



## **AI COMMENTARY: HKIAC ARBITRATION RULES 2018**

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

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## About Galadari

Galadari is a full-service Emirati law firm dedicated to providing legal solutions at every stage of the business cycle.

Since 1983, we have supported the development of the United Arab Emirates (UAE) legal framework, while contributing to the industry and driving great commercial impact across the Emirates and supporting our clients to navigate through their challenges.

For four decades, our goal has been to deliver the highest-quality product to solve complication issues. Our team take pride in our uncompromising approach to quality and recognise everything we do, or produce is a measurement of our commitment to quality. We give 100% the first time and every time.

Our legal team consists of over 60 locally qualified Emirati and international lawyers across 3 offices in the UAE who are fluent in 18 different languages. Our Emirati advocates have full rights of audience across all UAE Courts. Our team aims to provide the highest standard of legal service and maintain the same level of quality at every point of contact.

Aligned with our core values, Galadari is committed to being a responsible business. We are actively progressing towards a diverse and inclusive workforce, using our legal capabilities to do good in the community through pro bono work, supporting communities and charities across the UAE, and reducing our environmental impact.

## Galadari's International Arbitration Practice

Galadari "are a local law firm with international standards and lawyers, familiar with local UAE laws, DIFC laws, and international laws" (*The Legal 500 EMEA – UAE 2023*).

With over four decades of experience in the UAE, our team possesses extensive expertise gained from their involvement in high-profile, intricate disputes worth millions of dollars across the region. Clients rely on our broad-ranging knowledge to guide them on the most suitable strategy for their business when faced with a dispute, whether as the claimant or respondent.

We represent clients in proceedings governed by a variety of international arbitration bodies, including ICC, LCIA, SCC, SCIA, DIAC, and GCC CAC. Additionally, we also provide representation in ad-hoc arbitration cases, and arbitration-related proceedings before the courts of Dubai, the DIFC, Abu Dhabi, and the ADGM.

With one of the largest teams of Emirati advocates in the country, we offer a one-stop shop from the initiation to the conclusion of any arbitration, eliminating the need for external counsel.

Clients and legal directories continuously praise our forward-thinking approach. The team was shortlisted for Arbitration Law Firm of the Year by Thomson Reuters Asian Legal Business Middle East Law Awards 2023, and Arbitration Team of the Year in Law.com International's Middle East Legal Awards 2023.

## Galadari's International Arbitration Team



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## Editors' Preface

Galadari's Artificial Intelligence (AI) Commentary on arbitration rules, laws, and treaties, was composed by Abdulla Ziad Galadari, Sergejs Dilevka, and Dimitriy Mednikov.

The term 'artificial intelligence' (AI) was first suggested by John McCarthy in 1955, defining it as a challenge "*of making a machine behave in ways that would be called intelligent if a human were so behaving*".

Almost seventy years later, further to multiple waves advancing AI technologies and notwithstanding several so-called 'AI winters' (prolonged periods of time when interest and investment in AI was significantly decreasing), AI has finally arrived as an essential technology for our future development and is here to stay. Today, leading AI platforms are able to maintain logical conversations their users, thus, satisfying Mr McCarthy's problem by making a machine behave intelligently.

The benefits of AI for both individuals and businesses have transitioned from being purely theoretical to practicable and, to a great extent, quantifiable. For legal practitioners, presently, such quantifiable benefits would likely be based on the billable time saved, for example, on document review and textual analysis or production of documents based on standard templates. Further, there is a huge potential to use AI to write simple code automating mundane tasks, such as generation of exhibit lists, (re)numbering of exhibits, bulk-conversion of documents from one file format into another, updating cross-references or footnotes in a document — one can think of plenty of use cases and what is needed is a bit of knowledge on how to make basic changes to that code and run it. However, as of the date of this publication, it seems that the general consensus among legal practitioners is that AI systems cannot be reliably used for legal research and all of the results of such research would still have to be reviewed with great care by human lawyers.

Galadari's AI Commentary on arbitration rules, laws, and treaties, is an experiment focussed on using AI to ascertain the current quality of AI analysis, and to determine whether AI is able to digest large quantities of complex information and produce an accurate and logical analysis of the relevant text in respect of various arbitration rules.

In the development of this AI Commentary, we used ChatGPT (GPT-3.5), an AI-powered language model developed by OpenAI. This AI model is capable of generating human-like text based on context and past conversations. The method used, for consistency, and not due to lack of imagination, implemented the use of the following prompt template to generate commentary on each provision of the relevant text: 'analyse article/section X of arbitration law/rules/treaty'.

Overall, the general outcome of our experiment indicates that, in the majority of situations, ChatGPT was able to successfully dissect provisions, spot important nuances, and generate meaningful commentary on the relevant provisions. Specifically, once ChatGPT was presented with a provision for analysis, it would typically attempt to break down the text into separate aspects into a list or bullet point format, tackling each and summarising the provision at the end of its analysis. This approach is consistently observed by ChatGPT across all the AI Commentary publications. We found this method to be suitable and informative, allowing readers to process the analysis in a systematic manner and benefit from ChatGPT's separation of the provision into smaller bits that the reader may be specifically interested in. It was noted that ChatGPT does not overlook or miss certain aspects of a provision, which is a potential human risk factor. ChatGPT addressed every aspect of provisions without fail, for example:

**Article 21.3 of the UAE Federal Law No. 6 of 2018 on Arbitration (“UAE Arbitration Law”):** *“The Arbitral Tribunal may, at the request of any party or on its own motion, amend, suspend, or cancel an interim measure it has ordered, in exceptional circumstances, by prior notice to be given to the Parties.”*

**ChatGPT:** *“Article 21.3 of the UAE Arbitration Law grants the Arbitral Tribunal the authority to modify, suspend, or revoke interim measures it has previously ordered during the arbitration process. These changes can be made under specific conditions referred to as “exceptional circumstances”. Let us analyse this article:*

1. *Modification: The Tribunal can amend or alter the scope or conditions of an interim measure based on the evolving circumstances of the case.*
2. *Suspension: The Tribunal can suspend the enforcement of an interim measure temporarily if the circumstances warrant it.*
3. *Cancellation: The Tribunal can completely cancel or revoke an interim measure previously ordered if it deems it no longer necessary or appropriate.*
4. *Exceptional Circumstances: The Tribunal’s power to amend, suspend, or cancel interim measures is limited to exceptional circumstances, implying that such measures are not subject to routine or arbitrary alterations.*
5. *Prior Notice: The article requires the Tribunal to provide advance notice to the parties before making any changes to the interim measures. This ensures transparency and allows parties to present their positions on the proposed amendments.”*

The commentary produced using ChatGPT did display some shortcomings. For example, there were instances when ChatGPT would ‘hallucinate’, making something up, which is a well-known limitation not only for OpenAI and ChatGPT users but also for other AI systems, for example:

**Extract from ChatGPT’s commentary on Article 2.4 of DIAC Arbitration Rules 2022 containing a reference to Article 32:** *“This exception indicates that certain specific provisions, such as Article 32, may have limited application to agreements to arbitrate made before the effective date of the Rules. It provides flexibility for parties to agree on different rules or procedures regarding the settlement or termination of proceedings, even if the general principle of the Rules taking precedence over the parties’ agreement still applies.”*

**Human lawyer:** *Article 32 of DIAC Arbitration Rules 2022 does not concern ‘settlement or termination of proceedings’ but sets out provisions pertaining to expedited proceedings.*

Occasionally, ChatGPT would not appreciate the important distinction between ‘may’ or ‘should’ and the commanding ‘shall’, which can be crucial, for example:

**Article 4.1(c) of DIAC Arbitration Rules 2022:** *“Any party wishing to commence an arbitration under the Rules shall submit to the Centre a Request which shall include: [...] (c) a copy of any relevant agreement between the parties, which contains the agreement to arbitrate, in respect of which the claim arises; [...].”*

**ChatGPT:** *“Article 4.1 of the DIAC Arbitration Rules outlines the requirements for submitting a Request to commence an arbitration under the Rules. Let us analyse each component of this article: [...] Copy of relevant agreement: The Request ~~should~~ include a copy of any relevant*

*agreement between the parties that contains the agreement to arbitrate, which is the basis for the claim being made.”*

Parenthetically, ChatGPT sometimes would simply paraphrase a provision several times within a single answer or alter the format of the responses with a series of prompts within the same commentary. To be fair, most of these provisions were quite nominal and did not contain much substance for analysis, for example:

**Definition of ‘Parties’ Article 1.1 of UAE Arbitration Law:** *“Parties: The Claimant and the Respondent, whatever their number.”*

**ChatGPT:** *“Parties: Refers to the Claimant and the Respondent involved in the arbitration. The parties could be individuals, companies, or any legal entities engaged in a dispute.”*

It was expected that there would be such limitations, but it was pleasantly surprising that their frequency was much lower than anticipated.

