

*Hong Kong Centre of International Commercial
Arbitration (HKCICA)*

ARBITRATION RULES 2019

version 1.2



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Preamble

The HKCICA Arbitration Rules (“the Rules”) have been adopted by Hong Kong Centre of International Commercial Arbitration (“HKCICA”) and effective from 15 September 2019.

The HKCICA Arbitration Rules reflect international standards and developments in arbitration. It aims to provide the cost-effective, procedural flexible and transparent to parties of the arbitration administered by HKCICA.

Parties may adopt these Rules in a written agreement at any time before or after a dispute has arisen. These Rules are applicable to domestic and international arbitrations.

Model Arbitration Clause

Model arbitration clauses for contracts:

The following model arbitration clause may be adopted in the contract by its parties who wish to arrange for any future dispute with arbitration under the HKCICA Arbitration Rules

"Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Hong Kong Centre of International Commercial Arbitration ("HKCICA") in accordance with the Arbitration Rules of the Hong Kong Centre of International Commercial Arbitration ("HKCICA Rules") for the time being in force."

* The following are the additional terms for consideration:

- The seat of the arbitration shall be [Hong Kong].**
- The law of this arbitration clause shall be... [Hong Kong law]. **
- The Tribunal shall consist of [one *or* three] ** arbitrator(s).
- The language of the arbitration shall be [English]**.

***Adjusted according to clients' requests*

Section I. Introductory rules

Article 1 – Scope of application

1. The HKCICA arbitration rules (“Rules”) came into force on 15 September 2019.
2. The Rules shall apply to any arbitration where an agreement to arbitrate, whether entered into before or after a dispute has arisen, either provides these Rules to apply, or provides for arbitration under the UNCITRAL Arbitration Rules (the “UNCITRAL Rules”) administered by HKCICA or to words with similar effect.
3. These Rules shall not be in conflict with any provision of the law or investment treaty applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
4. The applicable version of the UNCITRAL Rules, with their modifications as noted, shall be the rules for any arbitration conducted under the HKCICA.

Article 2 – Notice and calculation of periods of time

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.
3. In the absence of such designation or authorization, a notice is:
 - a. Received if it is physically delivered to the addressee;
 - Or
 - b. Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
4. If, after reasonable efforts, delivery cannot be effected in accordance with Paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with Paragraphs 2, 3 or 4, or attempted to be delivered in accordance with Paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or nonbusiness days occurring during the running of the period of time are included in calculating the period.

Article 3 – Notice of Arbitration

1. The party or parties initiating recourse to arbitration (the “Claimant”) shall submit a Notice of Arbitration to HKCICA.
2. An arbitration and the proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by HKCICA.
3. The Notice of Arbitration shall include the following:
 - a. A demand that the dispute be referred to arbitration;
 - b. The names and contact of the parties and any representative, including the postal and email addresses, and facsimile telephone number;
 - c. Identification of the arbitration agreement that is invoked;
 - d. Identification of the contract(s) or other legal instrument(s) out of or in relation to which the dispute arises or, in the absence of such contract(s) or instrument(s), a brief description of the relevant relationship;
 - e. A brief description of the nature of the claim, the relief or remedy claimed, and any quantification of the amount claimed or involved;
 - f. A proposal as to the number of arbitrator(s) (one or three) and language of the arbitration, if the parties have not previously agreed thereon;
 - g. A comment regarding the applicable law and the Seat of Arbitration, if the parties have not previously agreed thereon;
 - h. Any matter which the parties have previously agreed regarding the conduct of the arbitration.

4. The Notice of Arbitration may also include:
 - a. A proposal for the designation of adopting HKCICA as the appointing authority;
 - b. A proposal for the appointment of a sole arbitrator referred to in article 8;
 - c. Notification of the appointment of an arbitrator referred to in article 8.
5. The language used for the Notice of Arbitration shall be same as the arbitration as agreed by the parties. In the absent of such arrangement, the Notice of Arbitration shall use either English, Traditional or Simplified Chinese. HKCICA shall make and notify all parties of its preliminary decision on using either English, Traditional or Simplified Chinese within seven days of receiving the Notice of Arbitration.
6. The Notice of Arbitration shall be accompanied by a non-refundable application fee of HKD \$6,000 by payment, by cheque or transfer to the account of HKCICA.

