



HAIAC

海南国际仲裁院
HAINAN INTERNATIONAL ARBITRATION COURT

Hainan International Arbitration Court
(Hainan Arbitration Commission)

Arbitration Rules

With effect from 1 November 2020

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Hainan International Arbitration Court (Hainan Arbitration Commission) Arbitration Rules

(Amended pursuant to the resolution of the First Board of Directors of the HIAC in the First Board Meeting on 25 August 2020)

Chapter 1 General Provisions

Article 1 Institute and Responsibility

(I)The Hainan International Arbitration Court (also known as Hainan Arbitration Commission) (“the HIAC”) is a permanent arbitration institution for public interest legally established and registered in accordance with laws in Hainan Province, China to resolve contractual disputes and other disputes over property rights and interests between natural persons, legal persons and unincorporated associations as subjects of equal status.

(II)The Chairman of the HIAC (“the Chairman”) performs the director's duties as prescribed by the Arbitration Law of the People's Republic of China (“the Arbitration Law”).

The President of the HIAC (“the President”) shall perform duties in accordance with the Articles of Association of the HIAC and may perform corresponding duties if so entrusted by the Chairman.

(III)These Arbitration Rules (“the Rules”) shall apply to the HIAC and its branches.

(IV)Working departments and branches of the HIAC are responsible for procedural management of arbitration cases according to the division of responsibilities.

(V)Where the parties agree in an arbitration agreement that the disputes shall be arbitrated by the HIAC, or that the name of the arbitration institution as agreed is the Hainan Arbitration Commission or its former name the Haikou Arbitration Commission, or that the disputes shall be arbitrated by the local arbitration institution which can be inferred as designating the HIAC, or that the disputes shall be arbitrated by a branch of the HIAC, then the HIAC has jurisdiction over the arbitration and to administer the arbitral proceedings.

Article 2 Scope of Application

Contractual disputes and other disputes over property rights and interests, including contractual or non-contractual disputes, between natural persons, legal persons and unincorporated associations as subjects of equal status may be filed to the HIAC for arbitration in accordance with the law.

Article 3 Applicability of the Rules

(I)Where the parties have agreed to submit their disputes to the HIAC for arbitration or the HIAC accepts the arbitration application in accordance with Paragraph (V) of Article 1, unless otherwise agreed by the parties, they shall be deemed to have agreed to arbitration in accordance with the Rules.

(II)Where the parties have agreed to arbitration under the Rules without providing the name of a specific arbitration institution, they shall be deemed to have agreed to submit the disputes to the HIAC for arbitration.

(III)Where the parties have agreed to arbitration by the HIAC but have agreed to apply the other arbitration rules or the Rules with modification or supplement, the parties' agreement shall prevail except where such agreement is unenforceable or contravenes a mandatory provision of the law applicable to the arbitral proceedings. Where the parties have agreed to apply the other arbitration rules, the HIAC shall perform the duties of the relevant institution under the applicable arbitration rules.

(IV)Where the parties have agreed to apply the arbitration rules made by the HIAC in respect of a specific industry or profession, the parties' agreement shall prevail.

(V)In respect of any matters not expressly provided for in the Rules, the HIAC may administer or the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, to ensure the efficient and fair resolution of disputes between the parties.

Article 4 Language of Arbitration

(I)Where the parties have agreed on the language of arbitration, such agreement shall prevail.

(II)In the absence of such agreement or such agreement is ambiguous,

the language applicable to the arbitral proceedings shall be determined by the HIAC or the arbitral tribunal having regard to the particular circumstances.

(III) At the hearing, if any party or its representative(s) or witness(es) needs language interpretation, such party shall arrange by itself or request the HIAC to provide interpretation services. Where the parties have an agreement on the costs of interpretation expenses, such agreement shall prevail; where there is no such agreement or the agreement is ambiguous, the party requesting for interpretation shall bear the interpretation expenses.

(IV) The arbitral tribunal or the HIAC may, if it considers necessary, require the parties to provide translated or abridged version of documents and evidentiary materials submitted by the parties in such language as applied to the arbitration proceedings.

Article 5 Seat of Arbitration

(I) Where the parties have agreed on the seat of arbitration, such agreement shall prevail.

(II) Where the parties have not agreed on the seat of arbitration or the agreed seat of arbitration is ambiguous, the seat of arbitration shall be the domicile of the HIAC. The HIAC may also determine the seat of arbitration to be another location having regard to the circumstances of the case.

(III) The arbitral award shall be deemed as having been made at the seat of arbitration.

Article 6 Good Faith Arbitration

(I) Arbitration participants shall act in accordance with the principle of good faith in arbitration.

(II) Where the parties concerned or their representatives are in breach of the Rules, the agreements between the parties or the decisions of the arbitral tribunal or commits any other impropriety resulting in delay in proceedings or increase in expenses, the arbitral tribunal shall have the power to decide that such parties shall bear the additional expenses.

(III) If the statements made or the documents submitted by the parties

or their representatives are false, such parties shall bear the adverse consequences arising therefrom.

(IV) Where the parties and their representatives practice fraudulent arbitration or where the arbitration may prejudice public interest or a third party's legitimate rights and interests, the HIAC shall have the power to decide not to accept their arbitration application, and the arbitral tribunal shall have the power to dismiss the party's corresponding arbitration application or claim in the arbitration.

Article 7 Waiver of Right to Objection

(I) A party who knows or ought to have known of a failure to comply with any provision of the Rules or any term of the arbitration agreement, but still takes part in or continues to take part in the arbitral proceedings without promptly raising its objection to such non-compliance in writing, shall be deemed to have waived its right to object to such non-compliance.

(II) Upon specific notification, a party who knows or ought to have known of a failure to comply with the statutory arbitration procedure at the seat of arbitration, but still takes part in or continues to take part in the arbitral proceedings without promptly raising its objection to such non-compliance in writing, shall be deemed to have waived its right to object to such non-compliance except that such non-compliance contravenes the mandatory requirement under the law of the seat of arbitration.

Chapter 2 Arbitration Agreement

Article 8 Definition and Form of Arbitration Agreement

(I) An arbitration agreement is an agreement whereby the parties agree to submit for arbitration a dispute which has arisen or may arise between the parties. An arbitration agreement includes an arbitration clause stipulated in a contract or an agreement requesting arbitration entered into in any other written form.

(II) The arbitration agreement shall be in written form. Written form includes, but is not limited to, contractual instruments, letters or electronic data messages (including telegram, telex, facsimile, electronic data interchange and e-mail), and any other form where the contents are

retrievable.

(III)Where, during exchange of the application for arbitration and the Statement of Defense, one party asserts the existence of an arbitration agreement but the other party participates in the arbitration and does not deny this, a written arbitration agreement between the parties shall be deemed to exist.

(IV)Where the applicable law of an arbitration agreement provides otherwise as to the form and validity of the arbitration agreement, such provision shall prevail.

Article 9 Severability of Arbitration Agreement

An arbitration agreement shall be severable from the contract in which it is contained. The validity of an arbitration agreement shall not be affected by any variation, assignment, discharge, termination, invalidity, voidness or unenforceability, expiry, ineffectiveness, rescission or non-existence of the contract.

Article 10 Invitation to Arbitration

(I)Where there is no arbitration agreement between the parties and one party via the HIAC invites the other party to resolve the disputes by arbitration and signs the written invitation to arbitration, the HIAC shall, within 3 days, serve the written invitation to arbitration and the Rules on that other party.

Upon that other party agreeing in writing agreeing to arbitration, an arbitration agreement shall be deemed to have been entered into between both parties and the HIAC shall notify both parties that the arbitration proceedings shall directly proceed. Where no reply in writing is received from the other party within 10 days from its receipt of the invitation to arbitration, the invitation shall be deemed to have not been accepted.

(II)Both parties to an arbitration agreement may jointly via the HIAC or the arbitral tribunal invite a third party to join the arbitration proceedings. Upon the third party agreeing in writing to join the arbitration, an arbitration agreement shall be deemed to have been entered into between both parties and the third party. The parties may jointly decide whether or not to recommence afresh the arbitration proceedings having

so proceeded. Where the parties fail to make a joint decision within the time limit as notified by the HIAC or arbitral tribunal, the HIAC or the arbitral tribunal shall make a decision. Where no reply in writing is received from the third party within 10 days from its receipt of the invitation to arbitration, the invitation shall be deemed to have not been accepted.

