

**Hong Kong International Arbitration Centre**  
**ELECTRONIC TRANSACTION ARBITRATION RULES**  
**(Adopted to take effect from 1 January 2002)**

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## **INTRODUCTION**

The Electronic Transaction Arbitration Rules (the Rules) are published by the 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.

Whilst the Rules have been developed to address the special requirements of the resolution of disputes arising out of electronic transactions, they are suitable for use in resolving a wide range of disputes both in the private and public sectors.

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 SAR Government but it is totally independent of both.

The HKIAC thanks Herbert Smith, solicitors, for their assistance in formulating these Rules.

## SUGGESTED CLAUSES

1. Parties to a contract who wish to have any future disputes referred to arbitration under the Electronic Transaction Arbitration 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 under the Electronic Transaction Arbitration Rules of the Hong Kong International Arbitration Centre."*

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

*'We, the undersigned, agree to refer to arbitration under the Electronic Transaction Arbitration 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.)*

*Signature: \_\_\_\_\_ (Claimant)*

*Signature: \_\_\_\_\_ (Respondent)*

## **Hong Kong International Arbitration Centre**

### **ELECTRONIC TRANSACTION ARBITRATION RULES**

(Adopted to take effect from 1 January 2002)

#### PREAMBLE

Where any agreement, submission or reference provides for arbitration under the Electronic Transaction Arbitration Rules of the 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 of Arbitration as per Form N requiring the Respondent to appoint or concur in appointing the Arbitrator.
- 1.2 A copy of the Notice of Arbitration and verification of service to the Respondent at the Respondent's last known address shall be sent to the Secretary General of the HKIAC (the Secretary General) together with a filing fee as detailed in Appendix A ("Arbitration Costs and Administrative Fees Schedule"). For the purposes of this subrule, registered post shall constitute good service.
- 1.3 The date on which the Notice of Arbitration and verification of service to the Respondent is received by the HKIAC shall, for all purposes, be deemed to be the date of the commencement of the arbitral proceedings.
- 1.4 For the purpose of facilitating the choice of the Arbitrator, within 14 days of receipt of the Notice of Arbitration, the Respondent shall send to the Claimant a Response (Response to the Notice of Arbitration) as per Form R.
- 1.5 A copy of the Response and verification of service to the Claimant at the latter's last known address shall be sent to the Secretary General or his designate. For the purposes of this subrule, registered post shall constitute good service.

- 1.6 The Secretary General or his designate may grant the Respondent an extension of time of not more than 7 days for filing the Response, if the HKIAC deems it to be necessary upon the request of the Respondent.
- 1.7 Failure to send a Response within the required timeframe shall neither preclude the Respondent from denying the claim nor from setting out a counterclaim in its Statement of Defence.
- 1.8 For the avoidance of doubt, where these Rules require any notice, pleading, submission or any other communication to be in writing, then, unless the parties agree or the Arbitrator orders otherwise, a communication delivered by facsimiles, telex, email, electronic or computer transmission shall satisfy that requirement together with a record of the sending thereof.

## **Article 2 Appointing Authority**

- 2.1 The 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) a duly completed Appointment Submission Form (Form A);
  - (b) copies of the Notice of Arbitration (Form N) and Response to the Notice of Arbitration (Form R) and any other related correspondence, in particular, the arbitration agreement;
  - (c) confirmation in writing that a copy of the application has been sent to or received by the other party; and
  - (d) payment of the necessary appointment fees as detailed in Appendix A (“Arbitration Costs and Administrative Fees Schedule”).

## **Article 3 Appointment of Arbitrator**

- 3.1 The Arbitrator may be appointed by agreement of the parties. Failing such agreement within 28 days of the commencement of the arbitration in accordance with Article 1,

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\* The HKIAC will require payment of an appointment fee for the use of its services as Appointing Authority as set out in the Arbitration Costs and Administrative Fees Schedule.

the Arbitrator shall, upon the application of either party in accordance with Article 2.2, be appointed by the HKIAC.