Being cognisant of all the existing issues and scepticism within the legal community, we consider that this experimental AI Commentary could be of assistance to practitioners in at least two ways. First, it allows the reader an opportunity to perform a sense check on their understanding of a provision or its aspect against ChatGPT’s analysis. Second, the time required to produce 24 publications comprising the AI Commentary was significantly less than the typical duration needed to produce a single comprehensive commentary text on any of the relevant arbitration laws, rules, or treaties. Thus, should it become necessary, a similar AI commentary could be produced on any arbitration law/rules/treaty at a fraction of time and cost typically associated with such a task.

The purpose of publishing the AI Commentary is to provide arbitration practitioners and academics with a general sense of what is presently possible to achieve in the field of arbitration with the assistance of generative AI software, and encourage the arbitration community to push the boundaries of arbitration as a flexible, efficient, and effective dispute resolution method.

Notably, all commentary was generated with ChatGPT and was supported by a selective review by the Editors. Accordingly, the commentary may contain inaccurate and/or incomplete information. Readers are strongly advised to exercise caution reading the commentary with some scepticism and to keep a pencil in hand to note any inaccuracies. Needless to say, nothing in this text should be considered and/or relied upon as legal advice. For detailed information, please refer to OpenAI’s Terms & Policies.

This project would not be complete without front page illustrations, which were also generated by AI. DALL E, another OpenAI system capable of creating images based on prompts, was used for this purpose. The chosen concept is based on a watercolour painting style, primarily portraying athletic rivalries in locations that correspond to the relevant arbitration law, rules, or treaty. The hope is that the readers will find the illustrations aesthetically appealing.

Should you have any questions, comments, or observations, including any noticed errors, please do not hesitate to contact us directly via email at [s.dilevka@galadarilaw.com](mailto:s.dilevka@galadarilaw.com).

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November 2023

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ARBITRATION RULES OF HONG KONG INTERNATIONAL ARBITRATION CENTRE 2018<sup>1</sup>

SECTION I. GENERAL RULES

Article 1 – Scope of Application

**1.1** These Rules shall govern arbitrations where an arbitration agreement (whether entered into before or after a dispute has arisen) either: (a) provides for these Rules to apply; or (b) subject to Articles 1.3 and 1.4 below, provides for arbitration “administered by HKIAC” or words to similar effect.

Article 1.1 of the HKIAC Arbitration Rules 2018 outlines the scope and applicability of the rules to arbitrations conducted under the Hong Kong International Arbitration Centre (HKIAC). This article sets the foundation for the jurisdiction of the HKIAC in administering arbitrations and establishes the scenarios under which these Rules shall govern the arbitration process. Let us break down the different components of this provision:

1. **Applicability to Arbitration Agreements:** The article states that the HKIAC Arbitration Rules shall apply to arbitrations where there is an arbitration agreement in place. This agreement can be entered into either before a dispute has arisen or after a dispute has already emerged. In other words, the Rules can govern arbitrations that are agreed upon in advance or decided upon in the midst of a dispute.
2. **Two Scenarios of Applicability:** The article presents two specific scenarios under which the HKIAC Arbitration Rules will apply to the arbitration process:
  - a. **Scenario (a):** The arbitration agreement explicitly states that these Rules shall apply. In this case, the parties have chosen to adopt the HKIAC Arbitration Rules as the governing framework for their arbitration process. This could be a result of mutual agreement or a contractual provision that specifies the use of these Rules.
  - b. **Scenario (b):** Subject to the conditions outlined in Articles 1.3 and 1.4 (which are not provided in your excerpt), the arbitration agreement provides for arbitration “administered by HKIAC” or similar language. This means that if the parties have indicated in their agreement that the arbitration is to be administered by the HKIAC, the Rules will automatically apply, unless the exceptions in Articles 1.3 and 1.4 come into play.
3. **Administered by HKIAC:** This phrase refers to the administrative role that the HKIAC plays in managing and supervising the arbitration proceedings. When parties agree to arbitration “administered by HKIAC”, they are essentially opting for the HKIAC to provide support services, such as appointing arbitrators, facilitating communication, and ensuring procedural fairness throughout the arbitration process.
4. **Exceptional Conditions (Articles 1.3 and 1.4):** The excerpt mentions that the applicability of the HKIAC Arbitration Rules under Scenario (b) is subject to certain conditions outlined

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<sup>1</sup> Source:

[https://www.hkiac.org/sites/default/files/ck\\_filebrowser/PDF/arbitration/2018%20Rules%20book/2018%20AA%20Rules\\_English.pdf](https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/2018%20Rules%20book/2018%20AA%20Rules_English.pdf)

in Articles 1.3 and 1.4. These conditions, which are not provided in your quote, could potentially affect the automatic application of the Rules when the arbitration is “administered by HKIAC”. The nature of these conditions would determine whether the Rules are to be applied as intended or if there are exceptions based on specific circumstances.

In summary, Article 1.1 of the HKIAC Arbitration Rules 2018 clarifies the circumstances under which these Rules will govern arbitrations involving the HKIAC. It covers scenarios where the parties explicitly agree to adopt the Rules or when the arbitration agreement indicates that the arbitration is to be “administered by HKIAC”. The article sets the stage for the application of the rules and provides a framework for the administration of arbitrations within the scope of the HKIAC.

**1.2 By agreeing to arbitration in accordance with Article 1.1, the parties accept that the arbitration shall be administered by HKIAC.**

Article 1.2 of the HKIAC Arbitration Rules 2018 establishes a fundamental principle regarding the administration of arbitrations conducted under these rules. Let us break down and analyse this provision:

1. **Context and Agreement to Arbitration (Article 1.1):** Article 1.1 likely defines the basic agreement to arbitrate. It would typically state that any dispute arising out of or in connection with a specific contract, transaction, or relationship shall be resolved through arbitration in accordance with the HKIAC Arbitration Rules.
2. **Acceptance of HKIAC Administration:** Article 1.2 focuses on the parties’ acceptance that the arbitration will be administered by the HKIAC. This means that the parties are agreeing to have the HKIAC play a central role in overseeing and facilitating the arbitration proceedings.
3. **Implications of Administration:** The administration of arbitration by a specialised institution like the HKIAC provides several important benefits:
  - a. **Neutrality and Impartiality:** The HKIAC serves as an independent and neutral institution, ensuring a level playing field for all parties involved.
  - b. **Efficiency and Expertise:** The HKIAC’s experience and expertise in arbitration administration can help streamline the arbitration process, making it more efficient and effective.
  - c. **Procedural Guidance:** The HKIAC can provide guidance on procedural matters, such as the appointment of arbitrators, timelines, and documentation requirements, helping to maintain a structured and fair arbitration process.
  - d. **Support Services:** The HKIAC can offer facilities, administrative support, and logistical assistance that contribute to the smooth conduct of the arbitration.
  - e. **Party Autonomy:** While Article 1.2 mandates HKIAC administration, it is important to note that this is based on the parties’ agreement. This underscores the principle of party autonomy in arbitration, where parties are generally free to decide on the

arbitration institution, rules, and procedures that will govern their dispute resolution process.

- f. **Legal Enforceability:** By accepting that the arbitration will be administered by the HKIAC, the parties are also acknowledging the legal enforceability of the arbitration proceedings conducted under the HKIAC Arbitration Rules. Any decisions or awards issued as a result of the arbitration will typically be binding and enforceable under relevant laws.

In summary, Article 1.2 of the HKIAC Arbitration Rules 2018 emphasises that parties who agree to arbitration under these rules also accept the administration of the arbitration by the HKIAC. This provision highlights the benefits of institutional administration and underscores the importance of party autonomy in choosing the arbitration framework for their disputes.