Article 11 Validity of Arbitration Agreement and Challenge to Jurisdiction

(I) Any challenge to the existence or validity of the arbitration agreement or to the jurisdiction shall be raised in writing before the first oral hearing is held. For arbitration conducted on paper, the challenge shall be raised in writing before the time limit for the submission of defense expires.

(II) If a party fails to raise a challenge in accordance with the above provisions, it shall be deemed to have accepted the validity of the arbitration agreement or the jurisdiction of the HIAC.

(III) The challenge of existence or validity of an arbitration agreement and the jurisdiction may be decided by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted. The decision of the arbitral tribunal may be made either during the arbitral proceedings or in the arbitral award. A decision made by an arbitral tribunal on the existence or validity of an arbitration agreement and the jurisdiction made under the authorization of the HIAC shall be deemed a decision made by the HIAC.

(IV) Where the HIAC or the arbitral tribunal authorized by the HIAC, upon preliminary examination, considers that an arbitration agreement exists, it may, based on prima facie evidence, decide that the HIAC has jurisdiction and the arbitration shall proceed. Such decision shall not prevent the HIAC or the arbitral tribunal authorized by the HIAC from making afresh a decision on jurisdiction based on facts or evidence found by the arbitral tribunal during the arbitral proceedings which are inconsistent with the prima facie evidence.

(V) Where the HIAC or the arbitral tribunal authorized by the HIAC has decided it lacks jurisdiction, the case shall be dismissed. Where the HIAC or the arbitral tribunal authorized by the HIAC has made a decision

that it lacks jurisdiction over a part of the arbitration, the application for arbitration of that part shall be dismissed.

Chapter 3 Application for Arbitration, Defense and Counterclaim

Article 12 Application for Arbitration

(I) A party applying for arbitration (“the Claimant”) shall submit:

(a) The arbitration agreement(s);

(b) A statement of application (“the Statement of Application”) containing the following contents:

(i) the name, residential address, postal code, telephone number, fax number and other effective and convenient means of communication of the Claimant and the respondent (“the Respondent”), and of the legal representative or the person in charge where a party is a legal person or unincorporated association;

(ii) the claim for relief and the facts and grounds on which the claim is based;

(iii) the signature and/or seal affixed by the Claimant or its authorized representative(s).

(c) The evidence and a list setting out the title and description, the source and the relevance of the evidence;

(d) Proof of the Claimant’s identity.

(II) For an application for arbitration failing to comply with the requirements set out in Paragraph (I), the party shall rectify within 5 days after receiving the notice; if the party still fails to rectify, the party shall be deemed not to have submitted an application for arbitration, and the HIAC shall not preserve such documents or materials as submitted by the Claimant.

Article 13 Acceptance

(I) The HIAC shall accept an arbitration application if it finds that the application meets the requirements for acceptance within 3 days from its receipt of the arbitration application.

(II) The Claimant that files for arbitration shall, within 5 days upon receipt of

the written notice, pay in advance the arbitration fees in accordance with the provisions of the HIAC Schedule of Arbitration Fees. Where a party has difficulty in paying the arbitration fees in advance within the specified time limit, it may apply for reduction, exemption or postponement of payment, which shall be decided by the HIAC. If a party fails to pay the arbitration fees in advance within the time limit and fails to apply for reduction, exemption or postponement of payment, or fails to pay all the arbitration fees in advance within the extended time limit granted by the HIAC, it shall be deemed to have withdrawn the arbitration application.

(III)The arbitration proceedings shall be deemed to commence on the date on which the HIAC accepts the arbitration application.

(IV)Upon acceptance of an application for arbitration, the HIAC shall designate a case manager to assist with the procedural administration of the arbitration.

Article 14 Notice of Arbitration

The HIAC shall serve a notice of arbitration (“the Notice of Arbitration”), a copy of the Rules and a list of the HIAC’s panel of arbitrators (“the Panel”) on the Claimant within 3 days from acceptance of the arbitration application; and serve the Notice of Arbitration, the Rules, a list of the Panel and the Statement of Application together with its attachments on the Respondent within 5 days from payment by the Claimant.

Article 15 Defense

(I)Within 15 days from the date of receipt of the Notice of Arbitration, the Respondent shall submit.

(a)A statement of defense (“the Statement of Defense”) containing the following contents:

(i)the name, residential address, postal code, telephone number, fax number and other effective and convenient means of communication of the Respondent and of the legal representative or the person in charge where a party is a legal person or unincorporated association;

(ii)its defense to the claim(s), and the facts and grounds on which the defense is based;

(iii)the signature and/or seal affixed by the Respondent or its authorized

representative(s).

(b)The evidence and a list setting out the title and description, the source and the relevance of the evidence;

(c)The Respondent's identity proof;

(II)The Respondent's request for extension of the period of time justified with proper grounds shall be determined by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

(III)The HIAC shall serve the Statement of Defense together with its attachments on the Claimant within 5 days from receipt of the Statement of Defense.

(IV)Failure to submit a Statement of Defense shall not affect the progress of the arbitral proceedings.

Article 16 Counterclaim

(I)Where the Respondent makes a counterclaim, it shall submit a written application before the end of the first oral hearing; for arbitration conducted on paper, the written application shall be submitted within 15 days from the receipt of the Notice of Arbitration. Whether or not to accept the application for counterclaim shall be decided by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

(II)Where the Respondent submits an application for counterclaim out of time, whether or not such counterclaim is accepted shall be decided by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been so constituted. When deciding whether to accept an application for counterclaim submitted out of time, there shall be taken into account the necessity to hear the counterclaim together with the claim, the extent of the delay in submitting the application for counterclaim, the unnecessary delay caused to the arbitral proceedings and any other relevant factors.

(III)Articles 12 and 13 of the Rules shall apply mutatis mutandis to an application for counterclaim.

(IV)The HIAC shall, within 3 days upon acceptance of the application

for counterclaim, serve the notice of counterclaim (“the Notice of Counterclaim”) to the Respondent; and shall, within 5 days upon payment of the arbitration fees by the Respondent, serve the Notice of Counterclaim, the Statement of Counterclaim together with its attachments on the Claimant.

(V)Article 15 shall apply mutatis mutandis to submission by the Claimant of its Statement of Defense to the counterclaim (“the Statement of Defense to Counterclaim”).

Article 17 Amendment to Claim or Counterclaim

(I)A party may amend its claim or counterclaim. A written application shall be submitted for any amendment to the arbitration claim or counterclaim. Whether or not to accept such application shall be decided by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

(II)Where a party amends the arbitration claim or counterclaim and is required to pay supplementary arbitration fees, Paragraph (II) of Article 13 shall apply mutatis mutandis.

Article 18 Consolidation of Arbitral Proceedings

(I)Upon the unanimous consent of the parties, the HIAC or the arbitral tribunal may consolidate two or more related or similar sets of commenced arbitral proceedings into one to be heard before the same arbitral tribunal.

(II)Unless otherwise agreed by the parties, the arbitral proceedings shall be consolidated into the arbitration proceedings having commenced first in time.

(III)Where the arbitral proceedings are consolidated, the procedural matters shall be decided by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

(IV)Where the arbitral proceedings are consolidated, the arbitral tribunal shall have the power to make separate awards or a joint award on the disputes between the parties.

Article 19 Joinder of Additional Parties

(I)Any party in commenced arbitral proceedings may apply in writing

to join an additional party under the same arbitration agreement to the arbitration. Whether or not to accept such application shall be decided by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

(II) Upon the unanimous consent of the parties and the additional party, the additional party may apply in writing to join the arbitration proceedings. The decision on whether to accept such application shall be decided by the arbitral tribunal. Where the arbitral tribunal has not been composed yet, the decision on whether to accept such application shall be made by the HIAC.

(III) The party applying for joinder shall submit a joinder application (“the Joinder Application”). So far as the contents of the Joinder Application and matters such as acceptance and defense are concerned, Articles 12 to 15 of the Rules shall apply *mutatis mutandis*.

(IV) Where the HIAC or arbitral tribunal accepts the joinder application, the parties on both sides shall nominate and appoint arbitrators *afresh* in accordance with Articles 23, 24, 62 and 69 of the Rules, unless the parties agree to the continuation of the hearing by the original arbitral tribunal.

Article 20 Submission of Copies of Documents

The Statement of Application, Statement of Defense, Statement of Counterclaim, Statement of Defense to Counterclaim, evidence and any other documents shall be submitted by the parties in quintuplicate. Where there are more than two parties, additional copies shall be provided accordingly; if the arbitral tribunal is composed of a sole arbitrator, two copies shall be reduced.

