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Administered Arbitration Rules



香港國際仲裁中心
Hong Kong International
Arbitration Centre

ADMINISTERED
ARBITRATION RULES

HONG KONG INTERNATIONAL ARBITRATION CENTRE ADMINISTERED ARBITRATION RULES

Introduction

These Rules have been adopted by the Council of the Hong Kong International Arbitration Centre (HKIAC) for use by parties who seek the benefits of an administered arbitration.

Application

These Rules may be adopted in an arbitration agreement or by an agreement in writing at any time before or after a dispute has arisen. Provisions regarding the scope of application of these Rules are set out in Article 1.

Effectiveness

These Rules have been adopted to take effect from 1 November 2013, in accordance with the provisions of Article 1 of the Rules.

Suggested Clauses

1. The following model clause may be adopted by the parties to a contract who wish to refer any future disputes to arbitration in accordance with these Rules:

“Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.

* The law of this arbitration clause shall be ... (*Hong Kong law*).

The seat of arbitration shall be ...(*Hong Kong*).

** The number of arbitrators shall be ... (*one or three*).
The arbitration proceedings shall be conducted in ...(*insert language*).”

* Optional. This provision should be included particularly where the law of the substantive contract and the law of the seat are different. The law of the arbitration clause potentially governs matters including the formation, existence, scope, validity, legality, interpretation, termination, effects and enforceability of the arbitration clause and identities of the parties to the arbitration clause. It does not replace the law governing the substantive contract.

** Optional

2. Parties to an existing dispute in which neither an arbitration clause nor a previous agreement with respect to arbitration exists, who wish to refer such dispute to arbitration under the HKIAC Administered Arbitration Rules, may agree to do so in the following terms:

“We, the undersigned, agree to refer to arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules any dispute, controversy, difference or claim (including any dispute regarding non-contractual obligations) arising out of or relating to:

(Brief description of contract under which disputes, controversies, differences or claims have arisen or may arise.)

* The law of this arbitration agreement shall be ... (*Hong Kong law*).

The seat of arbitration shall be ... (*Hong Kong*).

** The number of arbitrators shall be ... (*one or three*).
The arbitration proceedings shall be conducted in ... (*insert language*).

Signed: _____ (Claimant)

Signed: _____ (Respondent)

Date: _____ ”

* Optional. This provision should be included particularly where the law of the substantive contract and the law of the seat are different. The law of the arbitration agreement potentially governs matters including the formation, existence, scope, validity, legality, interpretation, termination, effects and enforceability of the arbitration agreement and identities of the parties to the arbitration agreement. It does not replace the law governing the substantive contract.

** Optional

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SECTION I. GENERAL RULES

Article 1 – Scope of Application

- 1.1 These Rules shall govern arbitrations where an arbitration agreement (whether entered into before or after a dispute has arisen) either: (a) provides for these Rules to apply; or (b) subject to Articles 1.2 and 1.3 below, provides for arbitration “administered by HKIAC” or words to similar effect.
- 1.2 Nothing in these Rules shall prevent parties to a dispute or arbitration agreement from naming HKIAC as appointing authority, or from requesting certain administrative services from HKIAC, without subjecting the arbitration to the provisions contained in these Rules. For the avoidance of doubt, these Rules shall not govern arbitrations where an arbitration agreement provides for arbitration under other rules, including other rules adopted by HKIAC from time to time.
- 1.3 Subject to Article 1.4, these Rules shall come into force on 1 November 2013 and, unless the parties have agreed otherwise, shall apply to all arbitrations falling within Article 1.1 in which the Notice of Arbitration is submitted on or after that date.
- 1.4 The provisions contained in Articles 23.1, 28, 29 and Schedule 4 shall not apply if the arbitration agreement was concluded before the date on which these Rules came into force, unless otherwise agreed by the parties.

Article 2 – Notices and Calculation of Periods of Time

- 2.1 Any notice or other written communication pursuant to these Rules shall be deemed to be received by a party or arbitrator or by HKIAC if:
 - (a) delivered by hand, registered post or courier service to
 - (i) the address of the addressee or its representative as notified in writing in the arbitration; or

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- (ii) in the absence of (i), to the address specified in any applicable agreement between the relevant parties; or
 - (iii) in the absence of (i) or (ii), to any address which the addressee holds out to the world at the time of such delivery; or
 - (iv) in the absence of (i), (ii) or (iii), to any last known address of the addressee; or
- (b) transmitted by facsimile, email or any other means of telecommunication that provides a record of its transmission, including the time and date, to:
- (i) the facsimile number or email address (or equivalent) of that person or its representative as notified in the arbitration; or
 - (ii) in the absence of (i), to the facsimile number or email address (or equivalent) specified in any applicable agreement between the relevant parties; or
 - (iii) in the absence of (i) and (ii), to any facsimile number or email address (or equivalent) which the addressee holds out to the world at the time of such transmission.

2.2 Any such notice or written communication shall be deemed to be received on the earliest day when it is delivered pursuant to paragraph (a) above or transmitted pursuant to paragraph (b) above. For this purpose, the date shall be determined according to the local time at the place of receipt. Where such notice or written communication is being delivered or transmitted to more than one party, or more than one arbitrator, such notice or written communication shall be deemed to be received when it is delivered or transmitted pursuant to paragraph (a) or (b) above to the last intended recipient.

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- 2.3 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received or deemed to be received. If the last day of such period is an official holiday or a non-business day at the place of receipt, the period shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time shall be included in calculating the period.
- 2.4 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. HKIAC shall not amend any time limits set by the arbitral tribunal unless it directs otherwise.

Article 3 – Interpretation of Rules

- 3.1 HKIAC shall have the power to interpret all provisions of these Rules. The arbitral tribunal shall interpret the Rules insofar as they relate to its powers and duties hereunder. In the event of any inconsistency between such interpretation and any interpretation by HKIAC, the arbitral tribunal's interpretation shall prevail.
- 3.2 HKIAC has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under these Rules. All decisions made by HKIAC under these Rules are final and, to the extent permitted by any applicable law, not subject to appeal.
- 3.3 References in the Rules to "HKIAC" are to the Council of HKIAC or any committee, sub-committee or other body or person specifically designated by it to perform the functions referred to herein, or, where applicable, to the Secretary General of HKIAC for the time being and other staff members of the Secretariat of HKIAC.
- 3.4 References in the Rules to "Claimant" include one or more claimants and references to "Respondent" include one or more respondents.
- 3.5 References to "additional party" include one or more additional parties and references to "party" or "parties" include claimants, respondents or additional parties.

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- 3.6 References in the Rules to the "arbitral tribunal" include one or more arbitrators. Such references do not include an Emergency Arbitrator as defined at paragraph 1 of Schedule 4.
- 3.7 References in the Rules to "witness" include one or more witnesses and references to "expert" include one or more experts.
- 3.8 References in the Rules to "claim" or "counterclaim" include any claim or claims by any party against any other party. References to "defence" include any defence or defences by any party to any claim or counterclaim submitted by any other party, including any defence for the purpose of a set-off.
- 3.9 References in the Rules to "award" include, inter alia, an interim, interlocutory, partial or final award, save for any award made by an Emergency Arbitrator as referred to in Schedule 4.
- 3.10 References in the Rules to the "seat" of arbitration shall mean the place of arbitration as referred to in Article 20.1 of the UNCITRAL Model Law on International Commercial Arbitration as adopted on 21 June 1985 and as amended on 7 July 2006.
- 3.11 These Rules include all Schedules attached thereto as amended from time to time by HKIAC, in force on the date the Notice of Arbitration is submitted.
- 3.12 HKIAC may from time to time issue practice notes to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.
- 3.13 English is the original language of these Rules. In the event of any discrepancy or inconsistency between the English version and the version in any other language, the English version shall prevail.

