

International: The 2024 HKIAC Administered Arbitration Rules

What you need to know

In brief

On 1 June 2024, the 2024 Administered Arbitration Rules of the Hong Kong International Arbitration Centre will come into effect. The 2024 Rules can be accessed [here](#).

Key takeaways

The 2024 Rules maintain HKIAC's "light touch" approach to case administration, which respects party autonomy and has been a fundamental feature of HKIAC administered arbitrations. This means that parties who have adopted arbitration under the HKIAC Administered Arbitration Rules in force when the arbitration commences can rest assured that the regime they have adopted continues to apply with no unforeseen drastic changes, while benefitting from enhancements and improvements.

The key changes seek to enhance time and cost efficiency of arbitrations, protect their integrity, and promote diversity and greener arbitrations. Many of the changes incorporate HKIAC's existing practices into the rules.

The fact that no drastic changes have been introduced into the 2024 Rules reflects a high degree of user satisfaction. According to HKIAC, its 2018 Rules have been well-received by users since their release on 1 November 2018 and are widely recognised as market-leading arbitration rules.

In depth

Powers of arbitral tribunals, HKIAC and emergency arbitrators

New Article 13.6 expressly sets out certain powers of the **tribunal** with a view to enhance the efficient determination of the dispute. It empowers the tribunal, in its discretion and after consulting the parties, to:

- Determine preliminary issues which it considers could dispose of all or part of the case.
- Bifurcate the proceedings.
- Conduct the arbitration in sequential stages.
- Decide the stage of the arbitration at which any issue or issues shall be determined.
- Otherwise adopt procedures to decide the case efficiently.

New Article 13.9 aims at protecting the integrity of the arbitration. It expressly empowers the tribunal to take any measure necessary to avoid a conflict of interest arising from a change in party representation, such as by excluding a proposed new party representative from participating in the arbitration. This provision gives tribunals reassurance in resolving situations where a party seeks to introduce a legal representative into the arbitration whose participation would result in a conflict of interest of an arbitrator due to their relationship with that legal representative.

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The powers of **HKIAC** are extended to address serious situations affecting the efficiency or integrity of the arbitration, such as extensive delays or excessive overcharging. HKIAC *may*:

- After consulting with the parties and the tribunal, take any measure necessary to preserve the efficiency or integrity of the arbitration. In exceptional circumstances, HKIAC may even revoke the appointment of any arbitrator where 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 (new Article 13.10); and
- Review a tribunal's fees and expenses, following which HKIAC may make adjustments to those fees and expenses where it considers appropriate in the circumstances of the case (Schedule 2, new paragraph 5.1).

The 2024 Rules introduce two important clarifications of the powers of an **emergency arbitrator** under Schedule 4:

- An emergency arbitrator may make any preliminary or interim order during the Emergency Relief proceedings (revised paragraph 10). While this power is not new, emergency arbitrators now have an express legal basis for granting temporary relief (e.g., an "interim-interim" injunction) pending their Emergency Decision.
- The emergency arbitrator may proceed with the Emergency Relief proceedings and make the Emergency Decision within the prescribed time even if the case file has already been transmitted to the tribunal (revised paragraph 13).

Enhancement of information security

Many arbitrations are conducted partially or fully on an electronic basis, which can raise a wide range of information security issues during the arbitration. The 2024 Rules address this important area in different ways:

- Information security has been added to Article 13.1 as a factor which the tribunal must consider when performing its duties to adopt suitable procedures for the conduct of the arbitration.
- New Article 45A expressly empowers the tribunal, after consulting with the parties, to give directions to protect the security of any information shared, stored or processed in relation to the arbitration. It also expressly empowers the tribunal to make a decision, order or award in respect of any breach of the information security measures agreed by the parties or directed by the tribunal pursuant to this provision.
- It also encourages the parties to agree on any reasonable measures to protect information shared, stored, or processed in relation to the arbitration.

New provisions promoting diversity and greener arbitration

Recent user surveys show that parties consider **diversity** when selecting arbitrators increasingly important. The 2024 Rules reflect this trend:

- New Article 9A.1 encourages the parties and co-arbitrators to consider diversity when designating arbitrators.
- HKIAC signed the ERA Pledge for Equal Representation in Arbitration in 2016 and has an established practice of considering diversity when appointing arbitrators. Consistent with user expectations and HKIAC's commitment, new Article 9A.2 makes it mandatory for HKIAC to consider diversity when exercising its authority to appoint an arbitrator under the 2024 Rules.

HKIAC is firmly committed to promoting **greener arbitrations**. It signed the Green Pledge to support the Campaign for Greener Arbitrations in 2021 and subsequently contributed to the drafting of the "Green Protocols", which were created to assist users to reduce their contribution to the environmental footprint of arbitrations.

The 2024 Rules introduce provisions seeking to reduce the environmental footprint of arbitrations:

- Tribunals must now also consider environmental impact when adopting suitable procedures under Article 13.1.
- New Article 34.4 expressly identifies adverse environmental impact arising out of the parties' conduct as an example of factors which the tribunal may take into account when making certain determinations on costs (see below).