Article 21 Preservation and Interim Measures

(I) A party may, in the event that enforcement of any award is likely to become difficult or any other detriment is likely to be caused to the party as a result of the conduct of the other party or of the existence of any other relevant factors, apply for an order to preserve assets of the other party or to compel a party to take or restrain the other party from taking certain actions.

(II) Where it is likely that the evidence may be destroyed or lost or become

difficult to obtain later on, a party may apply for preservation of evidence.

(III)Where a party makes an application aforesaid, the HIAC shall, within 5 days from the receipt of such application, forward the application to a People's Court with competent jurisdiction.

(IV)In urgent circumstances, where a party's lawful rights and interests would be irreparably damaged or evidence might be lost, destroyed or become difficult to obtain if no preservation measure is applied for immediately, a party may make an application for preservation measures to a People's Court with competent jurisdiction before submitting its application for arbitration.

(V)Any other interim measure ordered by the arbitral tribunal in the form of a decision, procedural order or interim award that does not fall within the scope as provided in Paragraphs(I) to (IV) above shall be binding upon the parties. Where the parties do not comply with the decision, procedural order or interim award of the arbitral tribunal, they shall bear the corresponding consequences.

Article 22 Representation

Where a party appoints one or more representatives for the arbitration, it shall submit a power of attorney stating the matters in which the representative(s) have authority to act and the scope of authority and the identity proof of the appointed representative(s).

Chapter 4 Arbitral Tribunal

Article 23 Panel of Arbitrators

(I)The HIAC may establish panel(s) of arbitrators according to different industries or specialties.

(II)The parties may nominate arbitrators either on or not on the Panel.

(III)Where the parties nominate arbitrators not on the Panel, they shall provide the HIAC with the professional qualification, resume and contact information of such nominees, who may act as arbitrators subject to the confirmation by the HIAC. Under circumstances other than those specified in Paragraph (I) of Article 59 hereof, the term of the arbitrator so nominated shall expire upon the conclusion of the arbitration.

Article 24 Composition of the Arbitral Tribunal

(I) Unless otherwise agreed by the parties or provided for in the Rules, the arbitral tribunal shall be composed of three arbitrators.

(II) Within 15 days of receipt of the Notice of Arbitration, each party shall respectively nominate or request the Chairman to appoint an arbitrator. Where any party fails to nominate or request the Chairman to appoint an arbitrator within the specified time limit, the Chairman shall appoint the same.

(III) Both parties shall jointly nominate or jointly request the Chairman to appoint the presiding arbitrator (“the Presiding Arbitrator”) within 15 days from the date of receipt of the Notice of Arbitration by the Respondent. Each party may also nominate one to three arbitrators as candidates for the Presiding Arbitrator within the aforesaid time limit. Upon application or consent by the parties, the HIAC may provide a list of five to seven candidates for the Presiding Arbitrator, from which each party shall select one to three arbitrators as the Presiding Arbitrator within the time limit specified herein. Where there is one common candidate on both parties’ nomination or selection lists, such candidate shall be the Presiding Arbitrator jointly selected by the parties. Where there is more than one common candidate on both parties’ nomination or selection lists, the Chairman shall, taking into consideration the particular circumstances of the case, appoint one of those candidates as the Presiding Arbitrator, who shall be deemed to have been jointly nominated by the parties. Where there is no common candidate on both parties’ nomination or selection lists, the Chairman shall appoint as the Presiding Arbitrator an arbitrator other than those appearing on the parties’ nomination or selection lists.

(IV) Where the parties fail to jointly nominate the Presiding Arbitrator in accordance with Paragraph (III) above, the Presiding Arbitrator shall be appointed by the Chairman.

(V) Where there are two or more applicants and/or respondents in a case, each party on the applicant side and/or the respondent side shall through consultations jointly nominate or jointly request the Chairman to appoint one arbitrator. If the applicant side and/or the respondent side fails to make such joint nomination or joint request within 15 days from the date on which the last party receives the Notice of Arbitration, the Chairman

shall appoint the same.

(VI) Where a party nominates an arbitrator residing outside the place of arbitration, it shall pay in advance and bear the travel and accommodation expenses incurred by the arbitrators for the purpose of the arbitration. If a party fails to pay in advance the travel and accommodation expenses within the specified time limit, it shall be deemed that no arbitrator has been nominated, and the Chairman may appoint another arbitrator in accordance with the Rules.

(VII) Where an arbitrator refuses to accept nomination by a party or is unable to participate in arbitration due to illness or any other reason that may prevent him or her from performing an arbitrator's usual duties, the party shall nominate another arbitrator within 5 days after receiving the notice of re-nomination of arbitrator. If that party fails to nominate another arbitrator within the time limit, the Chairman shall appoint the same.

Article 25 Notice of Composition of the Arbitral Tribunal

Within 5 days of the composition of the arbitral tribunal, the HIAC shall notify the parties accordingly. The case manager shall forward the case file to the arbitral tribunal promptly thereafter.

Article 26 Disclosure by Arbitrators

(I) Upon accepting the appointment or nomination, each arbitrator shall sign a statement of independence and impartiality. The statement shall be forwarded to each party by the case manager.

(II) Where an arbitrator becomes aware of circumstances relating to either party or its authorized representatives that are likely to lead any party to have justifiable doubts about his or her independence or impartiality, the arbitrator shall disclose such circumstance in writing or at the hearing.

(III) Within 5 days of receiving a written disclosure, either party shall state in writing whether it intends to challenge the arbitrator.

(IV) Paragraphs (I), (III), (V), (VI) and (VII) of Article 27 shall apply to the challenge to an arbitrator on the basis of circumstances disclosed by the arbitrator.

(V) If a party fails to challenge an arbitrator within the time limit prescribed in Paragraph (III) of this Article, it shall not be permitted to challenge the

arbitrator at a later time during the arbitral proceedings on the basis of the circumstances already disclosed by the arbitrator.

Article 27 Challenge of Arbitrators

(I) Under any of the following circumstances, an arbitrator shall disqualify himself or herself, and the parties shall be entitled to apply to challenge an arbitrator:

(a) the arbitrator is a party to a case or is a close relative of a party to a case or its representative(s);

(b) the arbitrator has an interest in the case;

(c) the arbitrator has any other relationship with a party to the case or its representative(s), which may affect the impartiality of the arbitration;

(d) the arbitrator has met a party or its representative in private;

(e) the arbitrator accepts any gift from a party its representative.

(II) A party shall be entitled to challenge an arbitrator on the basis of justifiable doubts as to the independence or impartiality of the arbitrator.

(III) A challenge shall be made in writing and accompanied by the grounds of the challenge and supporting evidence.

(IV) In any case other than those set out in Paragraph (III) of Article 26, a challenge shall be raised before the first hearing. A challenge based on circumstances that become known after the first hearing may be raised prior to the conclusion of the final hearing. Where no further hearing will be conducted or in the case of arbitration conducted on paper, a challenge shall be raised within 5 days after the party becomes aware of the circumstances giving rise to a challenge.

(V) The case manager shall promptly forward the application for challenge to the other parties and to each member of the arbitral tribunal.

(VI) Where a party challenges an arbitrator and the other party concurs with the challenge or where the challenged arbitrator withdraws voluntarily upon being informed of the challenge, that arbitrator shall no longer participate in the arbitration. Neither of these circumstances shall imply that the grounds on which the challenge is based are established.

(VII) In circumstances other than those specified in Paragraph (VI) of this

Article, the Chairman shall decide on the challenge.

(VIII) A party who, after becoming aware of the composition of the arbitral tribunal, appoints authorized representatives whose appointment may give rise to grounds for the challenge of any arbitrator in this chapter, shall be deemed to have waived its right to challenge the arbitrator on those grounds; the right of the other party to challenge the arbitrator shall not, however, be affected. Additional costs resulting from any delay caused to the arbitral proceedings in these circumstances shall be borne by the party responsible for causing the grounds for challenge.

(IX) The provisions on the challenge of arbitrators shall apply *mutatis mutandis* to the challenge of case manager, adjudicators, interpreters, inspectors, etc.

Article 28 Replacement of Arbitrator

(I) An arbitrator shall be replaced if he/she is unable to perform his/her duties due to death, health or other reasons, or if the Chairman decides that he or she is to withdraw from the arbitration, or if both parties jointly request him/her to withdraw from the arbitration.