SECTION II. COMMENCEMENT OF THE ARBITRATION

Article 4 – Notice of Arbitration

- 4.1 The party initiating recourse to arbitration (hereinafter called the "Claimant") shall submit a Notice of Arbitration in writing to HKIAC at its address, facsimile number or email address.
- 4.2 An arbitration shall be deemed to commence on the date on which a copy of the Notice of Arbitration is received by HKIAC. For the avoidance of doubt, this date shall be determined in accordance with the provisions of Articles 2.1 and 2.2.
- 4.3 The Notice of Arbitration shall include the following:
- (a) a demand that the dispute be referred to arbitration;
 - (b) the names and (in so far as known) the addresses, telephone and facsimile numbers, and email addresses of the parties and of their counsel;
 - (c) a copy of the arbitration agreement(s) invoked;
 - (d) a reference to the contract(s) or other legal instrument(s) out of or in relation to which the dispute arises;
 - (e) a description of the general nature of the claim and an indication of the amount involved, if any;
 - (f) the relief or remedy sought;
 - (g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;
 - (h) the Claimant's proposal regarding the designation of a sole arbitrator under Article 7, or the Claimant's designation of an arbitrator under Article 8; and

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- (i) confirmation that copies of the Notice of Arbitration and any exhibits included therewith have been or are being served simultaneously on all other parties (hereinafter called the "Respondent") by one or more means of service to be identified in such confirmation.
- 4.4 The Notice of Arbitration shall be accompanied by payment, by cheque or transfer to the account of HKIAC, of the Registration Fee as required by Schedule 1.
- 4.5 The Notice of Arbitration shall be submitted in the language of the arbitration as agreed by the parties. If no agreement has been reached between the parties, the Notice of Arbitration shall be submitted in either English or Chinese.
- 4.6 The Notice of Arbitration may also include the Statement of Claim referred to in Article 16.
- 4.7 If the Notice of Arbitration is incomplete or if the Registration Fee is not paid, HKIAC may request the Claimant to remedy the defect within an appropriate period of time. 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 Notice of Arbitration shall be deemed not to have been validly submitted and 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.
- 4.8 The Claimant shall notify and lodge documentary verification with HKIAC of the date of receipt by the Respondent of the Notice of Arbitration and any exhibits included therewith.

Article 5 – Answer to the Notice of Arbitration

- 5.1 Within 30 days from receipt of the Notice of Arbitration, the Respondent shall submit to HKIAC an Answer to the Notice of Arbitration. This Answer to the Notice of Arbitration shall include the following:
- (a) the name, address, telephone and facsimile numbers, and email address of the Respondent and of its counsel (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 proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;
 - (f) the parties' joint designation of a sole arbitrator under Article 7 or the Respondent's designation of an arbitrator under Article 8; and
 - (g) confirmation that copies of the Answer to the Notice of Arbitration and any exhibits included therewith have been or are being served simultaneously on 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 shall be submitted in the language of the arbitration as agreed by the parties. If no agreement has been reached between the parties, the Answer to the Notice of Arbitration shall be submitted in either English or Chinese.

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- 5.3 The Answer to the Notice of Arbitration may also include the Statement of Defence referred to in Article 17, if the Notice of Arbitration contained the Statement of Claim referred to in Article 16.
- 5.4 Any counterclaim or set-off defence 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 or set-off defence:
- (a) a reference to the contract(s) or other legal instrument(s) out of or in relation to which it arises;
 - (b) a description of the general nature of the counterclaim and/or set-off defence and an indication of the amount involved, if any;
 - (c) the relief or remedy sought.
- 5.5 If no counterclaim or set-off defence is raised with the Respondent's Answer to the Notice of Arbitration, or if there is no indication of the amount of the counterclaim or set-off, HKIAC shall rely upon the information provided by the Claimant pursuant to Article 4.3(e) for its determination of:
- (a) HKIAC's Administrative Fees referred to in Article 33.1(f) and Schedule 1;
 - (b) the arbitral tribunal's fees (where Article 10.1(b) and Schedule 3 applies); and
 - (c) whether the provisions of Article 41 (the "Expedited Procedure") may be applicable.
- 5.6 Once the Registration Fee has been paid and the arbitral tribunal has been confirmed, HKIAC shall transmit the file to the arbitral tribunal.

SECTION III. THE ARBITRAL TRIBUNAL

Article 6 – Number of Arbitrators

- 6.1 If the parties have not agreed upon the number of arbitrators, HKIAC shall decide whether the case shall be referred to a sole arbitrator or to three arbitrators, taking into account the circumstances of the case.
- 6.2 Where a case is handled under an Expedited Procedure in accordance with Article 41, the provisions of Article 41.2(a) and (b) shall apply.

Article 7 – Appointment of a Sole Arbitrator

- 7.1 Unless the parties have agreed otherwise and subject to Articles 9, 10, 11.1 to 11.4:
- (a) where the parties have agreed that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within 30 days from the date when the Notice of Arbitration was received by the Respondent;
 - (b) 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 30 days from the date when 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.

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 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 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 receipt of notification of the Claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator;
 - (c) the two arbitrators so appointed shall designate a third arbitrator who shall act as the presiding arbitrator of the arbitral tribunal. Failing such designation within 30 days from the confirmation 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) or (b), as applicable;
 - (b) if the parties have designated arbitrators in accordance with Article 8.2(a), the procedure in Article 8.1(c) shall apply to the designation of the presiding arbitrator;

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- (c) In the event of any failure to designate arbitrators under Article 8.2(a) or if the parties do not all agree in writing that they represent two separate sides (as Claimant(s) and Respondent(s) respectively) for the purposes of designating arbitrators, HKIAC may appoint all members of the arbitral tribunal without regard to any party's designation.

8.3 Appointment of the arbitral tribunal pursuant to Article 8.1 or 8.2 shall be subject to Articles 9, 10 and 11.1 to 11.4.

Article 9 – Confirmation of the Arbitral Tribunal

9.1 All designations of any arbitrator, whether made by the parties or the arbitrators, are subject to confirmation by HKIAC, upon which the appointments shall become effective.

9.2 The designation of an arbitrator shall be confirmed on the terms of:

- (a) Schedule 2; or
- (b) Schedule 3;

as applicable, in accordance with Article 10 and subject to any variations agreed by all parties and any changes HKIAC considers appropriate.

Article 10 – Fees and Expenses of the Arbitral Tribunal

10.1 The fees and expenses of the arbitral tribunal shall be determined according to either:

- (a) an hourly rate in accordance with Schedule 2, including the terms and conditions contained therein; or
- (b) the schedule of fees based on the sum in dispute referred to in Schedule 3, including the terms and conditions contained therein.

The parties shall agree the method for determining the fees and expenses of the arbitral tribunal, and shall inform HKIAC of the applicable method within 30 days of the date on which the Respondent receives the Notice of Arbitration. If the parties fail to agree on the applicable method, the arbitral tribunal's fees and expenses shall be determined in accordance with the terms of Schedule 2.

- 10.2 Where the fees of the arbitral tribunal are to be determined in accordance with Schedule 2,
- (a) the applicable rate for each co-arbitrator shall be the rate agreed between that co-arbitrator and the designating party;
 - (b) the applicable rate for a sole or presiding arbitrator shall be the rate agreed between that arbitrator and the parties,

subject to paragraphs 9.3 and 9.5 of Schedule 2. Where the parties fail to agree the rate of an arbitrator, HKIAC may determine the rate.

- 10.3 Where the fees of the arbitral tribunal are determined in conformity with Schedule 3, such fees shall be fixed by HKIAC in accordance with that Schedule and the following rules:
- (a) the fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitral tribunal and any secretary appointed under Article 13.4, and any other circumstances of the case, including, but not limited to, the discontinuation of the arbitration in case of settlement or for any other reason;
 - (b) where a case is referred to three arbitrators, HKIAC, at its discretion, shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of a sole arbitrator;

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- (c) the arbitral tribunal's fees may exceed the amounts calculated in accordance with Schedule 3 where in the opinion of HKIAC there are exceptional circumstances, which shall include but shall not be limited to the parties conducting the arbitration in a manner not reasonably contemplated by the arbitral tribunal at the time of appointment.

Article 11 – Qualifications and Challenge of the Arbitral Tribunal

- 11.1 An arbitral tribunal confirmed under these Rules shall be and remain at all times impartial and independent of the parties.
- 11.2 Subject to Article 11.3, as a general rule, where the parties to an arbitration under these Rules are of different nationalities, a sole arbitrator or the presiding arbitrator of an arbitral tribunal shall not have the same nationality as any party unless specifically agreed otherwise by all parties in writing.
- 11.3 Notwithstanding the general rule in Article 11.2, in appropriate circumstances and provided that none of the parties objects within a time limit set by HKIAC, the sole arbitrator or the presiding arbitrator of the arbitral tribunal may be of the same nationality as any of the parties.
- 11.4 Before confirmation, a prospective arbitrator shall (a) sign a statement confirming his or her availability to decide the dispute and his or her impartiality and independence; and (b) disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once confirmed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances.

