



20 June 2019

Ms. Emily Liu
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
By email esnliu@legco.gov.hk only

Dear Ms. Liu,

Re: HKIAC's Response to the Submissions from the Hong Kong Institute of Architects on the Proposed Amendments to Arbitration (Appointment of Arbitrators and Mediators and Decision on the Number of Arbitrators) Rules (Cap 609C)

1. We refer to Mr. Lemuel Woo's letter dated 18 June 2019 inviting HKIAC to respond to the submissions from the Hong Kong Institute of Architects ("HKIA") on the proposed amendments to the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (Cap 609C) ("Rules").
2. HKIAC thanks HKIA for its submissions and notes that HKIA has no objections to the proposed amendments in principle. In respect of HKIA's specific comments on certain proposed amendments set out in the Legislative Council Brief (File Ref.: LP 19/00/4C) ("LegCo Brief"), our responses are as follows:

Waiver of Fees

3. We note HKIA's agreement to the proposed amendments set out in paragraph 3 of the LegCo Brief.
4. HKIA invites HKIAC to consider permitting the use of hearing venues outside of HKIAC with lower costs. We wish to clarify that parties to arbitrations seated in Hong Kong are free to select any hearing venue. HKIAC imposes no restrictions in that regard.
5. With respect to HKIAC's current proposal to charge a one-off fee of HK\$8,000 for performing all its functions under the Hong Kong Arbitration Ordinance (Cap 609) ("Ordinance") in an arbitration in which the total amount in dispute is less than HK\$2.5 million, HKIA invites HKIAC to clarify what constitutes the total amount in dispute being less than HK\$2.5 million.
6. The general practice under the 2018 HKIAC Administered Arbitration Rules ("2018 Rules") is that claims and any counterclaims, cross claims or set-off defences are added for the determination of the total amount in dispute.¹ HKIAC does not normally include any claim for interest² or costs in the calculation of the amount in dispute. Where there are alternative claims, HKIAC normally takes into account the principal claim for the calculation of the amount in dispute, except where HKIAC considers it appropriate to take into account the amount of any alternative claim.³ If the amount in dispute is not quantified by any party, HKIAC will make a reasonable estimate taking into account the circumstances of the case.⁴

¹ Paragraph 2.2 of Schedule 1 of the 2018 Rules.

² Paragraph 2.3 of Schedule 1 of the 2018 Rules.

³ Paragraph 2.4 Schedule 1 of the 2018 Rules.

⁴ Paragraph 2.6 Schedule 1 of the 2018 Rules.



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HKIAC intends to apply the same practice to determine whether the total amount in dispute in an arbitration commenced under the Ordinance is less than 2.5 million. As mentioned in paragraph 7 of the LegCo Brief, HKIAC plans to publicize further details regarding the criteria for determining cases eligible for a one-off fee after the proposed amendments come into force.

7. HKIA suggests that HKIAC may consider in future whether other initiatives can be used or implemented for disputes in Belt and Road projects or in the Greater Bay Area. HKIAC is currently pursuing initiatives relevant to dispute resolution in Belt and Road projects and in the Greater Bay Area. Information is available at www.hkiac.org.

Delivery of a Request

8. We note HKIA's agreement to the proposed amendments set out in paragraphs 8 and 9 of the LegCo Brief.

Time Limits

9. We note HKIA's agreement to the proposed amendments set out in paragraph 10 of the LegCo Brief.

HKIAC's Discretion to Proceed

10. We note that HKIAC has no objections to the proposed amendments set out in paragraphs 11 and 12 of the LegCo Brief in principle.
11. HKIA advises HKIAC to consider inviting the parties' written consent to extend a time limit before exercising its discretion to decide whether to extend the time limit. As a matter of general practice, HKIAC always seeks the parties' comments before deciding whether to amend a time limit. If the parties agree to amend, HKIAC will give effect to the amended time limit.

Legislative Timetable

12. The legislative timetable at paragraph 13 of the LegCo Brief provides the dates of the key steps that were taken and will be taken in the process of enacting the Rules. Those dates remain correct.

Implications

13. We note HKIA's agreement to the implications stated in paragraphs 14 and 15 of the LegCo Brief in principle.

Yours sincerely,

Sarah Grimmer
Secretary-General
Hong Kong International Arbitration Centre