

PCPD’s Submission in response to the
Public Consultation on the Proposed Amendments
to the 2013 HKIAC Administered Arbitration Rules

This submission is made by the Privacy Commissioner for Personal Data (“**PCPD**”) in response to the Public Consultation carried out by the Hong Kong International Arbitration Centre (“**HKIAC**”) on the proposed amendments to the 2013 HKIAC Administered Arbitration Rules (“**Rules**”) in August 2017. The proposed amendments were made by the HKIAC in light of its experience since the implementation of the 2013 Rules as well as the latest local and global developments in arbitration. As the regulator to protect individuals’ privacy in relation to personal data under the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”), the PCPD would like to offer comments on the proposed amendments from the perspective of personal data privacy protection only.

Overall comments

2. It is noted that the proposed amendments in the Rules are tailored for the purpose of conducting the arbitral proceedings. The PCPD is generally in support of the idea to revise and update the Rules with the aim to maintaining Hong Kong as the hub for international arbitration.

Specific comments

(a) *An online repository approved by the HKIAC*

3. It is noted that the proposed amendment to Article 2.1(c) of the Rules provides for the uploading of written communications to “*a secured online repository approved by the HKIAC*” as an alternative means for service of documents to the parties to the arbitration, the arbitrator and the HKIAC.

4. In view of the potentially sensitive nature of the documents involved in arbitration (and the importance of ensuring confidentiality of the arbitral proceedings), it is necessary to take all reasonably practicable steps for ensuring the security of the personal data to be uploaded, transmitted and stored in the online repository in accordance with the Data Protection Principle (“**DPP**”) 4 in Schedule 1 of the PDPO.

5. Although it is noted that all parties’ agreement would be sought before the use of the online repository, it is equally important to ensure that the parties would adopt sufficient measures to ensure the security of the personal data contained in the documents in the process of “uploading” and “downloading” of documents from the online repository. Password encryption would be one of the means to ensure the information is kept confidential. The password may be

sent to the intended recipient on a need-to-know basis through another means of communication. In addition, notice should be given to the intended users of the online repository regarding the potential data privacy risks (including the consequence of data leakage or other security issues) that may be involved when seeking consent for using electronic means of communication.

(b) Confidentiality of Arbitration

6. It is noted that there are proposed additions to the exceptions under Article 45.3 to the confidentiality requirements under Article 45.1 of the Rules. However, there is no exception provided for the purpose of complying with data access requests made by the data subjects. In this connection, your attention is drawn to the potential implication on the requirement to maintain confidentiality in arbitration on the one hand, and the requirement imposed upon a data user to comply with a data access request made by a data subject on the other. Section 18(1) and DPP 6 of the PDPO provide that an individual may make a data access request to the data user to ascertain whether the data user holds personal data of which the individual is the data subject; and if the data user holds such data, to be supplied by the data user with a copy of such data¹. Unless the potential conflict is addressed otherwise, it is advisable to modify Article 45.3 to make it more specific to address the situation concerning the compliance with data access

¹ This requirement is subject to certain exceptions under section 20 of the PDPO

requests made by data subjects.

Privacy Commissioner for Personal Data, Hong Kong

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