

Hong Kong International Arbitration Centre  
**DOMESTIC ARBITRATION RULES**

(Adopted to take effect from 2 April 2012)

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*In developing the Domestic Arbitration Rules, HKIAC drew on the expertise of its many advisers. It also consulted a variety of other published rules. HKIAC acknowledges all of the assistance it has received in formulating the Rules and thanks the many people and organisations which have helped to produce them.*

## **INTRODUCTION**

### **Domestic Arbitration Rules (2012)**

These Domestic Arbitration Rules (2012), which amended and replaced the Domestic Arbitration Rules (1993), have been adopted by the Council of the Hong Kong International Arbitration Centre (HKIAC) for use by parties seeking to use a set of formal and convenient procedures for ad hoc arbitration in Hong Kong. The Rules provide that the wishes of the parties regarding procedure will be respected as far as possible, but they also seek to ensure that the Arbitrator will have sufficient powers to direct the proceedings if the parties cannot agree on procedure or will not co-operate.

These Rules have been adopted by the Hong Kong Government to apply to arbitrations taking place in Hong Kong instituted in accordance with its standard forms of General Conditions of Contract. For all other disputes, parties are advised to refer to the HKIAC Administered Arbitration Rules (2008) which may be adopted for use in both domestic and international arbitral proceedings. These Rules should not be used where the parties wish the seat of arbitration to be outside of Hong Kong.

In accordance with the Preamble to these Rules, Paragraph 1, arbitrations commenced after the commencement date of these Rules relating to existing contracts which refer to arbitration under the Domestic Arbitration Rules will be resolved under the HKIAC Domestic Arbitration Rules (2012).

### **Hong Kong International Arbitration Centre**

HKIAC was established in 1985 to assist disputing parties to solve their disputes by arbitration and by conciliation, adjudication and mediation. HKIAC is a non-profit making company limited by guarantee. It was established by a group of leading business and professional people in Hong Kong to be the focus in Asia for dispute resolution. It has been generously funded by the business community and by the Hong Kong Government but it is totally independent of both.

## SUGGESTED CLAUSES

1. Parties to a contract who wish to have any future disputes referred to arbitration under the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre (HKIAC) may insert in the contract an arbitration clause in the following form:

"Any dispute, controversy or claim arising out of or relating to this contract, including the invalidity, breach or termination thereof, shall be settled by arbitration in Hong Kong pursuant to the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre."

2. Parties to an existing dispute who wish to refer it to arbitration under the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre (HKIAC) may agree to do so in the following terms:

"We, the undersigned, agree to refer to arbitration under the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre all disputes, controversies or claims arising out of or relating to the below mentioned contract, including the invalidity, breach or termination thereof:

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

Signed \_\_\_\_\_ (Claimant)  
Signed \_\_\_\_\_ (Respondent)"

## **Hong Kong International Arbitration Centre DOMESTIC ARBITRATION RULES**

Adopted to take effect from 2 April 2012

### **PREAMBLE**

Where any agreement, submission or reference provides for arbitration under the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre (the Rules), the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the following Rules, or such amended Rules as the Hong Kong International Arbitration Centre (HKIAC) may have adopted to take effect before the commencement of the arbitration. The Rules are subject to such modifications as the parties may agree in writing at any time.

References in these Rules to "the Ordinance" are to the Arbitration Ordinance (Cap. 609 of the laws of Hong Kong).

The adoption of the HKIAC Domestic Arbitration Rules (2012) in an arbitration agreement will not, by itself, have the effect of providing that arbitration under that agreement is a domestic arbitration for the purposes of Section 100 of the Ordinance. If the parties desire to adopt all or any of the provisions of Sections 2 to 7 of Schedule 2 of the Ordinance, this must be specifically provided for in the arbitration agreement.

