

**THE ANNOTATED
HKIAC RULES
2024**



Des Voeux Chambers

Frances Lok SC

Connie Lee

Yu Hin Jonathan Chan

Cherry Xu

Howard Wong

Kwan Ping Kan

 **LexisNexis®**

Arbitration is, at its core, a process built on party autonomy and procedural fairness, but it is also a process that depends on clarity: clarity of rules, clarity of expectations, and clarity of reference points when procedural disputes arise. Our hope is that this volume assists counsel, arbitrators, in-house teams, and tribunal secretaries by reducing friction in that process—so that attention can remain focused on the proper resolution of the dispute.

We are grateful to all those who supported the preparation of this work, and to the users whose practice needs continue to shape what a modern set of arbitration annotations should look like.

The law and materials are stated as at 26 January 2026.

TABLE OF CONTENTS

<i>Preface</i>	v
<i>Table of Cases</i>	xiii
<i>Table of Legislation</i>	xvii
<i>Table of Arbitration Rules</i>	xix

SECTION I GENERAL RULES

Article 1 – Scope of Application	3
[1.1] Scope of Application: Article 1	3
[1.2] Practice Notes	4
Article 2 – Interpretation of Rules	6
[2.1] Interpretation of Rules: Article 2	7
[2.2] Practice Notes	8
Article 3 – Written Communications and Calculation of Time Limits	9
[3.1] Written Communications and Calculation of Time Limits: Article 3	10
[3.2] Practice Notes	11

SECTION II COMMENCEMENT OF THE ARBITRATION

Article 4 – Notice of Arbitration	17
[4.1] Notice of Arbitration: Article 4	18
[4.2] Practice Notes	19
Article 5 – Answer to the Notice of Arbitration	21
[5.1] Answer to the Notice of Arbitration: Article 5	22
[5.2] Practice Notes	23

SECTION III THE ARBITRAL TRIBUNAL

Article 6 – Number of Arbitrators	27
[6.1] Number of Arbitrators: Article 6	27
[6.2] Practice Notes	27
Article 7 – Appointment of a Sole Arbitrator	29
[7.1] Appointment of a Sole Arbitrator: Article 7	29
Article 8 – Appointment of Three Arbitrators	31
[8.1] Appointment of Three Arbitrators: Article 8	32
[8.2] Practice Notes	33

Article 9 – Confirmation of the Arbitral Tribunal	36
[9.1] Confirmation of the Arbitral Tribunal: Article 9	36
[9.2] Practice Notes	36
Article 9A – Diversity	38
[9A.1] Diversity: Article 9A	38
[9A.2] Practice Notes	38
Article 10 – Fees and Expenses of the Arbitral Tribunal	40
[10.1] Changes from the 2018 Rules	41
[10.2] Cross References	41
[10.3] Practice Notes.....	42
Article 11 – Qualifications and Challenge of the Arbitral Tribunal	47
[11.1] Changes from the 2018 Rules	48
[11.2] Cross References	48
[11.3] Practice Notes.....	49
[11.3.1] Articles 11.1 and 11.4: Duty of Impartiality and Independence and Duty of Disclosure.....	49
[11.3.2] Articles 11.2 and 11.3: Nationality of Arbitrators	55
[11.3.3] Article 11.5: Prohibition of ex parte Communication	56
[11.3.4] Articles 11.6–11.10: Procedure for Challenging an Arbitrator.....	58
Article 12 – Replacement of an Arbitrator	64
[12.1] Changes from the 2018 Rules	64
[12.2] Cross References	64
[12.3] Practice Notes.....	64

SECTION IV CONDUCT OF ARBITRATION

Article 13 – General Provisions	69
[13.1] Changes from the 2018 Rules	70
[13.2] Cross References	71
[13.3] Practice Notes.....	71
[13.3.1] Article 13.1: Tribunal as Master of the Procedure.....	71
[13.3.2] Article 13.2: Provisional Timetable.....	74
[13.3.3] Article 13.3: Communication with Tribunal.....	74
[13.3.4] Article 13.4: Tribunal Secretary	74
[13.3.5] Article 13.5: Fair and Efficient Conduct of Arbitration.....	75
[13.3.6] Article 13.6: Tribunal’s Procedural Powers.....	76
[13.3.7] Articles 13.7 to 13.9: Legal Representation	76
[13.3.8] Article 13.10: HKIAC’s Measures to Preserve Efficiency and Integrity	77
[13.3.9] Article 13.11: Alternative Dispute Resolution.....	77
[13.3.10] Article 13.12: Acting in the Spirit of the Rules	78
[13.3.11] Article 13.13: Ensuring the Validity of the Award.....	78