(II) Where an arbitrator voluntarily withdraws from the arbitration, he/she shall state the reason in writing and obtain the approval of the HIAC.

(III) An arbitrator may also be removed if the HIAC considers that the arbitrator is *de jure* or *de facto* unable to perform his or her duties as an arbitrator or fails to perform his or her duties as required by the Rules.

(IV) Where the removed arbitrator was nominated by the party concerned, the party concerned shall nominate the substitute arbitrator within 5 days upon receipt of the notice from the HIAC; where the removed arbitrator was appointed by the Chairman, the Chairman shall appoint a substitute arbitrator. The HIAC shall notify the parties concerned in writing of the replacement within 5 days from the date of such nomination or appointment of the substitute arbitrator, after the nomination or appointment of the substitute arbitrator, the parties may request the previous arbitral proceedings to be repeated and the arbitral tribunal shall decide whether it is necessary or not. The arbitral tribunal may also, on its own initiative, decide whether the previous arbitral proceedings shall be repeated. Where the arbitral tribunal decides to repeat the arbitration

proceedings, the time limits specified in Articles 51, 65 and 78 hereof shall be recalculated from the date on which the arbitrator is replaced.

Article 29 Continuation of Arbitration by Majority

After the conclusion of the final hearing, if an arbitrator of a 3-member arbitral tribunal is unable to participate in the deliberation or render an award due to his or her death, health, removal from the Panel or other special reasons, the two remaining arbitrators may continue with the arbitration proceedings upon the consent of both parties or the approval of the HIAC. This Article shall not apply to arbitration conducted on paper.

Chapter 5 Arbitral Proceedings and Award

Article 30 Mode of Proceedings

(I) The arbitral tribunal shall hold an oral hearing.

(II) Where the parties agree not to hold oral hearings, or the arbitral tribunal deems oral hearings unnecessary and obtains the consent of both parties, the arbitral tribunal may conduct the arbitration on paper based on the evidential materials and documents submitted by the parties.

(III) Unless otherwise agreed by the parties, the arbitral tribunal may conduct the arbitration in any way it considers appropriate and may decide on the procedural arrangements for the arbitration and may issue procedural orders.

(IV) Regardless of the mode of proceeding adopted, the arbitral tribunal shall treat the parties fairly and impartially and shall safeguard their right to make statements and to arguments.

Article 31 Related Matters that the Arbitration Tribunal may Decide

During the arbitration, the arbitral tribunal may, if necessary or upon the request of a party, decide on the matters which include, but are not limited to, the following:

(I) Issuing question lists to either party or requiring the party to answer the questions which it deems related to the case at the oral hearing;

(II) Ordering the party concerned to submit evidence in a proper form,

excluding irrelevant evidence, and requiring the party to provide evidence and make statements in respect of the relevant issues;

(III) Requiring the parties to provide goods for inspection, sell goods and keep the proceeds therefrom, test equipment and submit report, provide documents for audit or do such other acts as the arbitral tribunal considers necessary, or prohibiting the parties from acting in a certain way;

(IV) Proceeding with the arbitral proceedings even if the parties fail to comply with the Rules or the orders of the arbitral tribunal, and deciding on the allocation of additional costs incurred as a result of the misconduct of the parties;

(V) Drawing an adverse inference, in the partial award or the final award, to the party who fails to comply with the order, interim award or other decisions rendered by the arbitral tribunal;

(VI) Deciding the governing law of the arbitration agreement or the arbitral proceedings; and

(VII) Elucidating to the parties, where permissible under the applicable law, the nature of a specific legal relationship, the reliefs sought for arbitration claim or counterclaim.

Article 32 Confidentiality

(I) Arbitration shall be conducted in private. Where the parties agree to conduct the arbitration in public, the arbitration may be conducted in public, except where the arbitration involves state secrets or any third party's trade secrets, or where the arbitral tribunal considers a public arbitration is inappropriate.

(II) Where an arbitration is conducted in private, the parties and their authorized representatives, arbitrators, witnesses, interpreters, inspectors, adjudicators, experts consulted by the arbitral tribunal, the staff of the HIAC and other relevant persons shall not disclose to a third party any information concerning the arbitration, whether substantive or procedural.

Article 33 Place of Hearing

(I) Unless otherwise agreed by the parties or decided by the arbitral

tribunal, the hearing shall be held at the locality of the HIAC or its branch.

(II) Where the parties agree to hold a hearing at a location other than the locality of the HIAC or its branch, the parties shall bear the additional costs arising therefrom. In the event the parties fail to pay in advance the costs within the time limit in accordance with such proportions as agreed by them or decided by the arbitral tribunal, the parties shall be deemed to have not agreed to hold a hearing at a location other than the locality of the HIAC or its branch.

Article 34 Concurrent Hearings

The arbitral tribunal may, upon the consent of the parties, decide to hear concurrently two or more than two cases of similar or related subject matter.

The provisions of the preceding paragraph shall not apply to cases where the composition of the arbitral tribunals in the arbitral proceedings concerned are not identical.

Article 35 Notice of Hearing

(I) The arbitral tribunal shall notify the parties of the date and place of the hearing 5 days prior to the hearing. With the consent of both parties, the arbitral tribunal may reschedule the hearing to an earlier date. A party having justified reasons to request a postponement of the hearing shall make such request 3 days prior to the hearing. The arbitral tribunal shall decide whether to postpone the oral hearing or not.

(II) Notification of the date and place of any further hearing or that of the date and place of such postponed hearing shall not be subject to the 5-day time limit.

Article 36 Default of Parties

(I) Having been duly notified in writing of the hearing, if the Claimant fails to appear at the hearing without any justification or withdraws from an ongoing hearing without the permission of the arbitral tribunal, the Claimant shall be deemed to have withdrawn its application for arbitration. Where the respondent has raised a counterclaim, the Claimant's default shall not affect the hearing of the counterclaim by the arbitral tribunal.

(II) Having been duly notified in writing of the hearing, if the respondent

fails to appear at the hearing without any justification or withdraws from an ongoing hearing without the permission of the arbitral tribunal, the arbitral tribunal may proceed with the arbitration. Where the respondent has raised a counterclaim, such counterclaim shall be deemed to have been withdrawn.

Article 37 Suspension and Resumption of Arbitral Proceedings

(I)Where, during the arbitration, both parties jointly request or any exceptional circumstances occur that necessitate suspension, the arbitration proceedings may be suspended.

(II)The decision to suspend the arbitration proceedings shall be made by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

(III)The arbitral proceedings shall resume as soon as the reason for the suspension disappears or the suspension period ends.

Article 38 Submission of Evidence

(I)Each party shall bear the burden of proving the facts relied upon to support its claim or defense in the arbitration proceedings.

(II)The arbitral tribunal shall have the power to require the parties to submit their evidence within a specified time limit. The parties shall comply with any such order. The arbitral tribunal shall have the power to decide whether to accept any evidence not submitted within a specified time limit.

(III)If a party having the burden of proof fails to submit evidence within the specified time limit, or if the submitted evidence is insufficient to prove the facts supporting its claim, it shall bear the adverse consequences of such failure.

(IV)Each party shall classify, bind, number, and paginate the evidential materials submitted thereby and state briefly the name, source, content and the relevance of the evidential materials. The evidence list shall be signed, sealed and dated.

(V)Any reproduction, duplicate, counterpart or abridged version of any document or any item produced by one party to another party shall be deemed to be identical to the original copy, unless the other party challenges its authenticity.

(VI) Unless otherwise agreed by the parties, evidence and written documents submitted by the parties in a foreign language shall be accompanied by a Chinese translation. The arbitral tribunal may, if necessary, require the parties to provide a translation of the evidence and of any written documents in another language.

Article 39 Collection of Evidence by the Arbitral Tribunal

(I) At the request of a party and with the approval of the arbitral tribunal or if the arbitral tribunal considers it necessary, the arbitral tribunal may undertake investigations and collect evidence. If the arbitral tribunal considers it necessary to require the parties to be present when it undertakes investigations or collects evidence, it shall notify the parties in time. In case the notified parties are absent, the arbitral tribunal may proceed with the investigations or the collection of evidence and the same shall not be affected by the parties' absence.

(II) Evidence collected by the arbitral tribunal through investigation shall be sent to both parties for their comments.

(III) Where the arbitral tribunal considers that a third party's interest may be involved in the case, it shall hear the opinions of such party.