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- 11.5 No party or its representatives shall have any ex parte communication relating to the arbitration with any arbitrator, or with any candidate to be designated as arbitrator by a party, except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence, or to discuss the suitability of candidates for the designation of a third arbitrator, where the parties or party-designated arbitrators are to designate that arbitrator. No party or its representatives shall have any ex parte communication relating to the arbitration with any candidate for the presiding arbitrator.
- 11.6 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess qualifications agreed by the parties, or if the arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay. A party may challenge the arbitrator designated by it or in whose appointment it has participated only for reasons of which it becomes aware after the designation has been made.
- 11.7 A party who intends to challenge an arbitrator shall send notice of its challenge within 15 days after the confirmation of that arbitrator has been notified to the challenging party or within 15 days after that party became aware or ought reasonably to have become aware of the circumstances mentioned in Article 11.6.
- 11.8 The challenge shall be notified to HKIAC, all other parties, the arbitrator who is challenged and the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.
- 11.9 Unless the arbitrator being challenged withdraws or the non-challenging party agrees to the challenge within 15 days from receipt of the notice of challenge, HKIAC shall decide on the challenge. Pending the determination of the challenge, the arbitral tribunal (including the challenged arbitrator) may continue the arbitration.
- 11.10 If an arbitrator withdraws or a party agrees to a challenge under Article 11.9, no acceptance of the validity of any ground referred to in Article 11.6 shall be implied.

Article 12 – Replacement of an Arbitrator

- 12.1 Subject to Articles 12.2, 27.11 and 28.6, where an arbitrator dies, has been successfully challenged, has been otherwise removed or has resigned, a substitute arbitrator shall be appointed pursuant to the rules that were applicable to the appointment of the arbitrator being replaced. These rules shall apply even if during the process of appointing the arbitrator being replaced, a party had failed to exercise its right to designate or to participate in the appointment.
- 12.2 If, at the request of a party, HKIAC determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to designate a substitute arbitrator, HKIAC may, after giving an opportunity to the parties and the remaining arbitrators to express their views:
- (a) appoint the substitute arbitrator; or
 - (b) after the proceedings are declared closed under Article 30.1, authorise the other arbitrators to proceed with the arbitration and make any decision or award.
- 12.3 If an arbitrator is replaced, the arbitration shall resume at the stage where the arbitrator was replaced or ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

SECTION IV. CONDUCT OF ARBITRATION

Article 13 – General Provisions

- 13.1 Subject to these Rules, the arbitral tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues and the amount in dispute, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.
- 13.2 At an early stage of the arbitration and in consultation with the parties, the arbitral tribunal shall prepare a provisional timetable for the arbitration, which shall be provided to the parties and HKIAC.
- 13.3 Subject to Article 11.5, all documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other parties and HKIAC.
- 13.4 The arbitral tribunal may, after consulting with the parties, appoint a secretary. The secretary shall remain at all times impartial and independent of the parties, and shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence prior to his or her appointment. A secretary, once appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances.
- 13.5 The arbitral tribunal and the parties shall do everything necessary to ensure the fair and efficient conduct of the arbitration.
- 13.6 The parties may be represented by persons of their choice, subject to Article 13.5. The names, addresses, telephone and facsimile numbers, and email addresses of party representatives shall be communicated in writing to the other parties and HKIAC. The arbitral tribunal or HKIAC may require proof of authority of any party representatives.

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- 13.7 In all matters not expressly provided for in these Rules, HKIAC, the arbitral tribunal and the parties shall act in the spirit of these Rules.
- 13.8 The arbitral tribunal shall make every reasonable effort to ensure that an award is valid.

Article 14 – Seat and Venue of the Arbitration

- 14.1 The parties may agree on the seat of arbitration. Where there is no agreement as to the seat, the seat of arbitration shall be Hong Kong, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate.
- 14.2 Unless the parties have agreed otherwise, the arbitral tribunal may meet at any location outside of the seat of arbitration which it considers appropriate for consultation among its members, hearing witnesses, experts or the parties, or the inspection of goods, other property or documents. The arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the seat.

Article 15 – Language

- 15.1 Subject to agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages of the arbitration. This determination shall apply to the Statement of Claim, the Statement of Defence, any further written statements, any award, and, if oral hearings take place, to the language or languages to be used in such hearings.
- 15.2 The arbitral tribunal may order that any documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the arbitration, delivered in their original language, shall be accompanied by a translation into the language or languages of the arbitration agreed upon by the parties or determined by the arbitral tribunal.

Article 16 – Statement of Claim

- 16.1 Unless the Statement of Claim was contained in the Notice of Arbitration (or the Claimant elects to treat the Notice of Arbitration as the Statement of Claim), the Claimant shall communicate its Statement of Claim in writing to all other parties and to each member of the arbitral tribunal within a period of time to be determined by the arbitral tribunal.
- 16.2 The Statement of Claim shall include the following particulars:
- (a) the names, addresses, telephone and facsimile numbers and email addresses of the parties;
 - (b) a statement of the facts supporting the claim;
 - (c) the points at issue;
 - (d) the legal arguments supporting the claim; and
 - (e) the relief or remedy sought.
- 16.3 The Claimant shall annex to its Statement of Claim all documents on which it relies.
- 16.4 The arbitral tribunal may vary any of the requirements referred to in Article 16 as it considers fit.

Article 17 – Statement of Defence

- 17.1 Unless the Statement of Defence was contained in the Answer to the Notice of Arbitration (or the Respondent elects to treat the Answer to the Notice of Arbitration as the Statement of Defence), the Respondent shall communicate its Statement of Defence in writing to all other parties and to each member of the arbitral tribunal within a period of time to be determined by the arbitral tribunal.
- 17.2 The Statement of Defence shall reply to the particulars of the Statement of Claim (set out in Article 16.2(b), (c) and (d)). If the Respondent has raised an objection to the jurisdiction or to the proper constitution of the arbitral tribunal, the Statement of Defence shall contain the factual and legal basis of such objection.

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- 17.3 Where there is a counterclaim or a set-off defence, the Statement of Defence shall also include the following particulars:
- (a) a statement of the facts supporting the counterclaim or set-off defence;
 - (b) the points at issue;
 - (c) the legal arguments supporting the counterclaim or set-off defence; and
 - (d) the relief or remedy sought.
- 17.4 The Respondent shall annex to its Statement of Defence all documents on which it relies.
- 17.5 The arbitral tribunal may vary any of the requirements referred to in Article 17 as it considers fit.

Article 18 – Amendments to the Claim or Defence

- 18.1 During the course of the arbitration a party may amend or supplement its claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the circumstances of the case. However, a claim or defence may not be amended in such a manner that the amended claim or defence falls outside the jurisdiction of the arbitral tribunal.
- 18.2 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) if a party amends its claim or defence.

Article 19 – Jurisdiction of the Arbitral Tribunal

- 19.1 The arbitral tribunal may rule on its own jurisdiction under these Rules, including any objections with respect to the existence, validity or scope of the arbitration agreement(s).
- 19.2 The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Article 19, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not necessarily entail the invalidity of the arbitration clause.
- 19.3 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 referred to in Article 17, or, with respect to a counterclaim, in the Reply to the Counterclaim. A party is not precluded from raising such a plea by the fact that it has designated, or participated in the designation of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- 19.4 If a question arises as to the existence, validity or scope of the arbitration agreement(s) or to the competence of HKIAC to administer an arbitration before the constitution of the arbitral tribunal, HKIAC may decide whether and to what extent the arbitration shall proceed. The arbitration shall proceed if and to the extent that HKIAC is satisfied, *prima facie*, that an arbitration agreement under the Rules may exist. Any question as to the jurisdiction of the arbitral tribunal shall be decided by the arbitral tribunal once confirmed pursuant to Article 19.1.

19.5 HKIAC's decision pursuant to Article 19.4 is without prejudice to the admissibility or merits of any party's pleas.

Article 20 – Further Written Statements

The arbitral tribunal shall decide which further written statements, if any, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties or may be presented by them and shall set the periods of time for communicating such statements.

Article 21 – Periods of Time

The periods of time set by the arbitral tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed 45 days. However, the arbitral tribunal may, even in circumstances where the relevant period has already expired, extend time limits if it concludes that an extension is justified.

Article 22 – Evidence and Hearings

- 22.1 Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 22.2 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence, including whether to apply strict rules of evidence.
- 22.3 At any time during the arbitration the arbitral tribunal may allow or require a party to produce documents, exhibits or other evidence that the arbitral tribunal determines to be relevant to the case and material to its outcome. The arbitral tribunal shall have the power to admit or exclude any documents, exhibits or other evidence.