These Rules should be construed in accordance with the provisions of the Ordinance. The Ordinance contains a number of provisions which apply to arbitrations under the Rules without the need for further reference. Particular attention is drawn to the following Sections:-

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|-----------------------|--|
| (a) Section 18        | Disclosure of information relating to arbitral proceedings and awards prohibited |
| (b) Sections 35 to 42 | Provisions applicable to interim measures and preliminary orders                 |
| (c) Section 47        | Determination of rules of procedure  |
| (d) Section 54        | Expert appointed by arbitral tribunal  |

Due to their importance for the conduct of arbitrations under the Ordinance, a number of provisions of the Ordinance have been incorporated in whole or in part into these Rules. Where this has been done, reference is made to the relevant provisions of the Ordinance in the footnotes appended. Particular attention is drawn to the following Sections :-

- |                |  |
|----------------|--|
| (g) Section 10 | Receipt of written communications (Article 5.4 of the Rules) |
| (h) Section 11 | Waiver of right to object (Article 23 of the Rules)          |
| (i) Section 25 | Grounds for challenge (Articles 3.3 and 3.4 of the Rules)    |
| (j) Section 26 | Challenge procedure (Article 4.1 of the Rules)               |

- (k) Section 27 Failure or impossibility to act (Articles 4.2 and 4.3 of the Rules)
- (l) Section 28 Appointment of substitute arbitrator (Article 4.4 of the Rules)
- (m) Section 34 Competence of arbitral tribunal to rule on its jurisdiction (Article 13 of the Rules)
- (n) Section 35 Power of arbitral tribunal to order interim measures (Articles 14.1 and 14.2 of the Rules)
- (o) Section 46 Equal treatment of parties (Articles 3.2, 6.1 and 6.2 of the Rules)
- (p) Section 48 Place of arbitration (Article 16.2 of the Rules)
- (q) Section 52 Hearings and written proceedings (Article 9.1 of the Rules)
- (r) Section 53 Default of a party (Article 10 of the Rules)
- (s) Section 56 General powers exercisable by arbitral tribunal (Articles 15(c) to (f) of the Rules)
- (t) Section 69 Correction and interpretation of award; additional award (Article 20 of the Rules)
- (u) Section 74 Arbitral tribunal may award costs of arbitral proceedings (Article 21 of the Rules)
- (v) Section 79 Arbitral tribunal may award interest (Article 19.2 of the Rules)
- (w) Section 80 Interest on money or costs awarded or ordered in arbitral proceedings (Article 19.2 of the Rules)
- (x) Section 104 Arbitral tribunal or mediator to be liable for certain acts and omissions (Article 22.1 of the Rules)
- (y) Section 105 Appointors and administrators to be liable only for certain acts and omissions (Article 22.2 of the Rules)

## **Article 1 Commencement of Arbitration**

1.1 Any party wishing to commence an arbitration under these Rules (the Claimant) shall send to the other party (the Respondent) a written notice requiring the Respondent to appoint or concur in appointing the Arbitrator (Notice of Arbitration) which shall include, or be accompanied by:

- (a) the names and addresses (and telephone and fax numbers and email addresses as appropriate) of the parties to the dispute and, where the Claimant chooses to be represented by a Representative (under Article 8) and wishes to have communications sent to its Representative, the Representative's name and address (and telephone and fax numbers and email address);

- (b) reference to the contractual documents in which the arbitration clause is contained or under which the arbitration arises;
- (c) a copy of any separate arbitration agreement which is invoked;
- (d) a brief statement describing the nature and circumstances of the dispute, and specifying in outline the relief claimed;
- (e) a proposal that either HKIAC appoints the Arbitrator,\* or a list of up to three names from which the Respondent may choose an Arbitrator.
- (f) The appointment of the Arbitrator shall not be hindered by any controversy with respect to the sufficiency of the Notice of Arbitration, which shall be finally resolved by the Arbitrator.

The arbitration shall be deemed to commence on the date of receipt by the Respondent of the Notice of Arbitration.

*\* HKIAC may be asked either to make a direct appointment or may be asked to use the list system of appointment, as described in Appendix 1 attached.*

1.2 A copy of the Notice of Arbitration shall be sent to the Secretary-General of HKIAC (the Secretary-General) at the same time that it is sent to the Respondent.

