

## HKIAC's 2024 Administered Arbitration Rules Come Into Force

***The 2024 Rules significantly improve Hong Kong's arbitration framework, aiming to increase the efficiency of proceedings and clarify the tribunal's powers.***

The Hong Kong International Arbitration Centre's (HKIAC's) newly released 2024 Administered Arbitration Rules (2024 Rules) came into effect on 1 June 2024.

The new rules were announced following an extensive public consultation process, which took place earlier this year. Rather than a wholesale revision of the 2018 Administrative Arbitration Rules (2018 Rules), the amendments made in the 2024 Rules are intended to be a refinement of the 2018 Rules in order to promote efficiency and integrity of arbitral proceedings administered by the HKIAC, and to reduce costs. The 2024 Rules also include novel provisions which address the diversity of arbitrators, information security risks, and the environmental impact of arbitration.

In this Client Alert, we explore the key changes under the 2024 Rules and their implications for users of HKIAC-administered arbitrations.

### Applicability and Scope of Application

The 2024 Rules apply to arbitrations commenced on or after 1 June 2024 pursuant to arbitration agreements that provide for the HKIAC Administered Arbitration Rules to apply, or arbitration "administered by the HKIAC", or words to similar effect.

Previous versions of the HKIAC Rules included certain carve-outs, which disapplied provisions on early determination and appointment of an emergency arbitrator prior to the notice of arbitration in arbitrations commenced under arbitration agreements concluded before 1 November 2018. Further, provisions on emergency arbitration, consolidation, and single arbitration under multiple contracts were disapplied for arbitration agreements concluded before 1 November 2013. Parties to arbitration agreements which predated the relevant rules were therefore not bound by rules which did not exist when they entered into the arbitration agreement.

The 2024 Rules simplifies the position by providing that the entirety of the rules shall apply regardless of whether the arbitration agreement pre-dates or post-dates the introduction of the 2024 Rules.

## Key Updates in the 2024 Rules

### Emergency Arbitration

Prior to the constitution of the tribunal, parties may seek urgent interim relief by commencing an emergency arbitration. Emergency arbitrators have the power to issue preliminary relief pending determination of the application for emergency relief. This ability is now confirmed in paragraph 10 of Schedule 4 of the 2024 Rules, pursuant to which emergency arbitrators are now expressly empowered to make “any preliminary or interim order” which is deemed necessary before making the emergency decision.

Paragraph 13 of Schedule 4 further clarifies that emergency arbitrators may proceed with the emergency arbitration and issue its final decision even if the case has been transmitted to the main tribunal. However, emergency arbitrators have no further power to act once the tribunal is constituted.

### Constitution of Arbitral Tribunal

- **Number of arbitrators:** Parties are expressly required to include a reasoned proposal as to the number of arbitrators in the Notice of Arbitration and Answer to Notice of Arbitration, unless the parties have previously agreed on this (Article 4.3(g) and Article 5.1(2)).
- **Diversity:** Parties and co-arbitrators are encouraged to include considerations of diversity when designating the arbitrators. The HKIAC will also take the same approach when exercising its authority to appoint arbitrators (Article 9A).
- **Appointment:** Under the 2018 Rules, appointments of arbitrators are subject to confirmation by the HKIAC. Article 9.3 of the 2024 Rules provides that the HKIAC must consider “any factors that may affect the efficiency or integrity of the arbitrator”.
- **Revocation of appointment:** The HKIAC may, in exceptional circumstances and after consulting the parties and the tribunal, revoke the appointment of an arbitrator if it considers that the arbitrator is prevented from or has failed to fulfil their functions in accordance with the rules or within the prescribed time limits (Article 13.10). This new power is granted to the HKIAC for the purposes of regulating the efficiency and integrity of the proceedings. The HKIAC may take the initiative to revoke the appointment of an arbitrator in exceptional cases, even if the parties have not raised any challenge against the arbitrator.
- **Multi-party and multi-contract scenarios:** In multi-contract scenarios, a party seeking to bring claims pursuant to multiple contracts in the same arbitration must satisfy the HKIAC, *prima facie*, that the arbitration has been properly commenced in accordance with the requirements in Article 29.1 (referencing Article 19.5).

Consistent with the approach taken in the consolidation of arbitrations in Article 28.8 of the 2018 and 2024 Rules, Article 29(2) provides that once the HKIAC decides that an arbitration has been properly commenced under multiple contracts, parties will be deemed to have waived their rights to designate an arbitrator. Instead, the HKIAC shall appoint the arbitral tribunal with or without regard to any party’s designation.

- **Joinder:** Similarly, if an additional party is joined to the arbitration, the HKIAC may revoke any confirmation or appointment of an arbitrator and appoint the tribunal with or without regard to any party’s designation. This is the case not only prior to the constitution of the tribunal (as per the 2018 Rules), but at any stage in the proceedings (Article 27.13).

