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# Guide to Arbitration Under the Domestic Arbitration Rules 2014



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

**GUIDE TO ARBITRATION  
UNDER THE DOMESTIC  
ARBITRATION RULES 2014**

**HONG KONG INTERNATIONAL  
ARBITRATION CENTRE**

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## **INTRODUCTION TO THE GUIDE**

Arbitration is a flexible method of dispute resolution which can give a quick, inexpensive, confidential, fair and final solution to a dispute. It involves the determination of the dispute by one or more independent third parties rather than by a court. The third parties, called Arbitrators, are appointed by, or on behalf of, the parties in dispute. The arbitration is conducted in accordance with the terms of the parties' arbitration agreement which is usually found in the provisions of a commercial contract between the parties.

Arbitration in Hong Kong is governed by the Arbitration Ordinance, Chapter 609 of the Laws of Hong Kong (the Arbitration Ordinance) which came into effect on 1st June 2011. The Arbitration Ordinance has been internationally recognised as one of the best pieces of arbitration legislation in the world, combining the maximum of independence from the court system with a strong regime of court support in areas where this is required. Prior to the commencement of the Arbitration Ordinance in 2011 the Arbitration Ordinance was divided into two distinct regimes, the international regime and the domestic or non-international regime. The international regime incorporates the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 (the Model Law), a piece of model legislation developed by the United Nations and commended for international use. In 2011 the Arbitration Ordinance was streamlined to apply the Model Law to all arbitrations. The 2011 version of the Arbitration Ordinance makes a number of practical additions to the Model Law and includes a schedule of provisions which parties may agree to adopt providing additional court support to arbitration if this is what the parties want.

These Rules should be construed in accordance with the provisions of the Arbitration Ordinance, which largely incorporates the Model Law. Further information about the Model Law as well as case authorities from Model Law Jurisdictions (in the form of "Case Law on Model Law Texts" and the "Digest of Case Law") can be found at the UNCITRAL website at <http://www.uncitral.org>.

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The objective of the HKIAC Domestic Arbitration Rules (the Rules) is to provide a framework which is suitable for the widest possible range of domestic disputes. The Rules allow the procedure to be as short and as inexpensive as practicable.

This Guide does not form part of the Rules and is not intended to modify the Rules in any way. Its purpose is to direct parties and Arbitrators towards achieving the maximum benefit from the Rules. The Guide also encourages timely consideration of ways in which procedures may be tailored to suit any particular dispute.

The Rules with the support of the Arbitration Ordinance give wide powers<sup>1</sup> and jurisdiction<sup>2</sup> to the Arbitrator. The Guide indicates ways in which an Arbitrator may use his authority to avoid unnecessary expenditure of time and resources. Arbitrators are not bound to follow court procedure and should not slavishly do so. Indeed, section 46(3)(c) of the Arbitration Ordinance places a duty on Arbitrators to adopt appropriate procedures in each case, so as to avoid unnecessary delay and expense. An Arbitrator is master of his own procedure and can be confident that the Hong Kong courts do not ordinarily attempt to control the procedure in an arbitration. Arbitrators should however be wary of imposing a procedure which is contrary to the common wishes of both parties, because the principle of party autonomy is enshrined as a governing principle of the Arbitration Ordinance (see section 3(2)(a)). Arbitration arises from a contractual agreement between the parties and Arbitrators should be sensitive to their joint expectations of the process. In any event, whether Arbitrators are acting in accordance with a procedure agreed by the parties or which they have directed in the absence of agreement between the parties, Arbitrators must act fairly and impartially (see section 46(3)(b) of the Arbitration Ordinance).

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1 **powers:** the Arbitrator's authority to order the manner in which the arbitration shall be conducted and the manner in which the dispute shall be determined.

2 **jurisdiction:** the scope of the Arbitrator's authority to determine a dispute referred to him or her.

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Normally the decision to enter into a contract is based on commercial considerations, and the written contract documents record the bargain. The resolution of commercial disputes equally involves commercial considerations. Arbitration and these Rules provide one legal framework for resolution of disputes. Legal advice can be invaluable in both entering a contract and in resolving a dispute. Parties should however always remember that the objectives are commercial and that the legal framework is intended to help parties to achieve their legitimate commercial objectives.

Decisions on procedure should thus always be held up to commercial scrutiny. The parties themselves should take an active part in every stage of arbitration. This will ensure that they always know what is happening, why it is happening, what it is costing, how long it will take and what the ultimate benefit is expected to be. The closer the party stays to the dispute, the easier it is to resolve. Technical and legal advisers are urged to encourage their clients to meet the Arbitrator at the preliminary meeting to discuss ways in which the procedure can be simplified.

## Preamble

The Rules apply to any arbitration commenced on or after 1 November 2014 if the arbitration agreement provides that the Hong Kong International Arbitration Centre Domestic Arbitration Rules apply. They apply even if the contract containing the arbitration agreement was signed before 1 November 2014.

Persons drafting arbitration clauses should address the clauses in "Suggested Clauses", the third paragraph in the Preamble to the Rules and sections 23, 100 and 102 of the Arbitration Ordinance.

The Arbitrator, Arbitrator-appointed experts or assessors and their respective employees and agents 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 or, the Arbitrator-appointed experts' or assessors' functions, only if it is proved that the act was done or omitted to be done dishonestly.<sup>3</sup>

None of 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.<sup>4</sup>

## Article 1 Commencement of Arbitration

Under some contracts, an arbitration must be commenced within a very short period after the dispute has arisen. It is important for a prospective Claimant to avoid being time barred.<sup>5</sup> Section 49 of the Arbitration Ordinance states that, unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the Respondent. Claimants should ensure that the Notice of Arbitration fully complies with Article 1.

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<sup>3</sup> Based on section 104 of the Arbitration Ordinance.

<sup>4</sup> Based on section 105 of the Arbitration Ordinance.

<sup>5</sup> Under section 58(4) of the Arbitration Ordinance the arbitral tribunal is empowered to extend time limits only if it is satisfied that -

- (a) (i) the circumstances were such as to be outside the reasonable contemplation of the parties when they entered into the arbitration agreement; and
- (ii) that it would be just to extend the period; or
- (b) the conduct of one party makes it unjust to hold the other party to the strict terms of the agreement.

