

# The New HKIAC Domestic Arbitration Rules

This article introduces the 2012 Edition of the HKIAC Domestic Arbitration Rules, which replaced the 1993 Edition with effect from 2 April 2012, and discusses salient provisions of the Rules and their relationship with the Arbitration Ordinance (Cap 609) and the UNCITRAL Model Law.



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## Introduction

New HKIAC Domestic Arbitration Rules (the 2012 Rules)<sup>1</sup> came into effect on 2 April 2012. The 2012 Rules replace the 1993 edition of the Domestic Arbitration Rules. The HKIAC Domestic Arbitration Rules are adopted by the Hong Kong Government to apply to arbitrations in Hong Kong that are instituted in accordance with its standard form construction contracts and are therefore commonly used by parties who undertake *ad hoc* arbitration in Hong Kong. Whilst the wishes of the parties regarding procedure will be respected so far as possible, the 2012 Rules seek to ensure that the arbitrator will have sufficient powers to direct the proceedings if the parties are unable to agree on procedure or are unco-operative.

The changes made by the 2012 Rules largely mirror changes made by the Arbitration Ordinance (Cap 609) (the Ordinance). A number of

provisions of the Ordinance have been incorporated into the 2012 Rules, in whole or in part, so that the Rules are generally nuanced with the Ordinance. The Ordinance came into effect on 1 June 2011 to replace the previous Arbitration Ordinance (Cap 341) by providing a unified regime based on the 2006 version of the UNCITRAL Model Law. The Model Law is therefore also incorporated (at least in part) into the 2012 Rules, rendering them more user-friendly and attractive to international practitioners and parties who are already familiar with the Model Law.

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## Removal of arbitrator

The 2012 Rules prescribe the circumstances under which an arbitrator may be removed. Parties may now challenge the appointment of an arbitrator within 15 days after becoming aware of the appointment or after becoming aware of any circumstance that gives doubts as to his impartiality or independence or qualifications agreed by the parties. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the challenging party may within 30 days request the HKIAC to decide on the challenge and the decision shall be final<sup>2</sup>.

The 2012 Rules also contain provisions for the appointment of a substitute arbitrator, who should be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced<sup>3</sup>. This helps to avoid the situation where there is no arbitrator on board, thereby causing delay to arbitral proceedings. If the parties fail to appoint a substitute arbitrator within 42 days of the termination of the arbitrator's mandate, the substitute arbitrator shall be appointed by HKIAC<sup>4</sup>.

## Power to grant peremptory orders

The arbitral tribunal now has power to make a peremptory order where a party fails to comply with any of its orders or directions<sup>5</sup>. Furthermore, the 2012 Rules now empower the arbitrator to penalise parties for failing to comply with such orders. For example, the tribunal may direct that a party is not entitled to rely on any allegation or material that was

One issue of which practitioners and parties should be mindful is that the adoption of the 2012 Rules in an arbitration agreement will not, by itself, have the effect of providing that arbitration under that agreement is a "domestic arbitration" for the automatic application of the opt-in provisions under the Ordinance<sup>21</sup>. If the parties wish to adopt all or any of the provisions of ss 2-7 of Schedule 2 to the Ordinance, this must be specified in the arbitration agreement.

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#### Conclusion

As explained above, many of the changes to the HKIAC Domestic Arbitration Rules give additional powers to the arbitral tribunal to direct the proceedings and reduce the court's power of intervention. This reflects one of the main themes of the Arbitration Ordinance and the UNCITRAL Model Law. In light of the general acceptance of the Model Law by both civil law and common law jurisdictions, the recent changes to the arbitration regime will further promote Hong Kong as a major centre for international arbitration and, in turn, inform arbitral practice under the domestic regime.

It is important for practitioners and parties to understand the recent changes to Hong Kong's arbitration regime and to prepare and review

arbitration agreements accordingly in order to ensure that the intended results are achieved.

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- 1 [http://www.hkiac.org/images/stories/arbitration/e\\_domestic\\_2012.pdf](http://www.hkiac.org/images/stories/arbitration/e_domestic_2012.pdf).
- 2 Article 4.1 of the 2012 Rules; s 26(1) of the Arbitration Ordinance.
- 3 Article 4.4 of the 2012 Rules; s 28 of the Ordinance.
- 4 Article 4.5 of the 2012 Rules.
- 5 Article 10.2 of the 2012 Rules; s 53(3) of the Ordinance.
- 6 Article 10.3 of the 2012 Rules; s 53(1) & (4) of the Ordinance.
- 7 Article 14.1 of the 2012 Rules; s 35(1) of the Ordinance.
- 8 Article 14.2 of the 2012 Rules; s 35(1) & (2) of the Ordinance, which define 'interim measure'.

- 9 Section 36(1)(a) of the Ordinance.
- 10 *Ibid*, s 36(1)(b).
- 11 *Ibid*, s 37(1). The 2012 Rules do not of themselves deal with preliminary orders.
- 12 *Ibid*, s 37(2).
- 13 *Ibid*, s 38(2).
- 14 *Ibid*, s 38(3).
- 15 *Ibid*, s 38(4).
- 16 *Ibid*, s 40.
- 17 *Ibid*, s 42.
- 18 Article 21.4 of the 2012 Rules; s 74(3) of the Ordinance.
- 19 Article 15(d)-(f) of the 2012 Rules; s 56(1) (b)-(d) of the Ordinance.
- 20 Section 100 of the Ordinance.
- 21 *SOL International Ltd v Guangzhou Dongjun Real Estate Interest Co Ltd* [1998] 3 HKC 493.

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