

Hong Kong International Arbitration Centre

Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules

EFFECTIVE 1 JANUARY 2015

INTRODUCTION

These Procedures 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 while maintaining the flexibility afforded by the 1976 or 2010 version of the UNCITRAL Arbitration Rules (with or without paragraph 4 of Article 1 as introduced in 2013) (the “UNCITRAL Rules”). These Procedures supersede HKIAC’s previous procedures for the administration of arbitration under the UNCITRAL Rules, including the Procedures for the Administration of International Arbitration (effective 31 March 2005).

These Procedures may be adopted in an arbitration agreement entered into at any time before or after a dispute has arisen, which provides that any dispute between the parties shall be referred to arbitration administered by HKIAC under the UNCITRAL Rules, or words to similar effect.

Nothing in these Procedures shall prevent the parties to a dispute under the UNCITRAL Rules from naming HKIAC as the appointing authority, or from requesting certain administrative services from HKIAC without subjecting the arbitration to the provisions contained in these Procedures.

Neither the designation of HKIAC as the appointing authority under the UNCITRAL Rules nor a request by the parties or the arbitral tribunal for specific and discrete administrative assistance from HKIAC shall be construed as a designation of HKIAC as administrator of the arbitration as described in these Procedures. Unless otherwise stated, a request for administration by HKIAC of an arbitration under the UNCITRAL Rules will be construed as a designation of HKIAC as the appointing authority and administrator pursuant to these Procedures.

These Procedures may be adopted for any investor-State arbitration administered by HKIAC under the UNCITRAL Rules pursuant to a treaty providing for the protection of investments or investors.

MODEL ARBITRATION CLAUSES

1. The following model clause may be adopted by the parties to a contract who wish to have any future disputes referred to arbitration under the UNCITRAL Rules with HKIAC as the administrator of the arbitration in accordance with these Procedures:

“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 UNCITRAL Arbitration Rules in force when the Notice of Arbitration is submitted, as modified by the HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules.

- * The law of this arbitration clause shall be ... (*Hong Kong law*)
The place of the arbitration shall be ... (*Hong Kong*)
- ** The number of arbitrators shall be ... (*one or three*). The arbitration proceedings shall be conducted in ... (*insert language*)”

Notes:

- * *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 administered by the Hong Kong International Arbitration Centre under the UNCITRAL 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 UNCITRAL Arbitration Rules currently in force, as modified by the HKIAC Procedures for the Administration of Arbitration under the UNCITRAL 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 place of the 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(s))

Signed: _____ (Respondent(s))

Date: _____”

Notes:

- * *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*

I. INTRODUCTORY RULES

Article 1 - Scope of Application

- 1.1 These Procedures for Administration of Arbitration under the UNCITRAL Arbitration Rules (the “Procedures”) shall apply to arbitrations where an agreement to arbitrate (whether entered into before or after a dispute has arisen) or a treaty providing for the protection of investments or investors (“investment treaty”) either: (a) provides for these Procedures to apply; or (b) provides for arbitration under the UNCITRAL Arbitration Rules (the “UNCITRAL Rules”) administered by HKIAC or words to similar effect.
- 1.2 Subject to Article 1.3, these Procedures shall replace HKIAC’s previous procedures for the administration of arbitration under the UNCITRAL Rules, including the Procedures for the Administration of International Arbitration (effective 31 March 2005).
- 1.3 These Procedures shall come into force on 1 January 2015 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 Nothing in these Procedures shall prevent the parties to a dispute, an arbitration agreement or an investment treaty from naming HKIAC as appointing authority, or from requesting certain administrative services from HKIAC, without subjecting the arbitration to the provisions contained in these Procedures.
- 1.5 Where these Procedures are in conflict with a provision of the law or investment treaty applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

Article 2 - Arbitration Rules

The applicable version of the UNCITRAL Rules, with such modifications as noted herein, shall be the rules for any arbitration conducted under these Procedures.

Article 3 - Appointing Authority

Unless otherwise agreed by the parties, HKIAC shall perform the functions of the appointing authority as set out in the UNCITRAL Rules.

Article 4 – Administrator

HKIAC will administer the arbitration as set out in these Procedures and shall be entitled to charge Administrative Fees for its services as set out in Schedule 1 attached to these Procedures.

