

# Hong Kong International Arbitration Centre

## DOMESTIC ARBITRATION RULES

(Adopted to take effect from 1 April 1993)

<b>CONTENTS</b>		<b>Page</b>
	Introduction	1
	Suggested Clauses	2
	<b>RULES:</b>	
	Preamble	3
1	Commencement of Arbitration	3
2	Appointing Authority	4
3	Appointment of Arbitrator	4
4	Communication between Parties and the Arbitrator	5
5	Conduct of the Proceedings	5
6	Submission of Written Statements and Documents	6
7	Representation	7
8	Hearings	7
9	Witnesses	7
10	Assessor Appointed by the Arbitrator	8
11	Powers and Jurisdiction of the Arbitrator	8
12	Default of Appearance by a Party	9
13	Venue	10
14	Language	10
15	Deposits and Security	10
16	The Award	10
17	Interpretation of Awards, Correction of Awards and Additional Awards	11
18	Payment Into Court	12
19	Costs	12
20	Interest	12
21	Exclusion of Liability	12
22	Waiver	13
23	Destruction of Documents	13
24	Interpretation and General Clauses Ordinance	13
25	Documents-Only Arbitration	13
26	Confidentiality	14

*In developing the Domestic Arbitration Rules, HKIAC drew on the expertise of its many advisers. It also consulted a variety of other published rules. In particular, with the Chartered Institute of Arbitrators' permission, their 1988 rules were used as a starting point. HKIAC acknowledges all of the assistance it has received in formulating the Rules and thanks the many people and organisations which have helped to produce them.*

## INTRODUCTION

### Domestic Arbitration Rules (1993)

These Rules are published by Hong Kong International Arbitration Centre (HKIAC), to help parties and arbitrators take maximum advantage of the flexible procedures available in arbitration for the resolution of disputes quickly and economically. The Rules provide that the wishes of the parties regarding procedure will be respected as far as possible, but they also seek to ensure that the Arbitrator will have sufficient powers to direct the proceedings if the parties cannot agree on procedure or will not co-operate.

The Rules are suitable for use in resolving a wide range of disputes both in the private and public sectors. They have been adopted by the Hong Kong Government to apply to any arbitration instituted in accordance with its standard forms of General Conditions of Contract.

HKIAC also publishes "A Guide to Arbitration Under the Domestic Arbitration Rules 1993" which, while not in any way modifying these rules, provides helpful guidance to parties, representatives and arbitrators.

The Domestic Arbitration Rules of HKIAC are not intended for use in arbitrations relating to international contracts or disputes (e.g. where the parties come from different countries). In such cases, reference should be made to Hong Kong International Arbitration Centre "Procedure for Arbitration (including the UNCITRAL Rules)" or such other rules as the parties may choose.

### Hong Kong International Arbitration Centre

HKIAC was established in 1985 to assist disputing parties to solve their disputes by arbitration and by conciliation and mediation. HKIAC is a non-profit making company limited by guarantee. It was established by a group of leading business and professional people in Hong Kong to be the focus in Asia for dispute resolution. It has been generously funded by the business community and by the Hong Kong Government but it is totally independent of both.

**SUGGESTED CLAUSES**

- 1. Parties to a contract who wish to have any future disputes referred to arbitration under the Domestic Rules of Hong Kong International Arbitration Centre (HKIAC) may insert in the contract an arbitration clause in the following form:

"Any dispute or difference arising out of or in connection with this contract shall be referred to and determined by arbitration at Hong Kong International Arbitration Centre and in accordance with its Domestic Arbitration Rules."

- 2. Parties to an existing dispute who wish to refer it to arbitration under the Domestic Rules of Hong Kong International Arbitration Centre (HKIAC) may agree to do so in the following terms:

'We, the undersigned, agree to refer to arbitration under the Domestic Rules of 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.)