- 3.2 The application to the HKIAC to appoint an Arbitrator pursuant to Article 3.1 shall be made within 42 days of the commencement of the Arbitration, failing which the case in question shall be closed without prejudice to the right of the Claimant to submit another Notice of Arbitration in respect of the same case.
- 3.3 For an arbitration under these Rules, there shall be a sole Arbitrator.
- 3.4 The Arbitrator shall ensure that each party has a reasonable opportunity to present its case. In doing so, the Arbitrator shall act fairly and shall remain at all times wholly independent and impartial, and shall not act as advocate for any party.
- 3.5 Prior to appointment of a proposed Arbitrator as well as 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 Arbitrator in any dispute in which that person has any interest which, if a party knew of it, might lead such party to think that the Arbitrator might be biased.
- 3.6 In connection with Article 3.5, prior to appointment a prospective Arbitrator shall confirm in writing to the HKIAC any facts or circumstances which might be of such a nature as to call into question the Arbitrator's independence in the eyes of the parties. The HKIAC shall provide such information to the parties in writing and the parties shall have 7 days to provide comments upon the prospective Arbitrator proposed.
- 3.7 The decisions of the HKIAC as to the appointment, challenge or replacement of an Arbitrator shall be final and the reasons for such decisions shall not be communicated.
- 3.8 If the Arbitrator dies, is unable to act, or refuses to act, the HKIAC will, upon request by either party, appoint another Arbitrator.

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

- 4.1 The Secretary General of the HKIAC (the Secretary General) or his designate will act as the administrator of the arbitration. 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 or his designate.

- 4.2 Where the Secretary General or his designate sends any communication to one party, he shall send a copy to the other party at the same time.
- 4.3 Where a party sends any communication (including statements and documents under Article 6) to the Secretary General, it shall be copied to the other party and verification of service thereof should be forwarded to the Secretary General.
- 4.4 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 Secretary General and the other party.
- 4.5 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, telex or email) shall be deemed to be received on the same day as transmitted.
- 4.6 The HKIAC will charge an Administrative fee in accordance with the “Arbitration Costs and Administrative Fees Schedule” as detailed in Appendix A for the services of the Secretary General or his designate acting as arbitration administrator.

#### **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 Unless the Arbitrator is of the opinion that a preliminary meeting is necessary, all procedural matters in the arbitration shall, failing agreement between the parties, be settled by directions of the Arbitrator set out in written communications.

#### **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, written statements and supporting documents shall be exchanged as set out in this Article (and in accordance with Article 4).



- 6.2 Within 14 days of receipt by the Claimant of notification of the Arbitrator's acceptance of the appointment, the Claimant shall send to the Secretary General or his designate 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 As soon as practicable after the Secretary General or his designate receives a Statement of Claim, he shall transmit the Statement of Claim to the Respondent and a copy thereof to the Arbitrator.
- 6.4 Within 14 days of receipt of the Statement of Claim, the Respondent shall send to the Secretary General or his designate 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.
- 6.5 As soon as practicable after the Secretary General or his designate receives a Statement of Defence, he shall transmit the Statement of Defence to the Claimant and a copy thereof to the Arbitrator.
- 6.6 Within 14 days of receipt of the Statement of Defence, the Claimant may send to the Secretary General or his designate a Statement of Reply which, where there are Counterclaims, shall include a Defence to Counterclaims.
- 6.7 As soon as practicable after the Secretary General or his designate receives a Statement of Reply, he shall transmit the Statement of Reply to the Respondent and a copy thereof to the Arbitrator.
- 6.8 If the Statement of Reply contains a Defence to Counterclaims, the Respondent may within a further 14 days send to the Secretary General or his designate a Statement of Reply regarding Counterclaims.

- 6.9 As soon as practicable after the Secretary General or his designate receives a Statement of Reply regarding Counterclaims, he shall transmit the Statement of Reply regarding Counterclaims to the Claimant and a copy thereof to the Arbitrator.
- 6.10 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.
- 6.11 The Arbitrator may order the parties to produce any additional documents he may specify.
- 6.12 As soon as practicable following completion of the submission of the Statements specified in this Article, the Secretary General or his designate shall forward the supporting information to the Arbitrator in order for him to proceed pursuant to his authority under the Rules unless otherwise agreed by the parties.

