

(other than the fees and expenses of the Arbitrator); and

(b) award or order those costs (including the fees and expenses of the Arbitrator).

21.7 The legal or other costs of the parties may be taxed by the Arbitrator or the court in accordance with the provisions of Sections 74(6), 74(7) and 75 of the Ordinance if requested by the parties.

21.8 If the Arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final award is made, the parties shall be jointly and severally liable to pay to the Arbitrator his fees and expenses including the charges of any arbitration administrator, assessor, transcriber or translator as determined by him.

Article 22 Exclusion of Liability

22.1³⁹ Without prejudice to any existing rule of law, the Arbitrator, the Arbitrator appointed experts or assessors shall be liable in law to any party for any act done or omitted to be done in relation to the exercise or performance, or the purported exercise or performance, of the Arbitrator's, the Arbitrator appointed experts' or assessors' functions only if it is proved that the act was done or omitted to be done dishonestly.

22.2⁴⁰ None of the HKIAC, the HKIAC Council, the HKIAC Secretariat or their staff shall be liable in law for the consequences of doing or omitting to do an act in the exercise, or performance or the purported exercise or performance, of their functions in an arbitration conducted under these Rules, save only if it is proved that the act was done or omitted to be done dishonestly.

22.3 Subject to the provisions of Section 18 of the Ordinance, neither the Arbitrator nor HKIAC shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make the Arbitrator or HKIAC a witness in any legal proceedings arising out of the arbitration.

Article 23⁴¹ Waiver of Right to Object

A party who knows that any provision of the Ordinance or these Rules from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

Article 24 Destruction of Documents

HKIAC may destroy all documents served on it pursuant to the Rules after the expiry of a period of two years after the date of the last correspondence received by HKIAC relating to the arbitration.

³⁹ Based on S104(1) of the Ordinance (in part).

⁴⁰ Based on S105(1) of the Ordinance (in part)

⁴¹ Based on S11 of the Ordinance (in part).

Article 25 Interpretation and General Clauses Ordinance

The Interpretation and General Clauses Ordinance (or any statutory modification or re-enactment thereof for the time being in force) shall apply to these Rules.

Article 26 Confidentiality

Subject to the provisions of Section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration.

APPENDIX 1 – HKIAC List System for the Appointment of Arbitrators

Where a party proposes to the other party under Article 1.1(e) of the HKIAC Domestic Arbitration Rules (2012) that the list system of appointment of arbitrators be used and the other party concurs the following procedure will apply:

1. Particulars of any method or criteria for selection of the Arbitrator agreed by the parties shall forthwith be sent to HKIAC by the Claimant together with written confirmation that both parties have agreed to adopt the HKIAC list system for the appointment of arbitrators.
2. Each party shall, within 14 days of agreeing to adopt the HKIAC list system, send to HKIAC:
 - (a) the names and curriculum vitae of two persons;
 - (b) either of whom they would be prepared to accept as Arbitrator;
 - (c) who comply with any agreed criteria for selection; and
 - (d) who have indicated that they are prepared to accept appointment.

The names so submitted are not to be disclosed by the party sending them to the other party. Each party shall notify the other that they have complied with this procedure.

3. The HKIAC will vet the persons proposed by the parties to confirm that they comply with the agreed criteria for selection and may request any further information required for this purpose from the parties and the persons proposed.
4. If the 2 lists of persons proposed by the parties contain one or more common names HKIAC shall in their absolute discretion appoint as Arbitrator one of the persons whose name appears on both lists.
5. In the event that there are no common names HKIAC shall, within 7 days of receipt of the last list of names, prepare a list of 6 names including any names provided by the parties. The persons whose names are added by HKIAC will comply with any agreed criteria for selection and will have indicated that they are prepared to accept appointment.
6. HKIAC shall then send the list of 6 names to the parties without reference to the source of such names.
7. The parties shall within 7 days of receipt of the list of 6 names return the same to HKIAC in order of preference.
8. On receipt of the parties' list of 6 names HKIAC shall allot 6 points to any name which appears at the top of any list and one less point for each succeeding position. HKIAC shall appoint as Arbitrator the person who receives the most points. In the event of a tie in the number of points HKIAC shall, in their absolute discretion, appoint as Arbitrator any one of the persons who has tied with the highest number of points.

9. If a party shall fail to submit 2 names or to place them in order of preference HKIAC shall in their absolute discretion appoint the Arbitrator and shall not be precluded from appointing as Arbitrator one of the persons named by a party.
10. In the event that there are more than 2 parties to an arbitration the above procedures shall be adapted accordingly.
11. For the avoidance of doubt nothing contained in this procedure shall prevent the parties from making an appointment by consent in which case they shall immediately inform HKIAC.