Article 4 – Response to the Notice of Arbitration

1. Within 30 days of the receipt of the Notice of Arbitration, the Respondent is required to file a Response to the Notice of Arbitration (“Response”) to HKCICA, under the following rules.
 - a. The name, postal and email addresses, and facsimile telephone number of the Respondent and any representatives that are different from the description in the Notice of Arbitration;
 - b. The Response shall include the information set forth in the Notice of Arbitration, pursuant to Article 3, Paragraph 3 c to h.
2. The Response to Notice of Arbitration may also include:
 - a. Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
 - b. A proposal for the designation of adopting HKCICA as the appointing authority;
 - c. A proposal for the appointment of a sole arbitrator referred to in article 8 ;
 - d. Notification of the appointment of an arbitrator referred to in article 8.

Article 5 – Representing and assistance

1. Each party may be represented or assisted by any authorised person of their choice.
2. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance.
3. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.
4. Any party intending to change or add to its representative after the Tribunal's constitution shall notify the intended arrangement to the Tribunal, HKCICA and all other parties.

Article 6 – Appointing Authority (HKCICA)

1. Unless the parties agree otherwise, HKCICA shall perform the functions of the appointing authority
2. Provided that any requested deposit by the HKCICA has been paid, HKCICA shall transmit the case file to the arbitral tribunal as soon as the tribunal is constituted.

Section II. Composition of the arbitral tribunal

Article 7 – Number of arbitrators

1. The arbitral tribunal (“Tribunal”) shall consist of three arbitrators, unless parties have previously agreed otherwise, and if a mutual agreement is drawn within 30 days after the receipt by the respondent of the Notice of Arbitration proposed there shall be only one arbitrator.

Article 8 – Appointment of arbitrators (sole / three)

1. A sole arbitrator

- a. If a sole arbitrator is agreed to be appointed; parties shall jointly appoint the sole arbitrator within 30 days from the date when the Respondent receives the Notice of Arbitration;
- b. If the parties fail to appoint the sole arbitrator within the required time limit, HKCICA shall function as the appoint authority to appoint the sole arbitrator.
- c. HKCICA shall use the following list-procedures to make the arbitrator appointment:
 - i. HKCICA shall communicate to each of the parties an identical list containing at least three names;
 - ii. Within 15 days after the receipt of this list, each party may return the list to HKCICA after having deleted the name or names of to which it object and numbered the remaining names on the list in the order of its preference;
 - iii. After the expiration of the above period of time, HKCICA shall appoint the sole arbitrator from among the names approved on the returned lists and in accordance with the order of preference indicated by the parties;
 - iv. If for any reason the appointment cannot be made according to this procedure, HKCICA may exercise its discretion in appointing the sole arbitrator.

2. Three arbitrators

- a. If three arbitrators are to be appointed, each party shall appoint one arbitrator within 30 days from the date when the Respondent receives the Notice of Arbitration;

- b. The two appointed arbitrators thus shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
 - c. If a party has not notified the other party of the arbitrator it appointed within 30 days after receiving the other party's notification of arbitrator appointment, the other party may request HKCICA to appoint the second arbitrator;
 - d. If within 30 days after the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the presiding arbitrator, HKCICA shall appoint the presiding arbitrator in the same way as a sole arbitrator would be appointed under Paragraph 1c.
3. If there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
4. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
5. In the event of any failure to constitute the arbitral tribunal under these Rules, HKCICA shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Article 9 – Confirmation of the Arbitral Tribunal

1. All appointment of any arbitrator, whether made by the parties or the arbitrators, are subject to confirmation by HKCICA, upon which the appointments shall become effective.
2. When designating and confirming an arbitrator, HKCICA shall into account any agreement by the parties as to an arbitrator's qualifications, the fee and expenses of the arbitrator, as well as any disclosures by prospective arbitrators concerning impartiality or independence.