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The Rules do not require the Notice of Arbitration to be accompanied by a full Statement of Claim. The Statement of Claim (under Article 6.2) need not be sent until 28 days after the Arbitrator's acceptance of his or her appointment. However, a Claimant wishing to expedite the proceedings may attach its Statement of Claim to the Notice of Arbitration.

Article 1.1(b) requires the Notice of Arbitration to include "reference to the contractual documents or other legal instruments in which the arbitration clause is contained or under which the arbitration arises". For simple contracts, the full contract should be sent. In complex contracts, such as many construction contracts, those parts of the contract documents which give general information about the contract should be included.<sup>6</sup> If the contract documents include an arbitration clause, this must be included. If the contract documents themselves do not contain an arbitration clause but refer to a document that does, this document must be included.

Article 1.4 requires a copy of the Notice of Arbitration to be sent to the Secretary-General of HKIAC.

## **Article 2 Appointing Authority**

If the parties are unable to agree on a suitable Arbitrator, HKIAC will make an appointment from its Panel or List of Arbitrators.<sup>7</sup> As mentioned below the Secretary-General of HKIAC will assist parties who wish to agree upon an Arbitrator.

## **Article 3 Appointment of Arbitrator**

Any Arbitrator, if so requested by either party or the Appointing Authority, should sign a declaration that there are no circumstances likely to give rise to any justifiable doubts as to his impartiality or independence. An Arbitrator should also undertake that he will immediately disclose any such circumstances to the parties if they should arise during the arbitration. Parties and Arbitrators should note the judgment of the English House of Lords in *Porter v Magill*<sup>8</sup> where it was

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6 For example, articles of agreement, conditions of contract etc.

7 HKIAC is given statutory power under section 23(3) of the Arbitration Ordinance to decide whether there should be one or three arbitrators and under section 24 of the Arbitration Ordinance to appoint arbitrators. These powers apply in cases where the parties have not agreed to give these powers to an appointing authority or the appointing authority chosen does not act.

8 [2002] 2 AC 357 at page 494.

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held that the test of bias is whether, taking into account all relevant circumstances, a fair-minded and informed observer would conclude that there was a real possibility that the tribunal was biased. That test has been adopted in cases before the Hong Kong Court of Final Appeal and the Hong Kong Court of Appeal.<sup>9</sup>

Parties seeking a specialist Arbitrator should avoid falling into the trap of rejecting all of the most experienced Hong Kong Arbitrators in the field. If they do, they may be forced either to accept an inexperienced Arbitrator or to bring in an Arbitrator from overseas. Not infrequently the Claimant proposes several eminent Arbitrators. The Respondent rejects them for no other reason than that they are the Claimant's proposal. The Respondent then proposes several equally eminent Arbitrators. The Claimant rejects them because they are the Respondent's choice. Neither Claimant nor Respondent benefits from this process of elimination. HKIAC can assist parties to overcome this problem by using the list system detailed in Appendix 1 to the Rules.

## **Article 4 Communication between Parties and the Arbitrator**

It is very important that neither party should communicate with any Arbitrator without the other party knowing the content of the communications. For this reason written communications must always be copied to the other party. Direct telephone calls to an Arbitrator are to be avoided. Today urgent messages can normally be sent by fax or e-mail and copied to the other party. In exceptional circumstances where telephone contact is thought to be essential, the Secretary-General of HKIAC can act as a neutral intermediary.

In recent years it has become more common for parties to wish to interview potential Arbitrators before they are appointed. This procedure requires care to be exercised by both the interviewing party and the potential Arbitrator. The Chartered Institute of Arbitrators *Practice Guideline 16: The interviewing of Prospective Arbitrators* provides practical guidance if this

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<sup>9</sup> *Deacons and White & Case Litigation* (2003) 6 HKCFAR 322; *PCCW – HKT Telephone Ltd v. Telecommunications Authority* (2008) 2 HKLRD 282 at 288; *X v Education and Accreditation Committee, Medical Council of Hong Kong* (2013) 1 HKLRD 167 at 186.

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procedure is contemplated. Where the Secretary-General of HKIAC is appointed as arbitration administrator,<sup>10</sup> a charge will be made for the actual time spent on the arbitration and for expenses incurred. This service is most often useful in small disputes, where the parties are not legally represented, or where there is more than one Arbitrator. The service is also very helpful where two or more arbitrations are consolidated<sup>11</sup> by the courts or by agreement. The arbitration administrator, having no jurisdiction or power, is free to talk to the parties separately and may be able to facilitate agreement on procedure.

HKIAC is also willing to assist parties in settling their dispute outside the arbitration and will help with the appointment of a mediator. If agreed by the parties, a mediator may be appointed either before arbitration is commenced or at any time during the arbitration proceedings.

## **Article 5 Conduct of the Proceedings**

Article 5.2 states that the Arbitrator shall have the widest discretion in conducting the proceedings. This should be read in conjunction with sections 3, 46(2), 46(3) 47 & 56 of the Arbitration Ordinance which state:

3. *Objective and principles of this Ordinance*
- (1) *The object of this Ordinance is to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense.*
  - (2) *This Ordinance is based on the principles —*
    - (a) *that, subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved; and*
    - (b) *that the court should interfere in the arbitration of a dispute only as expressly provided for in this Ordinance.*

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<sup>10</sup> See Article 4.5 of the Rules.

<sup>11</sup> It is not unusual for two disputes to involve the same issues. This may occur for example where a trader buys and resells goods which are rejected by the final recipient. The buyer's complaint about the goods may be reflected by the trader's parallel claim against the party from whom he purchased the goods. It is sometimes desirable to consolidate the two disputes into a single arbitration. This may be done by agreement or it may be ordered by the court where the parties have opted-in to section 2 of Schedule 2 of the Arbitration Ordinance in accordance with sections 99, 100 or 101 of that Ordinance.

