



香港國際仲裁中心  
Hong Kong International  
Arbitration Centre

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Dear Mr Loo

**Arbitration (Appointment of Arbitrators and Mediator and Decision on Number of Arbitrators) Rules**

We refer to your letter dated 28 June 2013 concerning the captioned matter (the Letter).

In response to the queries listed in your Letter, we set out our clarifications as follows:-

Rule 4

- (a) Under rule 4(2) of the new Rules, a former member of the Board who has resigned without serving the full term of his first appointment will become eligible for reappointment after two years after he has ceased to be a member of the board upon his resignation.

Rule 5

- (b) The language "*with whom the HKIAC is able to communicate,*" is used as a result of the Department of Justice's concern that the meaning of "available members" in rule 5 of the Arbitration (Appointment of Arbitrators and Umpires Rules (Cap.609 sub. leg. B)(the "existing Rules") is unclear. While we explained that the words "*available members*" are intended to refer to the fact that some members will inevitably be unavailable either by reason of travel, illness or the like, we nonetheless agreed to emphasize the point that the Hong Kong International Arbitration Centre (HKIAC) should be able to contact the members by including the words "*with whom the HKIAC is able to communicate.*"

Rule 7

- (c) The change in rule 7(1)(b) of the new Rules is intended to be consistent with Art. 11(5) of UNCITRAL Model Law in s.24 of new Arbitration Ordinance (Cap. 609)(the "Ordinance") in which the HKIAC is required to have due regard to the "*qualifications*" of an arbitrator.
- (d) The change in rule 7(1)(c) of the new Rules is intended to be consistent with Art. 11(5) of UNCITRAL Model Law in s.24 of Cap 609 in which the HKIAC is required to have due regard to the "*nationality*" of the parties.



- (e) The Department of Justice brought to the HKIAC's attention that s.24 of the Ordinance does not seem to empower the HKIAC to decline making an appointment of an arbitrator in the cases specified in that section. We, therefore, agreed to change the word "may" in rule 7(2) of the existing Rules to the word "must" in rule 7(4) of the new Rules.
- (f) If no reasons mentioned in rule 9(2) of the new Rules are given to the HKIAC, the HKIAC will have two options to proceed: to make a decision under rule 9(3) or to request further information from the parties under rule 9(4). Therefore, it is appropriate for the rule 9(3) of the new Rules to provide that "HKIAC may proceed with the decision" on the number of arbitrators.

#### Rule 9

- (g) The Department of Justice was of the view that "availability of appropriate arbitrators" can either mean (1) whether there is such a qualified arbitrator; or (2) whether such a qualified arbitrator has time to take up the appointment. To avoid such ambiguity, we agreed to the Department of Justice's suggested language of incorporating the words "whether there are any appropriate arbitrators" in rule 9(e). "Appropriate arbitrators" means arbitrators with suitable qualifications.
- (h) Similar to s.24 of the Ordinance, s.23 of the Ordinance is a mandatory provision for the HKIAC to decide the number of arbitrators, if the parties fail to agree on the matter. Therefore, as suggested by the Department of Justice, we agreed that it is appropriate to use the word "must" in rule 9(6) of the new Rules in lieu of the word "may" in rule 10 (2) of the existing Rules.

#### Rule 11

- (i) As mediation is less formal than arbitration, in practice, it is not uncommon that parties applying to the HKIAC for appointment of mediator communicate with the HKIAC via telephone as to their preference on the choice of mediator.

#### Rule 13

- (j) Our responses to the two questions on rule 13 of the new Rules are as follows:-

(i) The maximum amount of fee payable for a request or application under the new Rules is \$15,000

(ii) In the event that a request or application under the new Rules requires extra manpower and resources from the HKIAC than those in normal cases, the fee payable to the HKIAC will exceed \$8,000. As the fee payable to the HKIAC under rule 13 of the new Rules must be a reasonable fee judged by the level of expenditure incurred by the HKIAC and in no circumstances it would exceed \$15,000, we believe that the variation of the fees would not undermine the object mentioned in section 3(1) of the Ordinance. The fee would be fair and necessary in the circumstances.



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Rule 15

- (k) Upon review of the rule 15 of the new Rules, we agree that the phrase *"has continued to have effect by virtue of section 4 of Schedule 3 to the Ordinance"* is inappropriate and needs to be revised. We have consulted the Department of Justice which has proposed the language *"was in force immediately before the repeal"* in lieu of *"has continued to have effect by virtue of section 4 of Schedule 3 to the Ordinance."*

Chinese text

- (l) We consider that both “核証” and “證明” can be Chinese renditions for “certify”, “certifying” and “certification”. In the Bilingual Laws Information System, we found that “certify” is commonly rendered as “核証” or “證明” in different legislations. As to paragraph 8 of Forms 1,2 and 3, we consider that “核証” is an appropriate term, as “核” may refer to “仔細地對照、考察” (to check/compare carefully) which suits the intent of paragraph 8 of the forms to ask the applicant to check the details before signing the Forms to certify the details are true and accurate. On the other hand, rule 6(2)(c), 8(2) (c) and 10(2) (c) are intended to emphasize the purpose and effect of signing the Forms. Hence, we used “證明” in these rules.
- (m) As per our understanding, "contention" refers to a point asserted as part of an argument, while “論據” means grounds of argument. Hence, we consider that “主張” which means "opinion" and "assertion" is a more appropriate rendition of "contention" in rule 9(2) of the new Rules.

Public consultation

- (n) The HKIAC has not conducted public consultation on the new Rules.

Yours sincerely

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Secretary-General

cc Department of Justice  
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