

# HKIAC Revises its Administered Arbitration Rules

May 28, 2024

NEWSLETTER

## CONTACT



**Peter Yuen**

Partner, Fangda Partners  
peter.yuen@fangdalaw.com



**Chen Xiongchao**

Associate, Fangda Partners



**Sophia Li**

Associate, Fangda Partners

Sakura Lee also contributed to the article.

### 1. Overview

The Hong Kong International Arbitration Centre (“**HKIAC**”) has recently released its 2024 Administered Arbitration Rules (“**Rules**”), set to be effective from **1 June 2024**. These revised Rules represent a refinement of the existing 2018 version which have been positively received by users, by introducing several enhancements to improve arbitration efficiency and integrity. Further, for the first time, the Rules address contemporary issues such as diversity in arbitrator designations, information security, and environmental protection.

### 2. Key Revisions

#### 2.1. HKIAC's Administration over Arbitration

**Article 41.4** of the revised Rules clarifies HKIAC's powers and responsibilities in arbitration administration. To dissuade tactically initiated arbitrations for the dominant purpose of pressuring the counterparty without the intention of actually conducting the proceedings, the HKIAC can suspend or terminate arbitration if the parties fail to fully pay the deposits for costs within 30 days of receiving a payment request from the HKIAC.

**Article 13.10** allows the HKIAC, after consulting with the parties and arbitral tribunal, to take any necessary measures to preserve the efficiency and integrity of the arbitration proceedings. In exceptional cases, the HKIAC can revoke an arbitrator's appointment if an arbitrator fails to fulfil the arbitrator's functions in accordance with the revised Rules or within the prescribed time limits.

The revised Rules also allow the HKIAC to review and adjust the arbitral tribunal's fees and expenses to ensure that costs for arbitration



are under check. For arbitrators who bill on an hourly basis, the HKIAC can adjust the arbitral tribunal's fees and expenses as appropriate under **Schedule 2, paragraph 5.1**. For arbitrators who bill based on the sum in dispute, the HKIAC can decide the arbitral tribunal's fees and expenses by taking into account the arbitrator's billing method, the work done by the arbitrator, and the complexity of the subject matter under **Schedule 3, paragraph 5**.

## **2.2. Arbitral Tribunal's Procedural Control**

Along with HKIAC's new suspension and termination powers, **Article 41.4** also empowers arbitral tribunals to stay or terminate arbitration under specific circumstances.

**Article 13.6** clarifies the arbitral tribunal's discretion to adopt procedural measures to effectively resolve disputes after consulting with the parties. On top of its power under the Early Determination Procedure in Article 43, the arbitral tribunal can now dispose of preliminary issues that may resolve all or part of the disputed matters by bifurcating those issues or conducting the arbitration in stages to deal with those preliminary issues first. These powers have been inherent to the arbitral tribunals and been invoked in practice, but the Rules now codify such powers which might not have been apparent to all users.

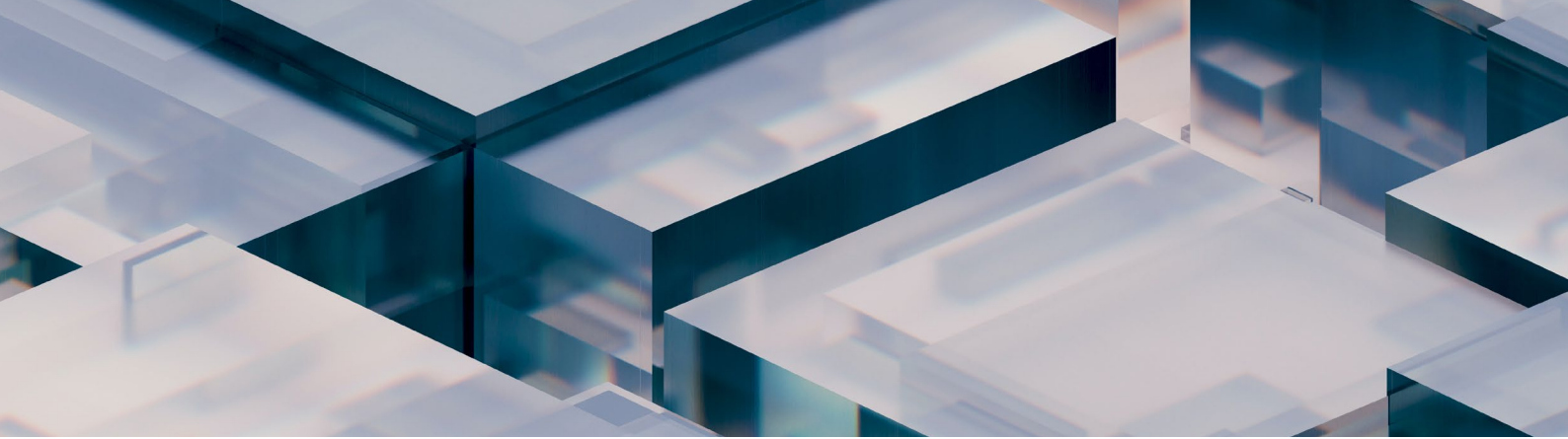
The revised Rules introduce three changes in the way arbitral tribunals handle expedited procedures. First, **Article 42.2(e)** clarifies that the arbitral tribunal can now resolve the dispute based on written submissions, in addition to documentary evidence, if a hearing is not necessary. Second, unlike the previous version of **Article 42.2(f)**, which restricted the arbitral tribunal's power to extend the time limit for rendering an award beyond six months to "exceptional circumstances" only, the revised Rules broaden the arbitral tribunal's power to extend this time limit in "appropriate circumstances". Third, **Article 42.3** extends to the arbitral tribunal the right to request the HKIAC to switch an arbitration administered by expedited procedure to a general arbitral procedure if new circumstances emerge during the arbitration justifying the switch. Under the previous version of the Rules, the right to request such a switch was reserved to the parties.