Article 40 Adjudication

(I) Where the parties apply for an adjudication and the arbitral tribunal agrees, the arbitral tribunal may notify the parties to nominate an adjudicating institution or an adjudicating expert jointly within a period of time specified by the arbitral tribunal. Where the parties fail to reach a consensus, the arbitral tribunal shall appoint an adjudicating institution or an adjudicating expert. The parties shall pay in advance the adjudication costs within the time limit in accordance with such proportions as agreed by them or decided by the arbitral tribunal. Where the parties fail to pay in advance the adjudication costs within the time limit, they shall be deemed to have withdrawn the application for adjudication.

(II) Where the parties have not applied for adjudication but the arbitral tribunal considers it necessary to conduct an adjudication, the arbitral tribunal may notify the parties to nominate an adjudicating institution or an adjudicating expert jointly within a period of time specified by the arbitral tribunal. Where the parties fail to reach a consensus, the arbitral

tribunal shall appoint an adjudicating institution or an adjudicating expert. The parties shall pay in advance the adjudication costs within the time limit in accordance with such proportions as decided by the arbitral tribunal. Where the parties fail to pay in advance the adjudication costs within the time limit, the arbitral tribunal has the right to decide not to proceed with such adjudication. The arbitral tribunal shall have the power to require the parties to provide or present to the adjudicator any relevant documents, materials, properties or any other items for the adjudication. If either party fails to comply with such a requirement, the party shall bear the corresponding consequences thereof.

(III) The arbitral tribunal shall decide upon any disagreement between any party and the adjudicator as to whether the document, materials, properties or any other items for the adjudication are relevant to the case.

(IV) A copy of the adjudication conclusion shall be sent to each party. Each party may express opinions on the adjudication opinion.

(V) If any party requests or if the arbitral tribunal considers it necessary, the arbitral tribunal may notify the adjudicator to attend the hearing. With the permission of the arbitration tribunal, the parties may question the adjudicator.

Article 41 Experts Appointed by the Parties

(I) The parties may at their own discretion retain experts with the appropriate qualifications to provide expert opinions on the factual or legal issues of the case.

(II) The arbitral tribunal has the power to require the experts appointed by each party to jointly hold an expert meeting before the hearing to submit written opinions on the matters on which they have reached a consensus, the matters on which they have not reached a consensus and the corresponding reasons.

(III) Either party may require an expert appointed by the other party to appear in hearing to give explanations and clarifications on the opinions submitted.

Article 42 Expert Appointed by Arbitral Tribunal

(I) At the request of the parties and with the consent of the arbitral tribunal

or if the arbitral tribunal considers it necessary, the arbitral tribunal may consult one or more experts on specialized issues relating to the case, and the experts may issue advisory opinion(s) thereon. The arbitral tribunal may also decide to engage experts to conduct audit, evaluation, testing or consultancy and provide expert opinion(s).

(II)The parties are obliged to provide the expert with any relevant materials or to facilitate the expert's on-site investigation.

(III)The arbitral tribunal may require the presence of experts at its sessions of explanation and interpretation of their opinion(s) on technical issues of the case.

(IV)The parties shall pay in advance the costs of the expert(s) within the time limit in accordance with such proportions as agreed by them or decided by the arbitral tribunal. Where the parties fail to pay in advance the costs of the expert(s), the application shall be deemed to have been withdrawn or the parties shall bear the corresponding legal consequences.

Article 43 Examination and Assessment of Evidence

(I)Where an oral hearing is to be held, evidence exchanged between the parties prior to the hearing shall be produced for examination during the hearing. Evidence already acknowledged as admissible and recorded during the exchange of evidence may, after confirmation of the same by the arbitral tribunal in a hearing, be admitted and accepted as the basis of fact finding without the evidence being produced.

(II)Where evidence is produced by any party during or after the hearing and the arbitral tribunal decides to admit the evidence without holding any further hearings, the arbitral tribunal may require the other party to comment on such evidence in writing within a specified period of time.

(III)The arbitral tribunal shall assess the evidence. It shall decide whether to admit the witness testimonies, adjudication opinions or expert opinion(s).

(IV)A party that neither acknowledges nor denies a fact claimed by the other party which is unfavorable to the party itself, but does not expressly confirm or deny it after full explanation and inquiry by the arbitral tribunal, is deemed to have acknowledged that fact.

(V)The facts and evidence that are unfavorable to the party itself and have been admitted by the party in the application for arbitration, defense, statements and other written opinions shall be confirmed by the arbitration tribunal. Where a self-admitted fact is inconsistent with an ascertained fact, the arbitral tribunal shall not confirm the self-admitted fact.

(VI)Where a party has in his power evidence and refuses to provide the said evidence without proper justification, when the party bearing the burden of proving a relevant fact makes a claim that the content of the said evidence, if produced, is adverse to the party having in his power the said evidence, such claim may be presumed to be established.

(VII)When the parties submit witness testimony, the witness shall appear to testify in accordance with the notice of the arbitral tribunal. With the permission of the arbitral tribunal, the parties may question the witnesses. The witness statement of such witness who fails to appear without proper justification shall not be accepted as evidence to be relied on for ascertaining the facts of the case.

Article 44 Presentation of Arguments

Each party may present oral arguments during the hearing.

Article 45 Closing Statements

At the closing of the hearing, the arbitral tribunal shall invite closing statements from the parties, which may be presented either orally during the hearing or in writing within a period of time specified by the arbitral tribunal.

Article 46 Record of Oral Hearing

(I)The arbitral tribunal shall make a written record of the hearing.

(II)With the consent of the arbitral tribunal, the HIAC may record the hearing by audio or video. The audio or video recordings are for the exclusive use of the HIAC or the arbitral tribunal and shall not be disclosed to public.

(III)A party or any other participant in the arbitration may request the rectification of any omission or error in the written record of their oral statement. The request shall be recorded if the arbitral tribunal does not

allow the rectification.

(IV)The arbitral tribunal, the case manager, the recorder, the parties and other participants in the arbitration shall sign or affix their seals on the written record.

(V)Where the parties or any other participant in the arbitration proceedings refuse to sign the hearing record, such refusal shall be recorded, and signed by the arbitrator(s) and the recorder.

Article 47 Withdrawal of Arbitration Application and Dismissal

(I)The Claimant may withdraw the application for arbitration. Where the respondent has raised a counterclaim; withdrawal of the application for arbitration shall not affect the determination of such counterclaim by the arbitral tribunal. The respondent may withdraw its counterclaim. Withdrawal of the counterclaim shall not affect the determination of the Claimant's claim by the arbitral tribunal.

(II)Where the party withdraws its arbitration application, the withdrawal application shall be decided by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

(III)Except for the circumstances above and Paragraph 5 of Article 11 of the Rules, where it becomes unnecessary or impossible to continue the arbitral proceedings for any reason, the HIAC or the arbitral tribunal, may decide to dismiss the case.

(IV)Where a party concerned withdraws the arbitration application before the composition of the arbitral tribunal, the HIAC shall refund the case acceptance fee collected in advance; where a party concerned withdraws the arbitration application after the composition of the arbitral tribunal, the HIAC shall, based on the actual circumstances, refund part of the case acceptance fee and case handling fee collected in advance.

Article 48 Conciliation and Mediation

(I)During the arbitral proceedings, the parties may settle by themselves.

(II)Upon the request of or with the consent of the parties, the arbitral tribunal may conduct mediation during the arbitral proceedings.

(III)The arbitral tribunal may, in accordance with the Rules, notify a party applying for the participation of a third party in the mediation, if the other

party and the third party agree.

(IV)The arbitral tribunal may conduct the mediation in appropriate manners.

(V)During the process of mediation, if a party proposes to terminate the mediation or if it fails, the process shall cease.

(VI)Where a settlement agreement is reached by the parties themselves, the parties may apply to the arbitral tribunal for rendering a mediation statement or an arbitral award, or apply to withdraw the claim and counterclaim.

(VII)Where the parties have reached a mediation agreement, the arbitral tribunal shall render a mediation statement or an award based on the outcome of the agreement. The mediation agreement that is capable of being immediately performed or for which the parties concerned state that it is not necessary to render a statement of mediation or an award shall be recorded in the written record, and the written records shall become legally effective after being signed or sealed by the parties concerned, arbitrators and case manager.