**1.3 Nothing in these Rules shall prevent parties to a dispute or arbitration agreement from naming HKIAC as appointing authority, or from requesting certain administrative services from HKIAC, without subjecting the arbitration to the provisions contained in these Rules. For the avoidance of doubt, these Rules shall not govern arbitrations where an arbitration agreement provides for arbitration under other rules, including other rules adopted by HKIAC from time to time.**

Article 1.3 of the HKIAC Arbitration Rules 2018 introduces important concepts related to party autonomy and the flexibility of the arbitration process. Let us break down and analyse this provision:

1. **Party Autonomy:** This provision underscores the principle of party autonomy in arbitration. It emphasises that the parties have the freedom to choose the extent to which they want the HKIAC to be involved in their arbitration proceedings. They are not bound to follow all the provisions of the HKIAC Arbitration Rules if they do not wish to do so.
2. **HKIAC as Appointing Authority:** Parties can select the HKIAC to act as the appointing authority in their arbitration, even if they do not intend to subject the entire arbitration to the procedural framework provided by the HKIAC Arbitration Rules. The appointing authority role involves the HKIAC assisting in the appointment of arbitrators, ensuring a neutral and impartial process.
3. **Requesting Administrative Services:** Parties can also request specific administrative services from the HKIAC without committing to the entire set of rules. This allows parties to access certain resources and support provided by the institution, such as assistance in selecting arbitrators, logistical support, or procedural guidance.
4. **Non-Subjecting to Rules:** The provision clarifies that parties can engage with the HKIAC for certain aspects of the arbitration process while not subjecting the entire arbitration to the detailed provisions of the HKIAC Arbitration Rules. In other words, parties have the flexibility to tailor the arbitration process to their preferences.
5. **Avoidance of Governing Rules:** The provision explicitly states that these Rules do not govern arbitrations where the parties have agreed to arbitration under other rules. This could include different rules adopted by the HKIAC or other recognised arbitration

institutions. This safeguards the parties' ability to choose the arbitration framework that best suits their needs.

6. **Incorporation of Other Rules:** Parties are free to adopt different arbitration rules, and they can do so without being bound by the provisions of the HKIAC Arbitration Rules. This recognises the diversity of arbitration frameworks and rules available to parties in international commercial disputes.

In summary, Article 1.3 of the HKIAC Arbitration Rules 2018 emphasises the importance of party autonomy and flexibility in arbitration proceedings. It allows parties to engage with the HKIAC for specific services or roles while maintaining the freedom to select different rules or provisions for their arbitration. This provision accommodates the varying preferences and needs of parties involved in international arbitration.

**1.4 Subject to Article 1.5, these Rules shall come into force on 1 November 2018 and, unless the parties have agreed otherwise, shall apply to all arbitrations falling within Article 1.1 in which the Notice of Arbitration is submitted on or after that date.**

Article 1.4 of the HKIAC Arbitration Rules 2018 establishes the effective date and application of the rules to arbitration proceedings. Let us analyse this provision:

1. **Effective Date:** The provision specifies that the HKIAC Arbitration Rules 2018 will come into force on 1 November 2018. This means that the rules become applicable and govern the procedures for arbitrations conducted under the HKIAC from that date onwards.
2. **Application to Arbitrations Falling within Article 1.1:** The rules apply to arbitrations that fall within the scope of Article 1.1. This refers back to the provision in Article 1.1 that outlines the general agreement to arbitrate disputes under the HKIAC Arbitration Rules. In other words, the rules apply to disputes that the parties have agreed to resolve through arbitration under these rules.
3. **Timing of Notice of Arbitration:** The rules apply to arbitrations where the "Notice of Arbitration" is submitted on or after the effective date of 1 November 2018. The Notice of Arbitration typically initiates the formal arbitration process and sets out the claims and details of the dispute. If this notice is submitted on or after the specified date, the arbitration proceedings will be subject to the HKIAC Arbitration Rules 2018.
4. **Parties' Agreement:** The provision acknowledges that the parties can agree otherwise regarding the application of the rules. This recognises the principle of party autonomy in arbitration, allowing parties to tailor the rules and procedures to their specific preferences or needs.
5. **Exclusion of Article 1.5:** The provision is subject to Article 1.5, which likely contains additional provisions or exceptions that may affect the application of the rules. The exact content of Article 1.5 would need to be examined to fully understand its impact.
6. **Clarity and Predictability:** By specifying the effective date and the triggering event (submission of the Notice of Arbitration), this provision provides clarity and predictability for parties and practitioners regarding when the new rules will apply.

In summary, Article 1.4 of the HKIAC Arbitration Rules 2018 sets out the effective date and application of the rules to arbitration proceedings. It establishes the date from which the rules will be in force and applies them to arbitrations initiated through the submission of the Notice of Arbitration on or after that date, subject to any parties' agreements or exceptions outlined in Article 1.5.

**1.5 Unless otherwise agreed by the parties: (a) Article 43 and paragraphs 1(a) and 21 of Schedule 4 shall not apply if the arbitration agreement was concluded before the date on which these Rules came into force; and (b) Articles 23.1, 28, 29 and Schedule 4 shall not apply if the arbitration agreement was concluded before 1 November 2013.**

Article 1.5 of the HKIAC Arbitration Rules 2018 contains important provisions regarding the application of specific rules based on the timing of the arbitration agreement. Let us analyse this provision.

1. **Applicability Based on Arbitration Agreement Date:** This provision establishes that the applicability of certain articles and provisions within the HKIAC Arbitration Rules is contingent upon the date when the arbitration agreement was concluded.
2. **Specific Exemptions:** The provision lists the specific articles and paragraphs within the Schedule 4 of the HKIAC Arbitration Rules that may not apply, depending on when the arbitration agreement was concluded.
  - a. **Article 43 and Paragraphs 1(a) and 21 of Schedule 4:** These provisions shall not apply if the arbitration agreement was concluded before the date on which these Rules came into force (i.e., before 1 November 2018). Article 43 and the mentioned paragraphs of Schedule 4 likely contain procedural provisions or requirements related to the conduct of the arbitration process.
  - b. **Articles 23.1, 28, 29 and Schedule 4:** These articles and Schedule 4 shall not apply if the arbitration agreement was concluded before 1 November 2013. Again, these provisions likely pertain to specific aspects of the arbitration process, such as the appointment of arbitrators, the powers of the arbitral tribunal, and procedural matters.
3. **Party Agreement Exception:** The provision includes the caveat "unless otherwise agreed by the parties". This means that parties can choose to apply these specific articles and provisions even if their arbitration agreement falls within the stated timeframes. This recognises the principle of party autonomy, allowing parties to opt for specific rules irrespective of the timing of their arbitration agreement.
4. **Transition Period:** By setting specific dates before which certain provisions do not apply, this provision provides clarity and predictability for parties involved in arbitration agreements concluded both before and after the introduction of the HKIAC Arbitration Rules 2018.
5. **Grandfathering Principle:** The provision adopts a "grandfathering" approach by allowing parties to continue using the arbitration rules that were in effect at the time they concluded their arbitration agreements. This respects the parties' original expectations and contractual arrangements.

In summary, Article 1.5 of the HKIAC Arbitration Rules 2018 outlines exceptions to the applicability of certain articles and provisions based on the timing of the arbitration agreement. It establishes specific cut-off dates before which certain provisions may not apply, while still allowing parties to agree to different arrangements if they so choose. This provision adds a level of flexibility while maintaining clarity regarding the rules that govern the arbitration process.

## Article 2 – Interpretation of Rules

**2.1 HKIAC shall have the power to interpret all provisions of these Rules. The arbitral tribunal shall interpret the Rules insofar as they relate to its powers and duties hereunder. In the event of any inconsistency between such interpretation and any interpretation by HKIAC, the arbitral tribunal’s interpretation shall prevail.**

Article 2.1 of the HKIAC Arbitration Rules 2018 outlines the allocation of interpretive authority between the HKIAC and the arbitral tribunal. Let us analyse this provision.