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

Signed \_\_\_\_\_ (Respondent)'

# Hong Kong International Arbitration Centre

## DOMESTIC ARBITRATION RULES

adopted to take effect from 1 April 1993

### PREAMBLE

Where any agreement, submission or reference provides for arbitration under the Domestic Arbitration Rules of Hong Kong International Arbitration Centre (the Rules), the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the following Rules, or such amended Rules as Hong Kong International Arbitration Centre (HKIAC) may have adopted to take effect before the commencement of the arbitration. The Rules are subject to such modifications as the parties may agree in writing at any time.

### Article 1 Commencement of Arbitration

- 1.1 Any party wishing to commence an arbitration under these Rules (the Claimant) shall send to the other party (the Respondent) a written notice requiring the Respondent to appoint or concur in appointing the Arbitrator (Notice of Arbitration) which shall include, or be accompanied by:
- (a) the names and addresses (and telephone, telex and fax numbers as appropriate) of the parties to the dispute and, where the Claimant chooses to be represented by a Representative (under Article 7) and wishes to have communications sent to its Representative, the Representative's name and address (and telephone, telex and fax numbers);
  - (b) reference to the contractual documents in which the arbitration clause is contained or under which the arbitration arises;
  - (c) a copy of any separate arbitration agreement which is invoked.
  - (d) a brief statement describing the nature and circumstances of the dispute, and specifying in outline the relief claimed;
  - (e) a proposal that either HKIAC appoints the Arbitrator,<sup>\*</sup> or a list of up to three names from which the Respondent may choose an Arbitrator.

The arbitration shall be deemed to commence on the date of receipt by the Respondent of the Notice of Arbitration.

- 1.2 A copy of the Notice of Arbitration shall be sent to the Secretary-General of HKIAC (the Secretary-General) at the same time that it is sent to the Respondent.

---

<sup>\*</sup> *HKIAC may be asked either to make a direct appointment or may be asked to use the list system of appointment detailed in the "Guide to Arbitration Under the Domestic Arbitration Rules 1993."*

---

- 1.3 For the purpose of facilitating the choice of the Arbitrator, within 28 days of receipt of the Notice of Arbitration, the Respondent shall send to the Claimant a Response containing:
- (a) confirmation or denial of his willingness to arbitrate and, if denial, the grounds relied upon;
  - (b) confirmation or denial of all or part of the claims;
  - (c) a brief statement of the nature and circumstances of any envisaged counterclaims;
  - (d) a response either agreeing to any proposals contained in the Notice of Arbitration, as called for under Article 1.1(e), or a list of up to three names from which the Claimant may choose an Arbitrator.
  - (e) details of its Representative, including the Representative's name and address (and telephone, telex and fax numbers), if appropriate.
- 1.4 A copy of the Responses shall be sent to the Secretary-General at the same time that it is sent to the Claimant.
- 1.5 Failure to send a Response shall neither preclude the Respondent from denying the claim nor from setting out a counterclaim in its Statement of Defence.

## Article 2 Appointing Authority

- 2.1 HKIAC shall be the Appointing Authority.\*
- 2.2 Any application to the Appointing Authority to act in accordance with these Rules shall be accompanied by:
- (a) copies of the Notice of Arbitration and Response and any other related correspondence;
  - (b) confirmation in writing that a copy of the application has been sent to or received by the other party;
  - (c) particulars of any method or criteria for selection of the Arbitrator agreed by the other parties.

## Article 3 Appointment of Arbitrator

- 3.1 There shall be a sole Arbitrator.
- 3.2 The Arbitrator shall be and remain at all times wholly independent and

---

\* *HKIAC will require payment of an appointment fee for the use of its services as Appointing Authority as set out in its Fee Schedule.*

---

- impartial, and shall not act as advocate for any party.
- 3.3 Prior to appointment any proposed Arbitrator, and after appointment the Arbitrator, shall disclose to the parties any circumstance likely to create an impression of bias or prevent a prompt resolution of the dispute between the parties. Except by consent of the parties, no person shall serve as the Arbitrator in any dispute in which that person has any interest which, if a party knew of it, might lead him to think that the Arbitrator might be biased.
  - 3.4 The Arbitrator may be appointed by agreement of the parties. Failing such agreement within 42 days of the commencement of the arbitration in accordance with Article 1, the Arbitrator shall upon the application of either party be appointed HKIAC.
  - 3.5 If the Arbitrator dies, is unable to act, or refuses to act, HKIAC will, upon request by either party, appoint another Arbitrator.