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46. *Equal treatment of parties*

- (2) *The parties must be treated with equality.*
- (3) *When conducting arbitral proceedings or exercising any of the powers conferred on an arbitral tribunal by this Ordinance or by the parties to any of those arbitral proceedings, the arbitral tribunal is required-*
  - (a) *to be independent;*
  - (b) *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; and*
  - (c) *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.*

47. *Determination of rules of procedure*

- (2) *If or to the extent that there is no such agreement of the parties, the arbitral tribunal may, subject to the provisions of this Ordinance, conduct the arbitration in the manner that it considers appropriate.*
- (3) *When conducting arbitral proceedings, an arbitral tribunal is not bound by the rules of evidence and may receive any evidence that it considers relevant to the arbitral proceedings, but it must give the weight that it considers appropriate to the evidence adduced in the arbitral proceedings.*

56. *General powers exercisable by arbitral tribunal*

- (1) *Unless otherwise agreed by the parties, when conducting arbitration proceedings, an arbitral tribunal may make an order —*
  - (a) *requiring a claimant to give security for the costs of the arbitration;*
  - (b) *directing the discovery of documents or the delivery of interrogatories;*
  - (c) *directing evidence to be given by affidavit;*

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- (d) *in relation to any relevant property —*
- (i) *directing the inspection, photographing, preservation, custody, detention or sale of the property by the arbitral tribunal, a party to the arbitral proceedings or an expert; or*
  - (ii) *directing samples to be taken from, observations to be made of, or experiments to be conducted on the relevant property;*
- (2) *An arbitral tribunal must not make an order under subsection (1)(a) only on the grounds that the claimant is —*
- (a) *a natural person who is ordinarily resident outside Hong Kong;*
  - (b) *a body corporate—*
    - (i) *incorporated under the law of a place outside Hong Kong; or*
    - (ii) *the central management and control of which is exercised outside Hong Kong; or*
- (3) *An arbitral tribunal —*
- (a) *must, when making an order under subsection (1)(a), specify the period within which the order has to be complied with; and*
  - (b) *may extend that period or an extended period.*
- (4) *An arbitral tribunal may make an award dismissing a claim or stay a claim if it has made an order under subsection (1)(a), but the order has not been complied with within the period specified under subsection (3)(a) or extended under subsection (3)(b).*
- (5) *Despite section 35(2), sections 39 to 42 apply, if appropriate, to an order under subsection (1)(d) as if a reference to an interim measure in those sections were an order under that subsection.*

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- (6) *Property is a relevant property for the purposes of subsection (1)(d) if—*
- (a) *the property is owned by or is in the possession of a party to the arbitral proceedings; and*
  - (b) *the property is subject of the arbitral proceedings, or any question relating to the property has arisen in the arbitral proceedings.*
- (7) *Unless otherwise agreed by the parties, an arbitral tribunal may, when conducting arbitral proceedings, decide whether and to what extent it should itself take the initiative in ascertaining the facts and the law relevant to those arbitral proceedings.*
- (8) *Unless otherwise agreed by the parties, an arbitral tribunal may —*
- (a) *administer oaths to, or take the affirmations of, witnesses and parties;*
  - (b) *examine witnesses and parties on oath or affirmation; or*
  - (c) *direct the attendance before the arbitral tribunal of witnesses in order to give evidence or to produce documents or other evidence.*
- (9) *A person is not required to produce in arbitral proceedings any document or other evidence that the person could not be required to produce in civil proceedings before a court.*

Consideration should be given to ways in which the procedure can be simplified or expedited. In particular, consideration should be given to conducting the arbitration on documents only or using a short hearing.

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Article 5.3 requires the Arbitrator to hold a preliminary meeting as soon as possible after accepting the appointment if requested to do so by any party. Arbitrators are encouraged to hold a preliminary meeting with the parties and their representatives to ensure that the parties are aware of what is expected of them in the arbitration. A preliminary meeting also provides an opportunity to review the possibility of using a simplified or expedited procedure or to consider requests for extensions of any time period. Appendix 1 to this Guide is a checklist of some matters to be considered at preliminary and procedural meetings. Not all of the items on the checklist will be relevant to every arbitration and all relevant items cannot normally be decided at an initial preliminary meeting. Some relevant items may be decided in exchanges of correspondence or at further procedural meetings. The Rules do not fix a time for the preliminary meeting. It is essentially a matter for the Arbitrator and the parties to consider. Timing will depend very much on the nature of the dispute and how detailed the respective claims and counter-claims (if any) are. There is little point in convening a very quick preliminary meeting shortly after appointment if the Arbitrator does not know enough about the case to make a meeting worthwhile. On the other hand, in some disputes an early preliminary meeting will enable the Arbitrator to assist the parties to define the claims and counterclaims.

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

If a party fails to comply with a peremptory order, then without affecting section 61 of the Arbitration 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.<sup>12</sup>

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<sup>12</sup> See section 53(3) & (4) of the Arbitration Ordinance.

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## **Article 6 Submission of Parties' Written Statements and Documents**

Written statements should describe in normal language the reasons why the party makes or denies a claim. The historical and factual background should be explained briefly as well as the legal basis of the party's contention. The objective is to convey the party's contention in simple language. Legal formula should be avoided as should the format of traditional court pleadings. Statements of Defence should fully explain the grounds on which the claim is challenged. An Arbitrator having read the Statements should have a clear picture of the dispute and the issues to be decided.

The timetable detailed in Article 6 is an appropriate timetable for non-complex and non-voluminous arbitrations but in complex cases, such as some construction disputes, it may be unreasonable to expect parties to follow the timetable. In such cases Arbitrators should be willing to consider extending the time limits. Conversely, in simple disputes the time limits may be reduced.<sup>13</sup>

Article 6.6 requires Statements to be accompanied by copies of all essential documents. Documents should thus be limited to those relied on in the Statement which they accompany. Where those documents are not voluminous they should be attached to the Statement they accompany. Where those documents are voluminous, the Arbitrator may give leave to provide lists of documents. Court style discovery of documents is not required or expected under these Rules. A Statement should refer to only those documents which are necessary to prove or defend a claim advanced in the arbitration. Where a party engages in the attachment of extraneous or unnecessary documents or lists, it may suffer costs consequences.