1. **HKIAC’s Interpretive Authority:** The provision grants the HKIAC the authority to interpret all provisions of the HKIAC Arbitration Rules 2018. This means that the institution has the ability to provide guidance and clarification on the meaning and application of the rules as a whole.
2. **Arbitral Tribunal’s Interpretive Authority:** The arbitral tribunal is also granted interpretive authority, specifically in relation to the rules that pertain to its own powers and duties within the arbitration proceedings. This acknowledges the tribunal’s role in ensuring a fair and efficient arbitration process.
3. **Priority of Arbitral Tribunal’s Interpretation:** The provision establishes a hierarchy of interpretations. If there is a conflict or inconsistency between the interpretation provided by the HKIAC and the interpretation made by the arbitral tribunal, the arbitral tribunal’s interpretation prevails. This underscores the importance of the tribunal’s role as the decision-maker in the arbitration process and respects its authority to ensure consistency and fairness.
4. **Balancing of Powers:** The provision strikes a balance between the institution’s role in administering the arbitration and the tribunal’s role in managing the substantive aspects of the dispute. The institution’s expertise in procedural matters is recognised, while the tribunal’s authority to determine substantive issues is preserved.
5. **Ensuring Consistency:** By providing a mechanism for resolving conflicts in interpretation, the provision aims to ensure consistency and clarity in the application of the rules throughout the arbitration process.
6. **Flexibility and Control:** The provision is designed to provide flexibility by allowing the arbitral tribunal to interpret the rules that directly affect its functions and responsibilities. This allows the tribunal to adapt procedural matters to the specific circumstances of the case.

In summary, Article 2.1 of the HKIAC Arbitration Rules 2018 delineates the interpretive authority between the HKIAC and the arbitral tribunal. It establishes that both entities have the power to

interpret the rules, but in case of inconsistency, the arbitral tribunal's interpretation takes precedence. This provision aims to ensure a balanced and coherent approach to interpreting and applying the rules in the context of arbitration proceedings.

**2.2 HKIAC has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under these Rules. Unless otherwise determined by HKIAC, all decisions made by HKIAC under these Rules are final and, to the extent permitted by any applicable law, not subject to appeal.**

Article 2.2 of the HKIAC Arbitration Rules 2018 addresses the discretion and authority of the HKIAC in making decisions in the context of arbitrations conducted under these rules. Let us analyse this provision.

1. **No Obligation to Provide Reasons:** This provision specifies that the HKIAC is not obligated to provide reasons for the decisions it makes in relation to arbitrations initiated under the HKIAC Arbitration Rules 2018. This means that the institution is not required to explain the rationale behind its decisions to the parties or the public.
2. **Finality of HKIAC Decisions:** The provision further states that, unless HKIAC decides otherwise, all decisions made by HKIAC under these Rules are considered final. This emphasises the importance of the decisions made by the institution in managing and administering the arbitration process.
3. **Limited Scope for Appeal:** The provision indicates that, to the extent permitted by any applicable law, decisions made by HKIAC are not subject to appeal. This acknowledges that there might be instances where local laws or regulations may allow for certain forms of challenge or review of arbitration-related decisions. However, the provision underscores that decisions made by HKIAC are generally intended to be final and conclusive.
4. **Efficiency and Expediency:** By not requiring the HKIAC to provide detailed reasons for its decisions, the provision supports the efficient administration of the arbitration process. This approach can help expedite the resolution of disputes and prevent unnecessary delays.
5. **Respect for Institutional Expertise:** The provision recognises the expertise of the HKIAC in managing arbitration proceedings and making procedural decisions. Parties typically choose arbitration under institutional rules due to the institutions' experience and knowledge in arbitration administration.
6. **Importance of Party Agreement:** It is important to note that the parties' agreement to arbitrate under the HKIAC Arbitration Rules implies their acceptance of the rules, including the provisions related to decision-making and finality.

In summary, Article 2.2 of the HKIAC Arbitration Rules 2018 highlights the discretionary authority of the HKIAC in making decisions and emphasises the finality of those decisions. It acknowledges the institution's expertise and contributes to the efficient administration of arbitration proceedings. However, the extent to which such provisions are legally enforceable might depend on the relevant laws and regulations governing arbitration in the applicable jurisdiction.



**2.3 Where the parties have designated an HKIAC body or person to perform a function that is delegated to HKIAC under the Rules, that function shall be performed by HKIAC.**

Article 2.3 of the HKIAC Arbitration Rules 2018 addresses the delegation of certain functions to an HKIAC body or person by the parties in the context of arbitration proceedings. Let us analyse this provision.

1. **Designated HKIAC Body or Person:** This provision refers to situations where the parties specifically designate an HKIAC body or an individual person to perform a certain function. This could be related to administrative tasks, procedural matters, or other functions within the arbitration process.
2. **Delegated Function:** The provision pertains to functions that are originally assigned to the HKIAC under the HKIAC Arbitration Rules 2018. These functions could include various administrative and procedural tasks that are typically carried out by the arbitration institution.
3. **Function Performance by HKIAC:** The provision establishes that if the parties have designated an HKIAC body or person to perform a function that is within the purview of the HKIAC under the rules, that function must be performed by the HKIAC itself. In other words, the delegation of a function to an HKIAC-designated body or person does not remove the responsibility from the institution; the function is still considered performed by the HKIAC.
4. **Clarity and Consistency:** This provision helps ensure clarity and consistency in the performance of functions within the arbitration process. It prevents potential conflicts or confusion arising from the delegation of functions to specific individuals or bodies.
5. **Party Autonomy:** The provision respects the parties' autonomy to designate a particular body or person to carry out certain functions within the arbitration process. However, it maintains the overall oversight and responsibility of the HKIAC in performing functions that are within its domain.
6. **Administrative Efficiency:** By allowing parties to designate specific entities or individuals for certain functions, the provision can contribute to administrative efficiency and streamline the arbitration process.

In summary, Article 2.3 of the HKIAC Arbitration Rules 2018 clarifies the relationship between the parties' designation of an HKIAC body or person for performing specific functions and the ultimate responsibility of the HKIAC itself. It ensures that functions delegated by the parties to a designated entity are still considered performed by the HKIAC, maintaining the institution's role and authority in the arbitration process.

**2.4 References to “HKIAC” are to the Council of HKIAC or any other body or person designated by it to perform the functions referred to herein, or, where applicable, to the Secretary-General of HKIAC and other staff members of the Secretariat of HKIAC.**

Article 2.4 of the HKIAC Arbitration Rules 2018 provides a definition and scope of the term “HKIAC” and specifies who it refers to in the context of the rules. Let us analyse this provision.

1. **Definition of “HKIAC”:** This provision clarifies the meaning of the term “HKIAC” as used within the HKIAC Arbitration Rules 2018. It specifies that the term encompasses several entities and individuals depending on the context.
2. **Council of HKIAC:** The primary reference is to the “Council of HKIAC”. The Council is a governing body or board that typically oversees the management and operations of the HKIAC. It plays a key role in making policy decisions and ensuring the effective functioning of the institution.
3. **Designated Bodies or Persons:** The provision extends the definition to include “any other body or person designated by [the Council] to perform the functions referred to herein”. This means that the Council has the authority to delegate certain functions to specific bodies or individuals within the institution or outside of it.
4. **Secretary-General and Secretariat Staff:** In situations where applicable, the term “HKIAC” can also refer to the “Secretary-General of HKIAC and other staff members of the Secretariat of HKIAC”. The Secretary-General is a prominent administrative figure within the institution, responsible for its day-to-day operations. The Secretariat includes the administrative personnel who assist in managing arbitration cases and providing support services.
5. **Contextual Flexibility:** The provision acknowledges that the term “HKIAC” can refer to different entities or individuals depending on the context. This flexibility allows for a comprehensive interpretation of the term based on the specific role or function being discussed.
6. **Clarity and Consistency:** By providing a clear definition of “HKIAC”, the provision ensures consistency and understanding when interpreting the rules and their application.

In summary, Article 2.4 of the HKIAC Arbitration Rules 2018 defines the term “HKIAC” and specifies the various entities and individuals it encompasses, depending on the context. It underscores the institution’s structure, delegation of functions, and key administrative figures involved in arbitration proceedings under the HKIAC rules.

**2.5 References to “Claimant” include one or more claimants.**

Article 2.5 of the HKIAC Arbitration Rules 2018 provides a clarification regarding the term “Claimant” and its interpretation within the context of the rules. Let us analyse this provision.

