relief on an urgent basis that cannot await the constitution of an arbitral tribunal may submit an application for the appointment of an emergency arbitrator to HKIAC at the time it submits the Notice or, at any time thereafter, prior to the constitution of the arbitral tribunal.

12. When will an emergency arbitrator be appointed?

If HKIAC determines that it should accept the application, it shall seek to appoint an emergency arbitrator within two (2) days after receipt of both the application and the Application Deposit, which is the amount, consisting of HKIAC's administrative expenses and the emergency arbitrator's fees and expenses, set by HKIAC, as stated on HKIAC's website on the date the application is submitted. The Application Deposit is currently fixed at HK\$180,000.

13. Are the fees of the emergency arbitrator determined in the same manner as the arbitral tribunal?

No, the parties do not have the option to apply Schedule 3. Instead, the emergency arbitrator's fees shall be determined on the basis of an hourly rate in accordance with Schedule 2.

14. How quickly will the emergency arbitrator determine the application?

The decision, order or award will be made within fifteen (15) days from the date on which HKIAC transmitted the file to the emergency arbitrator. This period may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

15. Will application of the emergency arbitrator procedures preclude parties from seeking judicial relief?

No. 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.

Expedited Procedure

16. What is the Expedited Procedure?

The Expedited Procedure is a fast-track process which requires the award to be rendered within six (6) months from the date when HKIAC transmits the file to the arbitral tribunal unless exceptional circumstances exist.

17. When does the Expedited Procedure apply?

Prior to the constitution of the arbitral tribunal, a party may apply to HKIAC in writing for the arbitration to be conducted in accordance with the provisions on the Expedited Procedure where:

- (a) the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence) does not exceed HK\$25 million;
- (b) the parties so agree; or
- (c) in cases of exceptional urgency.

The Arbitral Tribunal

18. How is the number of arbitrators determined?

The parties will often stipulate in their arbitration agreement the number of arbitrators. If the agreement is silent on the matter, the Claimant and the Respondent are required to advance their proposal of one or three arbitrators in the Notice and Answer, respectively. In the event of disagreement, upon application of one of the parties, HKIAC shall decide whether the case shall be referred to a sole arbitrator or to three arbitrators, taking into account the circumstances of the case.

19. How are the arbitrators appointed?

In the case of a sole arbitrator, the parties will have thirty (30) days from the Respondent's receipt of the Notice to jointly designate such arbitrator. Where the arbitral tribunal comprises three arbitrators, each party designates an arbitrator in the Notice and the Answer respectively, and the two arbitrators so appointed jointly designate the third and presiding arbitrator within 30 days of the confirmation of the second arbitrator. Where the parties or the two arbitrators fail to designate an arbitrator, HKIAC shall appoint such arbitrator.

Where there are more than two parties to the arbitration and the dispute is to be referred to three arbitrators, the Claimant(s) and the Respondent(s) shall each designate an arbitrator in the Notice and Answer respectively, and the two arbitrators so appointed shall jointly designate the third and presiding arbitrator. In the event of any failure to designate arbitrators or if the parties fail to agree that they represent two separate sides for the purposes of designating arbitrators, HKIAC may appoint all arbitrators without regard to any party's designation.

In any case where HKIAC appoints an arbitrator, the parties will be given the opportunity to comment on the arbitrator proposed.

20. Can a sole arbitrator or the presiding arbitrator be of the same nationality as the parties?

Where the parties to an arbitration are of different nationalities, a sole arbitrator or the presiding arbitrator of a three-member tribunal shall not have the same nationality as any party unless the parties specifically agree otherwise in writing. In appropriate circumstances, and provided that none of the parties objects within a time limit set by HKIAC, the sole arbitrator or the presiding arbitrator may be of the same nationality as any of the parties.

21. How are the arbitral tribunal's fees determined?

The 2013 Rules expressly provide for the parties to agree on one of two methods for determining the arbitral tribunal's fees: (a) an hourly rate in accordance with Schedule 2, or (b) the schedule of fees based on the sum in dispute referred to in Schedule 3.

The parties shall inform HKIAC of the applicable method within 30 days of the Respondent's receipt of the Notice. If the parties fail to agree on the applicable method, the arbitral tribunal's fees shall be determined on the basis of an hourly rate in accordance with Schedule 2.

22. Is there a cap on an arbitrator's hourly rate?

Yes. An arbitrator's hourly rate shall not exceed the rate set by HKIAC, as stated in the Schedule of Fees on HKIAC's website on the date that the Notice is submitted. Higher rates may be charged if the parties so agree or HKIAC so determines in exceptional circumstances. At the time of writing, the cap on the hourly rate has been fixed at HK\$6,500 per hour.