Article 6.7 empowers the Arbitrator to order production of additional documents where he or she considers that it would be just to do so in order to determine a claim or defence.

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<sup>13</sup> See Article 13(b) of the Rules.

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The rules of evidence do not apply to arbitration.<sup>14</sup> An Arbitrator may receive any evidence that he or she considers relevant to the arbitral proceedings, but the Arbitrator must give the weight that he or she considers appropriate to the evidence adduced in the proceedings. An Arbitrator is at liberty to accept secondary evidence.<sup>15</sup> An Arbitrator will be more inclined to receive secondary evidence when the effort involved in refuting it would be small but the effort of obtaining the primary evidence.<sup>16</sup> would be considerably greater.

Unless otherwise agreed by the parties, if, without showing sufficient cause, the Claimant fails to communicate its Statement of Claim in accordance with Article 6.2, 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).

If, on the other hand, unless otherwise agreed by the parties, the Respondent fails, without showing sufficient cause, to communicate its Statement of Defence in accordance with Article 6.3, the Arbitrator shall continue the proceedings without treating such failure in itself as an admission of the Claimant's allegations.

If 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 or her.<sup>17</sup>

## Article 7 Representation

Section 63 of the Arbitration Ordinance (Representation and preparation work) provides as follows:

Section 44 (Penalty for unlawfully practising as a barrister or notary public), section 45 (Unqualified person not to act as solicitor) and section 47 (Unqualified person not to prepare certain instruments, etc.) of the Legal Practitioners Ordinance (Cap 159) do not apply to—

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14 See section 47(3) of the Arbitration Ordinance.

15 **secondary evidence:** that by its nature suggests the existence of better evidence (e.g. a copy of a document or a statement made outside the hearing).

16 **primary evidence:** such as the original of a document, that by its nature does not suggest that better evidence is available.

17 Based on section 53(1) of the Arbitration Ordinance.

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- (a) *arbitration proceedings;*
  - (b) *the giving of advice and the preparation of documents for the purposes of arbitral proceedings; or*
  - (c) *any other thing done in relation to arbitral proceedings, except where it is done in connection with court proceedings—*
    - (i) *arising out of an arbitration agreement or*
    - (ii) *arising in the course of, or resulting from, arbitration proceedings.*

Thus parties to arbitrations in Hong Kong are not required to retain qualified lawyers. Parties who wish to be represented can be represented by whomever they please. Foreign lawyers can be retained if all applicable laws are complied with. Section 76 of the Arbitration Ordinance enables parties to recover the costs of employing representatives who are legal and non-legal professionals. These provisions apply to all arbitrations no matter when commenced or the date of the arbitration agreement.

It is essential that the name and address of the representative should be notified to the other party, the Arbitrator and HKIAC. If representation is by a firm, it is very helpful to have the names of at least one, and preferably two, persons within the firm who are dealing with the matter. Changes of representative should be notified immediately.

## **Article 8 Hearings**

Unless the parties have agreed to a documents-only arbitration, a party is entitled to require an oral hearing to be convened.<sup>18</sup> Where the contemporary documents record the central facts, it is frequently unnecessary for the Arbitrator to receive oral testimony of witnesses in a hearing. In these circumstances the documents-only procedure is highly economical and expeditious. Therefore it should be considered in appropriate cases. It is to be noted that, where these Rules apply, documents-only arbitration can only be used as a result of an agreement by the parties.

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<sup>18</sup> Based on section 52 of the Arbitration Ordinance.

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Where the parties have agreed to conduct an arbitration on documents-only, the Arbitrator will normally comply with their wishes. However, if it is clear to the Arbitrator from the documents that the Arbitrator would be unable to arrive fairly at an award, this article enables him or her to modify the procedure to the extent necessary for him or her to be able to adjudicate fairly. The Arbitrator should be careful to ensure that, so far as he or she is aware, all relevant documents have been submitted to him or her. If any are missing, he or she should call for them before considering his award. This approach is necessary to ensure justice between the parties.

It is advisable for the Arbitrator to invite the parties to give some alternative dates on which they are available for a hearing so that he or she can choose a reasonable date and time for the hearing (or any meeting). Sometimes a party may be difficult over dates. The Arbitrator must be prepared to take a strong line with a party who tries to delay the arbitration. The Arbitrator should fix what appears to him or her to be a reasonable date and place. An Arbitrator should, however, be wary of fixing a hearing with very short notice unless it is essential to do so or unless the parties agree.

Article 8.4 allows the Arbitrator, having reviewed the papers, to give the parties advance notice of matters which he or she would like them to consider or on which he or she would like assistance prior to the hearing. It may save time if the Arbitrator does so. Some examples are listed in Appendix 1, but this list is not exhaustive, and much will depend upon the facts of any particular case.

Article 8.5 permits the Arbitrator to order opening and closing statements in writing. Although not mandatory, in many cases, an Arbitrator will be greatly assisted by having opening and closing statements in writing.

Usually the Claimant submits its written opening statement first, and the Respondent replies, with any answer following shortly afterwards. Although this procedure may take some days, the opportunity for the parties and the Arbitrator to consider them in advance of the hearing often ultimately saves time. It is often necessary and appropriate, however, to allow parties to amplify their written statements with a brief oral opening at the hearing. Indeed the Arbitrator may request some oral amplification. Flexibility in approach is the key.