Article 10 – *Ex parte* Communication

1. None of the party or its representatives shall have any *ex parte* communication relating to the arbitration with any arbitrator, or with any candidate to be designated as arbitrator by a party, except to
 - a. Advise the candidate of the general nature of the dispute,

- b. To discuss the candidate's qualifications, availability, impartiality or independence, and
 - c. To discuss the suitability of candidates for the designation of a third arbitrator where the parties or party-designated arbitrators are to designate that arbitrator.
2. No party or its representatives shall have any *ex parte* communication relating to the arbitration with any candidate for the presiding arbitrator.

Article 11 – Qualifications, Discloses by and challenge of arbitrators

1. Any arbitrator shall be and remain impartial and independent at all times. In no circumstances he or she shall act as advocate for any party.
2. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose in written on any justifiable doubts as to any impartial or independent circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.
3. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if arbitrator does not possess qualifications agreed by the parties, or the arbitrator fails to act or in the event of the *de jure or de facto* impossibility of his or her performing his or her functions. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
4. A party that intends to challenge an arbitrator shall send a Notice of Challenge ("Challenge") within 15 days after the notification of confirmation or appointment of that arbitrator were made, or within 15 days after the circumstances mentioned in Paragraph 3 became known to that party.
5. The Notice of Challenge shall be communicated to HKCICA, all other parties, to the arbitrator who is challenged and to other members of the arbitrator tribunal. The Notice of Challenge shall state the reasons for the challenge.
6. After receiving the Notice of Challenge, the challenged arbitrator may resign or withdraw, or the other parties may agree to it. In none of these case does this imply acceptance of the validity of the grounds for the challenge.
7. If, within 15 days from the date of the Notice of Challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making

the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by HKCICA.

8. A party who does not challenge the arbitrator in accordance with Paragraph 3 within 30 days after receiving the arbitrator's disclosure is deemed to have waived any potential challenge based on such disclosure.

Article 12 – Replacement of an arbitrator

1. In the event of the death of an arbitrator, resignation, withdrawal, has been successfully challenged during the arbitration, a substitute arbitrator shall be appointed pursuant to the rules that were applicable to the appointment of the arbitrator being replaced.
2. If, at the request of a party, HKCICA determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to designate a substitute arbitrator, HKCICA may, after giving an opportunity to the parties and the remaining arbitrators to express their views on:
 - a. Appoint the substitute arbitrator; or
 - b. Authorize the other arbitrators to proceed with the arbitration and make any decision or award.
3. If an arbitrator is replaced, the arbitration shall resume at the stage where the arbitrator was replaced cease to perform his or her functions, unless the arbitration tribunal decides otherwise after consulting with the parties.

Article 13 – Exclusion of liability

1. Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, HKCICA and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral proceedings

Article 14 – General Provisions

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in appropriate manner, provided that the parties are treated with equality and ensures the parties were given a reasonable opportunity of presenting its case at the appropriate stage. The arbitral tribunal shall conduct suitable proceedings to avoid unnecessary delay and expense and to provide an efficient process for resolving the parties' dispute.
2. As soon as practicable after its constitution and in consultation with the parties, the arbitral tribunal shall establish the provisional timetable of the arbitration. Such timetable shall be provided to the parties and HKCICA. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
3. Subject to Article 10, all written communications between any party and the arbitral tribunal shall be communicated to all other parties and HKCICA. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
4. The parties may be represented by person of their choice and accordance with Article 5.
5. After the arbitral tribunal is constituted, any change or addition by a party to its legal representatives shall be communicated promptly to all other parties, the arbitral tribunal and HKCICA.
6. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
7. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The

arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

8. Where at stage of the arbitration, the parties agree to pursue other means of settling their dispute, HKCICA or the arbitral tribunal, may, at the request of any party, suspend the arbitration, as applicable, on such terms as it considers appropriate. The arbitration shall resume at the request of any party to HKCICA or the arbitral tribunal.