#### **Article 7 Documents-Only Arbitration**

- 7.1 Unless the Arbitrator is of the opinion that a hearing is necessary or the parties otherwise agree, the arbitration shall be conducted on a documents only basis in accordance with this Article.
- 7.2 Where a documents-only arbitration procedure has been 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.
- 7.3 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 8 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 Secretary General and the other parties of any change of Representative and his address (and

telephone, telex, fax numbers and email addresses) as soon as practicable after any such change.

## **Article 9      Hearings**

- 9.1 Hearings may, without limitation, be conducted in person, by videolink, by telephone or on-line (by email or by other electronic or computer communication).
- 9.2 The Arbitrator shall fix the date, time, place (if applicable) and manner of meetings and hearings in the arbitration, and shall give the parties reasonable notice thereof.
- 9.3 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.
- 9.4 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.
- 9.5 The Arbitrator may also order a transcript of any hearing or part of any hearing.
- 9.6 All meetings and hearings shall be in private unless the parties agree otherwise.
- 9.7 HKIAC shall make all reasonable endeavours to provide security for the transmission of data on-line between the parties, the Arbitrator, Secretary General or his designate and the HKIAC shall use its best endeavour to see to it that the data is inaccessible or accessible only in an encrypted form to other persons.
- 9.8 Notwithstanding Article 9.7, HKIAC accept no liability whatsoever for breach of contract, tort, negligence or otherwise for any damage arising as a result of any data transmitted on-line in the course of an Arbitration be disclosed to persons other than the intended recipient(s).

## **Article 10     Witnesses**

- 10.1 Subject to Article 5, the calling of witnesses and the giving of evidence by witnesses at any hearing shall be governed by this Article.
- 10.2 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.

- 10.3 The Arbitrator has discretion to allow, limit, or refuse to allow the appearance of witnesses, whether witnesses of fact or expert witnesses.
- 10.4 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.
- 10.5 The Arbitrator may, if he consider is necessary or expedient for the just disposal of the Arbitration or for the saving of costs or otherwise, order that a witness may give oral evidence by videolink or by telephone or may give written evidence on-line and be cross examined thereon.
- 10.6 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 10.3 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 11 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.

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\* As defined under "The New Shorter Oxford English Dictionary, Edition 1993" as (1) A person who sits as assistant or adviser to a judge or magistrate on technical points. (2) A person who sits beside another; a person who shares another's position.

## **Article 12 Powers and Jurisdiction of the Arbitrator**

12.1 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 including without limitation the fees of the Arbitrator by way of deposit or bank guarantee or in any other manner the Arbitrator thinks fit; and
- (o) order any party to provide security for all or part of any amount in dispute in the arbitration.

12.2 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.

12.3 For the purpose of Article 12.1(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.

12.4 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 the Arbitrator considers the delay justified.

### **Article 13 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 14     Seat of Arbitration**

The seat of the arbitration will be Hong Kong SAR 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 15     Language**

- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 The cost of translating documents pursuant to Article 15.2 and oral testimony pursuant to Article 15.3 shall, in the first instance, unless the Arbitrator orders otherwise, be borne by the party seeking to rely upon the relevant document or testimony. Nothing in this Article shall derogate from the powers of the Arbitrator pursuant to Article 20.

#### **Article 16     Deposits and Security**

- 16.1 The Secretary General or his designate 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 and those of the HKIAC. Such deposits shall be made to and held by the

HKIAC and may be drawn from as required by the Arbitrator and the HKIAC. Interest on sums deposited, if any, shall be accumulated to the deposits.

- 16.2 In the event that a party fails to make a deposit directed by the Secretary General or his designate in accordance with Article 16.1, it shall be open to any other party to make that deposit.
- 16.3 When a direction to make a deposit has not been complied with, and after consultation with the Arbitrator, the Secretary General or his designate may direct the Arbitrator to suspend its work and set a time limit, which must be not less than 14 days, on the expiry of which the relevant claims, or counterclaims, shall be deemed to be withdrawn. Should any party wish to object to this measure it must make a request within the aforementioned period for the matter to be decided by the Secretary General or his designate. A party shall not be prevented on the ground of such deemed withdrawal from relying upon the same claims or counterclaims in other proceedings or from issuing a new Notice of Arbitration in respect of the same claims or counterclaims.