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Parties and their legal representatives do not have an unlimited right to address a tribunal for as long as they like on as many topics as they wish. The right of parties to do this in Court was questioned by Lord Templeman in *Banque Keyser Ullman v Skandia (UK)*<sup>19</sup> when he said this:

*The present practice is to allow every litigant unlimited time and unlimited scope so that the litigant and his advisers are able to conduct their case in all respects in the way which seems best to them. The results not infrequently are torrents of words, written and oral, which are oppressive and which the Judge must examine in an attempt to eliminate everything which is not relevant, helpful and persuasive. The remedy lies in the Judge taking time to read in advance pleadings, documents certified by Counsel to be necessary, proofs of witnesses and short skeleton arguments of Counsel, and for the Judge, after a short discussion in open court, to limit the time and scope of oral evidence and the time and scope of oral arguments. The appellate courts should be unwilling to entertain complaints concerning the results of this practice.*

Similar observations made by the House of Lords in *Ashmore & Others v Corporation of Lloyd's*<sup>20</sup> would apply to an arbitration. Provided the order is fair and reasonable and he or she treats both parties with equality, an Arbitrator has nothing to fear from the courts if he or she limits oral submissions. Indeed section 46(3)(b) of the Arbitration Ordinance requires Arbitrators 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.”

Besides opening and closing statements (and exchange of witness statements see Article 9) Arbitrators may also find it helpful to consider requesting or ordering the following:

- (a) an agreed chronology;
- (b) an agreed list of issues or, if a list cannot be agreed a list from each side;
- (c) an agreed list of facts not in dispute;

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<sup>19</sup> [1990] 3WLR 364 page 380.

<sup>20</sup> [1992] 1WLR 446.

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- (d) a list of facts<sup>21</sup> in dispute;
  - (e) exchange of submissions on the law either generally or limited to particular issues.

These matters can be addressed conveniently at the preliminary meeting, in exchanges of correspondence or at further procedural meetings; they represent items for consideration under point 26 of the checklist in Appendix 1.

Unless otherwise agreed by the parties, if, without showing sufficient cause, any party fails to appear at a hearing of which due notice has been given, the Arbitrator may, with or without a hearing, continue the proceedings and make an award on the substantive issues and an award as to costs on the evidence before them.<sup>22</sup>

## Article 9 Witnesses

This Article reflects the modern approach to the presentation of evidence by witnesses. The parties inform each other of the identity of the witnesses whom they intend to call to give evidence and they exchange written statements of that evidence prior to the hearing. When a party receives the written statement of evidence of a witness to be called by the other side it sometimes accepts that there is nothing controversial in it. In those circumstances the party receiving the witness statement should inform the other party that the statement can stand as that witness's evidence in the hearing without the need for the witness to attend the hearing.

In light of Article 9.3, an Arbitrator should consider ordering that not only should witness statements be exchanged but also that a witness's statement(s) should stand as the witness's examination-in-chief.<sup>23</sup> That does not mean that the party calling that witness cannot ask him or her to clarify certain matters contained in his or her statement or to comment upon evidence already given in the hearing. This procedure saves much time in the hearing. Indeed it is not uncommon for witnesses to be permitted by the Arbitrator to provide reply witness statements. It is, however, a matter for the Arbitrator's discretion whether to require written witness statements and there may be cases where the Arbitrator feels it unnecessary or inappropriate to make such an order.

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21 Non-lawyers may find this terminology confusing. In this context a "fact" is what a party alleges to be a fact.

22 See section 53(1)(c) of the Arbitration Ordinance.

23 **examination-in-chief:** the questioning of a witness by the party who called him or her to give evidence.

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Although witness statements have been exchanged witnesses will normally be required to attend the hearing for cross-examination.<sup>24</sup>

## **Article 10 Experts and Assessors Appointed by the Arbitrator**

Traditionally, an Arbitrator could appoint an assessor to help him or her decide a technical or legal issue. This tradition is now seldom adopted except to assist an Arbitrator with the assessment of costs. Today the practice has shifted towards the Arbitrator appointing tribunal-appointed experts. Unlike an assessor, the tribunal-appointed expert may be examined by the Arbitrator or by the parties' representatives in a hearing.

The Arbitrator should bear in mind that tribunal-appointed experts' fees are recoverable as part of the Arbitrator's expenses. It is thus wise to inform the parties of the proposed fees of the tribunal-appointed expert before he or she is appointed.

## **Article 11 Jurisdiction of the Arbitrator**

This article should be read with section 34 of the Arbitration Ordinance.

The power of the Arbitrator to rule on his or her own jurisdiction under Articles 11.1 and 11.2 includes the power to decide whether the Arbitrator is properly appointed; as well as the power to decide what matters have been submitted to arbitration in accordance with the arbitration agreement.

If a dispute is submitted to arbitration in accordance with an arbitration agreement and a party makes a counter-claim arising out of the same dispute; or 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.<sup>25</sup>

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<sup>24</sup> **cross-examination:** the questioning of a witness by a party other than the party who called him or her to give evidence.

<sup>25</sup> Based on section 34(3) of the Arbitration Ordinance.

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The Arbitrator may rule on his or her own jurisdiction either as a preliminary question or in an award on the merits. If the Arbitrator rules, as a preliminary question, that he or she 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 (the 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.<sup>26</sup>

A ruling of the Arbitrator that he or she does not have jurisdiction to decide a dispute is not subject to appeal.<sup>27</sup>

## **Article 12 Interim Measures**

Section 35(1) of the Arbitration Ordinance and Article 17 of the UNCITRAL Model Law define interim measures which can be granted by a tribunal. These are temporary measures whereby a party is ordered 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.

Section 35(3) allows the tribunal to make an award to the same effect as an interim measure.

Section 36 and Article 17A set out the conditions as to which the tribunal needs to be satisfied before granting an interim measure.

Section 37 and Article 17B deal with *ex parte* applications for preliminary orders by the tribunal directing a party not to frustrate the purpose of a requested interim measure.

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<sup>26</sup> Based on section 34(1) of the Arbitration Ordinance.

<sup>27</sup> See section 34(4) of the Arbitration Ordinance.

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Section 38 and Article 17C provide for notification to all parties of the preliminary order, request for interim measure and other relevant information so that objection can be made. The preliminary order lasts for only 20 days during which the tribunal deals with the request for an interim measure. The preliminary order is not enforceable by a court and does not constitute an award.

Section 39 and Article 17D allow the tribunal to modify, suspend or terminate an interim measure or a preliminary order.

Section 40 and Article 17E allow the tribunal to order the party applying for an interim measure or a preliminary order to provide appropriate security.