Article 14 – Seat and Venue of the Arbitration	79
[14.1] Changes from the 2018 Rules	79
[14.2] Practice Notes.....	79
[14.2.1] Article 14.1: Seat of Arbitration	79
[14.2.2] Article 14.2: Venue of Hearings and Meetings.....	79
Article 15 – Language	81
[15.1] Changes from the 2018 Rules	81
[15.2] Practice Notes.....	81
Article 16 – Statement of Claim	83
Article 17 – Statement of Defence	84
Article 18 – Amendments to the Claim or Defence	85
[18.1] Changes from the 2018 Rules	85
[18.2] Practice Notes.....	85
[18.2.1] Article 16: Statement of Claim	85
[18.2.2] Article 17: Statement of Defence	86
[18.2.3] Article 18: Amendments to the Claim or Defence	86
Article 19 – Jurisdiction of the Arbitral Tribunal	88
[19.1] Changes from the 2018 Rules	89
[19.2] Practice Notes.....	89
[19.2.1] Articles 19.1 and 19.2: Competence-Competence	89
[19.2.2] Article 19.3: Timing and Procedure for Jurisdictional Challenge	89
[19.2.3] Articles 19.4 to 19.6: HKIAC’s Prima Facie Determination	90
Article 20 – Further Written Statements	91
[20.1] Further Written Statements.....	91
Article 21 – Time Limits	92
[21.1] Time Limits	92
Article 22 – Evidence and Hearings	93
[22.1] Burden of Proof.....	93
[22.2] Evidence.....	95
[22.3] Production of Documents.....	97
[22.3.1] Procedure for Document Production	97
[22.3.2] Obtaining Evidence from a Non-Party	99
[22.3.3] Comparison with Other Institutions	99
[22.4] Hearings.....	100
[22.4.1] The Importance of Hearings	100
[22.4.2] Notice of Hearing and Forms of Hearing	101
[22.5] Expert	102
[22.5.1] Cross-Examination	102
[22.5.2] Contents of Expert Reports.....	103
[22.5.3] Comparison with Other Institutions	104

[22.6] Translation and Recording	104
[22.7] Private Hearings	105
Article 23 – Interim Measures of Protection and Emergency Relief.....	106
[23.1] Emergency Relief	107
[23.1.1] The Foundation of Emergency Arbitration	107
[23.1.2] Key Changes in the 2024 Rules	108
[23.1.3] Comparisons with Other Regimes	109
[23.1.4] The Urgency Standard	111
[23.1.5] The Risk of Irreparable Harm	113
[23.1.6] The Forms of Relief in Emergency Arbitration	114
[23.2] Interim Measures	115
[23.2.1] Types and Forms of Interim Measures	116
[23.2.2] Other Provisional Measures Available from Arbitral Tribunals under Hong Kong Law	119
[23.3] Enforceability and Limitations	120
[23.4] Factors to Consider Before Ordering Interim Measures	121
[23.5] Modification, Suspension or Termination	124
[23.6] Safeguards for Granting Interim Measures	124
[23.7] Request for Interim Measures Addressed to a Competent Authority	124
Article 24 – Security for Costs	126
[24.1] Security for Costs	126
Article 25 – Tribunal-Appointed Experts	128
[25.1] Experts Appointed by the Tribunal	128
[25.2] Parties' Provision of Information to the Expert	130
[25.3] Provision of Information to the Expert	130
Article 26 – Default	133
[26.1] The Claimant's Responsibility when the Respondent Fails to Respond	133
Article 27 – Joinder of Additional Parties	136
[27.1] Power of the Arbitral Tribunal and HKIAC to Order Joinder	139
[27.2] Effect of Joinder on Jurisdiction	140
[27.3] Time Limit	141
[27.4] Notice Requirements	141
[27.5] Content of the Request for Joinder	141
[27.6] Content of an Answer to the Request for Joinder	142
[27.7] Tribunal's Power to Vary Content Requirements	143
[27.8] Additional Party Applying to be Joined	144
[27.9] Comments on the Request for Joinder	144
[27.10] Procedural Matters	144
Article 28 – Consolidation of Arbitrations.....	146
[28.1] Consolidation of Arbitrations	148
[28.1.1] Power to Consolidate	148

