



## Update China Desk China Law Brief

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English Version

### Hong Kong International Arbitration Centre's New Arbitration Rules (2013 Edition)

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On 1 November 2013 the revised Administered Arbitration Rules (2013 Edition) of the Hong Kong International Arbitration Centre ("HKIAC") will enter into force. This is another significant development in the Hong Kong arbitration environment following the amendment of the Hong Kong Arbitration Ordinance which came into effect on 19 July this year. The 2013 HKIAC Rules try to accommodate the new legal framework and the modern practice in international commercial arbitration, while maintaining its 'light touch' approach with the goal to improve the efficiency of arbitral proceedings.

The major highlights of the 2013 HKIAC Rules include:

#### Emergency Arbitrator

In practice, parties increasingly ask arbitral institutions to be able to effectively and efficiently handle applications for interim measures, such as preserving assets or evidence, prior to the appointment of an arbitral tribunal. To meet such requirement, the 2013 HKIAC Rules allow a party to apply for urgent interim or conservatory relief concurrent to or following its filing of a notice of arbitration. Upon the party's application HKIAC will appoint an emergency arbitrator within two days from receipt of the application and this emergency arbitrator shall make his decision of interim measures within 15 days. In light of the new legal framework of the Hong Kong Arbitration Ordinance amended shortly before, the emergency arbitrator process will be facilitated and the decision of interim measures will be enforceable in Hong Kong.

#### Expedited Procedure

The 2013 HKIAC Rules have modified the rules on expedited procedure of the 2008 HKIAC Rules, e.g. by raising the applicable monetary threshold for the adoption of the expedited procedure from USD 250,000 to HKD 25,000,000. Further-

#### HKIAC New Rules against the Background of the Amendment of Hong Kong Arbitration Law

#### Emergency Arbitrator Interim Measures Efficiency and Enforceability

#### Monetary Threshold

more, in contrast to the current application of expedited procedure primarily based on the amount in dispute, the 2013 HKIAC Rules allow the parties to agree on applying the expedited procedure irrespective of the amount in dispute and/or base their application on exceptional urgency.

### **Multiple Parties and Consolidation of Proceedings**

The multiple-party arbitration proceeding is becoming a modern practice in international commercial arbitration. Under the present 2008 HKIAC Rules, an arbitral tribunal could only join parties with the consent of the existing parties. The 2013 HKIAC Rules expand the tribunal's competence to join parties and allow additional parties to submit requests to join an arbitration proceeding. HKIAC even gains prima facie power to join an additional party if a request for joinder is submitted prior to the tribunal's constitution. As regards consolidating arbitrations on which the 2008 Rules remain silent, the 2013 Rules empower HKIAC to consolidate two or more arbitrations, not only where the parties agree to consolidate, but also where all of the claims in the arbitrations are made under the same arbitration agreement, or where a common question of law or fact arises and the arbitration agreements are found compatible.

### **Fee Schedule and Cap Rate**

In order to facilitate the negotiations on arbitrator appointment, the 2013 HKIAC Rules modify the fee schedule. Under the present 2008 Rules, the parties may choose the calculation of tribunal's fee either on the basis of the amount in dispute, or on the basis of agreed hourly rates. With regard to the hourly rates, the 2013 HKIAC Rules now set a fee cap, i.e. the arbitrator's hourly rate shall not exceed a cap of HKD 6,500 and no contrary agreement is allowed.

Notwithstanding so many innovative changes, the practical effect and functionality need to be valued through the practice. Complex legal questions may also arise, for instance, the enforceability of an interim measure decision of an emergency arbitrator outside Hong Kong is not clear, since such a decision is not equal to an order of the arbitral tribunal and lacks the finality required for the recognition and enforcement under the 1958 New York Convention.

## **Other Application Grounds**

### **Expanded Competence**

### **Consolidating Power**

### **Perspective for Practice**

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