(VIII)Where the contents of the conciliation agreement reached by the parties is beyond the scope of the claim, it shall be permitted, provided that it shall not prejudice public interest or a third party's legitimate rights and interests. The HIAC or the arbitral tribunal shall have the right to request the parties to make a statement to warrant the legality and authenticity of the conciliation agreement or the mediation agreement and the relevant transactions and request the parties to undertake not to prejudice public interest or a third party's legitimate rights and interests. Where the arbitral tribunal considers that the contents of the conciliation agreement or the mediation agreement prejudices public interest or a third party's legitimate rights and interests and the parties refuse to modify the contents, the arbitral tribunal may reject the parties' application for a statement of mediation or arbitral award made in accordance with the contents of the conciliation agreement or mediation agreement.

(IX)The Statement of Mediation shall state the claim and the terms of the resulting settlement agreement reached by the parties. It shall be signed by the arbitrators, sealed by the HIAC. The Statement of Mediation shall

be legally binding after all the parties have acknowledged receipt to fit in writing.

(X)Where the parties disagree and renege the mediation before the Statement being signed, the arbitral tribunal shall promptly render an arbitral award.

(XI)If the mediation fails to lead to a settlement, neither party shall be permitted to adduce evidence of or to refer to or use any statements, opinions, views or proposals expressed by the other party or by the arbitral tribunal during the mediation in support of any claim, defense or counterclaim in the subsequent arbitral proceedings, or as grounds in any judicial or other proceedings. The arbitration tribunal shall not base its award on the opinions expressed by the parties during the mediation.

Article 49 Decisions on Procedural Matters

(I)Any decision of an arbitral tribunal comprising 3 arbitrators shall be made by a majority of the arbitrators. If the arbitral tribunal fails to reach a majority decision, the decision of the Presiding Arbitrator shall prevail.

(II)The Presiding Arbitrator may, with the consent of the parties or with the authorization of the arbitral tribunal, decide upon procedural matters.

Article 50 Opinions of the Committee of Experts

Before the arbitral award is rendered, the case may be submitted to the HIAC Expert Committee for discussion and opinions, which may be taken as reference by the arbitral tribunal in any of the following circumstances:

(I)Where the arbitration case has a significant social impact;

(II)Where the arbitral tribunal has a material difference of opinion;

(III)Where the Chairman deems it necessary.

Article 51 Time Limit for Making the Award

(I)The arbitral tribunal shall render the award within 4 months from the date of its constitution. If there are special circumstances justifying an extension to this period, the Chairman may approve an extension at the request of the Presiding Arbitrator.

(II)The above periods shall not include the period during which the arbitration proceedings are suspended and the period during which the

professional issues are audited, evaluated, adjusted and tested, as well as the period for reconciliation as allowed by the arbitral tribunal upon the parties' written request.

Article 52 Making the Award

(I)The arbitral tribunal may conduct its deliberation at any place it deems appropriate and may also conduct its deliberation, if necessary, by such means as video, correspondence and electronic data messages.

(II)The award of an arbitral tribunal comprising 3 arbitrators shall be made by a majority of the arbitrators. The minority dissenting opinion may be recorded in writing. If the arbitral tribunal fails to reach a majority decision, the award shall be made in accordance with the opinion of the Presiding Arbitrator.

(III)The award shall state the claim, the facts in dispute, the reasons for the award, the dispositions (including the determination of arbitration fees), and the date of the award. The arbitral tribunal shall not be required to state the facts in dispute or the reasons for the award if the parties so agree.

(IV)The award shall be signed by every member of the arbitral tribunal. A dissenting arbitrator may choose whether or not to sign the award. An arbitrator who elects not to sign the award shall issue a dissenting written opinion. The dissenting opinion shall not form part of the award.

(V)The arbitral award shall be rendered upon signature by the arbitrator(s), and the HIAC's seal shall be affixed to it.

(VI)An award shall have legal effect on the date it is rendered.

Article 53 Interim Award

(I)Where the arbitral tribunal considers it necessary, or where a party so requests and the arbitral tribunal agrees, the arbitral tribunal may, before rendering the final award, render an interim award on any procedural issues or substantive issues.

(II)The rendering of an interim award and whether or not an interim award is complied with does not affect the continuation of the arbitral proceedings or the rendering of a final award by the arbitral tribunal.

Article 54 Partial Award

Where the arbitral tribunal considers it necessary, or where a party so requests and the arbitral tribunal agrees, the arbitral tribunal may, before rendering the final award, render a partial award on any part of the claim. A partial award is final and binding upon the parties. Where the parties have agreed on partial mediation, upon the parties' application, the arbitral tribunal may render a mediation statement on partial mediation.

Article 55 Determination of Costs in the Award

(I) The arbitral tribunal has the power to determine in the arbitral award, the arbitration fees and costs actually incurred which shall finally be borne by the parties in accordance with Article 54 of Arbitration Law and Paragraph (III) of Article 52 of the Rules, and to make an award that a party shall pay the amount of costs for which he shall be responsible directly to the other party who has advanced the cost.

(II) In principle, the arbitral tribunal shall determine the proportion of arbitration fees to be borne by each party on the basis of the extent of liability and the extent of success in the claim of the parties.

(III) Where a party contravenes the principle of good faith arbitration as provided herein or fails to comply with the requirements for proof imposed by the arbitral tribunal and such contravention results in increased arbitration costs, the arbitral tribunal has the right to determine that the party shall bear a reasonable proportion of the costs based on its conduct.

(IV) Where the parties reconcile themselves or the case is settled upon mediation by the arbitral tribunal, the parties may determine the allocation of arbitration fees through negotiation.

(V) The arbitral tribunal has the power to award, at the request of the parties, reimbursement by the responsible party of the reasonable costs incurred by the other party in conducting the case.

(VI) Where a party claims its legal costs and provides the relevant evidence, the arbitral tribunal may, where appropriate, take into account factors including the extent of the liability and the extent of success in the claim of the parties, the circumstances under which the lawyer's fees

are charged, the complexity of the case, the amount in dispute and the parties' conduct.

Article 56 Correction of the Award and Additional Award

(I)The arbitral tribunal shall make correction for any clerical error and any computational error and any claim presented by a party in the arbitration having been decided by the arbitral tribunal as expressed in the views of the arbitral tribunal in the award but omitted in the dispositions. In the event that any claim presented by a party in the arbitration is omitted from the award, the arbitral tribunal shall render an additional award.

(II)Upon discovering the existence of any of the circumstances described in Paragraph (I) of Article 56, a party may, within 30 days of the date of receiving the award, request in writing that the arbitral tribunal correct the award or render an additional award.

(III)Any correction made or additional award rendered by the arbitral tribunal shall form part of the original arbitral award.

Article 57 Use of Decision Notice

The HIAC or the arbitral tribunal shall issue a decision notice in any of the following circumstances:

(I) Confirmation of the existence and validity of the arbitration agreement or the jurisdiction over the case;

(II)Deciding on the challenge of an arbitrator;

(III)Suspension of the arbitral proceedings;

(IV)Permission of or deemed withdrawal of an arbitration application or a counterclaim;

(V)Dismissing an arbitration case;

(VI)Rejecting an application for arbitration;

(VII)Other matters.

Article 58 Correction of Statement of Mediation and Decision Notice

Article 56 shall apply to the correction of the statement of mediation and the decision notice.

Article 59 Re-arbitration

(I)Where the People's Court issues a notice of re-arbitration, the original arbitral tribunal shall decide whether to re-arbitrate the case within the time limit specified by the People's Court and the HIAC shall notify the People's Court of the decision. Where the original arbitral tribunal is unable to perform the duties on re-arbitration, the HIAC shall decide whether to re-arbitrate and inform the People's Court.

In the case of re-arbitration, the HIAC shall notify the parties concerned within 5 days. If both parties unanimously request the arbitrator to withdraw from the case, such arbitrator shall be replaced. Where the original arbitral tribunal is unable to perform the duties on re-arbitration, the HIAC shall decide to recompose a new arbitral tribunal.

(II)The arbitral tribunal shall determine the scope of re-arbitration according to the causes notified by the People's Court.

(III)It is for the arbitral tribunal to decide whether to hold a hearing. Notice of hearing date is not subject to the 5-day time limit. If the parties do not present new facts or evidence, if the arbitral tribunal deems that it is not necessary to hold an oral hearing, it may conduct the arbitration on paper.

(IV)Where the People's Court issues a notice of re-arbitration in respect of arbitration, the parties concerned may not challenge the jurisdiction in respect of the arbitration.

(V)When the re-arbitration award replaces the original award, the parties shall perform the award of re-arbitration.

(VI)No arbitration fee shall be charged for re-arbitration. However, where the cause of re-arbitration is attributable to the party or parties, the HIAC has the right to inform the party or parties to pay in advance the arbitration fee and make the final award on the liability for the arbitration fee.