## Conduct of Proceedings

- **HKIAC's general power:** The HKIAC has an enhanced role to preserve the efficiency and integrity of proceedings, and may take any measures necessary to this end after consulting the parties and the tribunal (Article 13.10). It shall also adopt suitable procedures to avoid unnecessary delay or expenses, bearing in mind traditional factors such as the complexity of issues, amount in dispute, the importance of ensuring equal treatment of the parties and affording them a reasonable opportunity to present their cases, as well as more contemporary issues including effective use of technology, information security, and environmental impact.
- **Expedited procedures:** The HKIAC Rules provides for the use of expedited procedures if the amount in dispute does not exceed HK\$25 million, the parties have so agreed, or in cases of exceptional urgency. It is a fast-track process during which the tribunal is expected to render its award within six months from the date the file is transferred to it. The 2024 Rules introduce three key changes to the expedited procedures. First, Article 42.2(f) provides that the HKIAC may extend the six-month timeline in "appropriate" circumstances, which is a lower threshold as compared to the requirement of "exceptional" circumstances under the 2018 Rules. Second, Article 42.2(e) clarifies that the tribunal may decide on the dispute on the basis of not only documentary evidence, but also written submissions. Third, the tribunal (and not just the parties) may request that the expedited procedures be disapplied (Article 42.3).
- **Preliminary issues, bifurcation, and sequential stages:** Article 13.6 expressly recognises the tribunal's power to determine preliminary issues, bifurcate proceedings and conduct an arbitration in sequential stages, decide the stage of the arbitration at which any issue(s) shall be determined, or otherwise adopt procedures to decide the case efficiently. These powers have been widely adopted in practice. The clarificatory provision, together with the early determination procedure in Article 43, provide potentially cost-effective options by allowing the parties to narrow down salient matters in dispute (which may potentially dispose of the case without progressing through the entire proceedings). The tribunal must exercise its discretion in consultation with the parties.
- **Information security:** The tribunal is now expressly required to adopt suitable procedures with regard to information security (Article 13.1), and may give directions to protect the security of any information shared, stored, or processed, as well as decisions, orders, or awards to address any breach of the information security measures agreed by the parties or directed by the tribunal.
- **Changes in legal representation:** Under the amended Article 13.8, parties are required to notify their opponent, the tribunal, and HKIAC of any proposed change or addition to its legal representatives, whereas previously the notification requirement only arose upon an actual change in legal representation. Furthermore, the tribunal may exclude any proposed party representative to avoid any conflict of interest after consulting the parties (Article 13.9). This prevents parties from attempting to rely on a change in legal representative as a delay tactic to stall the proceedings.
- **Close of proceedings:** The revised Article 31.1 provides that the proceedings, or a discrete phase of the proceedings, shall be declared closed no later than 45 days after the last directed substantive oral or written submissions in respect of the entire proceedings or the relevant phase of the proceedings. The award shall still be rendered within three months from the close of proceedings. Previously, the tribunal was only required to declare the proceedings closed once it was satisfied that the parties have had a reasonable opportunity to present their case. If proceedings are closed sooner as a result of the 45-day deadline imposed under the new rules, the parties will be able to benefit from speedier resolution of their dispute.

## Fees and Costs

- **Non-payment of deposits:** Under the 2014 Rules, the tribunal may suspend or terminate the arbitration if the required deposits are not paid in full to the HKIAC. Article 41.4(a) of the new rules allows the HKIAC to do the same or cease to administer the arbitration prior to the constitution of the tribunal if the deposits for costs are not paid.
- **Postponement fees:** Parties seeking a postponement of any hearing may now be responsible for fees incurred as a result of the postponement pursuant to the amended paragraph 10 of Schedule 2.
- **HKIAC's power to review tribunal's fees and expenses:** The HKIAC is now allowed to review and adjust the fees and expenses of the tribunal where it considers appropriate, taking into consideration the work done by the arbitrators and the complexity of the subject matter (paragraph 5.1 of Schedule 2).
- **Factors to be considered when apportioning costs:** Article 34.4 is a newly added provision which sets out a non-exhaustive list of factors to be considered by the tribunal when deciding on the apportionment of costs. These include: the relative success of the parties, scale and complexity of the dispute, the parties' conduct, third-party funding arrangement (if any), outcome-related fee structure agreement (if any), and any adverse environmental impact arising out of the parties' conduct.
- **Emergency arbitration costs:** Article 34.1(3) clarifies that the costs of arbitration include costs arising out of any emergency arbitration.
- **Revised arbitration model clause on fees and expenses:** The revised model arbitration clause now includes wording which allows parties to set out the basis upon which fees and expenses of the tribunal shall be determined, that is, on the basis of hourly rates or the sum in dispute. Without such stipulation, the parties will have to agree on the method of determining the fees and expenses, failing which they would be determined based on hourly rates.

## Commentary

The latest updates in the 2024 Rules have introduced significant changes to the framework for HKIAC-administered arbitrations, some of which address important topical issues.

With the new powers given to the HKIAC and the tribunal under the new rules, the HKIAC and tribunal now have more tools to ensure that arbitral proceedings are conducted in an efficient manner, both from a time and costs perspective, with the intention of enhancing the user experience for parties. New additional measures aim to further deter parties from taking tactical steps to delay or prolong the proceedings, such as refusing to pay the deposit for costs both prior to and after the constitution of the tribunal, changing their legal representatives over the course of the proceedings, or seeking to postpone the hearing.

Finally, the codification of existing practices, such as the tribunal's ability to determine preliminary issues and order the bifurcation of proceedings, and the power of emergency arbitrators to grant interim relief, provides clarification in relation to the tribunal's powers and should serve to reduce the incidence of unnecessary disputes over these issues.

All in all, the introduction of the 2024 Rules re-aligns the HKIAC-administered rules with international standards and ensures that they continue to keep up with modern arbitral practice.

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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:

**Dominic Geiser**

dominic.geiser@lw.com  
+852.2912.2738  
Hong Kong

**Tsun Ming (Truman) Mak**

truman.mak@lw.com  
+852.2912.2735  
Hong Kong

**Evangeline Y. L. Tsui**

evangeline.tsui@lw.com  
+852.2912.2631  
Hong Kong

**Nga Sze (Charlotte) Wong**

charlotte.wong@lw.com  
+852.2912.2516  
Hong Kong

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