1.3 For the purpose of facilitating the choice of the Arbitrator, within 28 days of receipt of the Notice of Arbitration, the Respondent shall, to the extent possible, send to the Claimant a Response containing:

- (a) confirmation or denial of his willingness to arbitrate and, if denial, the grounds relied upon as to why the matter should not be arbitrated or the Arbitrator does not have jurisdiction;
- (b) confirmation or denial of all or part of the claims;
- (c) a brief statement of the nature and circumstances of any envisaged counterclaims;
- (d) a response either agreeing to any proposals contained in the Notice of Arbitration, as called for under Article 1.1(e), or a list of up to three names from which the Claimant may choose an Arbitrator; and
- (e) details of its Representative, including the Representative's name and address (and telephone and fax numbers and email address), if appropriate.
- (f) The appointment of the Arbitrator shall not be hindered by any controversy with respect to the Respondent's failure to communicate a Response to the Notice of Arbitration or an incomplete or late Response to the Notice of Arbitration, which shall be finally resolved by the Arbitrator.

1.4 A copy of the Response shall be sent to the Secretary-General at the same time that it is

sent to the Claimant.

1.5 Failure to send a Response shall neither preclude the Respondent from denying the claim nor from setting out a counterclaim in its Statement of Defence.

## **Article 2 Appointing Authority**

2.1 HKIAC shall be the Appointing Authority.\*

*\* HKIAC will require payment of an appointment fee for the use of its services as Appointing Authority as set out in its Fee Schedule applicable to these Rules at the time of the application for appointment. The Fee Schedule will be published on the HKIAC website.*

2.2 Any application to the Appointing Authority to act in accordance with these Rules shall be accompanied by:

- (a) copies of the Notice of Arbitration and Response and any other related correspondence;
- (b) confirmation in writing that a copy of the application has been sent to or received by the other party;
- (c) particulars of any method or criteria for selection of the Arbitrator agreed by the other party.

## **Article 3 Appointment of Arbitrator**

3.1 There shall be a sole Arbitrator.

3.2<sup>1</sup> The Arbitrator is required to be independent, and to act fairly and impartially as between the parties, giving them a reasonable opportunity to present their cases and to deal with the cases of their opponents.

3.3<sup>2</sup> When a person is approached in connection with his possible appointment as the Arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. The Arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

3.4<sup>3</sup> The Arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge the Arbitrator in whose appointment he has participated only for reasons of which he becomes aware after the appointment has been made.

3.5 The Arbitrator may be appointed by agreement of the parties. Failing such agreement within 42 days of the commencement date of the arbitration in accordance with Article 1.1,

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<sup>1</sup> Based on S46(3)(a) and (b) of the Ordinance (in part).

<sup>2</sup> Based on S25(1) of the Ordinance

<sup>3</sup> Based on S25(2) of the Ordinance



the Arbitrator shall upon the application of either party be appointed by HKIAC.

#### **Article 4 Removal of Arbitrator**

4.1<sup>4</sup> A party who intends to challenge the Arbitrator shall, within 15 days after becoming aware of the appointment of the Arbitrator or after becoming aware of any circumstance referred to in Article 3.4, send a written statement of the reasons for the challenge to the Arbitrator. Unless the challenged Arbitrator withdraws from his office or the other party agrees to the challenge, the challenging party may request, within 30 days after having received notice of the Arbitrator's decision not, or failure, to withdraw, HKIAC to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the Arbitrator may continue the arbitral proceedings and make an award.

4.2<sup>5</sup> If the Arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the HKIAC to decide on the termination of the mandate, which decision shall be subject to no appeal.

4.3<sup>6</sup> If the Arbitrator withdraws from his office under this Article or a party agrees to the termination of the mandate of the Arbitrator, this does not imply acceptance of the validity of any ground referred to in this Article or Article 3.4.

4.4<sup>7</sup> Where the mandate of the Arbitrator terminates under Article 4 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute Arbitrator shall be appointed according to the rules that were applicable to the appointment of the Arbitrator being replaced.

4.5 If the parties fail to appoint a substitute Arbitrator within 42 days of the termination of the Arbitrator's mandate, the substitute Arbitrator shall upon the application of either party be appointed by HKIAC.

#### **Article 5 Communication between Parties and the Arbitrator**

5.1 Where the Arbitrator sends any communication to one party, he shall send a copy to the other party at the same time.

5.2 Where a party sends any communication (including Statements and documents under Article 7 and Article 11) to the Arbitrator, it shall be copied to the other party and be indicated to the Arbitrator to have been so copied at the same time.

5.3 The addresses of the parties for the purpose of all communications arising under the Rules shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Arbitrator and the other party.