Section 41 and Article 17F deal with disclosure of material changes in circumstances on the basis of which an interim measure was granted and similar obligations on a party applying for a preliminary order.

Section 42 and Article 17G provide for the tribunal to award costs and damages to a party if an interim measure or preliminary order should not have been granted.

It should be noted:

- (i) Section 61 of the Arbitration Ordinance deals with enforcement by the Court of interim measures granted by an arbitral tribunal.
- (ii) Section 45 of the Arbitration Ordinance allows the Court itself to grant interim measures subject to sections 45(3) and (4).

## **Article 13 General and Additional Powers of the Arbitrator**

Under these Rules the Arbitrator's powers are very wide and should enable the Arbitrator to decide disputes without reference to the courts. Although he or she must apply the law, an Arbitrator is not bound to follow the practice of the Hong Kong Courts. Nevertheless, an arbitrator may find it useful to have regard to the principles upon which the courts exercise such powers. Arbitrators should also be aware of the further extensive powers given to them by sections 34(1) (tribunal may rule on its jurisdiction), 57 (tribunal may limit amount of recoverable costs), 58 (power to extend time for arbitral proceedings), 59 (order to be made in case of delay in pursuing claims in arbitral proceedings) and 70 (award of remedy or relief) of the Arbitration Ordinance.

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Arbitration Ordinance sections 79 and 80 permit the arbitral tribunal to award simple or compound interest based on such dates and rates that the tribunal considers appropriate. In the absence of any specific provisions in the award, interest is payable from the date of the award and at the same rate as for a judgment debt. Interest may be awarded on any sum outstanding after the proceedings commenced, whether or not paid before the date of the award.

The power to proceed without the participation of one or more of the parties to make an award under section 53 of the Arbitration Ordinance should be exercised with great care. Arbitrators should bear in mind they have an overriding obligation of fairness and should ensure a defaulting party is clearly aware of the consequences of default.

## **Article 14 Place of Arbitration**

The Rules provide that Hong Kong shall be the place of the arbitration. It should be noted however that section 48 of the Arbitration Ordinance empowers Arbitrators, unless otherwise agreed by the parties, to meet at any place they consider appropriate for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents. It may be important, for reasons of enforcement and judicial challenge to the award, that the Arbitrator makes the award in Hong Kong. Parties and Arbitrators should be aware of the decision of the House of Lords in *Hiscox v Outhwaite*.<sup>28</sup>

## **Article 15 Language**

The arbitration will be conducted in the English language unless the parties agree otherwise which of course they are free to do. Whatever language is used for the arbitration, it is recognised that evidence may be available in other languages. Article 15.2 provides for translation of documents and Article 15.3 allows witnesses to give evidence in the language of their choice. In both provisions, the Arbitrator must consider the situation and make the appropriate order. In deciding whether to allow evidence in another language, the Arbitrator should balance the cost and inconvenience of a translation or interpretation against the possibility of putting one party at a disadvantage.

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<sup>28</sup> [1991] 3WLR 297.

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## Article 16 Deposits and Security

To secure his or her fees and expenses, the Arbitrator may require the parties to pay certain sums as deposits during the arbitration. The Article provides how the deposits and interest earned on them shall be held, and it also allows the Arbitrator to draw upon such sums. Usually the parties will be required to contribute in equal shares and an adjustment will be made in the Arbitrator's final award for costs. The general liability for the payment of fees is further reinforced under section 78 of the Arbitration Ordinance.

## Article 17 The Award

This article should be read with sections 67 and 70 of the Arbitration Ordinance.

Section 70 of the Arbitration Ordinance says:

- (1) *Subject to subsection (2), an arbitral tribunal may, in deciding a dispute, award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in the Court.*
- (2) *Unless otherwise agreed by the parties, the arbitral tribunal has the same power as the Court to order specific performance of any contract, other than a contract relating to land or any interest in land.*

An award must be in writing, dated and signed, and reasons should be given for the Arbitrator's conclusion. This will help with any enforcement proceedings that become necessary. The parties, however, may by agreement dispense with any requirement to give reasons.

Article 17.2 imposes on the Arbitrator a responsibility for delivering the award (or a certified copy) to the parties, subject to the usual provision that his fees and expenses have been paid. If a party considers those fees to be exorbitant, it may apply to the court for relief under section 77(2) of the Arbitration Ordinance as long as the total amount of fees and expenses was not agreed in writing.

Article 17.3 recognises that in some cases an interim award may be required and empowers the Arbitrator to make separate awards on different issues at different times.<sup>29</sup>

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<sup>29</sup> Based on section 71 of the Arbitration Ordinance.

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Article 17.4 recognises that parties frequently settle their disputes before an award is made. The sub-article empowers the Arbitrator either to issue an order for termination of the arbitration or alternatively, if requested by both parties, the Arbitrator may record the settlement as a consent award. The latter may be desirable if some record of the terms of settlement is required that, if necessary, can be enforced. When either procedure is completed, the Arbitrator will be discharged from his or her duty and the reference to arbitration will be concluded, subject to payment of the Arbitrator's fees and expenses.

Unless the parties have agreed otherwise the Arbitrator is required by Article 17.5 to provide a copy of the award to the Secretary-General of HKIAC. Awards provided to the Secretary-General will be kept strictly confidential but are of great assistance in monitoring the performance of Arbitrators. As the Appointing Authority it is of great importance that this information is available to HKIAC.

## **Article 18 Interpretation of Awards, Correction of Awards and Additional Awards**

Article 33 of the Model Law given effect by section 69 of the Arbitration Ordinance enables the Arbitrator to correct clerical errors in the award and make an additional award, or, if agreed by the parties, give an interpretation of the award. Correction of awards is similar to Order 20 Rule 11 of the Rules of the High Court. The notes in the HK Civil Procedure (White Book) may thus be helpful in ascertaining the scope of its application.

If the Arbitrator is requested to do so, he or she may also make an additional award where he or she has failed to deal with in the award claims which were presented in the arbitral proceedings.

The time limits must be noted and followed.