1. **Interpretation of “Claimant”:** This provision addresses the use of the term “Claimant” within the HKIAC Arbitration Rules 2018 and clarifies that it includes both singular and plural scenarios. In other words, when the term “Claimant” is used in the rules, it

encompasses situations where there is a single claimant as well as situations where there are multiple claimants.

2. **Simplification and Consistency:** By establishing that the term “Claimant” covers both singular and plural cases, the provision simplifies the language used in the rules and ensures consistent interpretation. This helps prevent confusion and ensures that the rules are applied accurately regardless of the number of claimants involved.
3. **Flexibility and Applicability:** The provision acknowledges that disputes can involve different configurations of parties, whether they are single claimants or multiple claimants jointly pursuing a claim. This flexibility in interpretation ensures that the rules are adaptable to various factual scenarios.
4. **Efficiency in Drafting:** By providing this clarification, the drafters of the rules simplify the drafting process by using a single term (“Claimant”) that covers a range of possible scenarios.
5. **Clarity for Parties and Practitioners:** Parties, arbitrators, and legal practitioners can rely on this provision to correctly interpret and apply the rules when referring to “Claimant” in various situations. It avoids the need for explicit differentiation between singular and plural forms.

In summary, Article 2.5 of the HKIAC Arbitration Rules 2018 clarifies that the term “Claimant” includes both singular and plural cases. This provision simplifies language usage, ensures consistent interpretation, and provides flexibility in accommodating different configurations of parties in arbitration proceedings governed by the rules.

## **2.6 References to “Respondent” include one or more respondents.**

Article 2.6 of the HKIAC Arbitration Rules 2018 provides clarification regarding the term “Respondent” and its interpretation within the context of the rules. Let us analyse this provision.

1. **Interpretation of “Respondent”:** This provision addresses the use of the term “Respondent” within the HKIAC Arbitration Rules 2018 and clarifies that it includes both singular and plural scenarios. In other words, when the term “Respondent” is used in the rules, it encompasses situations where there is a single respondent as well as situations where there are multiple respondents.
2. **Simplification and Consistency:** Similar to the corresponding provision for “Claimant”, this provision simplifies the language used in the rules and ensures consistent interpretation when referring to “Respondent”. It helps avoid confusion and ensures accurate application of the rules regardless of the number of respondents involved.
3. **Flexibility and Applicability:** The provision recognises that disputes may involve varying numbers of respondents, from a single respondent to multiple respondents collectively involved in a dispute. This flexibility in interpretation accommodates different factual scenarios.

4. **Efficiency in Drafting:** This provision streamlines the drafting process by allowing a single term (“Respondent”) to encompass a range of possible scenarios, eliminating the need for explicit differentiation between singular and plural forms.
5. **Clarity for Parties and Practitioners:** Just as with the provision regarding “Claimant”, this provision provides clarity for parties, arbitrators, and legal practitioners by accurately interpreting and applying the rules when dealing with “Respondent” in different situations.

In summary, Article 2.6 of the HKIAC Arbitration Rules 2018 clarifies that the term “Respondent” includes both singular and plural cases. This provision ensures consistent interpretation, simplifies language usage, and accommodates varying configurations of parties in arbitration proceedings governed by the rules.

## **2.7 References to “additional party” include one or more additional parties and references to “party” or “parties” include Claimant, Respondent and/or an additional party.**

Article 2.7 of the HKIAC Arbitration Rules 2018 provides definitions and interpretations for the terms “additional party”, “party”, “Claimant”, and “Respondent” within the context of the rules. Let us analyse this provision.

1. **Definition of “Additional Party”:** This provision establishes that the term “additional party” encompasses both singular and plural scenarios. When used in the rules, “additional party” includes situations where there is a single additional party as well as situations involving multiple additional parties.
2. **Interpretation of “Party”:** The provision goes further by defining the term “party” or “parties”. It clarifies that when the terms “party” or “parties” are used in the rules, they refer to the collective group of Claimants, Respondents, and/or additional parties involved in the arbitration proceedings.
3. **Simplification and Consistency:** Like the previous provisions, this clarification simplifies language usage and ensures consistent interpretation throughout the rules. It prevents ambiguity when referring to “additional party”, “party”, “Claimant”, and “Respondent”.
4. **Flexibility and Comprehensive Scope:** By including “additional party” in the definition of “party”, the provision accommodates situations where an arbitration involves multiple parties with different roles, ensuring a comprehensive interpretation that covers all possible scenarios.
5. **Clarity for Drafting and Application:** The provision aids drafters of arbitration agreements, legal practitioners, and arbitrators by providing clear and concise definitions for terms frequently used in arbitration proceedings.
6. **Harmonisation of Terminology:** The provision promotes clarity and prevents confusion by harmonising the terminology used throughout the rules, which can facilitate efficient and fair arbitration proceedings.

In summary, Article 2.7 of the HKIAC Arbitration Rules 2018 defines and interprets the terms “additional party”, “party”, “Claimant”, and “Respondent” in a comprehensive manner. It ensures consistent interpretation, simplifies language usage, and accommodates various configurations of parties in arbitration proceedings governed by the rules.

**2.8 References to the “arbitral tribunal” include one or more arbitrators. Except in Schedule 2, such references do not include an emergency arbitrator.**

Article 2.8 of the HKIAC Arbitration Rules 2018 defines and interprets the term “arbitral tribunal” within the context of the rules, distinguishing between regular arbitrators and emergency arbitrators. Let us analyse this provision.

1. Interpretation of “Arbitral Tribunal”: This provision specifies how the term “arbitral tribunal” is to be understood within the context of the HKIAC Arbitration Rules 2018.
2. Inclusion of One or More Arbitrators: The provision clarifies that references to the “arbitral tribunal” encompass situations involving one or more arbitrators. In other words, when the term “arbitral tribunal” is used in the rules, it covers cases where there is a sole arbitrator as well as cases with multiple arbitrators forming a tribunal.
3. Exclusion of Emergency Arbitrator: The provision introduces an exception. It states that, except in Schedule 2 of the rules, references to the “arbitral tribunal” do not include an emergency arbitrator. Schedule 2 likely outlines the procedures and rules for emergency arbitrator appointments.
4. Differentiating Regular Arbitrators and Emergency Arbitrators: This provision distinguishes between the general arbitral tribunal, which includes both single arbitrators and tribunals of multiple arbitrators, and the concept of an emergency arbitrator, who is appointed specifically to address urgent matters before the full tribunal is constituted.
5. Clarity and Consistency: By specifying the inclusion and exclusion of emergency arbitrators, this provision ensures clarity in interpreting the roles and functions of regular arbitrators and emergency arbitrators under the HKIAC Arbitration Rules.
6. Preserving Functionality: The exclusion of an emergency arbitrator from the definition of “arbitral tribunal” in most instances reflects the unique nature of emergency arbitrator procedures, which operate independently from the main arbitral proceedings.

In summary, Article 2.8 of the HKIAC Arbitration Rules 2018 defines and interprets the term “arbitral tribunal”, clarifying that it includes regular arbitrators (sole arbitrator or tribunal) but does not include an emergency arbitrator, except in specific cases as outlined in Schedule 2. This provision contributes to consistent interpretation and application of the rules, particularly in situations involving regular arbitration proceedings and emergency arbitration procedures.

**2.9 References to “witness” include one or more witnesses and references to “expert” include one or more experts.**

Article 2.9 of the HKIAC Arbitration Rules 2018 provides definitions and interpretations for the terms “witness” and “expert” within the context of the rules. Let us analyse this provision.

1. Interpretation of “Witness”: This provision clarifies how the term “witness” is to be understood in the context of the HKIAC Arbitration Rules 2018. It specifies that references to “witness” include situations involving a single witness as well as multiple witnesses.
2. Interpretation of “Expert”: Similarly, the provision addresses the term “expert” and explains that when the term is used in the rules, it encompasses both singular and plural scenarios. This means that references to “expert” include situations involving a single expert as well as multiple experts.
3. Simplification and Consistency: This provision simplifies language usage and ensures a consistent interpretation of the terms “witness” and “expert” throughout the rules. It prevents confusion and ambiguities when dealing with different numbers of witnesses or experts in arbitration proceedings.
4. Comprehensive Scope: By including both singular and plural forms of the terms, the provision accommodates various situations where multiple witnesses or experts may be involved, ensuring a comprehensive interpretation that covers all possibilities.
5. Efficiency and Clarity: Parties, arbitrators, and legal practitioners benefit from clear and concise definitions of terms commonly used in arbitration proceedings. This clarity can help avoid disputes over the interpretation of these terms.
6. Harmonisation of Terminology: Just as with previous provisions, this clarification promotes clarity and consistency by harmonising the terminology used throughout the rules, contributing to efficient and accurate arbitration proceedings.