Article 15 – Seat of Arbitration

1. The parties may agree on the seat of arbitration. If the parties have not previously agreed on the seat of arbitration, the Seat of Arbitration shall be Hong Kong, unless the arbitral tribunal determines that another seat is more appropriate in the circumstances after consulting with the parties.
2. The arbitral tribunal may meet at any location outside the Seat of Arbitration, which it considers appropriate for consultation among its members, hearing witness, experts or the parties, or the relevant evidence, property or documents.

Article 16 – Language

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings.
2. If no previously agreed on any language, any party shall communicate in English or Chinese (Article 5 Paragraph 5). This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
3. The arbitral tribunal may order that any supporting materials delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 17 – Statement of Claim

1. The claimant may elect to treat its Notice of Arbitration referred to in Article 3 as a statement of claim, provided that the Notice of Arbitration also complies with the requirements of all Paragraphs 2 to 4 of the same article.
2. If such arrangement is in absent, the claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of

time to be determined by the arbitral tribunal. The Statement of Claim shall include the following particulars:

- a. The names and contact details of the parties
 - b. A statement of the facts supporting the claim;
 - c. The points at issue;
 - d. The relief or remedy sought;
 - e. The legal grounds or arguments supporting the claim.
3. The Claimant shall annex to its Statement of Claim all supporting materials, includes but not limited to copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement.
 4. The arbitral tribunal may vary any of the requirements in Article 17 as it deems appropriate.

Article 18 – Statement of Defence

1. Unless the Statement of Defence was contained in the Response to Notice to Arbitration, the respondent shall communicate its Statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal.
2. The Statement of Defence shall reply to the particulars Article 17 (b) to (e) of the Statement of Claim. The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.
3. The respondent may make a counterclaim, set-off defence or cross-claim by including the following particulars in the Statement of Defence:
 - a. The names and contact details of the parties
 - b. A statement of the facts supporting the claim;
 - c. The points at issue;
 - d. The relief or remedy sought;
 - e. The legal grounds or arguments supporting the claim.
4. The Claimant shall annex to its Statement of Defence all supporting materials, includes but not limited to copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement.
5. The arbitral tribunal may vary any of the requirements in Article 17 as it deems appropriate.

Article 19 – Amendments to the Claim or Defence

1. During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.
2. HKCICA may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) if a party amends its claim or defence.

Article 20 – Jurisdiction of the arbitral tribunal

1. Any question as to the jurisdiction of the arbitral tribunal shall be decided by the arbitral tribunal once constituted.
2. The arbitral tribunal shall have the ruling power on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration agreement that forms part of a contract, and which provides for arbitration under these Rules, shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration agreement.
3. A plea that the arbitral tribunal does not have jurisdiction shall be raised if possible, in the Response to the Notice of Arbitration, and shall be raised no later than in the Statement of Defence or, with respect to a counterclaim. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
4. The arbitral tribunal may rule on a plea referred to in Paragraph 2 either as a preliminary question or in an award on the merits.

5. The arbitral tribunal may continue the arbitral proceedings and make an award only if and to the extent that HKCICA is satisfied that an arbitration agreement under the Rules may exist.
6. HKCICA's decision pursuant to Paragraph 5 is without prejudice to the admissibility or merits of any party's claim or defence.

Article 21 – Further written statements

1. The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the Statement of Defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Article 22 – Period of time

1. The periods of time or time limits fixed by the arbitral tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed 45 days.
2. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Article 23 – Interim measures

1. The arbitral tribunal may, at the request of a party, grant interim measures it deems necessary or appropriate.
2. An interim measure is any temporary measure by which, at any time before the dispute is finally decided. It shall be in the form of an order or award or other forms, issued by the arbitral tribunal to a party, for example and without limitation, 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, (i) current or imminent harm or (ii) 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.