Chapter 6 Expedited Procedure

Article 60 Application of the Expedited Procedure

(I)Unless otherwise agreed by the parties, the expedited procedure set out in this Chapter (the "Expedited Procedure") shall apply if the amount in dispute does not exceed RMB 3,000,000 or the arbitration fee is

charged by a fixed sum.

(II)The parties may also agree to apply the Expedited Procedure where the amount in dispute exceeds RMB3, 000,000. In such a case, the arbitration fees shall be reduced accordingly.

(III)If the parties agree to apply the ordinary procedure when the amount in dispute does not exceed RMB 3,000,000 or the arbitration fee is charged by a fixed sum, they shall bear any resulting additional arbitration fees.

(IV)In cases where there is no amount in dispute or where the amount in dispute is unclear, the HIAC shall decide whether to apply the Expedited Procedure according to the complexity of the case, the magnitude of the interests involved and other relevant factors.

Article 61 Defense and Counterclaim

Within 10 days of receipt of the Request for Submission of defense, the respondent shall submit to the HIAC its Statement of Defense, together with any relevant supporting documents. Where the respondent makes a counterclaim, it shall submit a written application before the conclusion of the first hearing; where the arbitration is conducted on paper, the written counterclaim application shall be submitted within 10 days from the date of receipt of the arbitration notice. The decision on whether to accept a counterclaim shall be made by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

Article 62 Composition of the Arbitral Tribunal

(I)An arbitration conducted in accordance with the Expedited Procedure shall be heard by a sole arbitrator.

(II)Within 10 days of receipt of the Notice of Arbitration by all parties, the parties shall jointly nominate a sole arbitrator or jointly request the Chairman to appoint a sole arbitrator from the Panel. The sole arbitrator may be selected in the manner prescribed by Paragraph (II) of Article 24.

If the parties fail jointly to nominate a sole arbitrator or request the Chairman to appoint a sole arbitrator within the specified period, the Chairman will appoint the sole arbitrator.

Article 63 Notice of Hearing

(I). Where an oral hearing is to be held, the arbitral tribunal shall notify the parties of the date and hearing place at least 3 days in advance.

(II)Hearing the case by way of oral hearing, it shall hold one hearing only in principle. Where necessary, however, the arbitral tribunal may on its own initiative decide to hold further hearings. Notification of the date of any further hearing shall not, however, be subject to the 3-day time limit under Paragraph (I) of Article63.

Article 64 Conversion of the Expedited Procedure

(I)Proceedings under the Expedited Procedure shall not be affected by reason of any amendment to the claim, the submission of a counterclaim or any amendment causing the amount in dispute to exceed RMB 3,000,000. Where a conversion of Expedited Procedure into ordinary procedure is necessary, it shall be decided by the Chairman.

(II)In the event of conversion of proceedings from the Expedited Procedure into the ordinary procedure after the composition of the arbitral tribunal, the parties shall, within 5 days of receipt of a notice of the conversion of the procedure (“Notice of Conversion of Procedure”), respectively nominate or respectively request the Chairman to appoint their arbitrators in accordance with Article 24 of the Rules. Unless otherwise agreed by the parties, the sole arbitrator originally appointed shall become the Presiding Arbitrator of the arbitral tribunal.

(III)The reconstituted arbitral tribunal shall decide whether the previous proceedings shall be repeated. The case shall not apply the Expedited Procedure after the arbitral tribunal is recomposed. The time limit stipulated in Article 51, Article 65 and Article 78 herein shall be calculated from the date on which the arbitral tribunal is reconstituted.

Article 65 Time Limit for Making the Award

The arbitral tribunal shall make its award within 60 days from the date of its constitution. If there are special circumstances justifying an extension of this period, the Chairman may approve an appropriate extension of time at the request of the arbitral tribunal.

Article 66 Applicability of the other Provisions of the Rules

In respect of matters not provided for in this Chapter, other relevant

provisions of the Rules shall apply.

Chapter 7 Special Provisions for International Commercial Arbitration

Article 67 Scope of Application of this Chapter

(I) Unless otherwise agreed by the parties, the provisions of this Chapter shall apply to international commercial arbitration. In respect of matters not provided for in this Chapter, the other relevant provisions of the Rules shall apply.

A commercial case involving any one of the following circumstances shall be regarded as an international commercial case in this Chapter: (a). One or both parties are foreigners, stateless persons, foreign enterprises or other organizations; (b). One or both parties have their habitual residence outside the territory of the People's Republic of China; (c). The subject matter in dispute is outside the territory of the People's Republic of China (d). Legal facts that create, change, or terminate the commercial relationship have taken place outside the territory of the People's Republic of China.

(II) For arbitration cases involving the Hong Kong Special Administrative Region ("SAR"), the Macao SAR and the Taiwan Region, the provisions of this Chapter shall apply.

(III) Where the parties have disputes over whether the case involves international elements or elements of Hong Kong SAR, Macao SAR or the Taiwan Region, the HIAC shall make a decision before the composition of the arbitral tribunal, and the arbitral tribunal shall make a decision after its composition. The decision of the arbitral tribunal shall not affect the arbitration proceedings which have already taken place.

Article 68 Defense and Counterclaim

Within 30 days of receipt of the Request for submission of defense, the respondent shall submit to the HIAC its Statement of Defense, together with any relevant supporting documents. Where the respondent makes a counterclaim, it shall submit a written application before the conclusion of the first hearing; where the arbitration is conducted on paper, the written counterclaim application shall be submitted within 30 days from the date

of receipt of the arbitration notice. The decision on whether to accept a counterclaim shall be made by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

Article 69 Composition of the Arbitral Tribunal

(I)Where the parties have particular agreement on the nationality, region or professional qualifications of the arbitrators, such agreement shall prevail.

(II)Within 30 days of receipt of the Notice of Acceptance, the parties shall, pursuant to the provisions of Article 23, 24, 62 nominate or request the Chairman to appoint their arbitrators and jointly nominate or jointly request the Chairman to appoint the Presiding Arbitrator.

(III)Where the parties fail to nominate or request the Chairman to appoint their arbitrators or the Presiding Arbitrator in accordance with those provisions, the arbitrators or the Presiding Arbitrator shall be appointed by the Chairman.

Article 70 Preservation and Interim Measures

(I)If a party applies for preservation through the HIAC in accordance with Chinese law, the HIAC shall submit the party's application for preservation to the court with jurisdiction specified by the party.

(II)At the request of the parties, the arbitral tribunal may order any interim measures it deems appropriate in accordance with the applicable law or agreement of the parties. An order for interim measures may take the form of a decision of the arbitral tribunal, an interim award, or any other form permitted by the applicable law. Where necessary, the arbitral tribunal may require the requesting parties to provide appropriate security.

(III)The parties may also directly apply for interim measures to the court with jurisdiction in accordance with relevant laws.

Article 71 Emergency Arbitrator

(I)Prior to the composition of the arbitral tribunal, if the parties need urgent interim relief, they may make a written application for the appointment of emergency arbitrators in accordance with the applicable law or the agreement of the parties. It is for the HIAC to decide whether

to accept.

(II) The written application materials shall include the following contents:

(a) The names, addresses, telephone numbers, fax numbers, e-mail addresses and other contact methods of the parties involved and their representative;

(b) The specific temporary measures applied for and the reasons thereof;

(c) Opinions on the place, language and applicable law of the emergency arbitrator proceedings;

(d) Other contents that may be required.

(III) Where the HIAC agrees to appoint an emergency arbitrator, the applicant shall pay the arbitration fee in advance. During the procedure of emergency arbitrator proceedings, the HIAC may decide to add corresponding arbitration fee as the case may require. Failure of the applicant to pay the fee in advance within the period notified by the HIAC shall be deemed withdrawal of the application.

(IV) The Chairman shall appoint an emergency arbitrator on the Panel within 2 days from the date on which the arbitration fees have been prepaid by the party. The appointment shall be notified to the Parties.

(V) The emergency arbitrator shall disclose to the HIAC any circumstances that may give rise to justifiable doubts as to his/her impartiality or independence. Where the parties request for abstention of an emergency arbitrator, the request shall be made within 2 days from receipt of the appointment notice of the emergency arbitrator and disclosure thereof. If a party fails to file a withdrawal within the above time limit, it shall not subsequently withdraw the arbitrator on the basis of matters disclosed by the emergency arbitrator.

