

## Hong Kong Arbitration Update: New Rules, New Regime April 2013

On 28 March, the Arbitration (Amendment) Bill ("**Bill**") was gazetted. The Bill proposes to amend the Arbitration Ordinance ("**Ordinance**") to support incoming revisions to the Hong Kong International Arbitration Centre Administered Arbitration Rules ("**HKIAC Rules**"), as well as provide for other developments.

The Bill is tabled for introduction to the Legislative Council in late April. The revised HKIAC Rules are scheduled to come into effect on 1 May 2013.

### The Bill

The Bill:

- implements the *Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region* (the "**Macao Arrangement**"), as concluded in January 2013. The Macao Arrangement is in line with the principles of the New York Convention, and similar to the arrangement made between Hong Kong and Mainland China in 1999. The Ordinance is amended to enable the Hong Kong courts to enforce Macao awards;
- makes it clear that any emergency relief granted by an "emergency arbitrator" is enforceable in accordance with the Ordinance. This amendment supports a development in the HKIAC Rules introducing an emergency arbitrator procedure (see below for more details) and also facilitates the enforcement of emergency relief granted under the rules of other arbitral institutions;
- clarifies that, if parties have agreed that costs of the arbitral proceedings are to be taxed by the court, they are to be taxed on a "party and party" basis. Currently, the Ordinance does not specify the basis on which the court can award costs;
- amends the Schedule to the Arbitration (Parties to New York Convention) Order, to include new state parties to the New York Convention: Fiji, Liechtenstein, Sao Tome and Principe and Tajikistan.

### The Revised HKIAC Rules

The revised version of the HKIAC Rules ("**Revised Rules**") is expected to come into force on 1 May 2013 and, unless the parties agree otherwise, will apply to arbitrations commenced on or after the date that the Revised Rules become effective, except for certain provisions that will only apply where the arbitration agreement was concluded after the effective date of the Revised Rules.

A brief summary of the key changes:

- In line with international trends, a new emergency arbitrator procedure has been introduced, enabling parties to seek interim or conservatory relief prior to the constitution of the arbitral tribunal. Any emergency relief granted by an emergency arbitrator will have the same effect as an interim measure and be binding on the parties\*.
- The arbitral tribunal has been given the power to join additional parties to an existing arbitration, so long as the additional party is bound by a valid arbitration agreement giving rise to the arbitration. The HKIAC also has *prima facie* power to join an additional party if a request for joinder is submitted before the tribunal is constituted.
- At the request of a party, the HKIAC may consolidate two or more HKIAC arbitrations into the arbitration that commenced first. Where the HKIAC has decided to consolidate arbitrations, all parties will be deemed to have waived their right to designate an arbitrator and the HKIAC may revoke any existing appointment and appoint a new tribunal\*.
- New provisions for arbitral tribunal fees to be calculated, at the option of the parties, as a percentage of the disputed sum or based on an hourly rate, capped at HK\$6,500. The Rules also provide detailed terms of appointment, aimed at reducing the need for parties to engage in discussion over such issues.

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\* These provisions will only apply where the arbitration agreement was concluded after the effective date of the Revised Rules.

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- The arbitral tribunal has been given an express power to exclude the participation of a party's counsel or other representatives if the conduct or appointment of the representative would disrupt the fair and expeditious conduct of the arbitration\*.
  - Where there is a question regarding the existence, validity or scope of an arbitration agreement or jurisdiction of the HKIAC over any arbitration prior to the constitution of the arbitral tribunal, the HKIAC may proceed with the arbitration if it is *prima facie* satisfied that an arbitration agreement may exist.

#### Comment

The Revised Rules reflect the latest best practice in international arbitration and address a number of well recognised practical difficulties in arbitration. They are therefore a welcome development, providing greater flexibility and efficiency for users. The quick response from the government to amend the Ordinance to support the changes to the HKIAC rules is also a positive signal of Hong Kong's arbitration-friendly status.

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