23. What are the grounds for challenging the appointment of an arbitrator?

Any arbitrator may be challenged if: (a) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence; (b) the arbitrator does not possess qualifications agreed by the parties; (c) the arbitrator becomes de jure or de facto unable to perform his or her functions; or (d) for other reasons, the arbitrator fails to act without undue delay.

A party may challenge the arbitrator designated by it or in whose appointment it has participated only for reasons of which it becomes aware after the designation has been made.

24. Is there a time limit for a party to challenge the appointment of an arbitrator?

Yes. A party who intends to challenge an arbitrator must send notice of its challenge within 15 days after the confirmation of that arbitrator has been notified to the challenging party or within 15 days after that party became aware or ought reasonably to have become aware of the grounds for challenge.

25. Does a challenge automatically stay the arbitration?

No. Pending the determination of the challenge, the arbitral tribunal (including the challenged arbitrator) has discretion whether or not to continue the arbitration.

26. What happens when an arbitrator is removed or replaced?

A substitute arbitrator will be appointed pursuant to the rules that were applicable to the appointment of the arbitrator being replaced. In exceptional circumstances, HKIAC may (a) remove a party's right to designate a substitute arbitrator and appoint the substitute arbitrator; or (b) after the arbitration proceedings are declared closed, authorise the remaining arbitrators to proceed with the arbitration and make any decision or award.

The arbitration shall resume at the stage where the arbitrator who was replaced or ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Arbitration Proceedings

General Procedure

27. How is the seat of arbitration determined?

The parties may agree on the seat of arbitration. Where there is no agreement, the seat of arbitration shall be Hong Kong, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate.

28. What procedures will be followed?

Subject to specific provisions in the 2013 Rules, the arbitral tribunal is given the discretion to adopt suitable procedures for the conduct of the arbitration. Having regard to the complexity of the issues and the amount in dispute, and provided that the procedures adopted ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case, the procedures adopted should avoid unnecessary delay or expense.

29. What is the timeframe for submission of written statements? Are extensions allowed?

The periods of time for the communication of written statements (including the Statement of Claim and Statement of Defence) will be set by the arbitral tribunal but should not exceed 45 days. The arbitral tribunal may extend the time limits if it concludes that an extension is justified.

30. What happens if the Claimant fails to submit its Statement of Claim? What happens if the Respondent fails to submit its Statement of Defence?

If the Claimant fails to show sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitration, unless the Respondent has brought a counterclaim and wishes the arbitration to continue.

If the Respondent fails to show sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration and make an award on the basis of the evidence before it.

31. Can parties amend their written submissions?

Yes. During the course of the arbitration a party may amend or supplement its claim or defence unless, given the circumstances of the case, the arbitral tribunal considers it inappropriate to allow such amendment.

32. Can the arbitration proceedings be reopened after closure?

Yes. Although the arbitral tribunal will declare the proceedings closed when it is satisfied that the parties have had a reasonable opportunity to present their case, at any time thereafter but before the award is made, the arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the proceedings.

Joinder and Consolidation

33. Can additional parties be joined in an existing arbitration?

Yes, a Request for Joinder may be submitted to HKIAC either by a party wishing to join an additional party or by a third party wishing to be joined as an additional party.

34. When can a Request for Joinder be made?

A Request for Joinder may be submitted both prior to and following the constitution of the arbitral tribunal.

35. Who has the power to join an additional party?

The arbitral tribunal, or HKIAC if an arbitral tribunal has not yet been confirmed, has the power to allow an additional party to be joined provided that, prima facie, the additional party is bound by an arbitration agreement under the 2013 Rules giving rise to the existing arbitration.

Any question as to the jurisdiction of the arbitral tribunal arising from HKIAC's decision to allow an additional party to be joined will be decided by the arbitral tribunal once confirmed.

36. What are some of the consequences of joining an additional party?

Where an additional party is joined before the confirmation of the arbitral tribunal, all parties shall be deemed to have waived their right to designate an arbitrator, and HKIAC may revoke the appointment of any arbitrators already designated or confirmed. Further, HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) after a Request for Joinder has been submitted.

