

## **Practice Note on Costs of Arbitration**

### **Based on Schedule 3 and the Sum in Dispute**

*Effective 1 June 2016*

#### **1 Scope of Application and Interpretation**

- 1.1 This Practice Note applies to arbitrations (including ongoing arbitrations commenced before 1 June 2016) in which the arbitral tribunal's fees and expenses are to be determined in accordance with Article 10.1(b) and Schedule 3 of the HKIAC Administered Arbitration Rules in force on 1 November 2013 (the "Rules"), unless otherwise agreed by the parties.
- 1.2 This Practice Note does not apply to the Emergency Arbitrator Procedures applicable pursuant to Article 23.1 and Schedule 4 of the Rules.
- 1.3 This Practice Note replaces the Practice Note on Arbitral Tribunal's Fees, Expenses, Terms and Conditions (Based on Schedule 3 and the Sum in Dispute) effective on 1 November 2013.
- 1.4 HKIAC may interpret the terms as well as the scope of application of this Practice Note as it considers appropriate.

#### **2 Declaration of Acceptance and Statement of Impartiality and Independence**

Before confirmation of his or her appointment, a prospective arbitrator shall sign a declaration confirming his or her availability to decide the dispute and his or her impartiality and independence, and disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence (the "Declaration") in accordance with Article 11.4 of the Rules.

#### **3 Payments to the Arbitral Tribunal**

- 3.1 Payments to the arbitral tribunal may be made during or at the conclusion of the arbitration at the request of an arbitrator. HKIAC will consider the request taking into account the circumstances of the case.
- 3.2 Payments to the arbitral tribunal shall generally be made by HKIAC from funds deposited by the parties in accordance with Article 40 of the Rules and paragraph 7 below. If insufficient funds are held at the time a payment is required, the invoice for the payment may be submitted to the parties for direct settlement.
- 3.3 An arbitrator may submit a request for payment to HKIAC indicating the work undertaken and the time spent to date in connection with the arbitration.

- 3.4 Following receipt of an arbitrator's request for payment pursuant to paragraph 3.1 and 3.3, HKIAC shall circulate the request to the parties and, where applicable, the other members of the arbitral tribunal, before any such payment is made.
- 3.5 In assessing a request for an interim payment, HKIAC may have regard to the following as guidance to determine the appropriate amount of payment.

Stage of the arbitration	Percentage of fees
Issuing of an interim, interlocutory, partial award or decision on substantive issues, including jurisdiction and interim measures	Up to 20%
Completion of a substantive hearing	Up to 50%

- 3.6 The percentages referred to in paragraph 3.5 shall be applied to the maximum amount payable to an arbitrator in accordance with paragraph 6 of Schedule 3 of the Rules.
- 3.7 Paragraph 3.5 shall not apply to the Expedited Procedure under Article 41 of the Rules, unless HKIAC determines otherwise.

#### **4 The Arbitral Tribunal's Fees**

- 4.1 Pursuant to Article 5.5 of the Rules, HKIAC will fix the fees of the arbitral tribunal in conformity with Schedule 3 and Article 10.3 of the Rules following receipt of the Respondent's Answer to the Notice of Arbitration. HKIAC may subsequently adjust the arbitral tribunal's fees which, in accordance with Articles 10.3(c), 18.2, 27.14 or 28.9 or in other exceptional circumstances, may exceed the amounts calculated in accordance with the table at paragraph 6 of Schedule 3.
- 4.2 When calculating the fees of the arbitral tribunal in cases where the amount in dispute is not quantified, HKIAC shall take into account the factors referred to in Article 10.3(a) of the Rules, save for the amount in dispute.
- 4.3 Where a case is referred to three arbitrators, the presiding arbitrator shall generally receive 40% and each co-arbitrator 30% of the total fees of the arbitral tribunal, unless the arbitral tribunal agrees or HKIAC determines otherwise.
- 4.4 Where an arbitrator is replaced in accordance with Articles 12, 27 or 28 of the Rules, HKIAC will determine the fees payable to the replaced arbitrator (if any), having taken into account the circumstances of the case including the factors identified at paragraph 5 of Schedule 3 of the Rules and the guidance referred to at paragraph 3.5 above.



- 4.5 Where an arbitration is settled or terminated in accordance with Article 36 of the Rules, HKIAC will determine the fees payable to the arbitral tribunal (if any), having taken into account the circumstances of the case including the factors identified at Article 10.3(a) of the Rules and the guidance referred to at paragraph 3.5 above.

## 5 The Arbitral Tribunal's Expenses

- 5.1 The arbitral tribunal's reasonable expenses shall be borne by the parties and reimbursed in accordance with paragraphs 5.2 to 5.5 below.