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

- 4.1 Where the Arbitrator sends any communication to one party, he shall send a copy to the other party at the same time.
- 4.2 Where a party sends any communication (including Statements and documents under Article 6) to the Arbitrator, it shall be copied to the other party and be indicated to the Arbitrator to have been so copied at the same time.
- 4.3 The addresses of the parties for the purpose of all communications arising under the Rules shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Arbitrator and the other party.
- 4.4 Unless the contrary is proved, any communication by post shall be deemed to be received in the ordinary course of mail. Any instantaneous means of communication (e.g. fax or telex) shall be deemed to be received on the same day as transmitted.
- 4.5 If the parties so agree, the Secretary-General will act as arbitration administrator. Where the Secretary-General is so appointed, all communications and notices between a party and the Arbitrator in the course of the arbitration (except at meetings and hearings) will be addressed through the Secretary-General.

#### Article 5 Conduct of the Proceedings

- 5.1 The Arbitrator shall have the power to adopt wherever possible a simplified or expedited procedure and in any case shall have the widest discretion allowed by law to conduct the proceeding so as to ensure the just, expeditious, economical, and final determination of the dispute.

- 5.2 The Arbitrator should, and shall, if requested by any party, hold a preliminary meeting with the parties as soon as possible after accepting his appointment.

## Article 6 Submission of Written Statements and Documents

- 6.1 Subject to any procedural rules agreed by the parties or determined by or requested from the Arbitrator under Article 5, the written stage of the proceedings shall be as set out in this Article (and in accordance with Article 4).
- 6.2 Within 28 days of receipt by the Claimant of notification of the Arbitrator's acceptance of the appointment, the Claimant shall send to the Arbitrator a Statement of Claim setting out a full description in narrative form of the nature and circumstances of the dispute specifying all factual matters and, if necessary for the proper understanding of the claim, a summary of any contentions of law relied upon and the relief claimed.
- 6.3 Within 35 days of receipt of the Statement of Claim, the Respondent shall send to the Arbitrator a Statement of Defence setting out a full description in narrative form the factual matters and contentions of law in the Statement of Claim which he admits or denies, on what grounds, and specifying any other factual matters and, if necessary for the proper understanding of the defence, a summary of any contentions of law relied upon. Counterclaims, if any, shall be submitted with the Statement of Defence in the same manner as claims set out in the Statement of Claim.
- 6.4 Within 21 days of receipt of the Statement of Defence the Claimant may send to the Arbitrator a Statement of Reply which, where there are Counterclaims, shall include a Defence to Counterclaims.
- 6.5 If the Statement of Reply contains a Defence to Counterclaims, the Respondent may within a further 21 days send to the Arbitrator a Statement of Reply regarding Counterclaims.
- 6.6 All Statements referred to in this Article shall be accompanied by copies (or, if they are especially voluminous and by leave of the Arbitrator, lists) of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where appropriate) by any relevant samples.
- 6.7 The Arbitrator may order the parties to produce any additional documents he may specify.
- 6.8 As soon as practicable following completion of the submission of the Statements specified in this Article, the Arbitrator shall proceed pursuant



to his authority under the Rules unless otherwise agreed by the parties.

## Article 7 Representation

A party may conduct his case in person or be represented throughout or in part by lawyers or other advisers or representatives of his choice (Representative). A party shall notify the Arbitrator, HKIAC and the other parties of any change of Representative and his address (and telephone, telex and fax numbers) as soon as practicable after any such change.