## **2.3. Restrictions on Replacing a Legal Representative**

**Article 13.9** restricts the parties from changing their legal representative (mid-arbitration) in order to avoid certain deliberately manufactured conflicts of interest with the tribunal that could delay the arbitration. If the arbitral tribunal considers that the change could lead to a conflict of interest, it may exclude the proposed new representative from participating in the arbitral proceeding or take other necessary measures, in consultation with the parties.

## **2.4. Emergency Arbitrator's Power to Issue Interim Orders**

Given the importance of providing parties with timely remedies in emergency situations, the revised Rules in **Schedule 4** clarify the emergency arbitrator's power to issue any necessary preliminary or interim orders even before issuing the Emergency Decision.



## 2.5. Diversity, Information Security, and Environmental Protection

**Article 9A** encourages parties and arbitrators to consider diversity when designating arbitrators. The HKIAC will also consider diversity when appointing arbitrators.

**Article 13.1** requires the arbitral tribunal to consider information security and environmental impact when deciding on the type of arbitration procedure to be adopted, alongside traditional factors such as dispute complexity, dispute amount and effective use of technology.

**Article 45A** empowers the arbitral tribunal to protect information security by requiring parties to comply with its directions.

**Article 34.4(f)** requires the tribunal, when apportioning the costs of the arbitration, to incorporate any adverse environmental impact resulting from the parties' conduct.

## 3. Final Thoughts

By building on the successful 2018 version of the administered arbitration rules, these revised Rules demonstrate HKIAC's strong commitment to reflecting the modern best practice of the industry. These Rules place emphasis on enhancing arbitration efficiency and integrity, which are important feedback from users of arbitration. They also show HKIAC's proactive approach to emerging issues such as diversity, information security, and environmental protection. The updates to the Rules are expected to further improve user experience of arbitrations administered by the HKIAC, which in turn strengthens Hong Kong's standing as an international arbitration hub and provide robust support for resolving international commercial disputes.

If you have any questions about the revised Rules, please feel free to contact the authors of this article, or your usual Fangda contact points.

### Beijing

27/F, North Tower  
Beijing Kerry Centre  
1 Guanghua Road  
Chaoyang District  
Beijing 100020, China

Tel: +86 10 5769 5600  
Fax: +86 10 5769 5788

### Guangzhou

66/F, Guangzhou CTF  
Finance Centre  
6 Zhujiang East Road  
Zhujiang New Town  
Guangzhou 510623, China

Tel: +86 20 3225 3888  
Fax: +86 20 3225 3899

### Hong Kong

26/F, One Exchange Square  
8 Connaught Place, Central  
Hong Kong

Tel: +852 3976 8888  
Fax: +852 2110 4285

### Nanjing

38/F, Asia Pacific Business Building  
2 Hanzhong Road  
Gulou District  
Nanjing 210005, China

Tel: +86 25 8690 9999  
Fax: +86 25 8690 9099

### Shanghai

24/F, HKRI Centre Two,  
HKRI Taikoo Hui  
288 Shi Men Yi Road  
Shanghai 200041, China

Tel: +86 21 2208 1166  
Fax: +86 21 5298 5599

### Shenzhen

9/F, Tower One, Kerry Plaza  
1 Zhong Xin Si Road  
Futian District  
Shenzhen 518048, China

Tel: +86 755 8159 3999  
Fax: +86 755 8159 3900