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## Article 19 Costs

The Arbitrator has a discretion under Article 19.1 to deal with the costs of the arbitral proceedings, which includes the fees and expenses of the arbitral tribunal, in any award.

The Arbitrator may also, in his or her discretion, order costs 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).<sup>30</sup>

Section 74 of the Arbitration Ordinance gives the Arbitrator express power to order that one party bear all or part of the legal costs and expenses of the arbitral proceedings. A provision of an arbitration agreement for the parties or one of the parties to pay their own costs is void, unless it is part of an agreement to submit to arbitration a dispute that had arisen before the arbitration agreement was made.<sup>31</sup> The Arbitrator may, 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, 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. The Arbitrator may also direct when the costs ordered are to be paid.

The normal order for costs is that they should ‘follow the event’ which means they should be paid by the losing party.

It must be emphasized that the award of costs is a matter wholly within the discretion of the Arbitrator. There could be unusual circumstances which might cause the Arbitrator to make an order which departs from the normal one. But, if an Arbitrator does not order that costs follow the event, then he or she must give reasons.<sup>32</sup>

Regarding the fees and expenses of the Arbitrator, both parties are jointly and severally liable to the Arbitrator for his or her fees and expenses under Article 19.2 as well as under section 78 of the Arbitration Ordinance. An Arbitrator’s expenses should include the fees and expenses of any tribunal-appointed expert, assessor, administrator, transcriber or translator if these have been procured by the Arbitrator.

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<sup>30</sup> Based on section 74(3) of the Arbitration Ordinance.

<sup>31</sup> See section 74(8) and (9) of the Arbitration Ordinance.

<sup>32</sup> See section 67 of the Arbitration Ordinance.

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Unless the parties have come to some agreement about cost-sharing after the dispute has arisen, the Arbitrator must also decide the proportions in which the parties to the arbitration shall pay the costs of the arbitral proceedings. It should be noted that parties cannot enter into an agreement about cost sharing before the dispute has arisen.<sup>33</sup> Further, the Arbitrator may also decide in his or her award that a party who has already paid money by way of deposit to the Arbitrator may recover it from the other party.

The Arbitrator has power to assess the amount of a party's costs of the arbitral proceedings. Unless the parties have agreed that the court shall tax the costs, an Arbitrator must exercise the power to assess costs if requested by the parties and must award or order those costs.

Section 74(6) of the Arbitration Ordinance states that the arbitral tribunal is not obliged to follow the scales and practices of the court on taxation when assessing the amount of costs. Section 74(7) provides that the arbitral tribunal must only allow costs that are reasonable and, unless otherwise agreed, may allow costs incurred in the preparation of arbitration proceedings prior to commencement of the arbitration.

Arbitrators should also be aware that section 57 of the Arbitration Ordinance empowers an arbitral tribunal to direct that the recoverable costs of arbitration proceedings before it be limited to a specified amount, unless the parties have agreed to the contrary. Any such direction may be made or varied by the Arbitrator at any stage of the arbitral proceedings subject to the conditions in section 57(3).

## **Article 20 Disclosure of Information**

Unless each party to the arbitration provides their consent in writing, or one of the exceptions in section 18(2) of the Arbitration Ordinance applies, information relating to the arbitration may not be disclosed.

In the absence of all the parties' written consent, the only circumstances where disclosure of information relating to the arbitration is permitted by the Arbitration Ordinance is if such disclosure:

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<sup>33</sup> See section 74(8) of the Arbitration Ordinance

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- is required to protect or pursue one of the party's legal rights or enforce or challenge the award in legal proceedings in Hong Kong or overseas;
  - is made to a government or regulatory body or a court or tribunal as required by law; or
  - is made to a professional or other adviser of any of the parties.

## **Article 21 Waiver of Right to Object**

By adopting the Rules, parties agree to their terms. Nevertheless, parties frequently agree expressly or tacitly to a variation of specific rules. For example, parties frequently agree to vary the time limits provided by the Rules. This Article precludes one party from insisting upon strict compliance where it knew or ought to have known of non-compliance with the Rules and yet proceeded with the arbitration without making a prompt objection. Where there is doubt the Arbitrator will decide.

## **Article 22 Destruction of Documents**

This clause is self-explanatory.

## **Article 23 Interpretation and General Clauses Ordinance**

The Interpretation and General Clauses Ordinance provides an extensive list of interpretation of words and expressions. It also includes various other parts dealing with such things as the interpretation of ordinances, powers of various statutory bodies, boards and committees and the meaning of various measures of time and distance. Reference should be made to the Ordinance itself for full details.

# **APPENDIX 1**

## **Checklist for Preliminary and Procedural Meetings**

Note: Not all of the items on this checklist are relevant to every arbitration. All relevant items cannot normally be decided at an initial preliminary meeting. Some relevant items may be decided in exchanges of correspondence or at further procedural meetings.

### **1      Communication (Article 4)**

- All communications to the Arbitrator always to be copied to other side and so endorsed.
- Means of communication / mode of service.
- Is an Arbitration Administrator to be appointed? (Article 4.5)

### **2      The Parties & Their Representatives**

- Confirmation of names of parties.
- Any changes since contract?
- Names of representatives and addresses for communications – including representation at any hearing. (Counsel?) (Article 7)

### **3      The Arbitration Agreement**

- Confirmation of a written arbitration agreement. (View original agreement.)

### **4      Jurisdiction (Article 11)**

- Confirmation of Arbitrator's appointment and terms.
- Is there any challenge to jurisdiction?
- Extent of Arbitrator's jurisdiction.

### **5      Applicable Law**

- Article 14 designates the place of arbitration as Hong Kong. The Arbitration Ordinance Cap 609 will generally be applicable to the arbitration procedure.
- Law applicable to the substance of the dispute.

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**6      Language (Article 15)**

- Confirmation of language of the proceedings to be English.
- Will evidence be presented in any other language?

**7      The Dispute**

- Preliminary description of dispute. (Amount claimed / counterclaimed.)

**8      Preliminary Points and Separation of Liability and Quantum**

- Is it desirable to determine any points preliminary to any main hearing of the arbitration? [May encourage early resolution of dispute.]
- Is it appropriate to decide issues of quantum with, or separate from, the issues of liability?
- Is it appropriate to divide the disputes at the arbitration hearing into different tranches to make the hearing more manageable?

