

# Hong Kong International Arbitration Centre

## PROCEDURES FOR THE ADMINISTRATION OF INTERNATIONAL ARBITRATION

(Adopted to take effect from 31 March 2005)

### INTRODUCTION

These Procedures have been adopted by the Council of the Hong Kong International Arbitration Centre (HKIAC) for use by parties who seek the formality and convenience of an administered arbitration while maintaining the flexibility afforded by the UNCITRAL Arbitration Rules (Rules) and supersede HKIAC's previous procedures. For the avoidance of doubt these procedures do not supersede the HKIAC Securities Arbitration Rules. These Procedures may be adopted in an arbitration agreement or by agreement in writing at any time before or after a dispute has arisen.

Nothing in these Procedures shall prevent parties to a dispute under the UNCITRAL Rules from naming the HKIAC as appointing authority, nor from requesting certain administrative services from the HKIAC without subjecting the arbitration to the provisions contained in the Procedures.

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

### SUGGESTED 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 Arbitration Rules with the HKIAC as the administrator of the arbitration in accordance with the Procedures:

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in Hong Kong under the UNCITRAL Arbitration Rules in accordance with the Hong Kong International Arbitration Centre Procedures for the Administration of International Arbitration in force at the date of this contract.

\* There shall be only one arbitrator.”

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\* This sentence must be deleted if a panel of three arbitrators is required.

2. Parties to an existing dispute in which neither an arbitration clause nor previous agreement with respect to arbitration exists, who wish to refer such dispute to arbitration under the UNCITRAL Arbitration Rules in accordance with the Procedures for the Administration of International Arbitration of the HKIAC may agree to do so in the following terms:

“We, the undersigned, agree to refer to arbitration in Hong Kong under the UNCITRAL Arbitration Rules in accordance with the Procedures for the Administration of International Arbitration of the Hong Kong International Arbitration Centre all disputes or differences arising out of or in connection with:

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

\* There shall be only one arbitrator.

Signed: \_\_\_\_\_ (Claimant)

Signed: \_\_\_\_\_ (Respondent)

Date: \_\_\_\_\_”

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\* This sentence must be deleted if a panel of three arbitrators is required.

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### I. GENERAL PROCEDURES

#### 1. Scope and Applicability

Where the Hong Kong International Arbitration Centre (HKIAC) has been designated, as administrator of the arbitration, either through an appropriate clause in the contract at issue, through a separate agreement at the time of such contract, or by designation of the parties subsequent to the dispute arising, the following Procedures for the Administration of International Arbitration (Procedures) shall apply.

#### 2. Arbitration Rules

The UNCITRAL Arbitration Rules (Rules), with such modifications as noted herein, shall be the rules for any arbitration conducted under the Procedures.

#### 3. Appointing Authority

Unless otherwise agreed by the parties, the HKIAC will perform the functions of the appointing authority as set forth in the Rules.

#### 4. Administration of Proceedings

The HKIAC will administer the arbitration as set forth in these Procedures and shall be entitled to charge fees for its services as is set forth in the fee schedule in Appendix A. Where, in these Procedures, reference is made to a specific administrator, such administrator shall be the Secretary-General of the HKIAC or such agents, as he has designated to carry out such function on his behalf.

The HKIAC shall make available, or arrange for, such facilities and assistance for the conduct of the arbitration proceedings as may be required. Such facilities and assistance shall be those enumerated in paragraphs 9 through 16 of the Procedures as well as any secretarial or clerical assistance, telephone, telex and other communication facilities, photocopying, printing and other office facilities as may be required.

#### 5. Place of Hearing

Pursuant to Article 16.1 of the Rules, unless otherwise specified in the contract at issue or by the parties to the arbitration, the arbitral tribunal shall determine the place of arbitration. In light of the administrative services provided by the HKIAC under the Procedures, unless otherwise stated, the tribunal will be presumed to choose the offices of the HKIAC in Hong Kong as the place of hearings for all arbitration under the Procedures. This presumption notwithstanding, the HKIAC is prepared to

administer arbitration in accordance with these Procedures in a location other than Hong Kong and will do so at the request and mutual agreement of the parties. In such case, all costs incurred as a result of administering the arbitration in a location other than Hong Kong shall be borne by the parties.

## **II. FUNCTIONS AS APPOINTING AUTHORITY**

### **6. Appointment of the Arbitration Tribunal**

The HKIAC shall carry out the functions as appointing authority for the purposes of appointing a tribunal as follows:

6.1 Where, pursuant to Article 6 or 7(3) of the Rules and paragraph 3 of these Procedures, the HKIAC is required to appoint a sole Arbitrator or the Presiding Arbitrator, the list procedure, as described in Article 6(3) of the Rules shall be followed. The list of names to be communicated by the HKIAC to the parties shall be drawn, by the administrator, from the HKIAC's Panel of Arbitrators with consideration given to the particular requirements of each case and subject to any conditions agreed upon by the parties.

6.2 Where, pursuant to Article 7(2)(a) of the Rules, three arbitrators are to be appointed, and the second party has failed to appoint an arbitrator within thirty days of notification by the first party of such party's appointment, the HKIAC, at the request of the first party and as appointing authority under paragraph 3 of these Procedures, shall appoint a second arbitrator.

### **7 Replacement of Arbitrators**

Replacement of an arbitrator will be effected by the HKIAC in accordance with the Rules as necessary.

### **8 Consultation for the Purpose of Fixing Fees of Arbitrators**

The fees for arbitrators appointed by the HKIAC are generally calculated by reference to work done by them in connection with the arbitration and are generally charged at hourly/daily rates. If the parties wish, the HKIAC will consult with the arbitral tribunal to establish the rates applicable to a particular case.