[28.1.2] Consolidation with Parties' Agreement	149
[28.1.3] All Claims under the Same Arbitration Agreement	149
[28.1.4] Claims Made under More Than One Arbitration Agreement	150
[28.1.5] Compatible Arbitration Agreements	152
[28.2] Notice Requirement	154
[28.3] Content of the Request for Consolidation	154
[28.4] HKIAC's Power to Vary Content Requirements	154
[28.5] Content of Comments to a Request for Consolidation	154
[28.6] Which Arbitration to Consolidate into	155
[28.7] Consolidation Has No Effect on Valid Acts Done	155
[28.8] Appointment of Arbitrators After Consolidation	155
[28.9] Effect of Revocation	156
[28.10] Adjustment of Fees	156
Article 29 – Single Arbitration under Multiple Contracts	157
[29.1] Single Arbitration under Multiple Contracts	157
Article 30 – Concurrent Proceedings	159
[30.1] Practice Notes	159
Article 31 – Closure of Proceedings.....	161
[31.1] Practice Notes	161
Article 32 – Waiver.....	163
[32.1] Practice Notes	163
SECTION V AWARDS, DECISIONS AND ORDERS OF THE ARBITRAL TRIBUNAL	
Article 33 – Decisions	167
[33.1] Practice Notes	167
Article 34 – Costs of the Arbitration	168
[34.1] Practice Notes	169
Article 35 – Form and Effect of the Award.....	172
[35.1] Practice Notes	172
Article 36 – Applicable Law, Amiable Compositeur.....	177
[36.1] Practice Notes	177
Article 37 – Settlement or Other Grounds for Termination	179
[37.1] Practice Notes	179
Article 38 – Correction of the Award	183
[38.1] Correction of the Award: Article 38	183
Article 39 – Interpretation of the Award	184
[39.1] Interpretation of the Award: Article 39	184

Article 40 – Additional Award	185
[40.1] Additional Award: Article 40.....	185
[40.2] Practice Notes	185
Article 41 – Deposits for Costs	189
[41.1] Request for Deposits	190
[41.2] Failure to Pay Deposits.....	190
[41.3] Accounting and Deposit Holding Accounts	190
[41.4] Practice Notes	191

SECTION VI OTHER PROVISIONS

Article 42 – Expedited Procedure	197
[42.1] Expedited Procedure: Article 42.....	198
Article 43 – Early Determination Procedure	200
[43.1] Early Determination Procedure: Article 43.....	201
[43.2] Practice Notes.....	202
[43.2.1] Expedited Procedure under Article 42.....	202
[43.2.2] Early Determination Procedure under Article 43	208
Article 44 – Disclosure of Third Party Funding of Arbitration	212
[44.1] Disclosure of Funding Agreement.....	212
[44.2] Time of Disclosure	212
[44.3] Disclosure of Changes	213
[44.4] Practice Notes.....	213
Article 45 – Confidentiality	215
[45.1] Confidentiality: Article 45	216
Article 45A – Information Security	217
[45A.1] Information Security: Article 45A.....	217
[45A.2] Practice Notes.....	217
Article 46 – Exclusion of Liability	220
[46.1] Exclusion of Liability: Article 46.....	220
[46.2] Practice Notes.....	221

ANNEX

Schedule 1	225
Schedule 2.....	227
Schedule 3.....	231
Schedule 4.....	234
<i>Index</i>	239

TABLE OF CASES

References are to paragraph numbers

宮本海 v 香港國際仲裁中心 [2015] 2 HKLRD 537, [2014] HKCU 1038 (CFI)	[46.2]
樓外樓房地產諮詢有限公司 對 何志蘭 [2015] HKCU 914 (unreported, HCMP 3202, 3203/2013, 24 April 2015) (CFI)	[3.2]

A

ADG v ADI [2014] 3 SLR 481 (HC, Singapore).....	[22.4.1]
Arctic Sunrise Arbitration (Netherlands v Russia), The ITLOS Case No 22, PCA Case No 2014-02, Award on the Merits 14 August 2015.....	[26.1]
Arjowiggins HKK2 Ltd v X Co [2016] HKCU 2736 (unreported, HCCT 53/2015, 12 October 2016) (CFI)	[32.1], [35.1]

B

Brunswick Bowling & Billiards Corp v Shanghai Zhonglu Industrial Co Ltd & Anor [2009] 5 HKC 1, [2011] 1 HKLRD 707 (CFI)	[13.3.1]
--	----------

C

CBS v CBP [2021] 1 SLR 935 (CA, Singapore).....	[22.4.1]
CC v AC [2025] HKCU 960, [2025] HKCFI 855	[3.2]
COG v ES [2023] HKCU 516, [2023] HKCFI 294.....	[22.4.1]
Company A and Anor v Company C [2025] 2 HKC 619, [2025] 1 HKLRD 469, [2024] HKCFI 3505.....	[23.2.1]

D

Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan [2010] UKSC 46, [2011] 1 AC 763, [2011] 1 All ER 485	[26.1], [27.2]
Davidson v Scottish Ministers (No 2) 2005 1 SC (HL) 7.....	[11.3.1]