3. The arbitral tribunal shall take into account the following, but not limited to the circumstances upon party's request an interim measure:
 - a. Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - b. There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
4. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
5. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
6. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
7. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the arbitration proceedings.
8. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the arbitration agreement, or as a waiver of that agreement.

Article 24 – Evidence

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.
3. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual,

notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

4. At any time during the arbitral proceedings the arbitral tribunal may require or allow the parties to produce documents, exhibits or other evidence. The submission period of time and relevance of the submission to the case shall be determined by the arbitral tribunal.

Article 25 – Hearing

1. The arbitral tribunal shall hold hearings at an appropriate stage of the arbitration, if so requested by any party or if it considers fit.
2. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
3. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
4. Unless the parties agree otherwise, hearings shall be held in private. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses.
5. If it is deemed to be necessary in the circumstances of the case, the arbitral tribunal may direct the translation of oral statements made at a hearing and for a record of the hearing.
6. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Article 26 – Experts appointed by the arbitral tribunal

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to assist the assessment of evidence. The appointed expert shall report to the arbitral tribunal, in writing, on specific issues to be determined by the arbitral tribunal. The arbitral tribunal shall establish the terms of reference for the expert, and shall communicate a copy of the established terms of reference to the parties and HKCICA.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal, to all parties and HKCICA a description of his or her qualifications and a statement of his or her impartiality and independence. Any expert appointed by the arbitral tribunal shall submit the qualifications in accordance with Article 11. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of Article 24 and 25 shall be applicable to such proceedings.

Article 27 – Default

1. If, within the period of time set by the arbitral tribunal, without showing sufficient cause:
 - a. The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
 - b. The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order

that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make an award according on the evidence before it.

Article 28 – Closure of hearings

1. If the parties have had a reasonable opportunity to present their case, the arbitral tribunal shall declare the hearings closed. Thereafter, no further submissions or arguments may be made, or evidence produced.
2. As the hearings are declared closed, the arbitral tribunal shall notify the parties and HKCICA of the anticipated date the award will be communicated to the parties. Such date shall not be longer than three months from the date when the arbitral tribunal declares the entire hearing is closed. Extension of the time limit shall be granted upon the agreement of the parties or, in appropriate circumstances determined by HKCICA.
3. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Article 29 – Waiver of right to object

1. A failure by any party that knows, or ought reasonably to know, to promptly object to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection.

Section IV. The Award

Article 30 – Decisions

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. When there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Article 31 – Form and effect of the award

1. The arbitral tribunal may make one or separate awards on different issues at different times, in the form of interim, interlocutory, partial or final award.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the Seat of Arbitration. Where there are three arbitrators and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. The arbitral tribunal shall provide the original signed award to HKCICA. Upon the fulfilment of all HKCICA's payment requests, HKCICA shall communicate the copies of the signed award to the parties.

Article 32 – Applicable law, amiable compositeur

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract(s), if any, and shall take into account any usage of trade applicable to the transaction(s).

Article 33 – Settlement or other grounds for termination

1. The arbitration is terminated by the following:
 - a. The final award issued by the arbitral tribunal
 - b. The settlement between parties
 - c. The order for terminating arbitration (Termination Order) from the arbitral tribunal
2. If, before the constitution of arbitration tribunal, a party wish to terminate the arbitration, it shall communicate this to all other parties and HKCICA. HKCICA shall set a period of time for all other parties to respond to the proposed termination. If the respondent fail to object within the time limit, HKCICA may terminate the arbitration. If any party objects to the termination, the arbitration shall proceed in accordance with the Rules.
3. If, after the constitution of arbitral tribunal and before the award is made, the arbitral tribunal shall issue a Termination Order when:
 - a. The parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitration or, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
 - b. The continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in Paragraph 2, the arbitral tribunal shall inform the parties of its intention to issue an order for terminating the arbitration. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
4. Copies of the order for termination of the arbitration or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties and HKCICA. Where an arbitral award on agreed terms is made, the provisions of Article 31, Paragraphs 2 and 4, shall apply.