#### **Article 17     The Award**

- 17.1 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 SAR.
- 17.2 The Arbitrator shall notify the Secretary General or his designate who shall notify the parties as soon as the award is ready for collection but shall not be obliged to deliver the award unless appropriate fees and expenses have been paid by the parties or by one of them.
- 17.3 The Arbitrator may make interim awards including separate awards on different issues at different times.
- 17.4 If, before an award/ interim award is made, the parties agree on a settlement of the dispute, the Arbitrator shall either issue an order for termination of the 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 and the HKIAC.

- 17.5 The time limit within which the Arbitrator must render a final Award under these Rules is six months from the date the Arbitrator is appointed. The Secretary General or his designate may extend this time limit pursuant to a reasoned request from the Arbitrator or on its own initiative if he decides it is necessary to do so.
- 17.6 An original of each Award made in accordance within these Rules shall be deposited with the HKIAC.
- 17.7 Every Award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any Award without delay and shall be deemed to have waived their right to any form of recourse in so far as such waiver can validly be made.

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

- 18.1 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 Secretary General or his designate 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 Secretary General or his designate who shall transmit the same to the parties. Any interpretation or correction shall take the form of an addendum and shall become part of the award.
- 18.2 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.
- 18.3 Unless otherwise agreed by the parties, a party may by notice to the Secretary General or his designate, 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 Secretary General or

his designate within 7 days who shall transmit such notification to the parties. The Arbitrator shall make the additional award within 28 days.

- 18.4 The provisions of Article 17 shall apply to any interpretation or correction of the award and to any additional award.

#### **Article 19 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 High 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 20 Costs**

- 20.1 The costs of arbitration shall include the fees and expenses of the Arbitrator and the Secretary General or his designate administrative expenses fixed by the HKIAC which shall be determined having regard to the Fee Schedule as shown in Appendix A (“Arbitration Costs and Administrative Fees Schedule”) together with the costs of any Assessor, transcriber or translator, save that the HKIAC may, having regard to the complexity and circumstances of the case, fix the fees of the Arbitrator at a sum higher or lower than that indicated by the Fee Schedule.
- 20.2 The Arbitrator shall specify in the award the total amount of the costs of the Arbitration. Unless the parties shall agree otherwise after the dispute has arisen, the Arbitrator shall determine the proportions in which the parties shall pay such costs, provided that the parties will be jointly and severally liable to the HKIAC for payment of all such costs until they have been paid in full. If the Arbitrator has determined that all or any of such costs be paid by any party other than a party which has already paid them to the Arbitrator or the HKIAC, the latter party shall have the right to recover the appropriate amount from the former.
- 20.3 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.

20.4 If an 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 HKIAC the costs of the Arbitration as determined by the Arbitrator.

#### **Article 21 Interest**

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

#### **Article 22 Exclusion of Liability**

22.1 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.

22.2 The HKIAC and its Secretary General 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.

22.3 After an 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, the 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, the HKIAC or its Secretary General or his designate a witness in any legal proceedings arising out of the arbitration.

#### **Article 23 Waiver**

A party which knew or ought to have known of non-compliance with the 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 24     Destruction of Documents**

The 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 the HKIAC relating to the arbitration.

#### **Article 25     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 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.

#### **Article 27     Amendments**

The HKIAC may amend the Rules from time to time at its sole discretion.

**Arbitration Costs and Administrative Fees Schedule**  
**(Adopted to take effect from 1 January 2002)**

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This Arbitration Costs and Administrative Fees Schedule governs arbitrations conducted under the Hong Kong International Arbitration Centre (HKIAC) Electronic Transaction Arbitration Rules (“the Rules”). All fees are in Hong Kong dollars.