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<sup>4</sup> Based on S26(1)(2) and S26(1)(3) of the Ordinance (in part)

<sup>5</sup> Based on s27(1) of the Ordinance

<sup>6</sup> Based on s27(2) of the Ordinance

<sup>7</sup> Based on S28 of the Ordinance



5.4 For the purpose of arbitration under these Rules, unless the contrary is proved, any written communication by post shall be deemed to be received in the ordinary course of mail. Any written communication by any other means by which information can be recorded and transmitted to the addressee (including facsimiles and emails) shall be deemed to be received on the same day as transmitted, if there is a record of receipt of the communication by the addressee.

5.5 Where the parties have agreed to the appointment of an arbitration administrator, the functions of the arbitration administrator may be performed by the Secretary General of the HKIAC or by such person as may be designated by the Secretary-General. Where the Secretary-General or his designate is so appointed, all communications and notices between a party and the Arbitrator in the course of the arbitration (except at meetings and hearings) will be addressed through the Secretary-General or his designate. If the Secretary General is unable to designate a person to perform the functions of arbitration administrator, the Council of HKIAC may do so.

## **Article 6 Equal treatment and Conduct of the Proceedings**

6.1<sup>8</sup> The parties must be treated with equality.

6.2<sup>9</sup> When conducting arbitral proceedings or exercising any of the powers conferred on the Arbitrator by the Ordinance, by these Rules or by the parties to any of those arbitral proceedings, the Arbitrator is required to use procedures that are appropriate to the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for resolving the dispute to which the arbitral proceedings relate.

6.3 The Arbitrator shall have the power to adopt wherever possible a simplified or expedited procedure and in any case shall have the widest discretion allowed by law to conduct the proceedings so as to ensure the just, expeditious, economical, and final determination of the dispute.

6.4 The Arbitrator should, and shall, if requested by any party, hold a preliminary meeting with the parties as soon as possible after accepting his appointment.

## **Article 7 Submission of Parties' Written Statements and Documents**

7.1 In default of agreement between the parties or determination of the Arbitrator the written stage of the proceedings shall be as set out in this Article (and in accordance with Article 5).

7.2 Within 28 days of receipt by the Claimant of notification of the Arbitrator's acceptance of the appointment, the Claimant shall send to the Arbitrator a Statement of Claim setting out a full description in narrative form of the nature and circumstances of the dispute specifying all factual matters and, if necessary for the proper understanding of the claim, a summary of any contentions of law relied upon and the relief claimed.

7.3 Within 35 days of receipt of the Statement of Claim, the Respondent shall send to the Arbitrator a Statement of Defence setting out a full description in narrative form of the

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<sup>8</sup> Based on S46(2) of the Ordinance

<sup>9</sup> Based on S46(3)(c) of the Ordinance (in part)

factual matters and contentions of law in the Statement of Claim which he admits or denies, on what grounds, and specifying any other factual matters and, if necessary for the proper understanding of the defence, a summary of any contentions of law relied upon. Counterclaims, if any, shall be submitted with the Statement of Defence in the same manner as claims set out in the Statement of Claim.

7.4 Within 21 days of receipt of the Statement of Defence the Claimant may send to the Arbitrator a Statement of Reply which, where there are Counterclaims, shall include a Defence to Counterclaims.

7.5 If the Statement of Reply contains a Defence to Counterclaims, the Respondent may within a further 21 days send to the Arbitrator a Statement of Reply regarding Counterclaims.

7.6 All Statements referred to in this Article shall be accompanied by copies (or, if they are especially voluminous and by leave of the Arbitrator, lists) of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where appropriate) by any relevant samples.

7.7 The Arbitrator may, at any stage of the proceedings, if so requested by a party or at the Arbitrator's own discretion, order the parties to produce any additional documents he may specify.

7.8 As soon as practicable following completion of the submission of the Statements specified in this Article, the Arbitrator shall proceed to resolve the disputes between the parties in accordance with the provisions of these Rules.

## **Article 8 Representation**

8.1 A party may conduct his case in person or be represented throughout or in part by lawyers or other advisers or representatives of his choice (Representative). A party shall notify the Arbitrator, HKIAC and the other parties of any change of Representative and his address (and telephone, fax number and email address) as soon as practicable after any such change.