In summary, Article 2.9 of the HKIAC Arbitration Rules 2018 defines and interprets the terms “witness” and “expert” in a comprehensive manner. It ensures consistent interpretation, simplifies language usage, and accommodates varying numbers of witnesses and experts in arbitration proceedings governed by the rules.

**2.10 References to “claim” or “counterclaim” include any claim or claims by any party against any other party. References to “defence” include any defence or defences by any party to any claim or counterclaim submitted by any other party, including any defence for the purpose of a set-off or cross-claim.**

Article 2.10 of the HKIAC Arbitration Rules 2018 provides definitions and interpretations for the terms “claim”, “counterclaim”, and “defence” within the context of the rules. Let us analyse this provision.

1. Interpretation of “Claim” and “Counterclaim”: This provision clarifies the meaning of the terms “claim” and “counterclaim” within the HKIAC Arbitration Rules 2018. It specifies that when these terms are used in the rules, they encompass not only singular claims but also any claim or claims by any party against any other party. In other words, a “claim” or

“counterclaim” can refer to a single claim or multiple claims asserted by any party involved in the arbitration against any other party.

2. Interpretation of “Defence”: Similarly, the provision addresses the term “defence” and explains that it includes any defence or defences by any party. This refers to the legal arguments or positions presented by a party in response to a claim or counterclaim submitted by any other party. Additionally, the definition includes “defence for the purpose of a set-off or cross-claim”, indicating that the term “defence” encompasses defences that are raised for various purposes, including the assertion of set-offs or cross-claims.
3. Comprehensive Scope: By defining “claim”, “counterclaim”, and “defence” in this way, the provision accommodates a wide range of scenarios where multiple claims or counterclaims are involved, and parties assert various defences, including those related to set-offs or cross-claims.
4. Clarity and Flexibility: The provision ensures clarity in interpreting these fundamental legal terms while also allowing for flexibility in the scope of the proceedings. It covers both singular and multiple claims, as well as the various defences that parties may raise.
5. Applicability to Complex Disputes: This provision is particularly relevant in complex arbitrations where parties may have multiple claims, counterclaims, and defences, including set-offs and cross-claims. It helps ensure a comprehensive approach to handling disputes involving multiple legal contentions.
6. Promotion of Efficiency: By providing a clear and inclusive definition of these terms, the provision contributes to the efficiency of arbitration proceedings. Parties and arbitrators can better understand and address the various legal contentions presented by the parties.

In summary, Article 2.10 of the HKIAC Arbitration Rules 2018 defines and interprets the terms “claim”, “counterclaim”, and “defence” comprehensively. It ensures consistent interpretation, simplifies language usage, and accommodates various types of claims, counterclaims, and defences in arbitration proceedings governed by the rules.

### **2.11 References to “arbitration agreement” include one or more arbitration agreements.**

Article 2.11 of the HKIAC Arbitration Rules 2018 provides a definition and interpretation for the term “arbitration agreement” within the context of the rules. Let us analyse this provision.

1. Interpretation of “Arbitration Agreement”: This provision clarifies the meaning of the term “arbitration agreement” as used within the HKIAC Arbitration Rules 2018. It specifies that when the term “arbitration agreement” is used in the rules, it encompasses situations involving a single arbitration agreement as well as cases where there are multiple arbitration agreements.
2. Singular and Plural Inclusion: The provision accounts for both singular and plural scenarios. It ensures that the term “arbitration agreement” covers the full spectrum of possible agreements, from a single agreement to multiple agreements between the parties.

3. **Simplification and Consistency:** By providing a clear definition, the provision simplifies language usage and ensures a consistent interpretation of the term “arbitration agreement” throughout the rules. This consistency prevents ambiguity and confusion in the interpretation of the rules.
4. **Flexibility in Interpretation:** The inclusion of both singular and plural forms of “arbitration agreement” acknowledges that disputes can arise from various situations, including different agreements between the same or different parties. The provision accommodates the diverse ways in which arbitration agreements may be structured.
5. **Comprehensive Scope:** The provision’s definition of “arbitration agreement” encompasses a broad range of scenarios, promoting clarity and flexibility when applying the rules to various factual situations.
6. **Supporting Legal Certainty:** The clear interpretation of “arbitration agreement” contributes to legal certainty by establishing a consistent framework for interpreting the parties’ agreement to arbitrate under the HKIAC rules.

In summary, Article 2.11 of the HKIAC Arbitration Rules 2018 defines and interprets the term “arbitration agreement” comprehensively. It ensures consistent interpretation, simplifies language usage, and accommodates both singular and plural forms of arbitration agreements in arbitration proceedings governed by the rules.

## **2.12 References to “language” include one or more languages.**

Article 2.12 of the HKIAC Arbitration Rules 2018 provides a definition and interpretation for the term “language” within the context of the rules. Let us analyse this provision.

1. **Interpretation of “Language”:** This provision clarifies how the term “language” is to be understood within the HKIAC Arbitration Rules 2018. It specifies that when the term “language” is used in the rules, it encompasses situations involving a single language as well as cases where there are multiple languages.
2. **Singular and Plural Inclusion:** The provision covers both singular and plural scenarios. It ensures that the term “language” covers instances where proceedings are conducted in a single language as well as situations where multiple languages are involved.
3. **Simplification and Consistency:** By providing this definition, the provision simplifies language usage and ensures a consistent interpretation of the term “language” throughout the rules. This consistent interpretation helps prevent confusion and misunderstandings.
4. **Multilingual Proceedings:** The inclusion of both singular and plural forms of “language” recognises that arbitration proceedings may involve parties, documents, and hearings in multiple languages. This accommodates the diverse linguistic aspects of international arbitration.



5. **Comprehensive Scope:** The provision’s definition of “language” encompasses various scenarios, promoting clarity and flexibility when applying the rules to different situations involving different languages.
6. **Supporting Global Arbitration:** In international arbitration, parties often come from different jurisdictions and may speak different languages. The provision acknowledges the need to adapt to this diversity while maintaining a clear and coherent framework.

In summary, Article 2.12 of the HKIAC Arbitration Rules 2018 defines and interprets the term “language” broadly. It ensures consistent interpretation, simplifies language usage, and accommodates both singular and plural forms of languages in arbitration proceedings governed by the rules. This definition supports the flexibility required for international arbitration involving parties and documents in different languages.

### **2.13 References to “award” include, inter alia, an interim, interlocutory, partial or final award, save for any award made by an emergency arbitrator.**

Article 2.13 of the HKIAC Arbitration Rules 2018 provides a definition and interpretation for the term “award” within the context of the rules. Let us analyse this provision.

1. **Interpretation of “Award”:** This provision clarifies how the term “award” is to be understood within the HKIAC Arbitration Rules 2018. It specifies that when the term “award” is used in the rules, it includes various types of awards, such as interim, interlocutory, partial, and final awards.
2. **Types of Awards Included:** The provision lists specific types of awards that are considered within the definition of “award”. These types are:
  - a. **Interim Award:** An award issued by the tribunal during the course of the proceedings to address specific matters before the final award is rendered.
  - b. **Interlocutory Award:** An award that addresses certain procedural or jurisdictional issues during the arbitration process.
  - c. **Partial Award:** An award that resolves only a part of the issues in dispute, leaving other matters to be resolved in subsequent proceedings.
  - d. **Final Award:** The ultimate award that conclusively determines all the issues in the arbitration and settles the dispute.
3. **Exclusion of Emergency Arbitrator Award:** The provision also excludes one specific type of award from the definition of “award”: any award made by an emergency arbitrator. Emergency arbitrator awards are distinct and are typically issued to address urgent matters before the formation of the full arbitral tribunal.
4. **Comprehensive Interpretation:** By encompassing various types of awards, this provision ensures a comprehensive interpretation of the term “award” as it is used in the HKIAC Arbitration Rules. It recognises the different stages and aspects of arbitration proceedings.