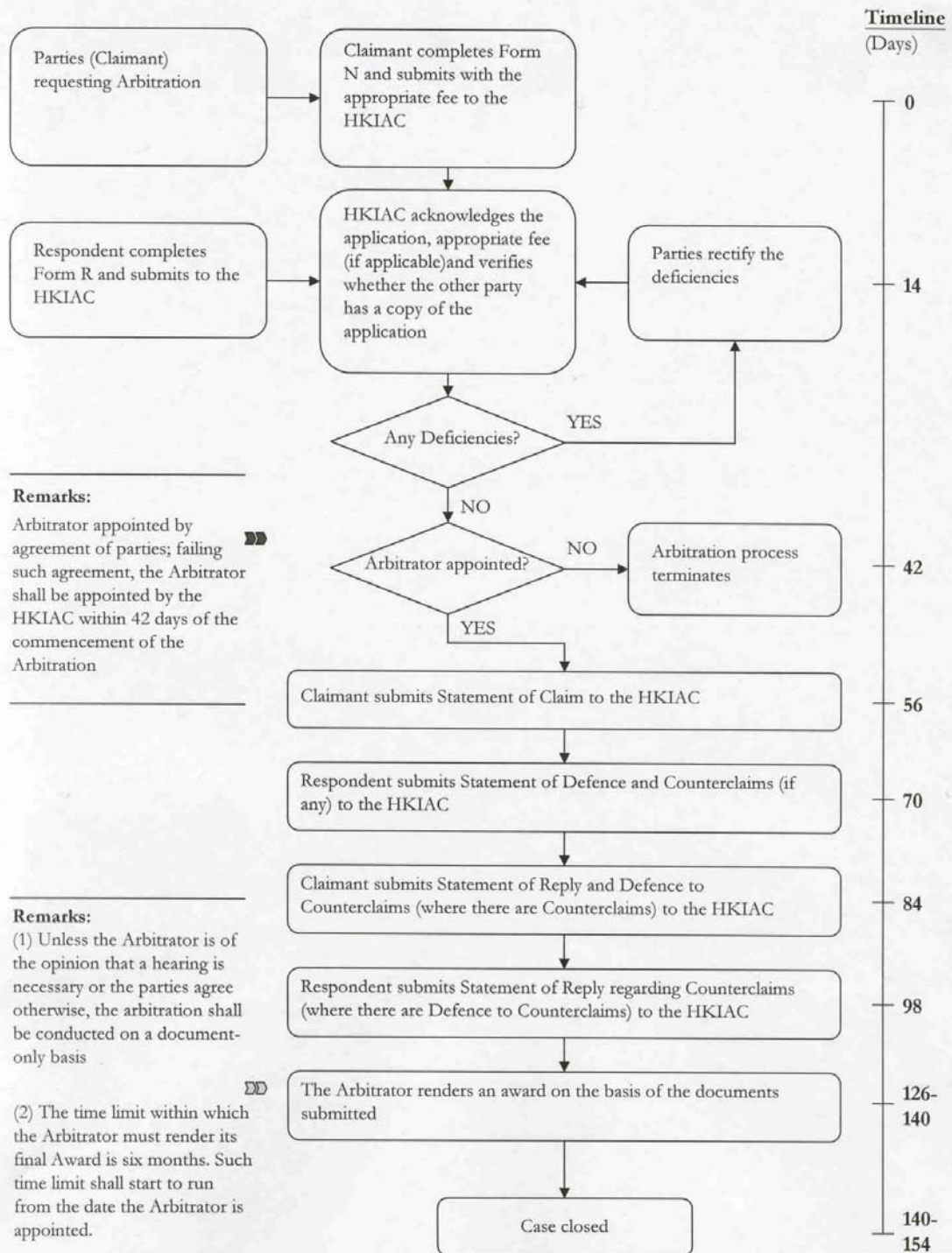
1. Any party wishing to commence an arbitration pursuant the Rules must submit a filing fee of HK\$ 1000 made payable to the Hong Kong International Arbitration Centre (HKIAC). Such payment is non-refundable.
2. Any application submitted by any party to the HKIAC to act as Appointing Authority in accordance with the Rules shall be accompanied by an appointment fee of HK\$ 4000 made payable to the HKIAC. Such payment is non-refundable.
3. Amounts fixed by the HKIAC to be paid to the Arbitrator do not include any possible value-added taxes (VAT) or other taxes or charges and imposts applicable to the Arbitrator’s fee. Parties are expected to pay any such taxes or charges, however, the recovery of any such charges or taxes is a matter solely between the Arbitrator and the parties.
4. Fees to be paid to the HKIAC in accordance with the HKIAC Electronic Transaction Arbitration Rules shall be paid free of any bank charges, transfer fees or any withholdings in Hong Kong Dollars (HK\$) only by cheque, draft or telegraphic transfer. Cheques and draft are to be made payable to the "Hong Kong International Arbitration Centre" Telegraphic transfers shall be made as follows:  
  