E

Emmott v Michael Wilson & Partners Ltd [2008] EWCA Civ 184, [2008] Bus LR 1361	[45A.2]
---	---------

F

Fenn Kar Bak Lily v So Shiu Tsung Thomas [2021] HKCU 2835, [2021] HKDC 719	[46.2]
---	--------

[3.1]

- 3.4 Where a written communication is being communicated to more than one party, or more than one arbitrator, such written communication shall be deemed received when it is communicated pursuant to Article 3.1(a) to (d) or (f), or attempted to be communicated pursuant to Article 3.2, to the last intended recipient, or when a notice that such written communication has been uploaded pursuant to Article 3.1(e) is communicated to the last intended recipient.
- 3.5 Time limits under these Rules shall begin to run on the day following the day when any written communication is received or deemed received. If the last day of the time limit is an official holiday or a non-business day at the place of receipt, the time limit shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the time limit shall be included in calculating the time limit.
- 3.6 If the circumstances of the case so justify, HKIAC may amend the time limits provided for in these Rules, as well as any time limits that it has set, whether any such time limits have expired. HKIAC shall not amend any time limits agreed by the parties or set by the arbitral tribunal or emergency arbitrator unless the parties agree or the arbitral tribunal or emergency arbitrator directs otherwise.

[3.1] Written Communications and Calculation of Time Limits: Article 3

Written communications are considered received if sent to the address, fax number, or email address provided by the parties or their representatives in the arbitration (see article 3.1(a)), specified in the parties' agreement (see article 3.1(b)), otherwise made publicly available (see article 3.1(c)), or last known (see article 3.1(d)). Communications may also be deemed received if: uploaded to an agreed secured online platform (see article 3.1(e)); or sent through any other agreed electronic means subject to approval by HKIAC and the tribunal (see article 3.1(f)).

If reasonable efforts to communicate fail, communications sent to the last-known address or fax number with proof of attempted communication are deemed received: see article 3.2.

Communications are deemed received on the earliest day they are delivered or uploaded, or attempted to be communicated, based on the recipient's local time: see article 3.3.

[3.2]

If sent to multiple parties or arbitrators, communication is deemed received when it is communicated or attempted to be communicated to the last intended recipient, or when written communication uploaded is communicated to the last intended recipient: see article 3.4.

Time limits begin to run on the day after receipt. If the last day falls on a holiday or non-business day at the place of receipt, the deadline extends to the next business day. Official holidays or non-business days during the period are included in calculating the time limit: see article 3.5.

HKIAC can adjust its own deadlines or those in the 2024 Rules if justified, but it cannot change deadlines set by the parties or tribunal unless they agree or the tribunal directs otherwise: see article 3.6.

[3.2] Practice Notes

'Written communications' is defined as including 'all notifications, proposals, pleadings, submissions, statements, documents, orders and awards that are produced, submitted or exchanged in the arbitration' (article 2.15).

'Communication' is defined as 'delivery, transmission or notification of a written communication by hand, registered post, courier service, facsimile, email or other means of telecommunication that provides a record of transmission' (article 2.16).

A significant update in the 2024 Rules is the express allowance for communications to be sent through any other agreed electronic means, subject to approval by HKIAC and the tribunal (see article 3.1(f)). This is a new provision, reflecting greater flexibility and responsiveness to modern communication technologies. This may also enhance the efficiency of arbitration and cater for parties' operational needs.

When sending written communications in an HKIAC arbitration, parties should ensure that written communications are sent to the addresses, fax numbers, or email addresses provided by the parties or their representatives in the arbitration. If such details are not available, parties should check the parties' agreement, their publicly available contact information, or use the last known contact details. Written communications may also be delivered by uploading to a secured online platform agreed by the parties, or by other electronic means agreed and approved by HKIAC and the tribunal.

If reasonable efforts to communicate fail, article 3.2 allows sending the document to the last known address or fax number with proof of attempted communication. Reasonable efforts may be demonstrated by attempting delivery to all addresses and through all methods specified in

[3.2] article 3.1.⁴ If any of the specified addresses is unavailable, the sender must show that a reasonable attempt has been made to locate such an address.⁵

Communications are considered received on the earliest date they are delivered, uploaded, or attempted, using the recipient's local time. For communications sent to multiple recipients, receipt is deemed when they are communicated to the last intended recipient.