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- 22.4 The arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral arguments, or whether the arbitration shall be conducted on the basis of documents and other materials. The arbitral tribunal shall hold such hearings at an appropriate stage of the arbitration, if so requested by a party or if it considers fit. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the relevant date, time and place.
- 22.5 Any person may be a witness or an expert. If a witness or expert is to be heard, each party shall communicate to the arbitral tribunal and to the other party the name and address of the witness or expert it intends to present, and the subject upon and the language in which such witness or expert will give his or her testimony, within such time as shall be agreed or as shall be specified by the arbitral tribunal.
- 22.6 The arbitral tribunal may make directions for the translation of oral statements made at a hearing and for a record of the hearing if it deems that either is necessary in the circumstances of the case.
- 22.7 Hearings shall be held in private unless the parties agree otherwise. The arbitral tribunal may require any witness or expert to leave the hearing room at any time during the hearing. The arbitral tribunal is free to determine the manner in which a witness or expert is examined.

Article 23 – Interim Measures of Protection and Emergency Relief

- 23.1 A party may apply for urgent interim or conservatory relief (the "Emergency Relief") prior to the constitution of the arbitral tribunal pursuant to the procedures set out in Schedule 4 (the "Emergency Arbitrator Procedures").
- 23.2 At the request of either party, the arbitral tribunal may order any interim measures it deems necessary or appropriate.

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- 23.3 An interim measure, whether in the form of an order or award or in another form, is any temporary measure ordered by the arbitral tribunal at any time prior to the issuance of the award by which the dispute is finally decided, that a party, for example and without limitation:
- (a) maintain or restore the status quo pending determination of the dispute;
 - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
 - (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
 - (d) preserve evidence that may be relevant and material to the resolution of the dispute.
- 23.4 When deciding a party's request for an interim measure under Article 23.2, the arbitral tribunal shall take into account the circumstances of the case. Relevant factors may include, but are not limited to:
- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- 23.5 The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
- 23.6 The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

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- 23.7 The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.
- 23.8 The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the arbitration.
- 23.9 A request for interim measures addressed by any party to a competent judicial authority shall not be deemed incompatible with the arbitration agreement(s), or as a waiver thereof.

Article 24 – Security for Costs

The arbitral tribunal may make an order requiring a party to provide security for the costs of the arbitration.

Article 25 – Tribunal-Appointed Experts

- 25.1 To assist it in the assessment of evidence, the arbitral tribunal, after consulting with the parties, may appoint one or more experts. The arbitral tribunal may meet privately with any tribunal-appointed expert. Such expert shall report to the arbitral tribunal, in writing, on specific issues to be determined by the arbitral tribunal. The arbitral tribunal shall establish terms of reference for the expert, and shall communicate a copy of the expert's terms of reference to the parties and HKIAC.
- 25.2 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

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- 25.3 Upon receipt of the expert's report, the arbitral tribunal shall send a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinions on the report. The parties shall be entitled to examine any document on which the expert has relied in his or her report.
- 25.4 At the request of either party the expert, after delivery of the report, shall attend a hearing at which the parties shall have the opportunity to be present and to examine the expert. At this hearing either party may present experts in order to testify on the points at issue. The provisions of Articles 22.2 to 22.7 shall be applicable to such proceedings.
- 25.5 The provisions of Article 11 shall apply by analogy to any expert appointed by the arbitral tribunal.

Article 26 – Default

- 26.1 If, within the period of time set by the arbitral tribunal, the Claimant has failed to communicate its Statement of Claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitration unless the Respondent has brought a counterclaim and wishes the arbitration to continue, in which case the tribunal may proceed with the arbitration in respect of the counterclaim.
- 26.2 If, within the period of time set by the arbitral tribunal, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
- 26.3 If one of the parties, duly notified under these Rules, fails to present its case in accordance with these Rules including as directed by the arbitral tribunal, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration and make an award on the basis of the evidence before it.

Article 27 – Joinder of Additional Parties

- 27.1 The arbitral tribunal shall have the power to allow an additional party to be joined to the arbitration provided that, prima facie, the additional party is bound by an arbitration agreement under these Rules giving rise to the arbitration, including any arbitration under Article 28 or 29.
- 27.2 The arbitral tribunal's decision pursuant to Article 27.1 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.
- 27.3 A party wishing to join an additional party to the arbitration shall submit a Request for Joinder to HKIAC. HKIAC may fix a time limit for the submission of a Request for Joinder.
- 27.4 The Request for Joinder shall include the following:
- (a) the case reference of the existing arbitration;
 - (b) the names and addresses, telephone and facsimile numbers, and email addresses of each of the parties, including the additional party;
 - (c) a request that the additional party be joined to the arbitration;
 - (d) a reference to the contract(s) or other legal instrument(s) out of or in relation to which the request arises;
 - (e) a statement of the facts supporting the request;
 - (f) the points at issue;
 - (g) the legal arguments supporting the request;
 - (h) the relief or remedy sought; and
 - (i) confirmation that copies of the Request for Joinder and any exhibits included therewith have been or are being served simultaneously on all other parties and the arbitral tribunal, where applicable, by one or more means of service to be identified in such confirmation.

A copy of the contract(s), and of the arbitration agreement(s) if not contained in the contract(s), shall be annexed to the Request for Joinder.

27.5 Within 15 days of receiving the Request for Joinder, the additional party shall submit to HKIAC an Answer to the Request for Joinder. The Answer to the Request for Joinder shall include the following:

- (a) the name, address, telephone and facsimile numbers, and email address of the additional party and its counsel (if different from the description contained in the Request for Joinder);
- (b) any plea that the arbitral tribunal has been improperly constituted and/or lacks jurisdiction over the additional party;
- (c) the additional party's comments on the particulars set forth in the Request for Joinder, pursuant to Article 27.4(a) to (g);
- (d) the additional party's answer to the relief or remedy sought in the Request for Joinder, pursuant to Article 27.4(h);
- (e) details of any claims by the additional party against any other party to the arbitration; and
- (f) confirmation that copies of the Answer to the Request for Joinder and any exhibits included therewith have been or are being served simultaneously on all other parties and the arbitral tribunal, where applicable, by one or more means of service to be identified in such confirmation.

27.6 A third party wishing to be joined as an additional party to the arbitration shall submit a Request for Joinder to HKIAC. The provisions of Article 27.4 shall apply to such Request for Joinder.

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- 27.7 Within 15 days of receiving a Request for Joinder pursuant to Article 27.3 or 27.6, the parties shall submit their comments on the Request for Joinder to HKIAC. Such comments may include (without limitation) the following particulars:
- (a) any plea that the arbitral tribunal lacks jurisdiction over the additional party;
 - (b) comments on the particulars set forth in the Request for Joinder, pursuant to Article 27.4(a) to (g);
 - (c) answer to the relief or remedy sought in the Request for Joinder, pursuant to Article 27.4(h);
 - (d) details of any claims against the additional party; and
 - (e) confirmation that copies of the comments have been or are being served simultaneously on all other parties and the arbitral tribunal, where applicable, by one or more means of service to be identified in such confirmation.
- 27.8 Where HKIAC receives a Request for Joinder before the date on which the arbitral tribunal is confirmed, HKIAC may decide whether, *prima facie*, the additional party is bound by an arbitration agreement under these Rules giving rise to the arbitration, including any arbitration under Article 28 or 29. If so, HKIAC may join the additional party to the arbitration. Any question as to the jurisdiction of the arbitral tribunal arising from HKIAC's decision under this Article 27.8 shall be decided by the arbitral tribunal once confirmed, pursuant to Article 19.1.
- 27.9 HKIAC's decision pursuant to Article 27.8 is without prejudice to the admissibility or merits of any party's pleas.
- 27.10 Where an additional party is joined to the arbitration, the date on which the Request for Joinder is received by HKIAC shall be deemed to be the date on which the arbitration in respect of the additional party commences.

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- 27.11 Where an additional party is joined to the arbitration before the date on which the arbitral tribunal is confirmed, all parties to the arbitration shall be deemed to have waived their right to designate an arbitrator, and HKIAC may revoke the appointment of any arbitrators already designated or confirmed. In these circumstances, HKIAC shall appoint the arbitral tribunal.
- 27.12 The revocation of the appointment of an arbitrator under Article 27.11 is without prejudice to:
- (a) the validity of any act done or order made by that arbitrator before his or her appointment was revoked; and
 - (b) his or her entitlement to be paid his or her fees and expenses subject to Schedule 2 or 3 as applicable.
- 27.13 The parties waive any objection, on the basis of any decision to join an additional party to the arbitration, to the validity and/or enforcement of any award made by the arbitral tribunal in the arbitration, in so far as such waiver can validly be made.
- 27.14 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) after a Request for Joinder has been submitted.