- 5.2 An arbitrator required to travel outside his or her usual place of residence or business for the purpose of an arbitration under the Rules shall:

- (a) be reimbursed at cost for expenses he or she reasonably incurs travelling from and returning to his or her usual place of residence or business, including inter alia airfares, train fares, transport to and from an airport or train station, upon receipt and verification by HKIAC of supporting invoices or receipts. The reimbursement of the cost of air travel shall be limited to flexible economy, premium economy or business class fares; and
- (b) be paid a *per diem* allowance of HK \$5,500, where he or she is required to use overnight accommodation, or of HK \$1,500, where he or she is not required to use overnight accommodation. The expenses covered by the *per diem* allowance include the following items which will not be reimbursed at cost:
  - (i) hotel accommodation (if applicable);
  - (ii) meals and beverages;
  - (iii) laundry, dry cleaning, ironing and other housekeeping services;
  - (iv) inner-city transport (excluding travel to and from an airport or train station);
  - (v) communication costs (telephone calls, faxes, internet, post etc); and
  - (vi) gratuities.

An arbitrator is not required to submit receipts or invoices in order to claim the *per diem* allowance. Evidence of travel for the purpose of the arbitration is sufficient.

- 5.3 An arbitrator not required to travel outside his or her usual place of residence or business for the purpose of an arbitration under the Rules shall be reimbursed at cost for expenses he or she reasonably incurs:

- (a) on inner-city transport travelling from and returning to his or her usual place of residence or business; and

- (b) purchasing meals and beverages;

upon receipt and verification by HKIAC of supporting invoices or receipts.



- 5.4 An arbitrator may be reimbursed at cost for any photocopying charges upon receipt and verification by HKIAC of supporting invoices or receipts.
- 5.5 Any expenses reasonably incurred and not covered in paragraphs 5.2 to 5.4 above may be reimbursed at cost upon receipt and verification by HKIAC of supporting invoices or receipts.
- 5.6 Where an arbitrator is replaced pursuant to Article 12, 27 or 28 of the Rules, HKIAC shall determine the expenses payable to the replaced arbitrator (if any) in accordance with paragraph 5 of Schedule 3 of the Rules and paragraphs 5.2 to 5.5 above.
- 5.7 The expenses of the arbitral tribunal determined in accordance with this paragraph 5 shall not be included in the determination of the arbitral tribunal's fees in accordance with paragraph 4 above.

## **6 Fees and Expenses of the Secretary to the Arbitral Tribunal**

- 6.1 Where the arbitral tribunal appoints a secretary pursuant to Article 13.4 of the Rules, the fees of such secretary shall form part of the arbitral tribunal's fees.
- 6.2 A secretary's reasonable expenses shall be borne by the parties and reimbursed in accordance with paragraphs 5.2 to 5.5 above, *mutatis mutandis*, save where the secretary is required to travel outside his or her usual place of residence or business for the purpose of an arbitration under the Rules, in which case he or she will be paid a *per diem* allowance of HK \$4,500 if overnight accommodation is required, or HK \$500 if no overnight accommodation is required.

## **7 HKIAC's Administrative Fees**

- 7.1 The parties are jointly and severally liable for HKIAC's Administrative Fees.
- 7.2 The percentages set forth below apply generally to the Administrative Fees payable to HKIAC in the event of a withdrawal or termination of the arbitration.
  - (a) From the receipt of the Notice of Arbitration by HKIAC to the due date for filing the Answer to the Notice of Arbitration (the "Answer"): up to 50%.
  - (b) From the due date for filing the Answer to the transmission of the case file to the arbitral tribunal: 50-80%.
  - (c) From the transmission of the case file to the rendering of the award: 80-100%.
- 7.3 The above percentages are indicative only and reflect the fact that the majority of HKIAC's work is done at an early stage in the arbitration. HKIAC may apply different percentages having considered the circumstances of the case, including the amount of work undertaken by HKIAC.



## 8 Deposits for Costs

- 8.1 As soon as practicable and normally within 15 days after receipt of the Notice of Arbitration, HKIAC will request from each party to the arbitration an initial deposit as an advance for the costs referred to in Article 33.1, paragraphs (a), (b), (c) and (f) of the Rules.
- 8.2 HKIAC may request further deposits from each party as soon as practicable and normally within 15 days after receipt of a counterclaim or set-off defence.
- 8.3 HKIAC may subsequently request the parties to make supplementary deposits pursuant to Article 40.3 of the Rules.
- 8.4 Where an additional party has been joined in accordance with Article 27 of the Rules, further deposits may be requested from each party, including the additional party, after the decision on joinder has been made.
- 8.5 Where two or more arbitrations have been consolidated in accordance with Article 28 of the Rules, further deposits may be requested from each party in the consolidated proceedings after the decision to consolidate has been made.
- 8.6 If the deposits required in accordance with paragraphs 8.1 to 8.5 are not paid in full to HKIAC within 30 days after receipt of the request, HKIAC shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claim or counterclaim as the tribunal considers fit.
- 8.7 If a party pays the required deposits 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.
- 8.8 The deposits for the arbitral tribunal's fees and expenses and HKIAC's Administrative Fees shall be held in two separate bank accounts, the details of which can be found at <http://www.hkiac.org/arbitration/fees>.

## 9 Administrative Support

HKIAC offers state of the art facilities for holding hearings and meetings at its premises. For further information please consult the Facilities & Services section of HKIAC's website <http://www.hkiac.org/our-services/facilities> or contact [arbitration@hkiac.org](mailto:arbitration@hkiac.org).