It is important to note that failure of service may be relied upon to set aside an award or resist enforcement.⁶ See, for example:

- (1) 樓外樓房地產諮詢有限公司 v 何志蘭,⁷ where the court refused to enforce the awards on the ground that the respondent was not given proper notice of the arbitral proceedings;
- (2) *Sun Tian Gang* (孫天罡) v *Hong Kong & China Gas (Jilin) Ltd* (香港中華煤氣(吉林)有限公司),⁸ where the relevant award was set aside on the basis of the absence of effective service and the respondent's inability to present his case;
- (3) *CC v AC*,⁹ where failure to receive notice was relied upon by the defendant to set aside an enforcement order, but the court was not satisfied that there was improper service or inability to present its case.

Section 10(1) of the Arbitration Ordinance (Cap 609) is compatible with article 3.1.¹⁰ However, the notice requirements set out in arbitral rules may not always align with those under the relevant national laws.¹¹ Thus, it is good practice to ensure that the chosen method of communication not only complies with the 2024 Rules but also meets the law of the place of communication.¹² This can help safeguard the enforceability of the award and minimise the risk of challenges.

4 Michael J Moser and Chiann Bao, *A Guide to the HKIAC Arbitration Rules* (2nd edn, Oxford University Press 2022) para 5.65 at 89.

5 Michael J Moser and Chiann Bao, *A Guide to the HKIAC Arbitration Rules* (2nd edn, Oxford University Press 2022) para 5.65 at 89.

6 'LexisNexis' Practice Note: HKIAC (2018) – starting arbitration'.

7 樓外樓房地產諮詢有限公司 v 何志蘭 [2015] HKCU 914 (unreported, HCMP 3202, 3203/2013, 24 April 2015).

8 *Sun Tian Gang* (孫天罡) v *Hong Kong & China Gas (Jilin) Ltd* (香港中華煤氣(吉林)有限公司) [2017] 1 HKC 69, [2016] 5 HKLRD 221 (CFI).

9 *CC v AC* [2025] HKCU 960, [2025] HKCFI 855.

10 Michael J Moser and Chiann Bao, *A Guide to the HKIAC Arbitration Rules* (2nd edn, Oxford University Press 2022) para 5.59 at 87.

11 'LexisNexis' Practice Note: HKIAC (2018) – starting an arbitration'.

12 'LexisNexis' Practice Note: HKIAC (2018) – starting an arbitration'.

When calculating time limits, the first day is the day after receipt. If a deadline falls on a holiday or non-business day where the communication is received, it moves to the next business day. However, official holidays or non-business days during the period are included in calculating the time limit.

HKIAC may adjust its own or the 2024 Rules' deadlines if justified by the circumstances, but it cannot alter deadlines set by the parties or the tribunal unless they agree or the tribunal directs otherwise.

- 4.6 If the Notice of Arbitration does not comply with these Rules or if the Registration Fee is not paid, HKIAC may request the Claimant to remedy the defect within an appropriate time limit. If the Claimant complies with such directions within the applicable time limit, the arbitration shall be deemed to have commenced under Article 4.2 on the date the initial version was received by HKIAC. If the Claimant fails to comply, the arbitration shall be deemed not to have commenced under Article 4.2 without prejudice to the Claimant's right to submit the same claim at a later date in a subsequent Notice of Arbitration.
- 4.7 Where an amendment is made to the Notice of Arbitration prior to the constitution of the arbitral tribunal, HKIAC has discretion to determine whether and to what extent such amendment affects other time limits under the Rules.
- 4.8 The Claimant shall notify, and lodge documentary verification with, HKIAC of the date the Respondent receives the Notice of Arbitration and any supporting materials included with it.

[4.1] Notice of Arbitration: Article 4

The party seeking arbitration (the claimant) must communicate a Notice of Arbitration to both HKIAC and the opposing party (the respondent). The arbitration is deemed to commence on the date HKIAC receives the notice: see articles 4.1 and 4.2.

The Notice of Arbitration must include essential information such as a request for arbitration,¹³ parties' contact details, copies of the arbitration agreement¹⁴ and relevant contracts, a description of the claim and the relief sought, a reasoned proposal as to the number of arbitrators, a proposal and comments on designation of a sole/three arbitrators, any third-party funding details and identity of funder, and confirmation that the notice has been sent to the respondent: see article 4.3.

The claimant must pay a registration fee when submitting the notice. The notice may also contain the Statement of Claim. If the notice

¹³ See also s 49(1) of the Arbitration Ordinance (Cap 609), adopting art 21 of UNCITRAL Model Law: 'Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent' (emphasis added).

¹⁴ See also s 19 of the Arbitration Ordinance, which defines 'arbitration agreement' and sets out the relevant requirements.

is non-compliant or if the registration fee is not paid, HKIAC may ask the claimant to remedy the issues within a set timeframe. If corrected in time, the arbitration commencement date remains as originally received. If not, the arbitration is deemed not to have commenced, but this does not prevent the claimant from submitting the same claim later in a subsequent Notice of Arbitration: see articles 4.4, 4.5 and 4.6.