Article 5 – Interpretation of the Procedures

- 5.1 HKIAC shall have the power to interpret all provisions of these Procedures including any Schedule attached thereto.
- 5.2 If the circumstances of the case so justify, HKIAC may amend the time limits provided for in the Procedures, as well as any time limits that it has set. HKIAC shall not amend any time limits set by the arbitral tribunal unless the arbitral tribunal directs otherwise.
- 5.3 HKIAC has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under these Procedures. All decisions made by HKIAC under the UNCITRAL Rules and these Procedures are final and, to the extent permitted by any applicable law, not subject to appeal.
- 5.4 References in the Procedures 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.
- 5.5 These Procedures include any Schedule attached thereto as amended from time to time by HKIAC, in force on the date the Notice of Arbitration is submitted.
- 5.6 HKIAC may from time to time issue practice notes to supplement, regulate and implement these Procedures for the purpose of facilitating the administration of arbitrations governed by the UNCITRAL Rules.

5.7 English is the original language of these Procedures. In the event of any discrepancy or inconsistency between the English version and the version in any other language, the English version shall prevail.

Article 6 – Notice of Arbitration

6.1 The party or parties initiating recourse to arbitration (the “Claimant”) shall submit a Notice of Arbitration to HKIAC at its address, facsimile number or email address.

6.2 An arbitration shall be deemed to commence on the date on which the Notice of Arbitration is received by HKIAC.

6.3 In addition to the information that is required to be included in the Notice of Arbitration under the UNCITRAL Rules, the Notice of Arbitration shall include confirmation that copies of the Notice of Arbitration and any exhibits included therewith have been or are being served on all other parties (the “Respondent”) by one or more means of service to be identified in such confirmation.

6.4 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.

6.5 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.

6.6 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 7 – Response to the Notice of Arbitration

7.1 Where the Respondent is required to file a Response to the Notice of Arbitration (the “Response”) under the UNCITRAL Rules, it shall submit the Response to HKIAC within 30 days of the receipt of the Notice of Arbitration.

7.2 In addition to the information that is required to be included in the Response under the UNCITRAL Rules, the Response shall include confirmation that copies of the

Response and any exhibits included therewith have been or are being served on all other parties to the arbitration by one or more means of service to be identified in such confirmation.

7.3 The Response shall be submitted in the language of the arbitration as agreed by the parties. If no agreement has been reached between the parties, the Response shall be submitted in either English or Chinese.

7.4 If no counterclaim or set-off defence is raised with the Response, or if there is no indication of the amount of the counterclaim or set-off, HKIAC shall rely upon the information provided in the Notice of Arbitration for its determination of its Administrative Fees referred to in Schedule 1, unless HKIAC determines otherwise.

7.5 Once the Registration Fee has been paid and the arbitral tribunal has been constituted, HKIAC shall transmit the file to the arbitral tribunal.

Article 8 - Communications

All communications, notices, documents, orders, decisions and awards transmitted pursuant to the UNCITRAL Rules shall at the same time be served on HKIAC or promptly thereafter.

II. COMPOSITION OF THE ARBITRAL TRIBUNAL

Article 9 – The List-Procedure

Where HKIAC is to appoint a sole or presiding arbitrator in accordance with the list-procedure as referred to in the UNCITRAL Rules, the list of names will be communicated by HKIAC to the parties taking into account any particular requirements of each case and any conditions agreed upon by the parties.

Article 10– Challenge of Arbitrators

Where HKIAC is to decide a challenge to an arbitrator under the UNCITRAL Rules, such challenge shall be determined by HKIAC in accordance with the procedures set out in the applicable practice note.

III. ARBITRAL PROCEEDINGS

Article 11 – HKIAC’s Prima Facie Power to Proceed

- 11.1 If a question arises as to the existence, validity or scope of the arbitration agreement(s) or to the competence of HKIAC to administer the 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 these Procedures may exist. Any question as to the jurisdiction of the arbitral tribunal shall be decided by the arbitral tribunal once constituted.
- 11.2 HKIAC’s decision pursuant to Article 11.1 is without prejudice to the admissibility or merits of any party’s pleas.

Article 12 – Place of Hearing

- 12.1 All hearings shall be held at the premises of HKIAC in Hong Kong unless the parties agree or the arbitral tribunal directs that any hearing shall be held elsewhere, whether in or outside Hong Kong.
- 12.2 The parties or the arbitral tribunal may determine the place of arbitration in accordance with the UNCITRAL Rules at a place different from the place or places of hearings. The arbitration shall be treated for all purposes as an arbitration conducted at the place of arbitration.

Article 13 – HKIAC’s Assistance on Procedural Matters

HKIAC will assist the arbitral tribunal and the parties in fixing the time limits for the arbitration, as well as establishing the date, time and place of meetings, hearings, or otherwise, as required.

IV. COSTS AND AWARDS

Article 14 – Fees of Arbitrators

For an arbitration conducted under these Procedures, arbitrators will be remunerated according to their hourly or daily rates for all work reasonably carried out in connection with

the arbitration, unless the parties agree otherwise. Upon the parties' request, HKIAC will consult with the arbitral tribunal to establish the rates applicable to the arbitration.