## **III. FUNCTIONS AS ADMINISTRATOR**

### **9 Communications**

9.1 Notwithstanding the provisions of the Rules, the Notice of Arbitration (Article 3), the Statement of Claims (Article 18), and the Statement of Defense (Article 19) shall be submitted to the HKIAC for forwarding to the other party.

9.2 Including such documents as listed in paragraph 9.1, all communication and notices between the parties and the arbitral tribunal in the course of arbitration

proceedings (except at meetings and hearings) will be addressed through the HKIAC.

- 9.3 When passed on by the HKIAC to a party, such communications and notices will be sent to the address of that party contained in the Notice of Arbitration or such other addresses as have been provided in writing to the HKIAC by that party.

## 10 Timing, Logistics, and Procedural Advice

- 10.1 The HKIAC will liaise with the arbitral tribunal and the parties to fix the time limits for the arbitration, as well as to establish the date, time and place of meetings, hearings, or otherwise, as required.
- 10.2 Upon request by the arbitral tribunal, the HKIAC will advise generally on applicable procedure under the Rules.

## 11 Costs

The costs of the arbitration as described in Articles 38 to 40 of the Rules shall be amended to include all reasonable fees assessed by the HKIAC for administration of the arbitration proceedings. Such fees are enumerated in Appendix A hereto.

## 12 Deposits

In lieu of the provisions of Article 41 of the UNCITRAL Arbitration Rules the following provisions shall apply:

- 12.1 The HKIAC administrator shall prepare an estimate of the cost of arbitration and may request each party to deposit an equal amount as an advance for those costs.
- 12.2 During the course of the arbitral proceedings the HKIAC may request supplementary deposits from the parties.
- 12.3 If the required deposits are not paid in full within thirty days after the receipt of the request, the HKIAC administrator 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 the HKIAC, may order the suspension or termination of the arbitral proceedings.
- 12.4 The HKIAC administrator may apply the deposits toward disbursements for the costs of arbitration.
- 12.5 After the award has been made, the HKIAC administrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.
- 12.6 Any interest accrued on deposits while held by the HKIAC will be credited to the parties in the aforementioned accounting.

### 13 Hearing Rooms

Hearing rooms and retiring rooms shall be provided at the HKIAC for hearings before the arbitral tribunal. If rooms are not available at the HKIAC, the HKIAC will make arrangements for rooms in an alternative location. Any rental costs shall not be included in the administrative fee but rather shall be paid by the parties to the HKIAC.

### 14 Stenographic Transcripts

Stenographic transcripts of the proceedings shall be provided by the HKIAC upon request by the parties. Although the HKIAC will make arrangements for a stenographer at the request of the parties, the cost of such service shall not be included in the administrative fee, but rather shall be paid by the parties to the HKIAC.

### 15 Translation and Interpretation

Any necessary arrangements for live or written translation or interpretation services will be made by the HKIAC upon request of the parties. Although the HKIAC will make arrangements for such services, the cost of the services shall not be included in the administrative fee, but rather shall be paid by the parties to the HKIAC.

### 16 Registration of Awards

Upon request, the HKIAC will assist in the filing or registration of arbitral awards in countries where such filing or registration is required by law. The cost of any such filing or registration fee not be included in the administrative fee, but rather shall be paid by the party concerned to HKIAC.

## APPENDIX A: FEE SCHEDULE

The following fees apply to any arbitration or related service conducted by or at the Hong Kong International Arbitration Centre. All fees are noted in Hong Kong dollars (“HK\$”).

### 1. Determination of Number of Arbitrators: HK\$4,000

A fee of HK\$4,000 shall be charged if the HKIAC, by request of a party, determines the number of arbitrators appropriate for an arbitration.

### 2. Appointment Fee: HK\$4,000

An appointment fee of HK\$4,000 shall be charged for the appointment of an arbitrator. This fee will cover all steps taken by the HKIAC in connection with the appointment of an arbitrator.

### 3. Arbitrator Fees

Arbitrator fees shall not be set by the HKIAC. As provided in paragraph 8 of these Procedures, however, the HKIAC will, at the parties’ request, consult with the arbitrators to assist the parties in setting fees for arbitration. Nevertheless the payment of fees is the responsibility of the parties. In such consultation, the parties may wish to consider the HKIAC’s Guide to applying for the appointment of an arbitrator or for a decision as to the number of arbitrators. (see HKIAC’s website [www.hkiac.org](http://www.hkiac.org) for further details).

### 4. Administrative Fees

Fees for administrative functions performed by the HKIAC shall be according to the following schedule:

<i>Amount of Claim</i>	<i>Fee</i>
Up to HK\$1 million	HK\$15,000
Up to HK\$5 million	HK\$25,000
Up to HK\$50 million	HK\$50,000
Up to HK\$100 million	HK\$100,000
Over HK\$100 million	As determined by HKIAC Council

### 5. Administrative Facilities and Services

5.1 The administrative fees enumerated in paragraph 4 provide for basic administration of the arbitration.

5.2 The cost of administrative services not provided directly by the HKIAC, such as stenographic or interpretation services, shall be borne solely by the parties.

### 6. Settlement or Early Termination

6.1 If the dispute is settled prior to such time as an award is issued by the arbitral tribunal, any administrative costs already incurred by the HKIAC shall be included

as a cost to be paid by the parties. Such administrative costs will include any non-refundable booking fees. (see HKIAC's website [www.hkiac.org](http://www.hkiac.org) for further details).

- 6.2 The parties will not be liable for administrative costs not yet incurred in any manner by the HKIAC.