Any amendments to the notice before the tribunal is formed may affect other deadlines, at HKIAC's discretion. The claimant must also notify HKIAC of the date the respondent receives the notice and provide documentary verification: see articles 4.7 and 4.8.

[4.2] Practice Notes

Article 4 under the 2024 Rules remains the same as that of the 2018 Rules, save that article 4.3(b) under the 2024 Rules requires that the Notice of Arbitration also include the telephone number of the parties and of their representatives; and article 4.3(g) under the 2024 Rules requires a 'reasoned proposal' (as opposed to simply a 'proposal' under the 2018 Rules) as to the number of arbitrators.

To begin an arbitration under the 2024 Rules, the party seeking to arbitrate (the claimant) must prepare and 'communicate' a Notice of Arbitration to both HKIAC and the respondent. For the definition of 'communication', see article 2.16 and above.

The arbitration is deemed to commence on the date HKIAC receives the notice. It is crucial to ensure that the Notice of Arbitration is complete and submitted in accordance with the 2024 Rules, as this date determines the official start of the proceedings and can impact limitation periods¹⁵ and other procedural deadlines.

The Notice of Arbitration must contain all information required by article 4.3. A helpful template can be found in 'Practical Guidance' on Lexis+ Hong Kong, under 'HKIAC arbitration'.

As noted above, article 4.3(g) now requires the claimant to submit a 'reasoned proposal' regarding the number of arbitrators. It was said that under the 2018 Rules, HKIAC may invite the parties to provide reasons if none were given.¹⁶ The 2024 Rules now expressly require parties to include their reasoning with their proposal.

¹⁵ See the Arbitration Ordinance, s 14.

¹⁶ Michael J Moser and Chiann Bao, *A Guide to the HKIAC Arbitration Rules* (2nd edn, Oxford University Press 2022) para 6.49 at 103.

[4.2]

Additionally, the claimant must pay the required registration fee when submitting the Notice of Arbitration. The Notice of Arbitration may also include the Statement of Claim, but this is optional at this stage.

If the Notice of Arbitration is incomplete or the registration fee is not paid, HKIAC may request the claimant to correct these issues within a specified time.

In this regard, in a case where a claimant failed to identify the arbitration clause in the Notice of Arbitration, the court held that any question as to the defects in the Notice of Arbitration:

- (1) could be cured by amendment;
- (2) did not affect the substantive jurisdiction of the tribunal in respect of the arbitration; and
- (3) were procedural matters to be dealt with by the tribunal within its jurisdiction.¹⁷

If the claimant remedies the deficiencies within this period, the commencement date will remain the original date of receipt by HKIAC. If not, the arbitration is considered not to have commenced, but the claimant is still permitted to resubmit the same claims in a new Notice of Arbitration. In such an event, the claimant should reconsider any potential limitations that might affect its ability to commence arbitration.¹⁸

If the claimant makes any amendments to the Notice of Arbitration before the tribunal is constituted, HKIAC may adjust related time limits accordingly.

Further to article 4.3(j), article 4.8 expressly requires the claimant to notify HKIAC of the date when the respondent received the Notice of Arbitration and further provide documentary verification. This ensures and provides evidence of proper service, which may be relevant if procedural challenges arise later.

¹⁷ *L v M* [2016] HKCU 1989 (unreported, HCCT 16/2016, 10 August 2016) (CFI) at paras 40–47.

¹⁸ 'LexisNexis' Practice Note: HKIAC (2018) – starting an arbitration'.

[5.1]

Article 5 – Answer to the Notice of Arbitration

5.1 Within 30 days from receipt of the Notice of Arbitration, the Respondent shall communicate an Answer to the Notice of Arbitration to HKIAC and the Claimant. The Answer to the Notice of Arbitration shall include the following:

- (a) the name, address, telephone and facsimile numbers, and/or email address of the Respondent and of its representatives (if different from the description contained in the Notice of Arbitration);
- (b) any plea that an arbitral tribunal constituted under these Rules lacks jurisdiction;
- (c) the Respondent's comments on the particulars set forth in the Notice of Arbitration, pursuant to Article 4.3(e);
- (d) the Respondent's answer to the relief or remedy sought in the Notice of Arbitration, pursuant to Article 4.3(f);
- (e) the Respondent's reasoned proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;
- (f) the Respondent's proposal and any comments regarding the designation of a sole arbitrator under Article 7 or the Respondent's designation of an arbitrator under Article 8;
- (g) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and
- (h) confirmation that copies of the Answer to the Notice of Arbitration and any supporting materials included with it have been or are being communicated simultaneously to all other parties to the arbitration by one or more means of service to be identified in such confirmation.