8.2<sup>10</sup> At any time, the Arbitrator may require from any party proof of authority granted to his Representative in such form as the Arbitrator may determine.

## **Article 9 Hearings**

9.1<sup>11</sup> Subject to any contrary agreement by the parties, the Arbitrator shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the Arbitrator shall hold such hearings at any appropriate stage of the proceedings, if so requested by a party.

9.2 Where the parties have agreed that a documents-only arbitration procedure shall be adopted, the parties shall not be entitled to a hearing and the testimony of any witness shall be

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<sup>10</sup> Based on Article 18.2 of the London Court of International Arbitration Rules

<sup>11</sup> Based on S52(1) of the Ordinance

presented in written form and shall be submitted in accordance with Article 11. If the Arbitrator feels unable to make an award on the basis of the documents submitted, he shall be entitled to require further evidence or submissions whether oral or in writing.

9.3 The Arbitrator shall fix the date, time and place of meetings and hearings in the arbitration, and shall give the parties reasonable notice thereof.

9.4 The Arbitrator may in advance of meetings and hearings provide the parties with a list of matters or questions to which he wishes them to give special consideration.

9.5 The Arbitrator may order opening and closing statements to be in writing and shall fix the periods of time for communicating such statements and the replies that may be necessary.

9.6 The Arbitrator may also order a transcript of any hearing or part of any hearing.

9.7 All meetings and hearings shall be in private unless the parties agree otherwise.

#### **Article 10 Default of a Party**

10.1 Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a)<sup>12</sup> the Claimant fails to communicate his Statement of Claim in accordance with Article 7, the Arbitrator shall terminate the proceedings (unless there are grounds for continuing them for the purpose of resolving any counterclaim, dealing with costs or for any other necessary purpose);
- (b)<sup>13</sup> the Respondent fails to communicate his Statement of Defence in accordance with Article 7, the Arbitrator shall continue the proceedings without treating such failure in itself as an admission of the Claimant's allegations;
- (c)<sup>14</sup> any party fails to appear at a hearing or to produce documentary evidence, the Arbitrator may continue the proceedings and make the award on the evidence before him;
- (d) in particular, if the Claimant fails to attend any hearing of which due notice has been given, the Arbitrator may, with or without a hearing, make an award on the substantive issues and an award as to costs on the evidence before him.
- (e) in particular, if the Respondent fails to communicate a Statement of Defence or to attend any hearing of which due notice has been given, the Arbitrator may make an award, with or without a hearing and in the presence of the Respondent or otherwise, on the substantive issues and an award as to costs on the evidence before him.

10.2<sup>15</sup> If without showing sufficient cause, a party fails to comply with any order or direction of the Arbitrator, the Arbitrator may make a peremptory order to the same effect,

<sup>12</sup> Based on S53(1)(a) of the Ordinance (in part)

<sup>13</sup> Based on S53(1)(b) of the Ordinance

<sup>14</sup> Based on S53(1)(c) of the Ordinance

<sup>15</sup> Based on S53(3) of the Ordinance

prescribing the time for compliance with it that the Arbitrator considers appropriate.

10.3<sup>16</sup> If a party fails to comply with a peremptory order, then without affecting Section 61 of the Ordinance, the Arbitrator may:

- (a) direct that the party is not entitled to rely on any allegation or material which was the subject of the peremptory order;
- (b) draw any adverse inferences that the circumstances may justify from the non-compliance;
- (c) make an award based on any materials which have been properly provided to the Arbitrator; or
- (d) make any order that the Arbitrator thinks fit as to the payment of the costs of the arbitration incurred in consequence of the non-compliance.

## **Article 11 Witnesses**

11.1 The Arbitrator may at any time require any party to give notice of the identity of witnesses he intends to call to give evidence. The Arbitrator may also require the exchange of witness statements, affidavit evidence and of expert reports.

11.2 The Arbitrator has discretion to allow, limit, or refuse to allow the appearance of witnesses, whether witnesses of fact or expert witnesses.

11.3 The Arbitrator may order that such witness statements or affidavit evidence shall stand as evidence-in-chief. A witness may be required by the Arbitrator to testify under oath or affirmation in accordance with the Ordinance as applicable. The Arbitrator may put questions to any witness at any stage of the examination.