Article 28 – Consolidation of Arbitrations

- 28.1 HKIAC shall have the power, at the request of a party (the “Request for Consolidation”) and after consulting with the parties and any confirmed arbitrators, to consolidate two or more arbitrations pending under these Rules where:
- (a) the parties agree to consolidate; or
 - (b) all of the claims in the arbitrations are made under the same arbitration agreement; or

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- (c) the claims are made under more than one arbitration agreement, a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions, and HKIAC finds the arbitration agreements to be compatible.
- 28.2 The party making the request shall provide copies of the Request for Consolidation to all other parties and to any confirmed arbitrators.
- 28.3 In deciding whether to consolidate, HKIAC shall take into account the circumstances of the case. Relevant factors may include, but are not limited to, whether one or more arbitrators have been designated or confirmed in more than one of the arbitrations, and if so, whether the same or different arbitrators have been confirmed.
- 28.4 Where HKIAC decides to consolidate two or more arbitrations, the arbitrations shall be consolidated into the arbitration that commenced first, unless all parties agree or HKIAC decides otherwise taking into account the circumstances of the case. HKIAC shall provide copies of such decision to all parties and to any confirmed arbitrators in all arbitrations.
- 28.5 The consolidation of two or more arbitrations is without prejudice to the validity of any act done or order made by a court in support of the relevant arbitration before it was consolidated.
- 28.6 Where HKIAC decides to consolidate two or more arbitrations, the parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator, and HKIAC may revoke the appointment of any arbitrators already designated or confirmed. In these circumstances, HKIAC shall appoint the arbitral tribunal in respect of the consolidated proceedings.
- 28.7 The revocation of the appointment of an arbitrator under Article 28.6 is without prejudice to:
- (a) the validity of any act done or order made by that arbitrator before his or her appointment was revoked;

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- (b) his or her entitlement to be paid his or her fees and expenses subject to Schedule 2 or 3 as applicable; and
 - (c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.

28.8 The parties waive any objection, on the basis of HKIAC's decision to consolidate, to the validity and/or enforcement of any award made by the arbitral tribunal in the consolidated proceedings, in so far as such waiver can validly be made.

28.9 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) after a Request for Consolidation has been submitted.

Article 29 – Single Arbitration under Multiple Contracts

29.1 Claims arising out of or in connection with more than one contract may be made in a single arbitration, provided that:

- (a) all parties to the arbitration are bound by each arbitration agreement giving rise to the arbitration;
- (b) a common question of law or fact arises under each arbitration agreement giving rise to the arbitration;
- (c) the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions; and
- (d) the arbitration agreements under which those claims are made are compatible.

29.2 The parties waive any objection, on the basis of the commencement of a single arbitration under Article 29, to the validity and/or enforcement of any award made by the arbitral tribunal in the arbitration, in so far as such waiver can validly be made.

Article 30 – Closure of Proceedings

- 30.1 When it is satisfied that the parties have had a reasonable opportunity to present their case, the arbitral tribunal shall declare the proceedings closed. Thereafter, no further submission or argument may be made, or evidence produced, unless the tribunal reopens the proceedings in accordance with Article 30.2.
- 30.2 The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the proceedings at any time before the award is made.

Article 31 – Waiver

A party who knows or ought reasonably to know that any provision of, or requirement arising under, these Rules (including the arbitration agreement(s)) has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

SECTION V. AWARDS, DECISIONS AND ORDERS OF THE ARBITRAL TRIBUNAL

Article 32 – Decisions

- 32.1 When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the presiding arbitrator alone.
- 32.2 With the prior agreement of all members of the arbitral tribunal, the presiding arbitrator may make procedural rulings alone.

Article 33 – Costs of the Arbitration

- 33.1 The arbitral tribunal shall determine the costs of the arbitration in its award. The term “costs of the arbitration” includes only:
- (a) the fees of the arbitral tribunal, as determined in accordance with Article 10;
 - (b) the reasonable travel and other expenses incurred by the arbitral tribunal;
 - (c) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
 - (d) the reasonable travel and other expenses of witnesses and experts;
 - (e) the reasonable costs for legal representation and assistance if such costs were claimed during the arbitration;
 - (f) the Registration Fee and Administrative Fees payable to HKIAC in accordance with Schedule 1.
- 33.2 The arbitral tribunal may apportion all or part of the costs of the arbitration referred to in Article 33.1 between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

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- 33.3 With respect to the costs of legal representation and assistance referred to in Article 33.1(e), the arbitral tribunal, taking into account the circumstances of the case, may direct that the recoverable costs of the arbitration, or any part of the arbitration, shall be limited to a specified amount.
- 33.4 Where arbitrations are consolidated pursuant to Article 28, the arbitral tribunal in the consolidated arbitration shall allocate the costs of the arbitration in accordance with Article 33.2 and 33.3. Such costs shall include, but shall not be limited to, the fees of any arbitral tribunal designated or confirmed and any other costs incurred in an arbitration that was subsequently consolidated into another arbitration.
- 33.5 When the arbitral tribunal issues an order for the termination of the arbitration or makes an award on agreed terms, it or HKIAC shall determine the costs of the arbitration referred to in Article 33.1, in the text of that order or award.

Article 34 – Form and Effect of the Award

- 34.1 The arbitral tribunal may make a single award or separate awards regarding different issues at different times and in respect of all parties involved in the arbitration in the form of interim, interlocutory, partial or final awards. If appropriate, the arbitral tribunal may also issue interim awards on costs.
- 34.2 Awards shall be made in writing and shall be final and binding on the parties and any person claiming through or under any of the parties. The parties and any such person shall be deemed to have waived their rights to any form of recourse or defence in respect of enforcement and execution of any award, in so far as such waiver can validly be made.
- 34.3 The parties undertake to comply without delay with any award or order made by the arbitral tribunal, including any award or order made in any consolidated proceedings under Article 28 or any arbitration under Article 29.

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- 34.4 An award shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.
- 34.5 An award shall be signed by the arbitral tribunal. It shall state the date on which it was made and the seat of arbitration as determined under Article 14 and shall be deemed to have been made at the seat of the arbitration. Where there are three arbitrators and any of them fails to sign, the award shall state the reason for the absence of the signature(s).
- 34.6 Subject to any lien, originals of the award signed by the arbitrators and affixed with the seal of HKIAC shall be communicated to the parties and HKIAC by the arbitral tribunal. HKIAC shall be supplied with an original copy of the award.

Article 35 – Applicable Law, Amiable Compositeur

- 35.1 The arbitral tribunal shall decide the substance of the dispute in accordance with the rules of law agreed upon by the parties. Any designation of the law or legal system of a given jurisdiction shall be construed, unless otherwise expressed, as directly referring to the substantive law of that jurisdiction and not to its conflict of laws rules. Failing such designation by the parties, the arbitral tribunal shall apply the rules of law which it determines to be appropriate.
- 35.2 The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly agreed that the arbitral tribunal should do so.
- 35.3 In all cases, the arbitral tribunal shall decide the case in accordance with the terms of the relevant contract(s) and may take into account the usages of the trade applicable to the transaction(s).

Article 36 – Settlement or Other Grounds for Termination

- 36.1 If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitration or, if requested by both parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
- 36.2 If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in Article 36.1, the arbitral tribunal shall issue an order for the termination of the arbitration. The arbitral tribunal shall issue such an order unless a party raises a justifiable objection, having been given a reasonable opportunity to comment upon the proposed course of action.
- 36.3 Copies of the order for termination of the arbitration or of the arbitral award on agreed terms, signed by the arbitral tribunal, shall be communicated by the arbitral tribunal to the parties and HKIAC. Where an arbitral award on agreed terms is made, the provisions of Articles 34.2, 34.3, 34.5 and 34.6 shall apply.

Article 37 – Correction of the Award

- 37.1 Within 30 days after receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may set a time limit, normally not exceeding 15 days, for the other party to comment on such request.
- 37.2 The arbitral tribunal shall make any corrections it considers appropriate within 30 days after receipt of the request but may extend such period of time if necessary.

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- 37.3 The arbitral tribunal may within 30 days after the date of the award make such corrections on its own initiative.
- 37.4 The arbitral tribunal has the power to make any further correction to the award which is necessitated by or consequential on (a) the interpretation of any point or part of the award under Article 38; or (b) the issue of any additional award under Article 39.
- 37.5 Such corrections shall be in writing, and the provisions of Articles 34.2 to 34.6 shall apply.

Article 38 – Interpretation of the Award

- 38.1 Within 30 days after receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award. The arbitral tribunal may set a time limit, normally not exceeding 15 days, for the other party to comment on such request.
- 38.2 Any interpretation considered appropriate by the arbitral tribunal shall be given in writing within 30 days after receipt of the request but the tribunal may extend such period of time if necessary.
- 38.3 The arbitral tribunal has the power to give any further interpretation of the award which is necessitated by or consequential on (a) the correction of any error in the award under Article 37; or (b) the issue of any additional award under Article 39.
- 38.4 Any interpretation given under Article 38 shall form part of the award and the provisions of Articles 34.2 to 34.6 shall apply.