5.2 The Answer to the Notice of Arbitration may also include the Statement of Defence, if the Notice of Arbitration contained the Statement of Claim.

5.3 Any counterclaim, set-off defence or cross-claim shall, to the extent possible, be raised with the Respondent's Answer to the Notice of Arbitration, which should include in relation to any such counterclaim, set-off defence or cross-claim:

- (a) a copy of the contract(s) or other legal instrument(s) out of or in relation to which it arises, or reference thereto;

(b) a description of the general nature of the counterclaim, set-off defence and/or cross-claim, and an indication of the amount involved, if any; and

(c) the relief or remedy sought.

5.4 HKIAC shall transmit the case file to the arbitral tribunal as soon as it has been constituted, provided that any deposit requested by HKIAC has been paid, unless HKIAC determines otherwise.

[5.1] Answer to the Notice of Arbitration: Article 5

Within 30 days of receiving the Notice of Arbitration, the respondent must communicate an Answer to the Notice of Arbitration to both HKIAC and the claimant. This Answer should include updated contact details, any objections to the tribunal's jurisdiction,¹⁹ comments on the claimant's claims, responses to the relief sought, a reasoned proposal on the number of arbitrators if not previously agreed, a proposal and comments on designation of a sole/three arbitrators, disclosure of any third-party funding and identity of funder, and confirmation that all parties have received copies of the Answer and supporting materials: see article 5.1.

The respondent may include a Statement of Defence in its Answer if the claimant's Notice of Arbitration already contained a Statement of Claim: see article 5.2.

The respondent should raise any counterclaim, set-off defence, or cross-claim with its Answer whenever possible. For each, the respondent must provide a copy of the relevant contracts, a description of the counterclaim, set-off defence and/or cross-claim, any amounts involved, and the relief sought: see article 5.3.

Once the arbitral tribunal is constituted and any required deposits are paid, HKIAC will transmit the case file to the tribunal, unless it decides otherwise: see article 5.4.

¹⁹ See also art 19.3 which states that: 'A plea that the arbitral tribunal does not have jurisdiction shall be raised if possible in the Answer to the Notice of Arbitration, and shall be raised no later than in the Statement of Defence, or, with respect to a counterclaim, in the Defence to the Counterclaim ...'. However, the arbitral tribunal may 'admit a later plea if it considers the delay justified'.

[5.2] Practice Notes

Article 5 under the 2024 Rules remains the same as that of the 2018 Rules, save that article 5.1(a) under the 2024 Rules requires that the Answer to the Notice of Arbitration also include the telephone number of the parties and of their representatives; and article 5.1(e) under the 2024 Rules requires a 'reasoned proposal' (as opposed to simply a 'proposal' under the 2018 Rules) as to the number of arbitrators.

Once the respondent receives the Notice of Arbitration, they have 30 days to 'communicate' an Answer to both HKIAC and the claimant. For the definition of 'communication', see article 2.16 and above.

The Answer must contain all information required by article 5.1. A helpful template can be found in 'Practical Guidance' on Lexis+ Hong Kong, under 'HKIAC arbitration'.

As noted above, article 5.1(e) now requires the respondent to provide a 'reasoned proposal' as to the number of arbitrators. Thus, if the respondent disagrees with the claimant's proposal, it should provide reasons for its disagreement and its proposal.

If a Statement of Claim is included with the Notice of Arbitration, the respondent may include a Statement of Defence with its Answer, allowing the tribunal to understand both sides' positions and expediting the proceedings.

The respondent should raise any counterclaim, set-off defence, or cross-claim at this stage, and comply with the requirements set out in article 5.3. This will allow the tribunal to address all related issues from the outset and may expedite the proceedings.

Once the arbitral tribunal is formed and any required deposits are paid, HKIAC will transmit the case file to the tribunal unless it decides otherwise. It is in both parties' interests to cooperate promptly on procedural steps, so the arbitration can move forward efficiently.

- (3) the nationality of the parties to the arbitration agreement;
- (4) any relevant customs of the trade, business or profession involved in the dispute;
- (5) whether there are any appropriate arbitrators; and
- (6) the urgency of the case.

These are also the factors set out in section 9(1) of the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (Cap 609C), which HKIAC must consider when determining the number of arbitrators under section 23(3) of the Arbitration Ordinance.