11.4 Subject to Article 11.2, any party may request that such a witness should attend for oral examination at a hearing. If the witness fails to attend, the Arbitrator may place such weight on the written testimony as he thinks fit, or may exclude it altogether.

## **Article 12 Experts and assessors appointed by the Arbitrator**

The Arbitrator may appoint one or more experts and/or assessors in accordance with Section 54 of the Ordinance.

## **Article 13 Jurisdiction of the Arbitrator**

13.1<sup>17</sup> The Arbitrator may rule on his own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

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<sup>16</sup> Based on S53(4) of the Ordinance

<sup>17</sup> Based on S34(1)(1) of the Ordinance

13.2<sup>18</sup> A plea that the Arbitrator does not have jurisdiction shall be raised not later than the submission of the Statement of Defence. A party is not precluded from raising such a plea by the fact that he has participated in the appointment of the Arbitrator. A plea that the Arbitrator is exceeding the scope of his authority shall be raised as soon as the matter alleged to be beyond the scope of his authority is raised during the arbitral proceedings. The Arbitrator may, in either case, admit a later plea if he considers the delay justified.

13.3<sup>19</sup> The Arbitrator may rule on a plea referred to in Article 13.2 either as a preliminary question or in an award on the merits. If the Arbitrator rules as a preliminary question that he has jurisdiction, any party may request, within 30 days after having received notice of that ruling, the Court of First Instance of the High Court to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the Arbitrator may continue the arbitral proceedings or make any award.

13.4<sup>20</sup> The power of the Arbitrator to rule on his own jurisdiction under Articles 13.1 to 13.3 includes the power to decide as to:

- (a) whether the Arbitrator is properly appointed; or
- (b) what matters have been submitted to arbitration in accordance with the arbitration agreement.

13.5<sup>21</sup> If a dispute is submitted to arbitration in accordance with an arbitration agreement and a party:

- (a) makes a counter-claim arising out of the same dispute; or
- (b) relies on a claim arising out of that dispute for the purposes of a set-off;

the Arbitrator has jurisdiction to decide on the counter-claim or the claim so relied on only to the extent that the subject matter of that counter-claim or that claim falls within the scope of the same arbitration agreement.

13.6<sup>22</sup> A ruling of the Arbitrator that he does not have jurisdiction to decide a dispute is not subject to appeal.

## Article 14 Interim Measures

14.1<sup>23</sup> Unless otherwise agreed by the parties, the Arbitrator may, at the request of a party, grant interim measures.

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<sup>18</sup> Based on S34(1)(2) of the Ordinance

<sup>19</sup> Based on S34(1)(3) of the Ordinance

<sup>20</sup> Based on S34(2) of the Ordinance

<sup>21</sup> Based on S34(3) of the Ordinance

<sup>22</sup> Based on S34(4) of the Ordinance

<sup>23</sup> Based on S35(1)(1) of the Ordinance

14.2<sup>24</sup> An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the Arbitrator orders a party to:

- (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.

14.3 The power of the Arbitrator to grant interim measures shall be exercised in accordance with Sections 35 to 42 of the Ordinance.

### **Article 15<sup>25</sup> General and Additional Powers of the Arbitrator**

Unless otherwise agreed by the parties, when conducting arbitral proceedings, the Arbitrator may make an order:

- (a) allowing any party, upon such terms (as to costs and otherwise) as the Arbitrator shall determine, to amend any document submitted under Article 7 and Article 11;
- (b) extending or abbreviating any time limits provided by the Rules or by his directions;
- (c) requiring the Claimant or counter-claimant to give security for the costs of the arbitration;
- (d) directing the discovery of documents or the delivery of interrogatories;
- (e) directing evidence to be given by affidavit;
- (f) in relation to any relevant property:
  - (i) directing the inspection, photographing, preservation, custody, detention or sale of the relevant property by the Arbitrator, a party to the arbitral proceedings or an expert; or
  - (ii) directing samples to be taken from, observation to be made of, or experiments to be conducted on the relevant property;
- (g)<sup>26</sup> rectifying any term of any contract or arbitration agreement of any mistake

<sup>24</sup> Based on S35(1)(2) of the Ordinance

<sup>25</sup> Articles 15(d) to (f) based on S56(1)(b), (c) & (d) of the Ordinance.