37. Can arbitrations be consolidated?

Yes, HKIAC shall have the power, at the request of a party and after consulting with the parties and any confirmed arbitrators, to consolidate two (2) or more arbitrations pending under the 2013 Rules, where: (a) the parties agree to consolidate; (b) all of the claims in the arbitrations are made under the same arbitration agreement; or (c) if the claims are made under more than one arbitration agreement, a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions, and HKIAC finds the arbitration agreements to be compatible.

38. What are some of the consequences of consolidating two or more arbitrations?

The arbitrations shall be consolidated into the arbitration that commenced first, unless all parties agree otherwise or HKIAC decides otherwise, taking into account the circumstances of the case. The consolidation is without prejudice to the validity of any act done or order made by a court in support of the relevant arbitration before it was consolidated. Further, parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator, and HKIAC may revoke the appointment of any arbitrators already designated or confirmed. In addition, HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) after a Request for Consolidation has been submitted.

Interim Measures

39. What is an interim measure?

An interim measure, whether in the form of an order or award or in another form, is any temporary measure ordered by the arbitral tribunal, an Emergency Arbitrator, or judicial authorities at any time prior to the issuance of the award by which the dispute is finally decided. For example, a party may be ordered to: (a) maintain or restore the status quo pending determination of the dispute; (b) take action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself; (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or (d) preserve evidence that may be relevant and material to the resolution of the dispute.

40. What are some of the circumstances taken into account in deciding a request for interim measures?

Relevant factors may include, but are not limited to:

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

The Award

41. What are the features of an arbitral award issued in accordance with the 2013 Rules?

An award will be in writing and is final and binding on the parties. It will state the reasons upon which it is based unless the parties have agreed that no reasons are to be given. By agreeing to the 2013 Rules parties undertake to comply without delay with any award of the arbitral tribunal.

42. Does HKIAC review or scrutinise arbitral awards?

No. Consistent with its light touch approach, HKIAC leaves it to the arbitral tribunal to render a valid award. The arbitral tribunal has a duty to make reasonable efforts to ensure that an award is valid.

43. Can the arbitral tribunal correct or interpret an award, or make an additional award?

Yes. Correction, interpretation and the making of an additional award can be requested by any party from the tribunal within thirty (30) days from the former's receipt of the award. Alternatively, the arbitral tribunal may within 30 days after the date of the award make corrections on its own initiative.

Costs of Arbitration

44. What is included in the costs of arbitration and by whom are they fixed?

Pursuant to Article 33.1, the term “costs of arbitration” includes: (a) the fees of the arbitral tribunal; (b) the reasonable travel and other expenses incurred by the arbitral tribunal; (c) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal; (d) the reasonable travel and other expenses of witnesses and experts; (e) the reasonable costs for legal representation and assistance if such costs were claimed during the arbitration; and (f) the Registration Fee and Administrative Fees payable to HKIAC.

The arbitral tribunal will determine the costs of the arbitration in its award.

45. When are the parties expected to pay deposits for costs of the arbitration?

HKIAC will request initial deposits as an advance for costs as soon as practicable after receipt of the Notice by the Respondent. In practice, the request will be made within 15 days from receipt of the Notice by the Respondent.

46. What are the consequences of a failure to pay deposits for costs?

In circumstances where one of the parties fails to pay its share of the deposit for costs, HKIAC may request one or another of the parties to make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claim or counterclaim as the tribunal considers fit.

47. After an award is rendered, what happens if there remain outstanding fees and expenses?

HKIAC and the arbitral tribunal will 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 the outstanding fees and expenses have been paid in full, whether jointly or by one or another of the parties.

Confidentiality

48. What aspects of the arbitration are confidential?


Any information relating to the arbitration under the arbitration agreement(s) and an award made in the arbitration are confidential. Also, the deliberations of the arbitral tribunal are confidential.

49. Are there exceptions to the confidentiality rule?

Yes. A party may publish, disclose or communicate information relating to the arbitration under the arbitration agreement(s) and an award under any of the following circumstances: (a) to protect or pursue a legal right or interest, or to enforce or challenge the award in legal proceedings before a court of other judicial authority; (b) to any government body, regulatory body, court or tribunal where the party is obliged by law to make the publication, disclosure or communication; or (c) to a professional or any other adviser of any of the parties, including any actual or potential witness or expert.

50. Does HKIAC publish arbitral awards?

Generally, no. However, HKIAC will publish arbitral awards if the following conditions are satisfied: (a) a request for publication is addressed to HKIAC; (b) all references to the parties' names are deleted; and (c) no party objects to such publication within the time limit fixed for that purpose by HKIAC. In case of an objection, the award shall not be published.



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