(VI) An emergency arbitrator shall consider the application for interim measures in such manner as he or she deems appropriate and shall ensure that the parties have a reasonable opportunity to present their cases.

(VII) The emergency arbitrator shall issue a decision, order or award, stating the grounds on which the interim measures are based, within 15 Days after his or her appointment. Such decision, order or award shall

be sent to the parties after being signed by the emergency arbitrator and affixed with the seal of the HIAC. Under special circumstances, the time limit can be extended with the reasons being given to the HIAC, and the HIAC shall decide whether or not to approve such an extension.

(VIII) Where a party objects to a decision, order or award made by the emergency arbitrator, it may apply to the emergency arbitrator for an amendment to or the suspension or revocation of such decision, order or award within 3 days of receipt of such decision, order or award. The emergency arbitrator will decide whether to approve such application.

(IX) Unless otherwise agreed by the parties, the emergency arbitrator shall not subsequently act as an arbitrator in the proceedings to which the application for interim measures relates.

(X) Any decision, order or award made by an emergency arbitrator will not be binding upon the arbitral tribunal. The arbitral tribunal may amend, suspend or revoke such a decision, order or award.

Article 72 Third Party Funding

(I) Subject to the law applicable to the arbitral proceedings, any party may enter into an agreement with a third party to fund all or part of the arbitration fees.

(II) Any party funded by a third party shall, without any delay, notify the other party, the arbitral tribunal, and the HIAC in writing of the fact and the nature of the funding arrangement by a third party, as well as the third party's name and domicile. The arbitral tribunal shall also have the power to order the party funded by the third party to disclose the relevant information. The arbitrator, who has a conflict of interest with the third party, shall withdraw from the case.

Article 73 Notice of Hearing

(I) The arbitral tribunal shall notify the parties of the date of the oral hearing 15 days in advance of the oral hearing. A party having justified reasons may request a postponement of the oral hearing at least 10 days in advance of the oral hearing. The arbitral tribunal shall decide whether to postpone the oral hearing.

(II) A notice of the subsequent oral hearing and a postponed oral hearing

shall not be subject to the time limit of 15 days.

Article 74 Rules of Evidence

(I) Where the parties have an agreement on the evidence rules, the parties' agreement shall prevail, unless the agreement cannot be implemented or is in conflict with the mandatory provisions of the laws applicable to the arbitral proceedings.

(II) The arbitral tribunal shall have the power to determine the adoption of the evidence rules formulated by other institutions according to the circumstances of the case.

Article 75 Record of Oral Hearing

(I) Upon a joint request by both parties, or a request by one party and an approval by the arbitral tribunal, the HIAC may engage one or more stenographers for the arbitral tribunal to make a stenographic record of the oral hearing, the cost of which shall be paid by both parties evenly.

(II) The stenographic record made by a stenographer may be provided to the parties.

(III) In circumstances other than those specified in Articles 74.1 and 74.2, Article 45 of the Rules shall apply *mutatis mutandis* to the stenographic record of the oral hearing.

Article 76 Mediation

(I) The arbitral tribunal may conduct mediation with the consent of both parties.

(II) If the mediation fails and is terminated and both parties apply to replace the arbitrator(s) on the ground that the outcome of the arbitration may be affected by the mediation, the Chairman shall decide whether to replace the arbitrator(s) and the additional costs incurred shall be borne by both parties.

(III) Matters not covered under this Article shall be conducted pursuant to Article 48 of the Rules.

Article 77 Arbitration Ex Aequo Et Bono

Where the parties agree in the arbitration agreement or a unanimous request is made in writing during the arbitral proceedings, the arbitral tribunal may conduct arbitration as *amiable compositeur* or *ex aequo et*

bono.

Article 78 Time Limit for Making the Award

The arbitral tribunal shall make an arbitral award within 6 months or 90 days under Expedited Procedure from the date on which the arbitral tribunal is composed. If special circumstances warrant extension of the time limit, the Presiding Arbitrator may apply to the Chairman for approval of the extension.

Article 79 Applicable Law

(I) The arbitral tribunal shall make an arbitral award according to the applicable law chosen by the parties. Unless otherwise agreed by the parties, the applicable law chosen by the parties refers to the substantive law.

(II) Where the parties have not chosen the applicable law, the arbitral tribunal has the power to determine the law to be applied in accordance with the principle of the closest connection.

(III) In any circumstance, the arbitral tribunal shall make an arbitral award in accordance with the effective provisions of the contract and taking into consideration the relevant business practices applicable to the transaction.

Article 80 Scrutiny of Draft Award

The arbitral tribunal shall submit its draft award to the HIAC for scrutiny before signing. The HIAC may suggest amendment(s) as to the form of the draft award and may also draw the attention of the arbitral tribunal to the substantive issues without affecting the independence of the arbitral tribunal in making the award.

Chapter 8 Period of Time and Service

Article 81 Reckoning Period of Time

(I) A period of time specified in or determined under the Rules shall be calculated from the day following the commencing date of a period of time. The first day of the period shall not be counted toward the period.

(II) Public holidays and non-business days within the period of time concerned are included in the calculation of the period. If the last day of the relevant period of time is a public holiday or a non-business day, the

period of time shall expire on the first following business day.

(III) A period of time shall not include the delivery time. The arbitration documents, notices or materials dispatched before the expiry of the period of time shall be deemed to be submitted within the period of time.

(IV) If a party defaults on complying with a time limit by reason of force majeure events or other justified grounds, the party may apply for an extension of time within 10 days after the circumstances causing the non-compliance have ceased to exist. The application may be decided by the HIAC where the arbitral tribunal has not been constituted or by the arbitral tribunal if it has been constituted.

Article 82 Service

(I) Where the parties have agreed upon the means of service, such agreement shall prevail.

(II) Except for Paragraph (I) above, arbitration documents, notices, materials, etc. may be served in person or by post, facsimile, email, other means by way of exchange of electronic data capable of providing a record or any such other means as the HIAC thinks fit.

Where the party being served refuses to sign or affix its seal to acknowledge receipt of the arbitration documents, notices, and materials etc served in person, the service by leaving the rejected legal documents at the place of abode shall apply.

(III) The arbitration documents, notices and materials etc., sent by the HIAC to the parties concerned or their representative shall be deemed to have been served under any of the following circumstances:

(a) delivery to the place of business, place of registration of incorporation, place of residence, place of domicile, address indicated on household registration, address indicated on the identification card, address confirmed with the HIAC orally or in writing, any effective address for external use, or address provided in the parties' agreements;

(b) In the event any of the above places cannot be found upon reasonable enquiry, delivery by post or by any other means which provides a record of delivery to the last known correspondence address of the party being served;

(c) In the event a party or its representative changes its address after having received the arbitration documents, notices or materials served by the HIAC yet fails to notify the HIAC of such change, delivery of the subsequent arbitration documents, notices or materials to the original service address of the party being served.

(IV) The date of signature for receipt or return of the mail shall be the delivery date. If the party being served designates a designated system to receive electronic data, the time when the electronic data enters the designated system shall be deemed as the time of service. If no system is designated, the time when the electronic data first enters any system of the addressee shall be deemed as the time of service.

(V) The time of service shall be the earliest time at which the party being served is duly served by any of the foregoing means of service.

Chapter 9 Supplementary Rules

Article 83 Assistance in Ad Hoc Arbitration

The HIAC may assist in ad hoc arbitration upon the parties' application. The HIAC shall separately prescribe the guidelines and the applicable fee for ad hoc arbitration.

Article 84 Time Limits

For the purpose of the Rules, "time limit" refers to the time within which the arbitration participants are required to do an act individually or jointly in the arbitral proceedings.

Article 85 Periods of Time

For the purpose of the Rules, "period(s) of time" refers to the duration of time which elapses from a particular point of time to another.

Article 86 Interpretation of the Rules

The Rules shall be interpreted by the HIAC. The headings of the articles in the Rules have guiding function only and shall not be used to interpret the meaning of the articles.

Article 87 Official Version of the Rules

The Chinese version, the English version and the version in any other language released by the HIAC are all official versions. In the event of

any discrepancy or inconsistency between different versions, the Chinese version shall prevail.

Article 88 Implementation of the Rules

The Rules shall take effect on November 1, 2020 and apply to all cases accepted by the HIAC on or after that date. For cases accepted by the HIAC before the Rules came into effect, the edition of the Arbitration Rules in force at the time of such acceptance shall apply. Where the parties unanimously agree to apply the Rules, the Rules may apply in any event.



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