## Article 8 Hearings

- 8.1 Subject to Article 12, each party has the right to be heard before the Arbitrator, unless the parties have agreed to documents-only arbitration under Article 25.
- 8.2 The Arbitrator shall fix the date, time and place of meetings and hearings in the arbitration, and shall give the parties reasonable notice thereof.
- 8.3 The Arbitrator may in advance of hearings provide the parties with a list of matters or questions to which he wishes them to give special consideration.
- 8.4 The Arbitrator may order opening and closing statements to be in writing and shall fix the periods of time for communicating such statements and the replies that may be necessary.
- 8.5 The Arbitrator may also order a transcript of any hearing or part of any hearing.
- 8.6 All meetings and hearings shall be in private unless the parties agree otherwise.

## Article 9 Witnesses

- 9.1 The Arbitrator may at any time require any party to give notice of the identity of witnesses he intends to call and a short summary of the subject matter of their testimony and its relevance to the issues. The Arbitrator may also require the exchange of witnesses' statements and of expert reports.
- 9.2 The Arbitrator has discretion to allow, limit, or refuse to allow the appearance of witnesses, whether witnesses of fact or expert witnesses.
- 9.3 Any witness who gives oral evidence may be questioned by each party or its Representative, under the control of the Arbitrator, and may be

required by the Arbitrator to testify under oath or affirmation in accordance with the Arbitration Ordinance. The Arbitrator may put questions to the witnesses at any stage of the examination.

- 9.4 The testimony of witnesses may be presented in written form, either as signed statements or by duly sworn affidavits, and the Arbitrator may order that such statements or affidavits shall stand as evidence-in-chief. Subject to Article 9.2 any party may request that such a witness should attend for oral examination at a hearing. If the witness fails to attend, the Arbitrator may place such weight on the written testimony as he thinks fit, or may exclude it altogether.

## Article 10 Assessor Appointed by the Arbitrator

Unless otherwise agreed by the parties, the Arbitrator may:

- (a) appoint an Assessor to assist him;
- (b) require a party to give any Assessor any relevant information or to produce, or to provide access to any relevant documents, goods or property for inspection by the Assessor.

## Article 11 Powers and Jurisdiction of the Arbitrator

11.1 Without prejudice to the generality of Article 5.1 and unless the parties at any time agree otherwise, the Arbitrator shall have the power and/or jurisdiction to:

- (a) allow any party, upon such terms (as to costs and otherwise) as the Arbitrator shall determine, to amend any document submitted under Article 6;
- (b) extend or abbreviate any time limits provided by the Rules or by his directions;
- (c) conduct such enquiries as may appear to the Arbitrator to be necessary or expedient;
- (d) order the parties to make any property or thing available for inspection, in their presence, by the Arbitrator or any Assessor;
- (e) order any party to produce to the Arbitrator, and to the other parties for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power which the Arbitrator determines to be relevant;
- (f) order the rectification in any contract or arbitration agreement of any mistake which he determines to be common to the parties;
- (g) rule on the existence, validity or termination of the contract;

- (h) rule on his own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement to the validity of his appointment or to his terms of reference;
- (i) determine any question of law arising in the arbitration;
- (j) determine any question of good faith, dishonesty or fraud arising in the dispute, if specifically asserted by a party in one of their Statements;
- (k) receive and take into account such written or oral evidence as he shall determine to be relevant and shall not be bound by the rules of evidence;
- (l) proceed in the arbitration and make an award notwithstanding the failure or refusal of any party to comply with these Rules or with the Arbitrator's written orders or written directions, or to exercise its right to present its case, but only after giving that party written notice that he intends to do so;
- (m) Order the making by one party to another of an interim payment of monies alleged to be due where, in the opinion of the Arbitrator, payment is undoubtedly due;
- (n) order any party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner the Arbitrator thinks fit.
- (o) order any party to provide security for all or part of any amount in dispute in the arbitration.

