

## HKIAC Updates Rules to Strengthen Market Profile and Improve User Experience

### ***Amendments to the administered arbitration rules address technology, third party funding, time limits, and other key mechanisms.***

Following the success of the 2013 HKIAC Administered Arbitration Rules (the 2013 Rules), the Hong Kong International Arbitration Centre (HKIAC) has updated its administered arbitration rules to keep pace with market change and current best practices and current best practices in the market. In August 2017, the HKIAC Rules Revision Committee (the Committee) announced proposed amendments to the 2013 Rules and launched a public consultation process inviting feedback from users and interest groups. In July 2018, the HKIAC released a second draft of the new Administered Arbitration Rules and a draft Practice Note on Appointment of Arbitrators for further public consultation.

These updates are an important development for both dispute resolution and transactional lawyers alike, since the HKIAC Rules are some of the most widely used arbitral rules and are commonly provided for in parties' dispute resolution clauses.

The new version of the Rules (the 2018 Rules)<sup>1</sup> will enter into force on 1 November 2018, accompanied by a Practice Note on Appointment of Arbitrators (the Practice Note)<sup>2</sup>. The 2018 Rules will introduce amendments relevant to:

- The use of technology
- Third-party funding
- Multi-party and multi-contract arbitrations
- The early determination of disputes
- Alternative means of dispute resolution
- Emergency arbitrator proceedings
- Time limits for the delivery of awards

This *Client Alert* summarizes the key proposed changes to the Rules and provides high-level commentary on the range of mechanisms for resolving disputes.

## Key Amendments to the Rules

- **Online Delivery of Documents — (Articles 3.1(e), 3.3, and 3.4):** Parties may agree to deliver documents through a secured online repository — a new method of delivery recognized by the 2018 Rules. If a document is uploaded to an online repository, the date of receipt will be determined according to the time at the place of receiving a notice of the upload.

Parties may agree to use their own repositories or a dedicated repository provided by the HKIAC.

- **Use of Technology for Determining Procedures — (Article 13.1):** Arbitral tribunals should consider the effective use of technology as a factor when determining suitable procedures for the conduct of an arbitration.
- **Use of Alternative Means of Dispute Settlement (e.g., arb-med-arb) — (Article 13.8):** After commencing an arbitration — if the parties agree to pursue alternative means of settling their dispute (e.g., mediation, conciliation, or negotiation) — a party may request HKIAC, the arbitral tribunal, or emergency arbitrator to suspend the arbitration or emergency arbitrator procedure, as applicable. A party may request that the arbitration or emergency arbitrator procedure resume at any time during or after the alternative process. Upon such request, the arbitration or emergency arbitrator procedure shall proceed.
- **Expanded Provisions for Single Arbitration under Multiple Contracts — (Article 29):** The 2018 Rules broaden the scope of the provisions on single arbitration under multiple contracts by allowing a party to commence a single arbitration under several arbitration agreements. This amendment applies even if the parties to the arbitration are not bound by each of the arbitration agreements.

Any question as to whether a single arbitration has been properly commenced under Article 29 shall be decided by the arbitral tribunal once constituted under Article 19.4 or, if the tribunal is not yet constituted, by HKIAC when deciding whether to proceed under Article 19.5.

- **Concurrent Proceedings — (Article 30):** The 2018 Rules provide an express basis for an arbitral tribunal to conduct multiple arbitrations simultaneously, to conduct one immediately after another, or to suspend any of the arbitrations until the determination of any other arbitration. The tribunal may conduct concurrent proceedings — after consulting the parties — if the same tribunal is constituted in each arbitration and a common question of law or fact arises in all the arbitrations. The test for concurrent proceedings is broader than that for consolidation. As a result, concurrent proceedings may be conducted in situations in which consolidation is not possible or desirable.
- **Time Limit for Delivering Awards — (Article 31.2):** After the arbitral proceedings are declared closed, the arbitral tribunal is required to notify the parties and HKIAC of the anticipated date of delivering an arbitral award. The date of delivery shall be within three months from the closure of the proceedings or relevant phase of the proceedings. This time limit may be extended by HKIAC or party agreement.
- **Early Determination Procedure — (Article 43):** The 2018 Rules empower an arbitral tribunal to decide either:
  - A point of law or fact that is manifestly without merit or manifestly outside of the tribunal's jurisdiction
  - A point of law or fact that, assuming the point of law or fact is correct, would not result in an award being rendered in favor of the party that submitted such point

The tribunal must decide whether to proceed with a request for early determination within 30 days from the date of the request. If the request is allowed to proceed, the tribunal must issue an order or award, which may be in summary form, on the relevant point within 60 days from the date of its decision to proceed. These time limits may be extended by HKIAC or party agreement. Pending the determination of the request, the tribunal may decide how to proceed with the underlying arbitration.

- **Disclosure, Costs, and Confidentiality of Third-Party Funding — (Articles 34.4, 44, and 45.3(e)):** 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 is permitted to disclose arbitration-related information to its existing and potential funder. These provisions are broadly in line with the relevant amendments to the Hong Kong Arbitration Ordinance.

The 2018 Rules also expressly allow an arbitral tribunal to take into account any third-party funding arrangement in fixing and apportioning arbitration costs.

- **Emergency Arbitrator Procedure — (Article 23.1 and Schedule 4):** A party may file an application for the appointment of an emergency arbitrator before the commencement of an arbitration, provided that a Notice of Arbitration is submitted to HKIAC within seven days — unless the emergency arbitrator extends this time limit.

Once appointed, an emergency arbitrator will apply the same test for interim measures under Article 23 when considering an application for emergency relief. All time limits under the Emergency Arbitrator Procedure have been shortened, and the total fees of an emergency arbitrator are subject to a maximum amount which will be notified on HKIAC's website.

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If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

**[Ing Loong Yang](#)**  
[ingloong.yang@lw.com](mailto:ingloong.yang@lw.com)  
+852.2912.2790  
Hong Kong

**[Andrew R. Halliwell](#)**  
[andrew.halliwell@lw.com](mailto:andrew.halliwell@lw.com)  
+852.2912.2598  
Hong Kong

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#### Endnotes

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- <sup>1</sup> The full text of the 2018 Rules and the Practice Note are available on the HKIAC website (<http://www.hkiac.org/>).
- <sup>2</sup> Latham partner Ing Loong Yang is a HKIAC Panel member who regularly acts for clients and sits as arbitrator in HKIAC international arbitrations. He has been contributing to HKIAC's public consultation by attending revision working group sessions and sharing his thoughts and comments on the proposed amendments.