Article 15 – HKIAC's Administrative Fees

15.1 The costs of the arbitration shall include all fees charged by HKIAC for administration of the arbitration as set out in Schedule 1.

15.2 HKIAC's Administrative Fees do not cover the costs of hearing rooms, transcription, translation, interpretation and costs of any other facilities or services which are not covered in these Procedures. However HKIAC can, at the request of the parties, assist with the making of necessary arrangements for the provision of such services.

Article 16 – Deposits of Costs

16.1 In lieu of the provisions regarding deposits of costs of the UNCITRAL Rules, the following provisions shall apply.

16.2 As soon as practicable after receipt of the Notice of Arbitration, HKIAC shall, in principle, request the Claimant and the Respondent each to deposit with HKIAC an equal amount as advance for the costs of the arbitration. HKIAC shall provide a copy of such request to the arbitral tribunal.

16.3 During the course of the arbitration, HKIAC may request the parties to make supplementary deposits with HKIAC after consulting with the arbitral tribunal. HKIAC shall provide a copy of such request(s) to the arbitral tribunal.

16.4 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, after consultation with HKIAC, may order the suspension or termination of the arbitration. If the required payment is made by a party on behalf of another party, the arbitral tribunal may, at the request of the paying party, make a separate award for reimbursement of the payment.

16.5 HKIAC may apply the deposits towards disbursements for the costs of the arbitration.

16.6 After a termination order or final award has been made, HKIAC shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

16.7 HKIAC shall place the deposits made by the parties in 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.

Article 17 – Release of Award(s)

Subject to any lien, originals of the award(s) signed by the arbitral tribunal and affixed with the seal of HKIAC shall be communicated to the parties by the arbitral tribunal. HKIAC shall be supplied with an original copy of the award(s).

Article 18 – Registration of Award(s)

Upon request by any party, HKIAC will assist in the filing or registration of the arbitral award(s) in countries where such filing or registration is required by law. The cost of any such filing or registration shall not be included in HKIAC's Administrative Fees and shall be paid by the requesting party to HKIAC.

V. OTHER PROVISIONS

Article 19 – Exclusion of Liability

19.1 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 Procedures, nor the Secretary General of HKIAC or other staff members of the Secretariat of HKIAC, the arbitral tribunal, any tribunal-appointed expert or secretary of the arbitral tribunal shall be liable for any act or omission in connection with the arbitration, save where such act was done or omitted to be done dishonestly.

19.2 After an arbitral award has been made and the possibilities of correction, interpretation and additional awards have lapsed or been exhausted, neither HKIAC nor the arbitral tribunal, any 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
FEES

Effective 1 January 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 in the Fee Schedule for an arbitration administered under the 2015 HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules ("Fee Schedule") 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 may not proceed with the arbitration.
- 1.3 The Registration Fee is not refundable.

2. Arbitrator Fees and Expenses

- 2.1 HKIAC will, at the parties' request, consult with the arbitral tribunal to assist the parties in setting the arbitral tribunal's fees in accordance with Article 14 of the Procedures.
- 2.2 The arbitral tribunal shall be reimbursed for its reasonable expenses. The expenses of the arbitral tribunal shall not be included in the arbitral tribunal's fees.

3. Payments to Arbitral Tribunal

- 3.1 Payments to the arbitral tribunal shall generally be made by HKIAC from funds deposited by the parties in accordance with Article 16 of the Procedures. 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.
- 3.2 If insufficient funds are held by HKIAC at the time a payment is required, the invoice for the payment may be submitted to the parties for settlement by them direct.

3.3 Payments to the arbitral tribunal shall be made in Hong Kong Dollars unless the arbitral tribunal directs otherwise.

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

4. HKIAC's Administrative Fees

4.1 HKIAC's Administrative Fees shall be determined in accordance with the Fee Schedule on HKIAC's website on the date the Notice of Arbitration is submitted.

4.2 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.

4.3 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.

4.4 Where a party amends its claim or defence, or in the opinion of HKIAC there are exceptional circumstances, HKIAC's Administrative Fees may exceed the amounts calculated in accordance with paragraph 4.1 of this Schedule.

4.5 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.

4.6 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.

4.7 If, before the award is made, the parties agree on a settlement of the dispute, HKIAC shall fix any Administrative Fees already incurred, which shall be payable by the parties.

4.8 The parties are jointly and severally liable for HKIAC's Administrative Fees.

5. 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 16 of the Procedures as and when they are incurred.

6. 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.