

LEGISLATIVE COUNCIL BRIEF

Arbitration Ordinance (Cap. 609)

Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) (Amendment) Rules 2019

INTRODUCTION

The Hong Kong International Arbitration Centre (“HKIAC”), in exercise of its power under section 13(3) of the Arbitration Ordinance (Cap. 609) (“Ordinance”), with the approval of the Chief Justice of Hong Kong, made the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) (Amendment) Rules 2019, at **Annex**.

JUSTIFICATIONS

Discretion to waive Fees

2. Pursuant to rule 13(1) of the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (Cap. 609, sub. leg. C) (“Rules”), the HKIAC currently charges HK\$8,000 for exercising any of its functions as the default appointing authority under sections 23(3)¹, 24² and 32(1)³ the Ordinance. The Rules do not provide a legal basis for the HKIAC to waive such fees.

3. In order to reduce a party’s costs in seeking an appointment or a decision from the HKIAC under the Rules in low-value arbitrations, the HKIAC wishes to have the discretion to waive its fees for exercising any of its functions under the Ordinance.

¹ the decision by the HKIAC on the number of arbitrators under section 23(3) of the Ordinance

² the default appointment by the HKIAC of an arbitrator under section 24 of the Ordinance

³ the default appointment by the HKIAC of a mediator under section 32(1) of the Ordinance

4. The HKIAC's current intention is to charge a one-off fee of HK\$8,000 for performing all its functions under the Ordinance in an arbitration in which the total amount in dispute is less than HK\$2.5 million.

5. This proposal will provide a stronger incentive for parties to choose Hong Kong as a seat of arbitration and is in line with the Government's policy to promote Hong Kong as an international legal and dispute resolution services centre.

6. The proposed amendments are made in rules 6(2)(b), 8(2)(b), 10(2)(b), 13(1) of, and item 7 of Forms 1, 2 and 3 in the Schedule to, the Rules and a new rule 13(2A) is added.

7. When this proposal is implemented, the HKIAC plans to publicize further details regarding the criteria for determining cases eligible for a one-off fee and the relevant payment procedure.

Delivery of a request

8. Section 10 of the Ordinance deals with the manner of delivery and timing of receipt of written communications in arbitral proceedings. The Rules currently include provisions that are at odds with section 10 of the Ordinance. The HKIAC proposes to amend rules 6(3)(a), 8(3)(a), 10(3)(a) of the Rules so that a party will be required to deliver its request for the HKIAC's appointment or decision to the other party in accordance with section 10 of the Ordinance.

9. The HKIAC also proposes to repeal the existing rules 6(4), 8(4) and 10(4) of the Rules which provide that, for the purposes of the delivery of a request or an application (as the case may be), "double registered post constitutes good service". These provisions have caused confusion as to whether double registered post is the only permitted method of delivering a request or an application under the Rules. As stated above, the amendments already make clear that a request or an application is to be delivered in accordance with the requirements of section 10 of the Ordinance.

Time limits

10. The Rules include several time limits for the parties to provide comments or information before the HKIAC proceeds to appoint or make a decision (see rules 7(4), 9(3), 9(5) and 11(4)). The HKIAC wishes to have the power, by virtue of the proposed new rule 13A, to amend these time limits if the circumstances of any particular case so justify. The HKIAC cannot amend

any time limits agreed by the parties.

HKIAC’s discretion to proceed

11. Some provisions of the Rules require the HKIAC to proceed to appoint or make a decision after a time limit expires (see rules 7(4) and 9(6)) whereas some other provisions give the HKIAC a discretion in similar circumstances (see rules 9(3) and 11(4)). The HKIAC wishes to be given the discretion to decide whether and how to proceed to make an appointment or a decision following the expiration of a time limit. The proposed amendments are made in rules 7(4) and 9(6) of the Rules.

12. Opportunity is also taken to amend a typographical error in item 4 of Form 2 in the Schedule to the Rules by replacing the reference to “THE APPOINTMENT OF ARBITRATORS” with “A DECISION ON THE NUMBER OF ARBITRATORS”.

LEGISLATIVE TIMETABLE

13. The legislative timetable is as follows–

Publication in the Gazette	17 May 2019
Tabling at LegCo	22 May 2019
Commencement	1 August 2019

IMPLICATIONS

14. The proposed amendments are intended to reduce costs of a party to seek an appointment or a decision of HKIAC in low-value arbitrations seated in Hong Kong and to streamline the process for HKIAC to exercise its functions under the Ordinance.

15. The proposed amendments will enhance the attractiveness of Hong Kong as a seat of arbitration and further strengthen Hong Kong’s status as the leading centre for international legal and dispute resolution services.

ENQUIRIES

16. Enquires on the proposed amendments may be directed to Ms. Sarah Grimmer, Secretary-General of the HKIAC, at sgrimmer@hkiac.org.

Hong Kong International Arbitration Centre
15 May 2019

Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) (Amendment) Rules 2019

(Made by the Hong Kong International Arbitration Centre under section 13(3) of the Arbitration Ordinance (Cap. 609) with the approval of the Chief Justice)

1. **Commencement**
These Rules come into operation on 1 August 2019.
2. **Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules amended**
The Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (Cap. 609 sub. leg. C) are amended as set out in rules 3 to 10.
3. **Rule 6 amended (procedure for requesting for appointment of arbitrator)**
 - (1) Rule 6(2)(b), after “13”—
Add
“(if applicable)”.
 - (2) Rule 6(3)(a)—
Repeal
“at the last known address or addresses of that other party or those other parties”
Substitute
“in accordance with section 10 of the Ordinance”.