Account Name: Hong Kong International Arbitration Centre  
  
Account Number: 004 567 190897 001  
HSBC  
1, Queens Road, Central, Hong Kong
5. The fees to be paid to the HKIAC do not include any payments, which a Party might have to be made to a lawyer or representative representing such party. Such fees are purely a matter for each party.
6. Arbitration Costs and Administrative Fees Schedule set forth below shall be effective as of 1 January 2002 in respect of all arbitrations commenced on or after such date, irrespective of the version of the Rules applying to such arbitrations.
7. The HKIAC may amend the Arbitration Costs and Administrative Fees Schedule from time to time at its sole discretion.

## Arbitration Costs and Administrative Fees Schedule

Sums in Dispute (in HK dollars)		Arbitrator's Fees (in HK dollars)				Administrative Fees (in HK dollars)			
		Minimum*		Maximum					
Up to	50 000	3 000		7 500		2 500			
From	50 001 to 100 000	3 000 + 1.50% of amount over	50 000	7 500 + 7.50% of amount over	50 000	2 500 + 3.00% of amount over	50 000		
From	100 001 to 250 000	7 000 + 0.80% of amount over	100 000	17 500 + 4.00% of amount over	100 000	4 750 + 1.50% of amount over	100 000		
From	250 001 to 500 000	15 750 + 0.70% of amount over	250 000	35 000 + 3.50% of amount over	250 000	7 375 + 1.00% of amount over	250 000		
From	500 001 to 1 000 000	30 750 + 0.60% of amount over	500 000	65 000 + 3.00% of amount over	500 000	11 125 + 0.75% of amount over	500 000		
From	1 000 001 to 2 000 000	50 750 + 0.40% of amount over	1 000 000	105 000 + 2.00% of amount over	1 000 000	16 750 + 0.50% of amount over	1 000 000		
From	2 000 001 to 5 000 000	80 750 + 0.30% of amount over	2 000 000	180 000 + 1.50% of amount over	2 000 000	24 250 + 0.50% of amount over	2 000 000		
From	5 000 001 to 10 000 000	130 750 + 0.20% of amount over	5 000 000	280 000 + 1.00% of amount over	5 000 000	41 750 + 0.50% of amount over	5 000 000		
Over	10 000 000	220 000 + 0.10% of amount over	10 000 000	450 000 + 0.50% of amount over	10 000 000	100 000			

(\* Please note for the Documents-Only arbitration, the minimum of the arbitrator's fees should apply.)

**Arbitration procedure under the Hong Kong International Arbitration Centre (HKIAC) Electronic Transaction Arbitration Rules**



**FORM N**

HONG KONG INTERNATIONAL ARBITRATION CENTRE

**NOTICE OF ARBITRATION**

This form shall be used by the party initiating resources to arbitration (hereinafter called the “Claimant”) to the other party (hereinafter called the “Respondent”) pursuant to the Electronic Transaction Arbitration Rules of the Hong Kong International Arbitration Centre adopted on 1 January 2002

*(Note: In case any section of the form is not applicable, please put in N/A)*

*(Note: If there is insufficient space, provide details on a separate sheet in the same format)*

**1 THE UNDERSIGNED HEREBY ISSUES A NOTICE OF ARBITRATION IN ACCORDANCE WITH ARTICLE 1.1 OF THE ELECTRONIC TRANSACTION ARBITRATION RULES OF THE HONG KONG INTERNATIONAL ARBITRATION CENTRE (HKIAC)**

**2 DETAILS OF PARTIES:** (If there is more than one Claimant / Respondent, provide the contact details for each and briefly describe the basis on which they are being joined in a common complaint.)