Unlike many other arbitration rules,²³ the 2024 Rules do not specify a default number of arbitrators. This approach allows HKIAC greater flexibility to determine the appropriate number based on the specific circumstances of each case.²⁴

For arbitrations under the Expedited Procedure, the specific provisions of article 42.2(a) and (b) regarding the number of arbitrators will apply. Article 42.2(a) provides that: 'the case shall be referred to a sole arbitrator, unless the arbitration agreement provides for three arbitrators'. Article 42.2(b) provides that: 'if the arbitration agreement provides for three arbitrators, HKIAC shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree, the case shall be referred to three arbitrators'.

²³ See the 2021 ICC Rules, art 12(2) (sole arbitrator); the 2020 LCIA Rules, art 5.8 (sole arbitrator); the 2025 SIAC Rules, r 19.1 (sole arbitrator); the 2021 UNCITRAL Rules, art 7.1 (three arbitrators).

²⁴ Michael J Moser and Chiann Bao, *A Guide to the HKIAC Arbitration Rules* (2nd edn, Oxford University Press 2022) para 7.07 at 124.

Article 7 – Appointment of a Sole Arbitrator

- 7.1 Unless the parties have agreed otherwise:
- (a) where the parties have agreed before the arbitration commences that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within 30 days from the date the Notice of Arbitration was received by the Respondent.
 - (b) where the parties have agreed after the arbitration commences to refer the dispute to a sole arbitrator, they shall jointly designate the sole arbitrator within 15 days from the date of that agreement.
 - (c) where the parties have not agreed upon the number of arbitrators and HKIAC has decided that the dispute shall be referred to a sole arbitrator, the parties shall jointly designate the sole arbitrator within 15 days from the date HKIAC's decision was received by the last of them.
- 7.2 If the parties fail to designate the sole arbitrator within the applicable time limit, HKIAC shall appoint the sole arbitrator.
- 7.3 Where the parties have agreed on a different procedure for designating the sole arbitrator and such procedure does not result in a designation within a time limit agreed by the parties or set by HKIAC, HKIAC shall appoint the sole arbitrator.

[7.1] Appointment of a Sole Arbitrator: Article 7

Unless otherwise agreed:

- (1) If the parties have agreed before arbitration begins that the dispute shall be referred to a sole arbitrator, they must jointly designate the arbitrator within 30 days of the respondent receiving the Notice of Arbitration: see article 7.1(a).
- (2) If the agreement occurs after arbitration has commenced, the designation must be made within 15 days of that agreement: see article 7.1(b).
- (3) If the number of arbitrators is undecided and HKIAC determines that the dispute shall be referred to a sole arbitrator, the parties have 15 days from HKIAC's decision to jointly designate the arbitrator: see article 7.1(c).

If the parties do not designate a sole arbitrator within the specified timeframes, HKIAC will appoint the arbitrator: see article 7.2.²⁵

If the parties have agreed on a different procedure for designating the sole arbitrator but fail to reach a decision within the agreed or HKIAC-set time limit, HKIAC will appoint the sole arbitrator: see article 7.3.

²⁵ See also the UNCITRAL Model Law, art 11(3)(b) given effect to by the Arbitration Ordinance, s 24(1).

Article 8 – Appointment of Three Arbitrators

- 8.1 Where a dispute between two parties is referred to three arbitrators, the arbitral tribunal shall be constituted as follows, unless the parties have agreed otherwise:
- (a) where the parties have agreed before the arbitration commences that the dispute shall be referred to three arbitrators, each party shall designate in the Notice of Arbitration and the Answer to the Notice of Arbitration, respectively, one arbitrator. If either party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.
 - (b) where the parties have agreed after the arbitration commences to refer the dispute to three arbitrators, the Claimant shall designate an arbitrator within 15 days from the date of that agreement, and the Respondent shall designate an arbitrator within 15 days from receiving notice of the Claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.
 - (c) where the parties have not agreed upon the number of arbitrators and HKIAC has decided that the dispute shall be referred to three arbitrators, the Claimant shall designate an arbitrator within 15 days from receipt of HKIAC's decision, and the Respondent shall designate an arbitrator within 15 days from receiving notice of the Claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.
 - (d) the two arbitrators so appointed shall designate a third arbitrator, who shall act as the presiding arbitrator. Failing such designation within 30 days from the confirmation or appointment of the second arbitrator, HKIAC shall appoint the presiding arbitrator.
- 8.2 Where there are more than two parties to the arbitration and the dispute is to be referred to three arbitrators, the arbitral tribunal shall be constituted as follows, unless the parties have agreed otherwise:
- (a) the Claimant or group of Claimants shall designate an arbitrator and the Respondent or group of Respondents shall designate an arbitrator in accordance with the procedure in Article 8.1(a), (b) or (c), as applicable;