Article 34– Correction and Interpretation of the award

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to

- a. Correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature.
 - b. Give an interpretation of the award.
2. The arbitral tribunal may set a time limit for any other party to comment on such request for correction or interpretation. The time limit is normally within 15 days of receiving the request.
3. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
4. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
5. The arbitral tribunal may make any further correction to the award which is necessitated by or consequential on:
 - a. The interpretation of any point or part of the award or the correction of any error in the award under this Article; or
 - b. The issue of any additional award under Article 35.
6. The HKCICA may grant an extension of the time limit for the arbitral tribunal to make correction or provide interpretation.
7. Such corrections, made in the original award or in a separate memorandum, shall be in writing and shall form part of the award. This is equally applied to any interpretation. The provisions of Article 31, Paragraphs 2 to 5, shall apply.

Article 35 – Additional award

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitration but not omitted from the award.
2. Any other party may comment on such request within 15 days of receiving the request.
3. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the time limit it shall make the award.
4. The arbitral tribunal may within 30 days after the communication of the award make additional award on its own initiative after consulting with the parties. The

arbitral tribunal may make any additional award which is necessitated by or consequential on the interpretation of any point or part of the award or the correction of any error in the award under this Article 34.

5. When such an award or additional award is made, the provisions of article 31, Paragraphs 2 to 5, shall apply.

Article 36 – Costs of the Arbitration

1. As soon as the arbitral tribunal is constituted or an additional party is joined or the arbitrations are consolidated, the arbitral tribunal shall determine the costs of arbitration in one or more orders or the final award, and notify HKCICA.
2. The term “Costs of Arbitration” includes only:
 - a. The fees of the arbitral tribunal, as determined in accordance with Article 37;
 - b. The reasonable travel and other expenses incurred by the arbitrators;
 - c. The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
 - d. The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
 - e. The reasonable legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
 - f. The Registration Fee and Administrative Fees payable to HKCICA in accordance with Schedule 1, and any expenses payable to HKCICA

Article 37 – Fees and expenses of arbitrators

1. The fees and expenses of the arbitrators shall be determined according to either:
 - a. Based on hourly rate (Schedule 2)
 - b. Based on the amount in dispute (Schedule 3)
2. Within 30 days of the date on which the Respondent receives the Notice of Arbitration, the parties shall inform HKCICA on the agreed the payment method, and the fees and expenses of the arbitral tribunal. If parties fail to agree on the applicable method, the fee of arbitration tribunal and expenses shall be determined with the amount in dispute, in accordance with Schedule 2.

3. When the fee is determined based on the amount in dispute, in accordance with Schedule 3, HKCICA shall fix the fee with the following rules:
 - a. In a reasonable amount
 - b. The amount in dispute
 - c. The complexity of the subject matter of the arbitration
 - d. The time spent by the arbitration tribunal
 - e. Any other circumstances including, but not limited to, the discontinuation of the arbitration because of settlement or any other reason.
4. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to HKCICA for review. If, within 45 days of receipt of such a referral, HKCICA shall find that the proposal of the arbitral tribunal is inconsistent with Paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.
5.
 - a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to Article 36, Paragraphs 2a and 2b, the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;
 - b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the HKCICA.
 - c) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of Article 34, Paragraph 7, shall apply.
6. Throughout the procedure under Paragraphs 4 and 5, the arbitral tribunal shall proceed with the arbitration, in accordance with Article 14, Paragraph 1.

Article 38 – Deposit of costs

1. As soon as practicable after receipt of the Notice of Arbitration by the Respondent, HKCICA shall, in principle, request the Claimant and the Respondent each to deposit with HKCICA an equal amount as advance for the costs referred in Article The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in Article 36, Paragraphs 2a to 2c. HKCICA shall provide a copy of such request to the arbitral tribunal.