**CLAIMANT:**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No \_\_\_\_\_  
Fax No \_\_\_\_\_  
Email \_\_\_\_\_  
Nationality \_\_\_\_\_  
\_\_\_\_\_

**RESPONDENT:**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No \_\_\_\_\_  
Fax No \_\_\_\_\_  
Email \_\_\_\_\_  
Nationality \_\_\_\_\_  
\_\_\_\_\_

**REPRESENTATIVE (IF ANY):**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No \_\_\_\_\_  
Fax No \_\_\_\_\_  
Email \_\_\_\_\_  
Nationality \_\_\_\_\_  
\_\_\_\_\_

**REPRESENTATIVE (IF ANY):**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No \_\_\_\_\_  
Fax No \_\_\_\_\_  
Email \_\_\_\_\_  
Nationality \_\_\_\_\_  
\_\_\_\_\_



**3 CONTRACT / AGREEMENT:** (Enclose a copy or summarize briefly.)

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**4 ARBITRATION CLAUSE OR AGREEMENT:** (A copy is attached to this application.)

**5 DISPUTE:** (Brief particulars of nature, circumstances and location of disputes, issue for arbitration, amount at issue, and the relief sought.)

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**6 OTHER RELEVANT DETAILS:** (In the application, give date on which party was requested to concur in appointment of Arbitrator under the contract/agreement, names of Arbitrators proposed, whether the party has responded or not and, if so, in what terms, whether it is proposed that the HKIAC appoint the Arbitrator etc.)

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**7 FILING FEE:** A cheque payable to “Hong Kong International Arbitration Centre” for HK\$ 1000.00 for payment of the filing fee is enclosed.

**Yes / No \***

*(\* delete as appropriate)*

## 8 AWARD PUBLICATION

The Claimant consents/ does not consent \* to the publication of any Award made herein by the HKIAC on their website or in other publications by the HKIAC.

(\* delete as appropriate)

## 9 ADDITIONAL INFORMATION

- (i) The Notice of Arbitration shall be submitted to the Respondent to his last known address in accordance with Article 1 of the HKIAC Electronic Transaction Arbitration Rules. A copy of the Notice of Arbitration shall also be submitted to the HKIAC in accordance with Article 1.2 of the HKIAC Electronic Transaction Arbitration Rules.
- (ii) The following documents should be consulted in connection with preparing this Notice of Arbitration
  - Arbitration clause of the said agreement in dispute;
  - Arbitration Ordinance Chapter 341;
  - HKIAC Electronic Transaction Arbitration Rules.

## 10 CERTIFICATE

The Claimant, by submitting the Complaint agrees to the settlement of the dispute, which is the object of the Complaint by final and binding arbitration in Hong Kong SAR in accordance with the HKIAC Electronic Transaction Arbitration Rules.

The Claimant agrees that its claims and remedies concerning the dispute, or the dispute's resolution shall be solely against the Respondent and waives all such claims and remedies against the HKIAC as well as their directors, officers, employees, and agents and the Arbitrator who will hear the dispute, except in the case of fraud or dishonesty or deliberate wrongdoing.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Capacity (in print): \_\_\_\_\_

**FORM R**

HONG KONG INTERNATIONAL ARBITRATION CENTRE

**RESPONSE TO THE NOTICE OF ARBITRATION**

This form shall be used by the party responding to a Notice of Arbitration (hereinafter called the “Respondent”) to the party who initiated the Notice of Arbitration (hereinafter called the “Claimant”) pursuant to the Electronic Transaction Arbitration Rules of the Hong Kong International Arbitration Centre adopted on 1 January 2002

*(Note: In case any section of the form is not applicable, please put in N/A)*

*(Note: If there is insufficient space, provide details on a separate sheet in the same format)*

**1 THE UNDERSIGNED HEREBY RESPONDS TO THE NOTICE OF ARBITRATION IN ACCORDANCE WITH ARTICLE 1.4 OF THE ELECTRONIC TRANSACTION ARBITRATION RULES OF THE HONG KONG INTERNATIONAL ARBITRATION CENTRE (HKIAC).**

**2 DETAILS OF PARTIES:** (If there is more than one Claimant / Respondent, provide the contact details for each and briefly describe the bases on which they are being joined in a common complaint.)