<sup>26</sup> Based on Article 70(1) of the Ordinance (in part)



which he determines to be common to the parties or for any other purpose as could be ordered by the Court if the dispute had been the subject of civil proceedings in the Court; or

- (h) by which the Arbitrator decides to proceed in the arbitration and make an award(s) notwithstanding the total or partial failure or refusal of any party to comply with these Rules or with the Arbitrator's written directions, or to exercise its right to present its case, but only after giving that party written notice that he intends to do so.

## **Article 16 Place of arbitration**

16.1 The place of the arbitration shall be Hong Kong but the Arbitrator may decide for the purpose of expediting any hearing or saving costs to hear witnesses or oral argument or consult with an expert or assessor (if appointed) at any place the Arbitrator deems appropriate having regard to the circumstances of the arbitration.

16.2<sup>27</sup> Notwithstanding Article 16.1, the Arbitrator may, unless otherwise agreed by the parties, meet at any place he considers appropriate for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

## **Article 17 Language**

17.1 The language of the arbitration shall be English and all written communications and statements, and all hearings and meetings shall be conducted in the English language unless the parties and the Arbitrator otherwise agree.

17.2 The Arbitrator may order that any documents, including written statements which are produced in the course of the arbitration in their original language, shall be accompanied by a translation into the language of the arbitration, such translation to be certified by a translator approved by the Arbitrator if not agreed.

17.3 Unless the Arbitrator otherwise orders, witnesses shall be entitled to give their evidence in the language of their choice and the Arbitrator may order the translation of that evidence and any related witness statements into the language of the arbitration by a suitably qualified person.

## **Article 18 Deposits and Security**

The Arbitrator may direct the parties, in such proportions as he deems just, to make one or more deposits to secure the Arbitrator's fees and expenses. Such deposits shall be made to and held by the Arbitrator, or HKIAC or some other person or body to the order of the Arbitrator, as the Arbitrator may direct, and may be drawn from as required by the Arbitrator. Interest on sums deposited, if any, shall be accumulated to the deposits.

## **Article 19 The Award**

19.1 The Arbitrator shall make his award in writing and, unless all the parties agree otherwise,

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<sup>27</sup> Based on S48(2) of the Ordinance



shall state the reasons upon which the award is based. The award shall be dated and signed by the Arbitrator and shall state that Hong Kong is the place of arbitration. The award shall be deemed to be made in Hong Kong.

19.2 The Award may include simple or compounded interest on sums awarded at such rates and on such basis as the Arbitrator shall determine. Such interest shall be assessed, awarded and payable in accordance with the provisions of Sections 79 and 80 of the Ordinance.

19.3 The Arbitrator shall notify the parties as soon as the award is ready for collection but shall not be obliged to deliver the award unless his fees and expenses have been paid.

19.4 The Arbitrator may make interim awards including separate awards on different issues at different times.

19.5 If, before the award is made, the parties agree on a settlement of the dispute, the Arbitrator shall either issue an order for termination of the reference to arbitration or, if requested by both parties and accepted by the Arbitrator, record the settlement in the form of a consent award. The Arbitrator shall then be discharged and the reference to arbitration concluded, subject to payment by the parties of all outstanding fees and expenses of the Arbitrator.

19.6 Unless the parties otherwise agree, the Arbitrator shall provide a copy of the award (including any interim or consent award) to the Secretary-General.

## **Article 20 Interpretation of Awards, Correction of Awards and Additional Awards**

20.1<sup>28</sup> Within 30 days of receiving an award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may:

- (a) request the Arbitrator to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature; and
- (b) if so agreed by the parties, request the Arbitrator to give an interpretation of a specific point or part of the award.

If the Arbitrator considers the request to be justified, he shall make the correction or give the interpretation within 30 days of receipt of the request. The interpretation or correction, which shall be given in writing and notified in writing to the parties and to the Secretary-General (if applicable), shall form part of the award.

20.2<sup>29</sup> The Arbitrator may also correct any error of the type referred to in Article 20.1(a) on his own initiative within 30 days of the date of the award.