Waiver of right to designate an arbitrator where a claimant commences a single arbitration under multiple contracts

The 2013 Rules introduced highly useful multi-party and multi-contract regimes. One of them allows a claimant to commence a single arbitration under multiple contracts where (i) a common question of law or fact arises under each arbitration agreement giving rise to the arbitration, (ii) the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions, and (iii) the relevant arbitration agreements are compatible.

Pursuant to Article 19.5, a single arbitration under multiple contracts shall proceed only if HKIAC is satisfied that the arbitration has been properly commenced. A new Article 29.2 has been added to the single arbitration regime which provides that where HKIAC decides that the arbitration has been properly commenced, parties shall be deemed to have waived their right to designate an arbitrator.

This provision mirrors Article 28.8 under the consolidation regime, thereby establishing a uniform approach to HKIAC constituting the entire tribunal in consolidated arbitrations or a single arbitration under multiple contracts where necessary to protect the parties' fundamental right of equal treatment in constituting the tribunal. This provision aims at improving the effective operation of the single arbitration regime which is often undermined by inadequately drafted arbitration clauses which lack compatibility regarding the appointment process (for a recent example, see *SYL and Another v GIF* [2024] HKCFI 1324).

Modifications to the Expedited Procedure

The Expedited Procedure is set out in Article 42. It is a streamlined procedure with limited pleadings and often without an oral hearing that requires the tribunal to deliver the award within 6 months from receipt of the case file. A party can request HKIAC to adopt the Expedited Procedure if the amount in dispute is below the monetary threshold published on HKIAC's website (currently HKD 25 million / ~USD 3.2 million), or if the parties so agree, or in cases of exceptional urgency.

Revised Article 42.2(f) now allows HKIAC to extend the 6-month time limit for the award in *appropriate* circumstances rather than in exceptional ones. While previously only the parties had the right to request HKIAC to decide that the Expedited Procedure shall no longer apply, revised Article 42.3 extends this right to the tribunal.

Shorter deadlines for tribunals to close proceedings and issue awards

Revised Article 31.1 introduces a time limit for the tribunal to close the proceedings or a discrete phase. It requires the tribunal to do so no later than 45 days from the last directed substantive oral or written submissions in respect of the entire proceedings or the relevant phase (excluding costs submissions).

The date of rendering the award under Article 31.2 remains 3 months from the date when the tribunal declares the proceedings or a discrete phase closed. This deadline can be extended by party agreement or in appropriate circumstances by HKIAC.

The revision effectively seeks to ensure that the 3-month time limit for rendering the award is triggered within the new 45-day time limit, rather than being deferred by keeping the proceedings open beyond 45 days.

Costs and new optional provision on arbitrator remuneration in HKIAC's Model Clause

New Article 34.4 imposes a duty on the tribunal to take into account the circumstances of the case in determining (i) whether the costs of the arbitration are reasonable, and (ii) whether and how to apportion the costs of the arbitration between the parties. The new provision clarifies that the tribunal *may* take into account any factors it considers relevant, and provides examples:

- The relative success of the parties;
- The scale and complexity of the dispute;
- The parties' conduct in relation to the proceedings;
- Any third party funding arrangement;
- Any outcome related fee structure agreement; and
- Any adverse environmental impact arising out of the parties' conduct in the arbitration.

One of the unique features of HKIAC administered arbitrations is that parties have a choice between remunerating arbitrators based on hourly rates (Schedule 2) or the sum in dispute (Schedule 3), with the former applying by default where parties fail to

agree. By comparison, arbitrators in ICC, SIAC and CIETAC arbitrations are invariably remunerated based on the sum in dispute.

To encouraging parties to consider at the contract drafting stage whether to state in the arbitration clause on what basis the tribunal shall be remunerated, HKIAC has added a new optional provision to its Model Clause contained in the 2024 Rules.

Removal of carve-outs

Article 1.5 of the 2018 Rules has not been maintained. It excluded the application of certain provisions if the arbitration agreement was entered into before the 2013 and 2018 Rules came into force unless the parties agree otherwise, because these provisions introduced more fundamental changes to the rules.

This means that parties arbitrating under the 2024 Rules can benefit from all features under the 2024 Rules regardless of when they entered into their arbitration agreement.

Contact Us



Gary Seib
Partner
Hong Kong
gary.seib@bakermckenzie.com



Philipp Hanusch
Partner
Hong Kong
philipp.hanusch@bakermckenzie.com



James Ng
Registered Foreign Lawyer
Hong Kong
james.ng@bakermckenzie.com



Gillian Lam
Senior Associate
Hong Kong
gillian.lam@bakermckenzie.com



Jerald Wong
Senior Associate
Hong Kong
jerald.wong@bakermckenzie.com



Alex Cheng
Associate
Hong Kong
alex.cheng@bakermckenzie.com

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