5. Exception for Emergency Arbitrator Awards: The provision carves out an exception for awards made by emergency arbitrators. This exception reflects the unique nature and purpose of emergency arbitration, which operates independently from the main arbitration proceedings.
6. Promotion of Clarity and Understanding: Providing a clear and inclusive definition of “award” supports clarity and understanding for parties, arbitrators, and practitioners who are navigating the arbitration process under the HKIAC rules.

In summary, Article 2.13 of the HKIAC Arbitration Rules 2018 defines and interprets the term “award” comprehensively. It includes various types of awards, such as interim, interlocutory, partial, and final awards, while excluding awards made by emergency arbitrators. This definition ensures consistent interpretation and clarity when dealing with different types of awards in arbitration proceedings governed by the rules.

#### **2.14 References to the “seat” of arbitration mean the place of arbitration as defined in Article 20.1 of the UNCITRAL Model Law on International Commercial Arbitration.**

Article 2.14 of the HKIAC Arbitration Rules 2018 provides a specific definition for the term “seat” of arbitration within the context of the rules. Let us analyse this provision.

1. Interpretation of “Seat” of Arbitration: This provision clarifies the meaning of the term “seat” of arbitration as used within the HKIAC Arbitration Rules 2018. It specifies that when the term “seat” is referenced in the rules, it should be interpreted in accordance with the definition provided in Article 20.1 of the UNCITRAL Model Law on International Commercial Arbitration.
2. Applicability of UNCITRAL Model Law: The provision explicitly refers to the UNCITRAL Model Law on International Commercial Arbitration as the source of the definition for the term “seat” of arbitration. The UNCITRAL Model Law is a widely recognised and influential framework for modern arbitration laws and practices.
3. Definition of “Seat” from UNCITRAL Model Law: Article 20.1 of the UNCITRAL Model Law defines the “place of arbitration” as the seat of arbitration, which indicates the legal jurisdiction under whose laws the arbitration proceedings are conducted and the courts have supervisory authority over the arbitration process.
4. Consistency and Clarity: By incorporating the definition from the UNCITRAL Model Law, this provision ensures consistency and clarity in interpreting the term “seat” of arbitration within the HKIAC Arbitration Rules. It aligns the rules with widely accepted international arbitration principles.
5. Legal Framework: The provision relies on the well-established framework of the UNCITRAL Model Law, which provides a solid foundation for determining the legal framework and jurisdictional basis of the arbitration proceedings.
6. Avoiding Ambiguity: This provision helps prevent potential disputes or ambiguities regarding the determination of the seat of arbitration by providing a clear reference to a widely accepted definition.

In summary, Article 2.14 of the HKIAC Arbitration Rules 2018 defines the term “seat” of arbitration by referencing the definition provided in Article 20.1 of the UNCITRAL Model Law on International Commercial Arbitration. This definition ensures consistency, clarity, and alignment with established international arbitration practices when determining the legal jurisdiction of the arbitration proceedings.

**2.15 References to “written communications” include all notifications, proposals, pleadings, statements, documents, orders and awards that are produced, submitted or exchanged in the arbitration.**

Article 2.15 of the HKIAC Arbitration Rules 2018 provides a comprehensive definition for the term “written communications” within the context of the rules. Let us analyse this provision.

1. Interpretation of “Written Communications”: This provision offers a detailed interpretation of the term “written communications” as used within the HKIAC Arbitration Rules 2018. It specifies that when the term “written communications” is used in the rules, it encompasses a wide range of materials and documents involved in the arbitration process.
2. Inclusion of Various Forms: The definition covers several types of written materials, including:
  - a. Notifications: Any form of formal communication or notice provided to parties or arbitrators.
  - b. Proposals: Submissions made by parties as part of the arbitration process.
  - c. Pleadings: Formal written statements outlining the parties’ respective positions and arguments.
  - d. Statements: Any written communication conveying factual or legal information.
  - e. Documents: Any records, evidence, or supporting materials submitted in the arbitration.
  - f. Orders: Written decisions or directives issued by the arbitral tribunal.
  - g. Awards: Final determinations or decisions made by the tribunal.
3. Comprehensive Scope: By encompassing various forms of written materials, this provision ensures a comprehensive interpretation of the term “written communications” as it is used in the HKIAC Arbitration Rules. It recognises the diverse nature of written exchanges in arbitration proceedings.
4. Flexibility and Adaptability: The broad definition accommodates the evolving nature of arbitration proceedings and the various types of documents that may be generated or exchanged as part of the process.

5. **Promotion of Clarity:** Providing a detailed definition for “written communications” supports clarity and understanding for parties, arbitrators, and practitioners who need to navigate the communication aspects of the arbitration process.
6. **Efficiency and Consistency:** This provision contributes to the efficient management of arbitration proceedings by providing a clear and comprehensive framework for interpreting the term “written communications” across different stages of the process.

In summary, Article 2.15 of the HKIAC Arbitration Rules 2018 defines and interprets the term “written communications” broadly. It includes a wide array of materials, such as notifications, proposals, pleadings, statements, documents, orders, and awards, that are produced, submitted, or exchanged during arbitration proceedings governed by the rules. This comprehensive definition ensures consistent interpretation and clarity when dealing with various types of written materials in arbitration.

**2.16 References to “communication” mean delivery, transmission or notification of a written communication by hand, registered post, courier service, facsimile, email or other means of telecommunication that provides a record of transmission.**

Article 2.16 of the HKIAC Arbitration Rules 2018 provides a detailed definition and interpretation for the term “communication” within the context of the rules. Let us analyse this provision.

1. **Interpretation of “Communication”:** This provision offers a comprehensive interpretation of the term “communication” as used within the HKIAC Arbitration Rules 2018. It clarifies that when the term “communication” is referenced in the rules, it encompasses the actions of delivering, transmitting, or notifying a written communication between parties or participants in the arbitration process.
2. **Modes of Communication:** The definition outlines several methods of communication, including:
  - a. **Delivery:** Physically handing over a written communication.
  - b. **Registered Post:** Sending the communication through postal services with a record of delivery.
  - c. **Courier Service:** Using a commercial courier for secure and tracked delivery.
  - d. **Facsimile:** Transmitting a written communication electronically using a facsimile machine (fax).
  - e. **Email:** Sending a written communication electronically through email.
  - f. **Other Telecommunication Means:** Any other electronic means of communication that provides a record of transmission.
3. **Record of Transmission:** The provision emphasises that the chosen means of communication must provide a record of transmission. This ensures that there is evidence

of the communication being sent or received, which is essential for tracking and confirming the delivery.

4. **Clarity and Consistency:** By specifying the modes of communication and the requirement for a record of transmission, this provision ensures clarity and consistency in interpreting the term “communication” throughout the arbitration process.
5. **Modernisation and Technological Advances:** The definition reflects the modern reality of communication methods, including electronic means such as email and fax, which have become integral to international arbitration proceedings.
6. **Efficiency and Reliability:** By providing a clear framework for communication methods that ensure a record of transmission, this provision contributes to the efficient and reliable exchange of information in arbitration proceedings.

In summary, Article 2.16 of the HKIAC Arbitration Rules 2018 defines and interprets the term “communication” comprehensively. It includes a range of methods for delivering, transmitting, or notifying written communications, emphasising the importance of a record of transmission. This definition ensures consistent interpretation and clarity when dealing with various forms of communication in arbitration proceedings governed by the rules.

**2.17 These Rules include all Schedules attached thereto, as amended from time to time by HKIAC, in force on the date the Notice of Arbitration is submitted.**

Article 2.17 of the HKIAC Arbitration Rules 2018 outlines the scope and incorporation of the arbitration rules, including any attached schedules, within the context of the rules. Let us analyse this provision:

1. **Incorporation of Rules and Schedules:** This provision clarifies that the HKIAC Arbitration Rules 2018 include not only the main body of the rules but also all schedules that are attached to them. Schedules are additional documents that provide supplementary information or procedures related to the arbitration process.
2. **Amendment Authority:** The provision acknowledges that the HKIAC has the authority to amend the rules and schedules over time. This ensures that the rules and procedures can be updated or improved as necessary to adapt to changing circumstances or developments in arbitration practice.
3. **Applicability Date:** The provision specifies that the version of the rules and schedules in force on the date the Notice of Arbitration is submitted will be applicable to the arbitration proceedings. The Notice of Arbitration marks the official initiation of the arbitration process.
4. **Certainty and Predictability:** By clarifying the applicable version of the rules and schedules based on the submission date of the Notice of Arbitration, this provision promotes legal certainty and predictability for parties and practitioners involved in arbitration proceedings.