2. HKCICA may request supplementary deposits if the Respondent submits a counterclaim or cross-claim, or it otherwise appears appropriate in the circumstances.
3. During the course of the arbitration, the HKCICA may request supplementary deposits, that is consider necessary, from the parties. The arbitral tribunal may inform HKCICA if further deposits is required.
4. If the required deposits are not paid in full to HKCICA within 30 days after the receipt of the request, HKCICA shall so inform the parties in order that one or more 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 HKCICA or the arbitral tribunal considers appropriate.
5. If a party pays the required deposits on behalf of another party, the arbitral tribunal may, at the request of the paying party, make an award for reimbursement of the payment.
6. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.
7. HKCICA shall place the deposits made by the parties in an account at a reputable licensed deposit-taking institution. In selecting the account.
8. HKCICA shall have due regard to the possible need to make the deposited funds available immediately.
9. The parties are jointly and severally liable for the Deposit for Costs.

Supplementary

Fee and costs

Schedule 1 - Table of HKCICA Administration Fee

Amount Dispute (HKD)	in Administration Fee (HKD)			
Range	Basic Fee	Additional Fee (% of dispute amount)	Range	
0 - 500,000	18,000	-	18,000	18,000
500,001 - 1,000,000	18,000	1.2% of 500K and more	18,001	24,000
1,000,001 - 5,000,000	24,000	1.0% of 1M and more	24,001	64,000
5,000,001 - 10,000,000	64,000	0.45% of 5M and more	64,001	86,500
10,000,001 - 50,000,000	86,500	0.2% of 10M and more	86,501	166,500
50,000,001 - 150,000,000	166,500	0.1% of 50M and more	166,501	266,500
150,000,001 - 300,000,000	266,500	0.06% of 150M and more	266,501	356,500
300,000,001 - 500,000,000	356,500	0.05% of 350M and more	356,501	456,500
500,000,001 - 750,000,000	456,500	0.04% of 500M and more	456,501	556,500
> 750,000,000	556,500	0.04 % of 750M and more	556,501	> 556,501
Non-refundable Registration Fee paid by the claimant		6,000		

Fees of Arbitral Tribunal

Two types of fee charge methods (Schedule 2 and Schedule 3):

1) Based on Hourly Rates (Schedule 2)

The maximum hourly rate of an arbitrator is HKD \$ 6,500 per hour

* The suggested arbitrator hourly remuneration is for one arbitrator. If the parties in dispute agreed to appoint two or more arbitrators, the remuneration shall be in multiply of the number of arbitrators.

2) Based on Scheduled amount (Schedule 3)

When the arbitral tribunal fees are determined by the HKCICA, they are in accordance with the table below:

Amount in Dispute (HKD)	Arbitrator Charge			
	Range	Basic Fee	Additional Fee (% of dispute amount)	Lower Limit
0 - 500,000	35,000	-	35,000	35,000
500,001 - 1,000,000	18,000	8.0% of 500K and more	18,001	58,000
1,000,001 - 5,000,000	58,000	4.5% of 1M and more	58,001	238,000
5,000,001 - 10,000,000	238,000	1.7% of 5M and more	238,001	323,000
10,000,001 - 50,000,000	323,000	0.8% of 10M and more	323,001	643,000
50,000,001 - 150,000,000	643,000	0.3% of 50M and more	643,001	943,000
150,000,001 - 300,000,000	943,000	0.2% of 150M and more	943,001	1,243,000
300,000,001 - 500,000,000	1,243,000	0.04% of 350M and more	1,243,001	1,323,000
> 500,000,000	1,323,000	0.04% of 500M and more	1,323,001	8,000,000

- If the amount in dispute cannot be determined, the Suggested Arbitrator's Charge will be determined by HKCICA upon negotiation with arbitrator.
- All charges incurred in the course of mediation shall be borne by parties in dispute, except for the individual income tax of the appointed arbitrator(s).

For further information

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