11.2 By agreeing to arbitration under the Rules, the parties hereby agree to apply to the Arbitrator, and not to any court of law or other judicial authority, for any order which, but for the Rules, would normally be made by a court of law or other judicial authority.

11.3 For the purpose of Article 11.1(h) above, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not entail the invalidity of the arbitration clause.

11.4 A plea that the Arbitrator does not have jurisdiction shall be raised not later than the time for service of the Statement of Defence. A plea that the Arbitrator is exceeding the scope of his authority shall be raised promptly after the Arbitrator has indicated his intention to decide on the matter alleged to be beyond the scope of his authority. In either case the Arbitrator may nevertheless admit a late plea under this paragraph if he considers the delay justified.

## Article 12 Default of Appearance by a Party

If the Claimant fails to attend any hearing of which due notice has been given, the Arbitrator may make an award on the substantive issues and an award as to costs, with or without a hearing. If the Respondent fails to submit a Statement of

Defence or to attend any hearing after due notice has been given, the Arbitrator may conduct the hearing in the absence of the Respondent and make an Award on the evidence.

### Article 13 Venue

The venue of the arbitration will be Hong Kong but the Arbitrator may decide for the purpose of expediting any hearing or saving costs to hear witnesses or oral argument or consult with an Assessor (if appointed) at any place the Arbitrator deems appropriate having regard to the circumstances of the arbitration.

### Article 14 Language

14.1 The language of the arbitration shall be English and all written communications and statements, and all hearings shall be conducted in the English language unless the parties and the Arbitrator otherwise agree.

14.2 The Arbitrator may order that any documents other than written statements which are produced in the course of the arbitration in their original language shall be accompanied by a translation into the language of the arbitration, such translation to be certified if not agreed.

14.3 Unless the Arbitrator otherwise orders, witnesses shall be entitled to give their evidence in the language of their choice and the Arbitrator may order the translation of that evidence into the language of the arbitration by a suitably qualified person.

### Article 15 Deposits and Security

The Arbitrator may direct the parties, in such proportions as he deems just, to make one or more deposits to secure the Arbitrator's fees and expenses. Such deposits shall be made to and held by the Arbitrator, or HKIAC or some other person or body to the order of the Arbitrator, as the Arbitrator may direct, and may be drawn from as required by the Arbitrator. Interest on sums deposited, if any, shall be accumulated to the deposits.

### Article 16 The Award

16.1 The Arbitrator shall make his award in writing and, unless all the parties agree otherwise, shall state the reasons upon which the award is based. The award shall be dated and signed by the Arbitrator. The award shall be deemed to be made in Hong Kong.

- 16.2 The Arbitrator shall notify the parties as soon as the award is ready for collection but shall not be obliged to deliver the award unless his fees and expenses have been paid.
- 16.3 Unless the parties otherwise agree, the Arbitrator shall provide a copy of the award to the Secretary-General.
- 16.4 The Arbitrator may make interim awards including separate awards on different issues at different times.
- 16.5 If, before the award is made, the parties agree on a settlement of the dispute, the Arbitrator shall either issue an order for termination of the reference to arbitration or, if requested by both parties and accepted by the Arbitrator, record the settlement in the form of a consent award. The Arbitrator shall then be discharged and the reference to arbitration concluded, subject to payment by the parties of all outstanding fees and expenses of the Arbitrator.