20.3<sup>30</sup> Unless otherwise agreed by the parties, a party, with written notice to the other party, may request, within 30 days of receipt of the award, the Arbitrator to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the Arbitrator considers the request to be justified, he shall notify the parties and the

<sup>28</sup> Based on S69(1)(1) of the Ordinance (in part)

<sup>29</sup> Based on S69(1)(2) of the Ordinance

<sup>30</sup> Based on S69(1)(3) of the Ordinance (in part)

Secretary-General (if applicable) within 7 days and make the additional award within 60 days of the date of the request.

20.4<sup>31</sup> The Arbitrator may extend, if necessary, the period of time within which he shall make a correction, interpretation or an additional award under this Article.

20.5<sup>32</sup> The provisions of Article 19 shall apply to a correction or interpretation of the award and to an additional award.

20.6<sup>33</sup> The Arbitrator has the power to make other changes to an arbitral award which are necessitated by or consequential on the correction of any error in the award or the interpretation of any point or part of the award.

## **Article 21 Costs**

21.1<sup>34</sup> The Arbitrator may include in an award directions with respect to the costs of the arbitral proceedings (including the fees and expenses of the Arbitrator). The Arbitrator shall specify in the award the total amount of his fees and expenses, including the charges of any arbitration administrator, expert, assessor, transcriber or translator.

21.2<sup>35</sup> The Arbitrator may also, having regard to all relevant circumstances (including the fact, if appropriate, that a written offer of settlement of the dispute concerned has been made), direct in the award to whom and by whom and in what manner the costs of the arbitral proceedings (including the legal or other costs of the parties and the fees and expenses of the Arbitrator) are to be paid.

21.3 The parties will be jointly and severally liable to the Arbitrator for payment of all the Arbitrator's fees and expenses until they have been paid in full. If the Arbitrator has determined that all or any of his fees and expenses shall be paid by any party other than a party which has already paid them to the Arbitrator, the latter party shall have the right to recover the appropriate amount from the former.

21.4<sup>36</sup> The Arbitrator may also, in his discretion, order costs (including the fees and expenses of the Arbitrator) to be paid by a party in respect of a request made by any of the parties for an order or direction (including an interim measure).

21.5<sup>37</sup> The Arbitrator may direct that the costs ordered under Article 21.4 are to be paid forthwith or at the time that the Arbitrator may otherwise specify.

21.6<sup>38</sup> Subject to Section 75 of the Ordinance, the Arbitrator must:

(a) assess the amount of costs to be awarded or ordered to be paid under this Article

<sup>31</sup> Based on S69(1)(4) of the Ordinance

<sup>32</sup> Based on S69(1)(5) of the Ordinance

<sup>33</sup> Based on S69(2) of the Ordinance

<sup>34</sup> Based on S74(1) of the Ordinance (in part)

<sup>35</sup> Based on S74(2) of the Ordinance (in part)

<sup>36</sup> Based on S74(3) of the Ordinance

<sup>37</sup> Based on S74(4) of the Ordinance.

<sup>38</sup> Based on S74(5) of the Ordinance.

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

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

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

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

## **Article 22 Exclusion of Liability**

22.1<sup>39</sup> Without prejudice to any existing rule of law, the Arbitrator, the Arbitrator appointed experts or assessors shall be liable in law to any party for any act done or omitted to be done in relation to the exercise or performance, or the purported exercise or performance, of the Arbitrator's, the Arbitrator appointed experts' or assessors' functions only if it is proved that the act was done or omitted to be done dishonestly.

22.2<sup>40</sup> None of the HKIAC, the HKIAC Council, the HKIAC Secretariat or their staff shall be liable in law for the consequences of doing or omitting to do an act in the exercise, or performance or the purported exercise or performance, of their functions in an arbitration conducted under these Rules, save only if it is proved that the act was done or omitted to be done dishonestly.

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

## **Article 23<sup>41</sup> Waiver of Right to Object**

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

## **Article 24 Destruction of Documents**

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

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<sup>39</sup> Based on S104(1) of the Ordinance (in part).

<sup>40</sup> Based on S105(1) of the Ordinance (in part)

<sup>41</sup> Based on S11 of the Ordinance (in part).

### **Article 25 Interpretation and General Clauses Ordinance**

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

### **Article 26 Confidentiality**

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

## **APPENDIX 1 – HKIAC List System for the Appointment of Arbitrators**

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

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

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

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

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