**CLAIMANT:**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No \_\_\_\_\_  
Fax No \_\_\_\_\_  
Email \_\_\_\_\_  
Nationality \_\_\_\_\_

**RESPONDENT:**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No \_\_\_\_\_  
Fax No \_\_\_\_\_  
Email \_\_\_\_\_  
Nationality \_\_\_\_\_

**REPRESENTATIVE (IF ANY):**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No \_\_\_\_\_  
Fax No \_\_\_\_\_  
Email \_\_\_\_\_  
Nationality \_\_\_\_\_

**REPRESENTATIVE (IF ANY):**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No \_\_\_\_\_  
Fax No \_\_\_\_\_  
Email \_\_\_\_\_  
Nationality \_\_\_\_\_

**3 CONFIRMATION OR DENIAL OF ALL OR PART OF CLAIMS**

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**4 CONFIRMATION OR DENIAL OF WILLINGNESS TO ARBITRATE AND, IF DENIAL, THE GROUNDS RELIED UPON**

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**5 STATEMENT OF THE NATURE AND CIRCUMSTANCES OF ANY ENVISAGED COUNTERCLAIMS:** (Brief particulars of the nature, circumstances of the dispute giving rise to the counterclaim(s) and a statement of the relief sought, including, to the extent possible, an indication of any amount(s) counterclaimed.)

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**6 OTHER RELEVANT DETAILS:** (A response either agreeing to any proposals contained in the Notice of Arbitration, or a list of up to three names from which the Claimant may choose an Arbitrator.)

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## 7 AWARD PUBLICATION

The Respondent consents/ does not consent \* to the publication of any Award made herein by the HKIAC on their website or in other publications by the HKIAC.

(\* delete as appropriate)

## 8 ADDITIONAL INFORMATION

- (i) The Response to the Notice of Arbitration shall be submitted to the Claimant to his last known address in accordance with Article 1.4 of the HKIAC Electronic Transaction Arbitration Rules. A copy of the Response to the Notice of Arbitration shall also be submitted to the HKIAC in accordance with Article 1.5 of the HKIAC Electronic Transaction Arbitration Rules.
- (ii) The following documents should be consulted in connection with preparing this Response to the Notice of Arbitration
  - Arbitration clause of the said agreement in dispute;
  - Arbitration Ordinance Chapter 341;
  - HKIAC Electronic Transaction Arbitration Rules.

## 9 CERTIFICATE

The Respondent, by submitting the Response to the Notice of Arbitration agrees to the settlement of the dispute, which is the object of the Complaint by final and binding arbitration in Hong Kong SAR in accordance with the HKIAC Electronic Transaction Arbitration Rules.

The Respondent agrees that its counterclaims and remedies concerning the dispute, or the dispute's resolution shall be solely against the Claimant and waives all such claims and remedies against the HKIAC as well as their directors, officers, employees, and agents and the Arbitrator who will hear the dispute, except in the case of fraud or dishonesty or deliberate wrongdoing.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Capacity (in print): \_\_\_\_\_

**FORM A**

HONG KONG INTERNATIONAL ARBITRATION CENTRE

**APPOINTMENT SUBMISSION FORM**

This form shall be used by the parties who wish to have the HKIAC to act as the Appointing Authority in accordance with the Electronic Transaction Arbitration Rules of the Hong Kong International Arbitration Centre adopted on 1 January 2002

**To: Hong Kong International Arbitration Centre**

**Date:** \_\_\_\_\_

**Re:** \_\_\_\_\_

By submitting this form, we, \_\_\_\_\_, hereby request that the Hong Kong International Arbitration Centre (HKIAC) to appoint an Arbitrator pursuant to the Hong Kong International Arbitration Centre Electronic Transaction Arbitration Rules (“the Rules”) adopted on 1 January 2002.

We enclose the following information for you to proceed with the appointment of an Arbitrator:

1. Notice of Arbitration (Form N);
2. Response to the Notice of Arbitration (Form R);
3. Confirmation in writing that a copy of this application has been sent to or received by the other party; and
4. Payment of the necessary appointment fees (as detailed in Appendix A – Arbitration Costs and Administrative Fees Schedule)

We understand that the decisions of the HKIAC as to the appointment, challenge or replacement of an Arbitrator shall be final and the reasons for such decisions shall not be communicated.

SIGNATURE:

\_\_\_\_\_

(NAME IN PRINT: \_\_\_\_\_ )