## Article 17 Interpretation of Awards, Correction of Awards and Additional Awards

- 17.1 Within 14 days of receiving an award, unless another period of time has been agreed upon by the parties, a party may by written notice to the Arbitrator and the other party request the Arbitrator to give an interpretation of the award. Such party may also request the Arbitrator to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature. If the Arbitrator considers the request to be justified, he shall provide an interpretation or correction within 14 days of receiving the request. Any interpretation or correction shall be given in writing and shall be notified in writing to the parties and to the Secretary-General and shall become part of the award.
- 17.2 The Arbitrator may correct any error of the type referred to in Article 17.1 on his own initiative within 14 days of the date of the award.
- 17.3 Unless otherwise agreed by the parties, a party may request the Arbitrator, within 14 days of the date of the award, and with written notice to the other party, to make an additional award as to claims presented in the reference to arbitration but not dealt with in the award. If the Arbitrator considers the request to be justified, he shall notify the parties and the Secretary-General within 7 days and shall make the additional award within 28 days.
- 17.4 The provisions of Article 16 shall apply to any interpretation or correction of the award and to any additional award.

## Article 18 Payment into Court

Any party may at any time avail himself of the procedure for payment into court pursuant to the provisions of Order 73 of the Rules of the Supreme Court of Hong Kong, although the Arbitrator may take account of any written offer of settlement where a payment into court could have been made.

## Article 19 Costs

- 19.1 The Arbitrator shall specify in the award the total amount of his fees and expenses, including the charges of any arbitration administrator, Assessor, transcriber or translator. Unless the parties shall agree otherwise after the dispute has arisen, the Arbitrator shall determine the proportions in which the parties shall pay such fees and expenses, provided that the parties will be jointly and severally liable to the Arbitrator for payment of all such fees and expenses until they have been paid in full. If the Arbitrator has determined that all or any of his fees and expenses shall be paid by any party other than a party which has already paid them to the Arbitrator, the latter party shall have the right to recover the appropriate amount from the former.
- 19.2 Unless the parties shall agree otherwise after the dispute has arisen, the Arbitrator may order in the award that all or a part of the legal or other costs of one party reasonable in amount and reasonably incurred shall be paid by the other party. The Arbitrator also has power to tax these costs and shall do so if requested by the parties.
- 19.3 If the Arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final award is made, the parties shall be jointly and severally liable to pay to the Arbitrator his fees and expenses including the charges of any arbitration administrator, Assessor, transcriber or translator as determined by him.

## Article 20 Interest

Unless otherwise agreed by the parties, the Arbitrator may order that compound interest be paid.

## Article 21 Exclusion of Liability

- 21.1 Without prejudice to any existing rule of law, the Arbitrator shall not be liable to any party for any act or omission in connection with any arbitration conducted under the Rules, save for the consequences of fraud or dishonesty.

21.2 HKIAC and its Secretary-General shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, save for the consequences of fraud or dishonesty.

21.3 After the award has been made and the possibilities of interpretation, correction and additional awards referred to in Article 17 have lapsed or been exhausted, the Arbitrator, HKIAC and its Secretary-General shall not be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make the Arbitrator, HKIAC or its Secretary-General a witness in any legal proceedings arising out of the arbitration.

## Article 22 Waiver

A party which knew or ought to have known of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object. The Arbitrator shall determine any issue which may arise as to whether a party has waived its right to object to the non-compliance by any other party.

## Article 23 Destruction of Documents

HKIAC may destroy all documents served on it pursuant to the Rules after the expiry of a period of one year after the date of the last correspondence received by HKIAC relating to the arbitration.

## Article 24 Interpretation and General Clauses Ordinance

The Interpretation and General Clauses Ordinance (or any statutory modification or re-enactment thereof for the time being in force) shall apply to these Rules.

## Article 25 Documents-Only Arbitration

25.1 Where the parties have agreed that a documents-only arbitration procedure shall be adopted, the parties shall not be entitled to a hearing and the testimony of any witness shall be presented in written form and shall be submitted in accordance with Article 6. If the Arbitrator feels unable to make an award on the basis of the documents submitted, he shall be entitled to require further evidence or submissions whether oral or in writing.

25.2 If a party fails to submit any statement in accordance with Article 6, the Arbitrator may make an award on the substantive issues and an award as to costs without a hearing.

## Article 26 Confidentiality

No information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration.