

## Client Alert

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## New HKIAC Administered Arbitration Rules further enhance efficiency of arbitrations

The Hong Kong International Arbitration Centre (HKIAC) has announced that the new version of its Administered Arbitration Rules (2018 Rules) will come into force on 1 November 2018. The 2018 Rules can be found [here](#).

The 2018 Rules introduce a raft of important and useful amendments including rules facilitating complex arbitrations, a procedure for an early determination of points of law or fact, shorter time limits under the emergency arbitrator procedures, third party funding provisions, and use of technology.

Our alert will discuss the impact of these amendments.

### What this means for you

Parties who have adopted arbitrations administered by HKIAC under the HKIAC Administered Arbitrations Rules in their arbitration agreements should be aware that the 2018 Rules will apply in arbitrations commenced on or after 1 November 2018. This will occur where the arbitration agreement refers to the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted, as opposed to the date when the contract is concluded.

The amendments introduced by the 2018 Rules further improve user friendliness, efficiency, and reflect international best practice. The key amendments are described below.

#### *1. Enhanced procedures for multi party and multi contract cases*

The 2018 Rules expand a party's right to commence a single arbitration under multiple contracts with separate arbitration agreements even if the parties are not bound by each of the arbitration agreements. This is premised on having a common question of law or fact, the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions, and all arbitration agreements concerned are compatible.

An arbitral tribunal sitting in multiple arbitrations involving a common question of law or fact will be expressly allowed to conduct those arbitrations at the same time, one immediately after another, or suspend any of them until the determination of any other of them. This may be particularly useful in situations where consolidation of arbitrations is not possible or desirable.

#### *2. Early Determination Procedure*

A significant amendment is the express power for a tribunal to determine certain issues at an early stage of the arbitration. This procedure applies to a point of law or fact that is manifestly without merit or manifestly outside of the tribunal's jurisdiction, or assuming the point is correct, it would not result in an award in favour of the party that submitted such point.





Requests for early determination must be made as promptly as possible after the relevant points are submitted. The tribunal has 30 days to decide whether to allow the request and, if so, another 60 days to decide on the request.

### *3. Emergency Arbitrator Procedures*

The 2018 Rules shorten all time limits under the emergency arbitrator procedures. In addition, they allow a claimant to apply for the appointment of an emergency arbitrator prior to commencement of the arbitration provided that the claimant commences arbitration within seven days thereafter.

In deciding an application for emergency relief, an emergency arbitrator will apply the test a tribunal applies for interim measures under Article 23.

### *4. Deadline for delivery awards*

Once the proceedings are declared closed, tribunals will have to inform the parties of the anticipated time of delivery of an award. Importantly, tribunals will have to render awards within three months from the date when the tribunal declares the entire proceedings or the relevant phase thereof closed. The time limit can only be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

### *5. Party paying defaulting party's share of advance on costs can request award for reimbursement*

If a party fails to pay its share of an advance for costs and the other party pays that share, the paying party can request the tribunal to make an award for reimbursement. This should help to reduce or mitigate situations where a respondent shifts the burden of bearing an advance on the claimant.

### *6. Third Party Funding*

In our earlier [alert](#), we discussed a milestone development relating to the ability for third party funders to fund Hong Kong seated arbitrations and arbitration-related proceedings falling under the Hong Kong Arbitration Ordinance, such as arbitration-related court proceedings.

In line with the relevant amendments to the Arbitration Ordinance, the 2018 Rules provide that a funded party is required to disclose promptly the existence of a funding agreement, the identity of the funder, and any subsequent changes to such information. A funded party will be permitted to disclose arbitration-related information to its existing and potential funder.

### *7. Use of technology*

The 2018 Rules expressly embrace the use of technology by including it among the factors to be considered by a tribunal when determining suitable procedures for the conduct of an arbitration. The rules also propose a new method of delivery through the use of a secured online repository.

### *8. Alternative means of dispute settlement*

The 2018 Rules clarify that if parties wish to pursue alternative means of settling their dispute (e.g., mediation) during the arbitration, a party may request the suspension of the arbitration. The arbitration shall resume at the request of any party.



Attempting to settle the dispute after commencing the arbitration has the advantage that, if the parties reach a settlement, they can request the tribunal to record it in the form of an award. Such an award on agreed terms is enforceable as any other final award.

## *9. Practice Note on Appointment of Arbitrators*

The 2018 Rules will be accompanied by a new Practice Note setting out HKIAC's general practice of appointing arbitrators. HKIAC normally appoints arbitrators from its panel or list of arbitrators published on its website.

When appointing arbitrators, HKIAC takes into account a wide range of factors, such as the amount, nature, and complexity of the dispute, the governing law of the contract, and availability and proposed fees of the arbitrator. Where the parties are of different nationalities, HKIAC will generally appoint a sole or presiding arbitrator of neutral nationality; however, in cases involving at least one Mainland Chinese party, HKIAC may still appoint a holder of a Hong Kong passport.

## **Actions to consider**

To ensure that parties avail themselves of the best options for resolving disputes, we recommend the following steps:

- When negotiating or drafting the arbitration clause, seek legal advice on relevant issues such as the appropriate seat and arbitration rules, whether any third parties should be able to benefit from the arbitration clause, and in which jurisdictions enforcement may be required.
- Adopt compatible arbitration clauses in all agreements arising under the same transaction or a series of transactions so that consolidation of arbitrations, joinder of third parties to an arbitration, and commencing a single arbitration under multiple contracts are possible.

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