Article 39 – Additional Award

- 39.1 Within 30 days after receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitration but omitted from the award. The arbitral tribunal may set a time limit, normally not exceeding 30 days, for the other party to comment on such request.
- 39.2 If the arbitral tribunal considers the request for an additional award to be justified, it shall make the additional award within 60 days after receipt of the request but may extend such period of time if necessary.
- 39.3 The arbitral tribunal has the power to make an additional award which is necessitated by or consequential on (a) the correction of any error in the award under Article 37; or (b) the interpretation of any point or part of the award under Article 38.
- 39.4 When an additional award is made, the provisions of Articles 34.2 to 34.6 shall apply.

Article 40 – Deposits for Costs

- 40.1 As soon as practicable after receipt of the Notice of Arbitration by the Respondent, HKIAC shall, in principle, request the Claimant and the Respondent each to deposit with HKIAC an equal amount as an advance for the costs referred to in Article 33.1, paragraphs (a), (b), (c) and (f). HKIAC shall provide a copy of such request to the arbitral tribunal.
- 40.2 Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, HKIAC may request separate deposits.
- 40.3 During the course of the arbitration HKIAC may request the parties to make supplementary deposits with HKIAC. HKIAC shall provide a copy of such request(s) to the arbitral tribunal.

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- 40.4 If the required deposits are not paid in full to HKIAC within 30 days after receipt of the request, HKIAC shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claim or counterclaim as the tribunal considers fit.
- 40.5 In its final award, the arbitral tribunal shall render an account to the parties of the deposits received by HKIAC. Any unexpended balance shall be returned to the parties by HKIAC.
- 40.6 HKIAC shall place the deposit(s) made by the parties in interest bearing deposit account(s) at a reputable licensed Hong Kong deposit-taking institution. In selecting the account(s), HKIAC shall have due regard to the possible need to make the deposited funds available immediately.

SECTION VI. OTHER PROVISIONS

Article 41 – Expedited Procedure

- 41.1 Prior to the constitution of the arbitral tribunal, a party may apply to HKIAC in writing for the arbitration to be conducted in accordance with Article 41.2 where:
- (a) the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence) does not exceed HKD 25,000,000 (twenty-five million Hong Kong Dollars); or
 - (b) the parties so agree; or
 - (c) in cases of exceptional urgency.
- 41.2 When HKIAC, after considering the views of the parties, grants an application made pursuant to Article 41.1, the arbitral proceedings shall be conducted in accordance with an Expedited Procedure based upon the foregoing provisions of these Rules, subject to the following changes:
- (a) the case shall be referred to a sole arbitrator, unless the arbitration agreement provides for three arbitrators;
 - (b) 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;
 - (c) HKIAC may shorten the time limits provided for in the Rules, as well as any time limits that it has set;
 - (d) after the submission of the Answer to the Notice of Arbitration, the parties shall in principle be entitled to submit one Statement of Claim and one Statement of Defence (and Counterclaim) and, where applicable, one Statement of Defence in reply to the Counterclaim;
 - (e) the arbitral tribunal shall decide the dispute on the basis of documentary evidence only, unless it decides that it is appropriate to hold one or more hearings;

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- (f) the award shall be made within six months from the date when HKIAC transmitted the file to the arbitral tribunal. In exceptional circumstances, HKIAC may extend this time limit;
 - (g) the arbitral tribunal shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

41.3 Unless the parties agree otherwise, the Expedited Procedure contained in Article 41 shall not apply to any consolidated proceedings under Article 28 or to any arbitration commenced under Article 29.

Article 42 – Confidentiality

42.1 Unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to:

- (a) the arbitration under the arbitration agreement(s);
or
- (b) an award made in the arbitration.

42.2 The provisions of Article 42.1 also apply to the arbitral tribunal, any Emergency Arbitrator appointed in accordance with Schedule 4, expert, witness, secretary of the arbitral tribunal and HKIAC.

42.3 The provisions in Article 42.1 do not prevent the publication, disclosure or communication of information referred to in Article 42.1 by a party:

- (a) (i) to protect or pursue a legal right or interest of the party; or
- (ii) to enforce or challenge the award referred to in Article 42.1;

in legal proceedings before a court or other judicial authority;

- (b) to any government body, regulatory body, court or tribunal where the party is obliged by law to make the publication, disclosure or communication;
or

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- (c) to a professional or any other adviser of any of the parties, including any actual or potential witness or expert.
- 42.4 The deliberations of the arbitral tribunal are confidential.
- 42.5 An award may be published, whether in its entirety or in the form of excerpts or a summary, only under the following conditions:
- (a) a request for publication is addressed to HKIAC;
 - (b) all references to the parties' names are deleted; and
 - (c) no party objects to such publication within the time limit fixed for that purpose by HKIAC. In the case of an objection, the award shall not be published.

Article 43 – Exclusion of Liability

- 43.1 None of the Council of HKIAC nor any committee, sub-committee or other body or person specifically designated by it to perform the functions referred to in these Rules, nor the Secretary General of HKIAC or other staff members of the Secretariat of HKIAC, the arbitral tribunal, any Emergency Arbitrator, tribunal-appointed expert or secretary of the arbitral tribunal shall be liable for any act or omission in connection with an arbitration conducted under these Rules, save where such act was done or omitted to be done dishonestly.
- 43.2 After the award has been made and the possibilities of correction, interpretation and additional awards referred to in Articles 37 to 39 have lapsed or been exhausted, neither HKIAC nor the arbitral tribunal, any Emergency Arbitrator, tribunal-appointed expert or secretary of the arbitral tribunal shall be under an obligation to make statements to any person about any matter concerning the arbitration, nor shall a party seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

SCHEDULE 1
REGISTRATION AND
ADMINISTRATIVE FEES

**(All amounts are in Hong Kong Dollars,
hereinafter “HKD”)**

Effective 1 February 2015

1. Registration Fee

- 1.1 When submitting a Notice of Arbitration, the Claimant shall pay a Registration Fee in the amount set by HKIAC, as stated on HKIAC's website on the date the Notice of Arbitration is submitted.
- 1.2 If the Claimant fails to pay the Registration Fee, HKIAC shall not proceed with the arbitration subject to Article 4.7 of the Rules.
- 1.3 The Registration Fee is not refundable.

2. HKIAC's Administrative Fees

- 2.1 HKIAC's Administrative Fee shall be determined in accordance with the following table:

SUM IN DISPUTE		ADMINISTRATIVE FEE
(in HKD)		(in HKD)
Up to	400,000	19,800
From	400,001	19,800 + 1.300% of amt.
to	800,000	over 400,000
From	800,001	25,000 + 1.000% of amt.
to	4,000,000	over 800,000
From	4,000,001	57,000 + 0.545% of amt.
to	8,000,000	over 4,000,000
From	8,000,001	78,800 + 0.265% of amt.
to	16,000,000	over 8,000,000
From	16,000,001	100,000 + 0.200% of amt.
to	40,000,000	over 16,000,000
From	40,000,001	148,000 + 0.110% of amt.
to	80,000,000	over 40,000,000
From	80,000,001	192,000 + 0.071% of amt.
to	240,000,000	over 80,000,000
From	240,000,001	305,600 + 0.059% of amt.
to	400,000,000	over 240,000,000
Over	400,000,000	400,000

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- 2.2 Claims and counterclaims are aggregated for the determination of the amount in dispute. The same rule applies to any set-off defence, unless the arbitral tribunal, after consulting with the parties, concludes that such set-off defence will not require significant additional work.
- 2.3 An interest claim shall not be taken into account for the calculation of the amount in dispute. However, when the interest claim exceeds the amounts claimed in principal, the interest claim alone shall be considered in calculating the amount in dispute.
- 2.4 Pursuant to Articles 18.2, 27.14 or 28.9 or where in the opinion of HKIAC there are exceptional circumstances, HKIAC's Administrative Fees may exceed the amounts calculated in accordance with paragraph 2.1.
- 2.5 If the amount in dispute is not quantified, HKIAC's Administrative Fees shall be fixed by HKIAC, taking into account the circumstances of the case.
- 2.6 Amounts in currencies other than Hong Kong Dollars shall be converted into Hong Kong Dollars at the rate of exchange published by HSBC Bank on the date the Notice of Arbitration is submitted or at the time any new claim, set-off defence or amendment to a claim or defence is filed.

