

China Legal Report

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2024 New HKIAC Rules

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2024 New HKIAC Rules

I. Introduction

On May 3, 2024, the Hong Kong International Arbitration Centre (HKIAC) released the 2024 edition of the HKIAC Administered Arbitration Rules (hereinafter referred to as the "2024 Rules"), which came into effect on June 1, 2024.

Overall, the 2024 Rules, while preserving the principles of "light administration" and "party autonomy" embodied in the 2018 HKIAC Administered Arbitration Rules (hereinafter referred to as the "2018 Rules"), grant arbitral tribunals expanded powers and aim to refine dispute resolution mechanisms. The 2024 Rules also address key contemporary issues such as ESG (Environmental, Social, and Governance) factors and data protection, introducing, for the first time, provisions related to diversity, environmental impact, and information security. This report will highlight and analyse the significant changes introduced in the 2024 Rules.

II. Scope of Application

The 2024 Rules apply to all arbitrations commenced on or after June 1, 2024, in accordance with Article 1.1. A significant difference between the 2024 Rules and the 2018 Rules lies in the scope of application, as Article 1.5 of the 2018 Rules has not been retained in the 2024 Rules.

Article 1.5 of the 2018 Rules stipulated that, unless otherwise agreed by the parties:

(a) Articles 43 and Appendix 4, Section 1(a), and Section 21 do not apply to arbitration agreements concluded before the rules came into effect;

(b) Articles 23.1, 28, 29, and Appendix 4 do not apply to arbitration agreements concluded before November 1, 2013.

In other words, if an arbitration agreement was entered into before certain dates, the application of specific provisions in the 2018 Rules would be excluded.

The 2018 Rules introduced these exceptions with the rationale that parties might have chosen HKIAC arbitration before the relevant provisions were implemented. These provisions could have significant implications for parties' rights and interests, including, in certain cases, their right to nominate arbitrators. Thus, the default position was that such provisions would not apply if the arbitration agreement was entered into before their effective date.

Over time, however, these provisions have been in force for a considerable period, gaining recognition and acceptance from HKIAC users. Against this backdrop, and possibly informed by data on cases involving these exceptions, HKIAC appears to have deemed it appropriate to eliminate these exceptions, thereby simplifying the position under the 2024 Rules.

III. Discretionary Powers of Arbitral Tribunals

Article 13.6 of the 2024 Rules provides that, in addition to the powers conferred by Article 43 (Early Determination Procedure), arbitral tribunals may, at their discretion and after consulting with the parties, take the following measures:

- Determine preliminary issues that may resolve all or part of the dispute;
- Conduct arbitration in steps;
- Conduct arbitration in phases;

- Decide at which stage of arbitration any dispute should be resolved; or

- Adopt other procedures to efficiently determine the case.

This provision supplements and refines the early determination procedure by codifying, with better clarity and clearer structure, the discretionary powers of tribunals.

IV. Single Arbitration for Multiple Contracts

A key development in the 2024 Rules is Article 29.1, which permits claims arising out of or relating to multiple contracts to be brought in a single arbitration, subject to the following conditions:

(a) The arbitration agreements involve common legal or factual issues;

(b) The claims arise out of or relate to the same transaction or a series of related transactions; and

(c) The arbitration agreements are compatible.

This provision significantly reduces time and costs. Additionally, Article 29.2 introduces a notable feature: if HKIAC determines under Article 19.5 that a single arbitration is appropriate, the parties are deemed to have waived their right to nominate arbitrators, and HKIAC will appoint the tribunal, considering or disregarding party nominations at its discretion.

These provisions establish a unified approach to tribunal formation in consolidated arbitrations and arbitrations involving multiple contracts, ensuring equal treatment of parties while enhancing procedural efficiency.

V. Diversity

The 2024 Rules break new ground by incorporating diversity considerations under Article 9A:

- Article 9A.1 encourages parties and arbitrators to consider diversity when nominating arbitrators.

- Article 9A.2 requires HKIAC to consider diversity alongside other relevant factors when exercising its power to appoint arbitrators.

These provisions aim to broaden the pool of arbitrator candidates, ensure that tribunals better reflect the cultural and commercial backgrounds of the parties, and reduce potential biases, thereby enhancing the credibility of arbitral awards. By introducing these provisions, HKIAC demonstrates its commitment to modernization and fairness, strengthening its appeal to both Asian and global businesses.

VI. Information Security and Environmental Protection

The 2024 Rules introduce provisions addressing information security and environmental impact:

- Article 13.1 mandates tribunals to adopt procedures appropriate to the complexity and value of the dispute, utilizing technology effectively to avoid unnecessary delays and costs while ensuring equal treatment of the parties and providing them a reasonable opportunity to present their cases.

- Article 45A specifies measures to safeguard the sharing, storage, or processing of arbitration-related information. It also allows parties to agree on information management measures.

These provisions respond to increasing concerns about data protection and sustainability, aligning arbitration with broader societal expectations.

VII. Time Limits for Awards

Article 31.1 of the 2024 Rules introduces a 45-day deadline for tribunals to conclude arbitration proceedings or relevant stages following the final substantive oral or written submission (excluding submissions on costs). Article 31.2 retains the requirement that awards be rendered within three months of the tribunal's declaration of the conclusion of proceedings, subject to extensions with party consent or HKIAC approval.

This time limit enhances procedural efficiency, transparency, and accountability, encouraging tribunals to manage case workflows effectively while optimizing resource allocation.

VIII. Service of Written Communications

The 2024 Rules expand the methods of service for written communications under Article 3.1(f) to include any electronic communication method agreed upon by the parties, such as WeChat and WhatsApp, subject to prior approval by HKIAC and the tribunal.

This change significantly reduces communication delays, accelerating arbitration timelines, particularly in cross-border disputes involving multiple parties.

IX. Conclusion

The 2024 Rules reflect HKIAC's responsiveness to calls for procedural optimization in the arbitration community. It has introduced a series of significant and welcome improvements, including key amendments reflecting new powers and

corresponding obligations assigned to tribunals and HKIAC, as well as clarifications on the existing ones. How these rules will operate in practice and be received by users remains to be observed by the global arbitration community. As an increasingly influential international arbitration institution, the practical impact and user acceptance will inevitably contribute to the future landscape of international arbitration.

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