**9      Miscellaneous Preliminary Considerations**

- Is a hearing required or can the arbitration be conducted on documents only?
- Is an expedited procedure appropriate?
- Is an agreed chronology of events to be prepared?
- Is a list of facts and issues which are not in dispute to be prepared?
- Is a list of issues in dispute to be agreed? [As in ICC Terms of Reference.]
- Are recoverable costs to be capped?

**10     Experts & Assessors (Article 10)**

- Are any Arbitrator-appointed experts or assessors required?

**11     Arbitration Rules and Arbitrator's Authority**

- Have the parties made any amendment to the Rules? (See the second sentence of the first paragraph in the Preamble to the Rules.)

- 
- Have the parties made any agreements to limit or define the Arbitrator's authority and powers?

## **12 Written Statements (Article 6)**

- Is the timetable for the parties to submit their Written Statements stated in Article 6 to be modified?
- Is a Scott schedule (a spreadsheet usually describing multiple claims and the Respondent's response to them) appropriate?
- Procedure for service or exchange of Written Statements (paper, fax or electronic means)?

## **13 Legal Submissions**

- Article 6 requires Written Statements to include summaries of any contentions of law necessary for a proper understanding of the Written Statement in which they are included. Are fuller legal submissions in writing to accompany the Written Statements and to include law reports and authorities or are they to be part of opening or closing submissions?

## **14 Rules of Evidence**

- Are any special rules of evidence to apply such as the IBA Rules on the Taking of Evidence in International Commercial Arbitration (2010)?

## **15 Documentary Evidence**

- To consider in what form and when documentary evidence is to be submitted. Article 6 requires Written Statements to be accompanied by copies of all essential documents on which the party concerned relies and which have not previously been submitted by any party. What is to be included as essential documents?
- Article 6 allows for lists of essential documents to be provided in lieu of the documents themselves but only if the parties agree or with leave of the Arbitrator. Is leave requested?
- To consider whether an order for the production of additional documents is requested and, if so the procedure to apply.

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- To consider what rules are to apply to the admission of documentary evidence. For example should the following special rules for the admission of documentary evidence apply:

*Unless a party raises an objection to any of the following conclusions within two weeks of receipt of any submission to which the relevant document or copy is attached or within which it is relied upon:*

- a) *a document is accepted as having originated from the source indicated on the document;*
- b) *a copy of a dispatched communication (e.g. letter, telex, fax, or other electronic message) is accepted without further proof as having been received by the addressee; and*
- c) *a copy is accepted as a true copy.*

## **16 Witnesses of Fact**

- To consider whether there are to be any witnesses of fact and if so the procedure and timetable to be followed. For example, are:
  - written witness statements to be exchanged;
  - witnesses to exchange written replies;
  - witness statements (and replies if any) to stand as evidence-in-chief.
- Is the total number of witnesses to be limited to save cost?
- If the arbitration is 'documents only', are written witness statements to be in the form of Affidavits?

## **17 Expert Evidence**

- To consider whether leave is sought to adduce expert evidence and if so the procedure to be followed.
- Considerations to include:
  - Party-appointed experts or experts appointed by the Arbitrator.
  - Number and discipline of experts.

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- Terms of appointment of experts; issues to be dealt with and the methodology to be used.
  - Are experts to meet to narrow issues and agree facts/figures and if so is their meeting "without prejudice"?
  - Timetable. Sequential or simultaneous exchange?
  - Are expert reports to stand as evidence in chief?
  - Use by Arbitrator of own expertise?

## **18 Bundles**

- The form of bundles of documents to be prepared for a hearing and when they are to be provided.
  - Should there be one agreed bundle only, in chronological order starting from the front, paginated and indexed or is some other form preferable?
  - Is a core bundle necessary?
  - Are drawings, documents, figures, photographs, etc. to be agreed as far as possible?
  - Are photographs to be numbered on their faces?

## **19 Site Inspection**

- Is a site inspection required and if so when it is to take place (before/ during/ after hearing)?

## **20 Additional Preliminary Meetings or Pre-Hearing Review**

- Should any further preliminary meetings be scheduled?
- Is telephone / video conferencing appropriate?
- Is a pre-hearing review desirable?

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**21 Opening Submissions**

- Are opening submissions to be written or oral and what is to be covered?
  - if written, are they to be exchanged sequentially or simultaneously; and
  - when?

**22 Hearing (Article 8)**

- When is the hearing to take place? Is this date firm or provisional?
- Where is the hearing to be held? Are arrangements to be made by Claimant in consultation with Respondent?
- How long is required for the hearing?
- What form is the hearing to take?
  - Inquisitorial or adversarial?
  - Sitting hours?
  - Allocation of time. Chess clock?
  - Order and number of witnesses.
  - How are experts to be examined?
  - Will all witnesses be present or is telephone or video conferencing required?
  - Evidence to be taken on oath or affirmation?
  - If an oath is to be taken, has the Party calling that witness to provide the necessary books, etc?
  - If translation is required, who is to arrange translation and what are the requirements for approval of translators?
  - Is a transcript required and, if so, what form is it to take (real time / shorthand / tape recording)?

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**23**     **Closing Submissions**

- Are closing submissions to be written or oral and what is to be covered?
  - if written, are they to be exchanged sequentially or simultaneously, and
  - when?

**24**     **Costs (Article 19)**

- Are final submissions on costs to be made at the end of hearing or in documentary submissions? If in documentary submissions, when?
- Is the Arbitrator to determine the amount of recoverable costs? (See sections 74 & 75 of the Arbitration Ordinance)

**25**     **Award (Article 17)**

- What form is the Award to take? A reasoned Award including the Arbitrator's reasoning with regard to findings of fact normally is given unless it is agreed by both parties that this is not required.

**26**     **Any Other Business**

- Are there any other matters which may contribute to an economical and expeditious resolution of the dispute?



For further information relating to dispute resolution in Hong Kong,  
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