SCHEDULE 2
ARBITRAL TRIBUNAL'S FEES,
EXPENSES, TERMS AND CONDITIONS
Based on Hourly Rates
Effective 1 November 2013

1. Scope of Application and Interpretation

- 1.1 Subject to Article 9.2 of the Rules, this Schedule shall apply to arbitrations in which the arbitral tribunal's fees and expenses are to be determined in accordance with Article 10.1(a) of the Rules and to the appointment of an Emergency Arbitrator under Schedule 4.
- 1.2 HKIAC may interpret the terms of this Schedule as well as the scope of application of the Schedule as it considers appropriate.
- 1.3 This Schedule is supplemented by the Practice Note on Arbitral Tribunal's Fees, Expenses, Terms and Conditions Based on Schedule 2 and Hourly Rates in force on the date the Notice of Arbitration is submitted.

2. Payments to Arbitral Tribunal

- 2.1 Payments to the arbitral tribunal shall generally be made by HKIAC from funds deposited by the parties in accordance with Article 40 of the Rules. HKIAC may direct the parties, in such proportions as it considers appropriate, to make one or more interim or final payments to the arbitral tribunal.
- 2.2 If insufficient funds are held at the time a payment is required, the invoice for the payment may be submitted to the parties for settlement by them direct.
- 2.3 Payments to the arbitral tribunal shall be made in Hong Kong Dollars unless the tribunal directs otherwise.
- 2.4 The parties are jointly and severally liable for the fees and expenses of an arbitrator, irrespective of which party appointed the arbitrator.

3. Arbitral Tribunal's Expenses

- 3.1 The arbitral tribunal shall be reimbursed for its reasonable expenses in accordance with the Practice Note referred to at paragraph 1.3.
- 3.2 The expenses of the arbitral tribunal shall not be included in the arbitral tribunal's fees charged by reference to hourly rates under paragraph 9 of this Schedule.

4. Administrative Expenses

The parties shall be responsible for expenses reasonably incurred and relating to administrative and support services engaged for the purposes of the arbitration, including, but not limited to, the cost of hearing rooms, interpreters and transcription services. Such expenses may be paid directly from the deposits referred to in Article 40 of the Rules as and when they are incurred.

5. Fees and Expenses Payable to Replaced Arbitrators

Where an arbitrator is replaced pursuant to Article 12, 27 or 28 of the Rules, HKIAC shall decide the amount of fees and expenses to be paid for the replaced arbitrator's services (if any), having taken into account the circumstances of the case, including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the complexity of the subject-matter.

6. Fees and Expenses of Secretary to Arbitral Tribunal

Where the arbitral tribunal appoints a secretary in accordance with Article 13.4 of the Rules, such secretary shall be remunerated at a rate which shall not exceed the rate set by HKIAC, as stated on HKIAC's website on the date the Notice of Arbitration is submitted. The secretary's fees and expenses shall be charged separately. The arbitral tribunal shall determine the total fees and expenses of a secretary under Article 33.1(c) of the Rules.

7. Lien on Award

HKIAC and the arbitral tribunal shall have a lien over any awards issued by the tribunal to secure the payment of their outstanding fees and expenses, and may accordingly refuse to release any such awards to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties.

8. Governing Law

The terms of this Schedule and any non-contractual obligation arising out of or in connection with them shall be governed by and construed in accordance with Hong Kong law.

9. Arbitral Tribunal's Fee Rates

- 9.1 An arbitrator shall be remunerated at an hourly rate for all work reasonably carried out in connection with the arbitration.
- 9.2 Subject to paragraphs 9.3 and 9.4 of this Schedule, the rate referred to in paragraph 9.1 is to be agreed in accordance with Article 10.2 of the Rules. An arbitrator shall agree in writing upon fee rates in accordance with paragraph 9 of this Schedule prior to the confirmation of his or her appointment by HKIAC in accordance with Article 9 of the Rules.
- 9.3 An arbitrator's agreed hourly rate shall not exceed a rate set by HKIAC, as stated on HKIAC's website on the date the Notice of Arbitration is submitted.
- 9.4 Subject to paragraph 9.3, an arbitrator may review and increase his or her agreed hourly rate by no more than 10% on each anniversary of the confirmation of his or her appointment by HKIAC.
- 9.5 Higher rates may be charged if expressly agreed in writing by all parties to the arbitration or if HKIAC so determines in exceptional circumstances.

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- 9.6 If an arbitrator is required to travel for the purposes of fulfilling obligations as an arbitrator, the arbitrator shall be entitled to charge and to be reimbursed for:
- (a) time spent travelling but not working at a rate of 50% of the agreed hourly rate; and
 - (b) time spent working whilst travelling at the full agreed hourly rate.

10. Cancellation Fees

- 10.1 All hearings booked shall be paid for, subject to the following conditions:
- (a) if a booking is cancelled at the request of the arbitral tribunal, it will not be charged;
 - (b) if a booking is cancelled at the request of a party less than 30 days before the day booked it shall be paid at a daily rate of 75% of eight times the applicable hourly rate;
 - (c) if a booking is cancelled at the request of a party less than 60 days but more than 30 days before the day booked it shall be paid at a daily rate of 50% of eight times the applicable hourly rate;
 - (d) if a booking is cancelled at the request of a party more than 60 days before the day booked it will not be charged; and
 - (e) in all cases referred to above, credit will be given against all time spent on the case during the day(s) booked.
- 10.2 Where hearing days are cancelled or postponed other than by agreement of all parties, this may be taken into account when considering any subsequent allocation of costs.

SCHEDULE 3
ARBITRAL TRIBUNAL'S FEES,
EXPENSES, TERMS AND CONDITIONS

Based on Sum in Dispute

**(All amounts are in Hong Kong Dollars,
hereinafter “HKD”)**

Effective 1 November 2013

1. Scope of Application and Interpretation

- 1.1 Subject to paragraph 1.2 below and Article 9.2 of the Rules, this Schedule applies to arbitrations in which the arbitral tribunal's fees and expenses are to be determined in accordance with Article 10.1(b) of the Rules.
- 1.2 This Schedule shall not apply to the appointment of an Emergency Arbitrator under Schedule 4.
- 1.3 HKIAC may interpret the terms of this Schedule as well as the scope of application of the Schedule as it considers appropriate.
- 1.4 This Schedule is supplemented by the Practice Note on Arbitral Tribunal's Fees, Expenses, Terms and Conditions Based on Schedule 3 and the Sum in Dispute in force on the date the Notice of Arbitration is submitted.

2. Payments to Arbitral Tribunal

- 2.1 Payments to the arbitral tribunal shall generally be made by HKIAC from funds deposited by the parties in accordance with Article 40 of the Rules. HKIAC may direct the parties, in such proportions as it considers appropriate, to make one or more interim or final payments to the arbitral tribunal.
- 2.2 If insufficient funds are held at the time a payment is required, the invoice for the payment may be submitted to the parties for settlement by them direct.
- 2.3 Payments to the arbitral tribunal shall be made in Hong Kong Dollars unless the tribunal directs otherwise.

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- 2.4 The parties are jointly and severally liable for the fees and expenses of an arbitrator, irrespective of which party appointed the arbitrator.

3. Arbitral Tribunal's Expenses

- 3.1 The arbitral tribunal shall be reimbursed for its reasonable expenses in accordance with the Practice Note referred to at paragraph 1.4.
- 3.2 The expenses of the arbitral tribunal shall not be included in the determination of fees charged in accordance with paragraph 6 of this Schedule.

4. Administrative Expenses

The parties shall be responsible for expenses reasonably incurred and relating to administrative and support services engaged for the purposes of the arbitration, including, but not limited to, the cost of hearing rooms, interpreters and transcription services. Such expenses may be paid directly from the deposits referred to in Article 40 of the Rules as and when they are incurred.

5. Fees and Expenses Payable to Replaced Arbitrators

Where an arbitrator is replaced pursuant to Article 12, 27 or 28 of the Rules, HKIAC shall decide the amount of fees and expenses to be paid for the replaced arbitrator's services (if any), having taken into account the circumstances of the case, including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the complexity of the subject-matter.

6. Determination of Arbitral Tribunal's Fees

- 6.1 The arbitral tribunal's fees shall be calculated in accordance with the following table. The fees calculated in accordance with the table represent the maximum amount payable to one arbitrator.