- (3) Rule 6—
Repeal subrule (4).
4. **Rule 7 amended (appointment of suitable person as arbitrator by HKIAC)**
Rule 7(4)—
Repeal
“must”
Substitute
“may”.
5. **Rule 8 amended (procedure for seeking decision on number of arbitrators)**
 - (1) Rule 8(2)(b), after “13”—
Add
“(if applicable)”.
 - (2) Rule 8(3)(a)—
Repeal
“at the last known address or addresses of that other party or those other parties”
Substitute
“in accordance with section 10 of the Ordinance”.
 - (3) Rule 8—
Repeal subrule (4).
6. **Rule 9 amended (decision by HKIAC on number of arbitrators)**
Rule 9(6)—
Repeal

“must”

Substitute

“may”.

7. Rule 10 amended (procedure for applying for appointment of mediator)

- (1) Rule 10(2)(b), after “13”—

Add

“(if applicable)”.

- (2) Rule 10(3)(a)—

Repeal

“at the last known address or addresses of that other party or those other parties”

Substitute

“in accordance with section 10 of the Ordinance”.

- (3) Rule 10—

Repeal subrule (4).

8. Rule 13 amended (fees)

- (1) Rule 13(1)—

Repeal

“subrule (2)”

Substitute

“subrules (2) and (2A)”.

- (2) After rule 13(2)—

Add

“(2A) The HKIAC may, if it considers reasonable in any particular case, waive any of the fees referred to in subrule (1).”

9. Rule 13A added

After rule 13—

Add

“13A. Time limits

(1) The HKIAC may, if the circumstances of any particular case so justify, amend any of the time limits provided in these Rules, whether the time limit has expired.

(2) However, the HKIAC must not amend any time limits agreed by the parties.”.

10. Schedule amended (forms)

- (1) The Schedule, Form 1, item 7—

Repeal

“FEE: A cheque payable to “Hong Kong International Arbitration Centre” for HK\$ for payment of the HKIAC’s fee is enclosed.

(The HKIAC to set out the fee payable.)”

Substitute

“FEE: *A payment of the HKIAC’s fees in the amount of HK\$ (if applicable) has been made. A copy of the payment receipt is enclosed. / A payment of the HKIAC’s fees in the amount of HK\$ (if applicable) is enclosed.

(The HKIAC to set out the fees payable. The methods of payment are specified at <http://www.hkiac.org>.)

* Delete as appropriate”.

- (2) The Schedule, Form 2, item 4—

Repeal

“THE APPOINTMENT OF ARBITRATORS”

Substitute

“A DECISION ON THE NUMBER OF ARBITRATORS”.

- (3) The Schedule, Form 2, item 7—

Repeal

“FEE: A cheque payable to “Hong Kong International Arbitration Centre” for HK\$ for payment of the HKIAC’s fee is enclosed.

(The HKIAC to set out the fee payable.)”

Substitute

“FEE: *A payment of the HKIAC’s fees in the amount of HK\$ (if applicable) has been made. A copy of the payment receipt is enclosed. / A payment of the HKIAC’s fees in the amount of HK\$ (if applicable) is enclosed.

(The HKIAC to set out the fees payable. The methods of payment are specified at <http://www.hkiac.org>.)

* Delete as appropriate”.

- (4) The Schedule, Form 3, item 7—

Repeal

“FEE: A cheque payable to “Hong Kong International Arbitration Centre” for HK\$ for payment of the HKIAC’s fee is enclosed.

(The HKIAC to set out the fee payable.)”

Substitute

“FEE: *A payment of the HKIAC’s fees in the amount of HK\$ (if applicable) has been made. A copy of the payment receipt is enclosed. / A payment of the HKIAC’s fees in the amount of HK\$ (if applicable) is enclosed.

(The HKIAC to set out the fees payable. The methods of payment are specified at <http://www.hkiac.org>.)

* Delete as appropriate”.

Approved this 9th day of May 2019.



Chief Justice

Made this 9th day of May 2019.



Chairman,
Hong Kong International Arbitration
Centre

Explanatory Note

With the approval of the Chief Justice, the Hong Kong International Arbitration Centre (*HKIAC*) makes the following four amendments to the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (Cap. 609 sub. leg. C) (*Rules*)—

- (a) fees—with a view to reducing a party's costs in seeking an appointment or a decision from the HKIAC under the Rules in low-value arbitrations, the HKIAC may waive its fees for exercising any of its functions as the default appointing authority under the Arbitration Ordinance (Cap. 609) (*Ordinance*) in appropriate cases (see the amendments to rules 6(2)(b), 8(2)(b) and 10(2)(b) of, and item 7 of Forms 1, 2 and 3 in the Schedule to, the Rules and the newly added rule 13(2A));
- (b) delivery of a request or an application—the HKIAC amends the relevant provisions of the Rules to require a party to deliver the following to the other party in accordance with section 10 of the Ordinance: a request for the HKIAC's appointment of an arbitrator, an application for the HKIAC's decision on the number of arbitrators and an application for the HKIAC's appointment of a mediator (see the amendments to rules 6(3)(a), 8(3)(a) and 10(3)(a) of the Rules). The HKIAC also repeals the existing rules 6(4), 8(4) and 10(4) of the Rules to avoid any confusion as to the permitted method of delivering a request or an application under the Rules;
- (c) time limits—the HKIAC has been given the power to amend the time limits provided in the Rules if the circumstances of any particular case so justify. The

HKIAC is not empowered to amend any time limits agreed by the parties (see the newly added rule 13A); and

- (d) the HKIAC's discretion to proceed—the HKIAC has been given the discretion to proceed to make an appointment of an arbitrator or make a decision on the number of arbitrators after the respective time limit under rule 7(4) or 9(6) of the Rules has expired (see the amendments to rules 7(4) and 9(6) of the Rules).