SUM IN DISPUTE (in HKD)		ARBITRATOR'S FEES (in HKD)
Up to	400,000	11.000% of amount in dispute
From to	400,001 800,000	44,000 + 10.000% of amt. over 400,000
From to	800,001 4,000,000	84,000 + 5.300% of amt. over 800,000
From to	4,000,001 8,000,000	253,600 + 3.780% of amt. over 4,000,000
From to	8,000,001 16,000,000	404,800 + 1.730% of amt. over 8,000,000
From to	16,000,001 40,000,000	543,200 + 1.060% of amt. over 16,000,000
From to	40,000,001 80,000,000	797,600 + 0.440% of amt. over 40,000,000
From to	80,000,001 240,000,000	973,600 + 0.250% of amt. over 80,000,000
From to	240,000,001 400,000,000	1,373,600 + 0.228% of amt. over 240,000,000
From to	400,000,001 600,000,000	1,738,400 + 0.101% of amt. over 400,000,000
From to	600,000,001 800,000,000	1,940,400 + 0.067% of amt. over 600,000,000
From to	800,000,001 4,000,000,000	2,074,400 + 0.044% of amt. over 800,000,000
Over	4,000,000,000	3,482,400 + 0.025% of amt. over 4,000,000,000 Maximum of 12,574,000

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- 6.2 The arbitral tribunal's fees shall cover the activities of the arbitral tribunal from the time the file is transmitted to it until the last award.
- 6.3 Claims and counterclaims are added for the determination of the amount in dispute. The same rule applies to any set-off defence, unless the arbitral tribunal, after consulting with the parties, concludes that such set-off defence will not require significant additional work.
- 6.4 An interest claim shall not be taken into account for the calculation of the amount in dispute. However, when the interest claim exceeds the amounts claimed in principal, the interest claim alone shall be considered in calculating the amount in dispute.
- 6.5 Pursuant to Articles 10.3(c), 18.2, 27.14 or 28.9 or in other exceptional circumstances, the arbitral tribunal's fees may exceed the amounts calculated in accordance with paragraph 6.1.
- 6.6 If the amount in dispute is not quantified, the arbitral tribunal's fees shall be fixed by HKIAC, taking into account the circumstances of the case.

7. Lien on Award

HKIAC and the arbitral tribunal shall have a lien over any awards issued by the tribunal to secure the payment of their outstanding fees and expenses, and may accordingly refuse to release any such awards to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties.

8. Governing Law

The terms of this Schedule and any non-contractual obligation arising out of or in connection with it shall be governed by and construed in accordance with Hong Kong law.

SCHEDULE 4
EMERGENCY ARBITRATOR PROCEDURES

Effective 1 November 2013

1. A party requiring Emergency Relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the arbitral tribunal, submit an application (the "Application") for the appointment of an emergency arbitrator (the "Emergency Arbitrator") to HKIAC.
2. The Application shall be submitted in accordance with any of the means specified in Article 2.1 of the Rules. The Application shall include the following information:
 - (a) the names and (in so far as known) the addresses, telephone and facsimile numbers, and email addresses of the parties to the Application and of their counsel;
 - (b) a description of the circumstances giving rise to the Application and of the underlying dispute referred to arbitration;
 - (c) a statement of the Emergency Relief sought;
 - (d) the reasons why the applicant needs the Emergency Relief on an urgent basis that cannot await the constitution of an arbitral tribunal;
 - (e) the reasons why the applicant is entitled to such Emergency Relief;
 - (f) any relevant agreement(s) and, in particular, the arbitration agreement(s);
 - (g) comments on the language, the seat of the Emergency Relief proceedings, and the applicable law;
 - (h) confirmation of payment, by cheque or transfer to the account of HKIAC, of the amount referred to in paragraph 6 of this Schedule (the "Application Deposit"); and

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- (i) confirmation that copies of the Application and any exhibits included therewith have been or are being served simultaneously on all other parties to the arbitration by one or more means of service to be identified in such confirmation.
 3. The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.
 4. Two copies of the Application shall be provided, one copy for the Emergency Arbitrator and one copy for HKIAC.
 5. If HKIAC determines that it should accept the Application, HKIAC shall seek to appoint an Emergency Arbitrator within two days after receipt of both the Application and the Application Deposit.
 6. The Application Deposit is the amount set by HKIAC, as stated on HKIAC's website on the date the Application is submitted. The Application Deposit consists of HKIAC's administrative expenses and the Emergency Arbitrator's fees and expenses. The Emergency Arbitrator's fees shall be determined by HKIAC by reference to his or her hourly rate subject to the terms set out in Schedule 2. HKIAC may, at any time during the Emergency Relief proceedings, decide to increase the Emergency Arbitrator's fees or HKIAC's administrative expenses, taking into account, inter alia, the nature of the case and the nature and amount of work performed by the Emergency Arbitrator and HKIAC. If the party which submitted the Application fails to pay the increased fees and/or expenses within the time limit fixed by HKIAC, the Application shall be dismissed.
 7. Once the Emergency Arbitrator has been appointed, HKIAC shall so notify the parties to the Application and shall transmit the file to the Emergency Arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the Emergency Arbitrator with a copy to the other party to the Application and HKIAC. A copy of any written communications from the Emergency Arbitrator to the parties shall also be copied to HKIAC.


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8. Article 11 of the Rules shall apply to the Emergency Arbitrator, except that the time limits set out in Articles 11.7 and 11.9 are shortened to three days.
 9. Where an Emergency Arbitrator dies, has been successfully challenged, has been otherwise removed, or has resigned, HKIAC shall seek to appoint a substitute Emergency Arbitrator within two days. If an Emergency Arbitrator withdraws or a party agrees to terminate an Emergency Arbitrator's appointment under paragraph 8 of this Schedule, no acceptance of the validity of any ground referred to in Article 11.6 of the Rules shall be implied. If the Emergency Arbitrator is replaced, the Emergency Relief proceedings shall resume at the stage where the Emergency Arbitrator was replaced or ceased to perform his or her functions, unless the substitute Emergency Arbitrator decides otherwise.
 10. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the Emergency Relief proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant to Article 14.1 of the Rules, the seat of the Emergency Relief proceedings shall be Hong Kong.
 11. Taking into account the urgency inherent in the Emergency Relief proceedings and ensuring that each party has a reasonable opportunity to be heard on the Application, the Emergency Arbitrator may conduct such proceedings in such a manner as the Emergency Arbitrator considers appropriate. The Emergency Arbitrator shall have the power to rule on objections that the Emergency Arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause(s) or of the separate arbitration agreement(s), and shall resolve any disputes over the applicability of this Schedule.
 12. Any decision, order or award of the Emergency Arbitrator on the Application (the "Emergency Decision") shall be made within fifteen days from the date on which HKIAC transmitted the file to the Emergency Arbitrator. This period of time may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

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13. The Emergency Decision may be made even if in the meantime the file has been transmitted to the arbitral tribunal.
 14. Any Emergency Decision shall:
 - (a) be made in writing;
 - (b) state the date when it was made and summary reasons upon which the Emergency Decision is based (including a determination on whether the Application is admissible under Article 23.1 of the Rules and whether the Emergency Arbitrator has jurisdiction to grant the Emergency Relief); and
 - (c) be signed by the Emergency Arbitrator.
 15. Any Emergency Decision shall fix the costs of the Emergency Relief proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties, subject always to the power of the arbitral tribunal to determine finally the apportionment of such costs in accordance with Article 33 of the Rules. The costs of the Emergency Relief proceedings include HKIAC's administrative expenses, the Emergency Arbitrator's fees and expenses and the reasonable and other legal costs incurred by the parties for the Emergency Relief proceedings.
 16. Any Emergency Decision shall have the same effect as an interim measure granted pursuant to Article 23 of the Rules and shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with any Emergency Decision without delay.
 17. The Emergency Arbitrator shall be entitled to order the provision of appropriate security by the party seeking Emergency Relief.
 18. Any Emergency Decision may, upon a reasoned request by a party, be modified, suspended or terminated by the Emergency Arbitrator or the arbitral tribunal (once constituted).

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19. Any Emergency Decision ceases to be binding:
- (a) if the Emergency Arbitrator or the arbitral tribunal so decides;
 - (b) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;
 - (c) upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award; or
 - (d) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision. This period of time may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.
20. Subject to paragraph 13 of this Schedule, the Emergency Arbitrator shall have no further power to act once the arbitral tribunal is constituted.
21. The Emergency Arbitrator may not act as arbitrator in any arbitration relating to the dispute that gave rise to the Application and in respect of which the Emergency Arbitrator has acted, unless otherwise agreed by the parties to the arbitration.
22. The Emergency Arbitrator Procedures are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time.
23. In all matters not expressly provided for in this Schedule, the Emergency Arbitrator shall act in the spirit of the Rules.
24. The Emergency Arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

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