5. **Consistency and Uniformity:** The provision ensures that all parties are subject to the same version of the rules and schedules, minimising potential discrepancies or confusion that could arise from using different versions.
6. **Adaptation to Changes:** The inclusion of a provision allowing for amendments by the HKIAC recognises the need for flexibility and the ability to stay up-to-date with developments in arbitration practice, technology, and procedural improvements.
7. **Promotion of Efficient Arbitration:** This provision contributes to efficient and effective arbitration proceedings by incorporating any necessary changes or updates to the rules and schedules, which can enhance the overall arbitration experience.

In summary, Article 2.17 of the HKIAC Arbitration Rules 2018 outlines the incorporation and scope of the rules and attached schedules. It ensures that the applicable version of the rules and schedules is determined by the submission date of the Notice of Arbitration and allows for amendments to be made by the HKIAC to maintain the relevance and effectiveness of the rules over time.

**2.18 HKIAC may from time to time issue practice notes and guidelines to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.**

Article 2.18 of the HKIAC Arbitration Rules 2018 addresses the authority and function of the HKIAC to issue practice notes and guidelines within the context of the rules. Let us analyse this provision:

1. **Issuance of Practice Notes and Guidelines:** This provision grants the HKIAC the authority to issue practice notes and guidelines as needed. These practice notes and guidelines serve as supplementary materials that provide additional guidance, instructions, or clarifications on how the HKIAC Arbitration Rules should be interpreted and applied in practice.
2. **Purpose of Practice Notes and Guidelines:** The primary purpose of these practice notes and guidelines is to facilitate the administration of arbitration proceedings governed by the HKIAC Arbitration Rules. They are intended to support parties, arbitrators, and practitioners in understanding and complying with the procedural aspects of the rules.
3. **Supplementary and Regulatory Role:** The practice notes and guidelines are designed to supplement the main body of the rules. They may provide practical insights, address specific procedural issues, or offer recommendations for efficient case management. Additionally, they can help regulate certain aspects of arbitration practice to ensure consistency and fairness.
4. **Implementation of Rules:** The provision emphasises that the practice notes and guidelines are intended to implement the HKIAC Arbitration Rules effectively. They can provide practical guidance on how specific provisions should be operationalised or interpreted.
5. **Flexibility and Adaptation:** By allowing the issuance of practice notes and guidelines, this provision recognises the need for flexibility and adaptation to the evolving landscape of international arbitration. It enables the HKIAC to address emerging issues and provide timely guidance.

6. **Clarity and Consistency:** Practice notes and guidelines contribute to clarity and consistency in the administration of arbitration proceedings. They help ensure that all parties are on the same page regarding procedural matters and the interpretation of the rules.
7. **Improvement of Arbitration Experience:** The issuance of practice notes and guidelines reflects the HKIAC's commitment to providing a positive and effective arbitration experience. They can enhance efficiency, reduce potential disputes, and promote a smooth arbitration process.

In summary, Article 2.18 of the HKIAC Arbitration Rules 2018 empowers the HKIAC to issue practice notes and guidelines to complement, regulate, and implement the rules. These supplementary materials serve to facilitate the administration of arbitrations under the rules, promote clarity, and support the efficient and effective conduct of arbitration proceedings.

**2.19 English is the original language of these Rules. In the event of any discrepancy or inconsistency between the English version and the version in any other language, the English version shall prevail.**

Article 2.19 of the HKIAC Arbitration Rules 2018 addresses the language of the rules and provides a mechanism for resolving discrepancies or inconsistencies between different language versions. Let us analyse this provision.

1. **Original Language of the Rules:** This provision establishes that the original language of the HKIAC Arbitration Rules 2018 is English. The rules were drafted and formulated in English, and this serves as the authoritative version.
2. **Discrepancy or Inconsistency:** The provision anticipates the possibility of variations or discrepancies that may arise when translating the rules into other languages. This can include differences in interpretation, wording, or structure.
3. **Precedence of English Version:** In case of any such discrepancy or inconsistency, the English version of the rules is given precedence and is considered the definitive and controlling version.
4. **Ensuring Uniform Interpretation:** The provision ensures that there is a consistent and uniform interpretation of the rules across different jurisdictions and linguistic contexts. It helps prevent potential disputes that could arise from differences in translation.
5. **Legal Certainty:** By specifying that the English version prevails in case of discrepancies, the provision promotes legal certainty and reduces the risk of confusion or ambiguity when parties and practitioners refer to the rules.
6. **Recognition of International Practice:** The use of English as the original language reflects a common practice in international arbitration where English is often used as a lingua franca for arbitration proceedings involving parties from different linguistic backgrounds.

7. Efficiency in International Arbitration: Given the global nature of international arbitration, having a single authoritative version of the rules in English helps streamline processes and communication among parties, arbitrators, and institutions.

In summary, Article 2.19 of the HKIAC Arbitration Rules 2018 designates English as the original language of the rules and establishes the precedence of the English version in case of any discrepancies or inconsistencies with translations into other languages. This provision ensures clarity, uniformity, and legal certainty in the interpretation and application of the rules in international arbitration proceedings.

### Article 3 – Written Communications and Calculation of Time Limits

#### 3.1 Any written communication pursuant to these Rules shall be deemed to be received by a party, arbitrator, emergency arbitrator or HKIAC if:

- (a) communicated to the address, facsimile number and/or email address communicated by the addressee or its representative in the arbitration; or
- (b) in the absence of (a), communicated to the address, facsimile number and/or email address specified in any applicable agreement between the parties; or
- (c) in the absence of (a) and (b), communicated to any address, facsimile number and/or email address which the addressee holds out to the world at the time of such communication; or
- (d) in the absence of (a), (b) and (c), communicated to any last known address, facsimile number and/or email address of the addressee; or
- (e) uploaded to any secured online repository that the parties have agreed to use.

Article 3.1 of the HKIAC Arbitration Rules 2018 outlines the rules for deeming the receipt of written communications in the context of arbitration proceedings. This provision is essential for establishing a clear and reliable method of communication between parties, arbitrators, and the HKIAC itself. Let us break down the different elements of this provision:

1. (a) Communication to Address, Facsimile Number, or Email Address Provided: According to this subsection, a written communication is deemed to be received if it is sent to the address, facsimile number, or email address that has been provided by the intended recipient or its representative in the arbitration. In other words, if a party or arbitrator has explicitly communicated their contact details for the purpose of the arbitration, sending a communication to those specified contact details will be considered as effective receipt.
2. (b) Communication to Agreed Address, Facsimile Number, or Email Address: If there is no prior communication of contact details as mentioned in (a), this subsection states that communication can be deemed received if it is sent to the address, facsimile number, or email address specified in any relevant agreement between the parties. This emphasises the importance of adhering to any pre-existing agreement between the parties regarding communication channels.



3. (c) Communication to Publicly Held Contact Information: If neither (a) nor (b) applies, this subsection allows for a written communication to be deemed received if it is sent to any address, facsimile number, or email address that the intended recipient has made known to the public at the time of the communication. This could include contact information listed on official documents, websites, or other public forums.
4. (d) Communication to Last Known Contact Information: In the absence of the previous options, this subsection enables a communication to be deemed received if it is sent to the last known address, facsimile number, or email address of the intended recipient. This provision offers a fallback option for ensuring that communication reaches the intended recipient even when specific contact details are not readily available.
5. (e) Communication via Secured Online Repository: Finally, this subsection introduces a modern approach to communication. It states that a written communication can be deemed received if it is uploaded to a secured online repository that the parties have agreed to use. This recognises the increasing use of digital technology and online platforms for document sharing and communication.

Overall, Article 3.1 of the HKIAC Arbitration Rules 2018 provides a comprehensive framework for determining when a written communication is considered received in the context of arbitration proceedings. It takes into account various scenarios and methods of communication, ranging from traditional methods like physical addresses and fax numbers to modern digital alternatives like email and online repositories. The aim is to ensure that parties have a clear and reliable means of communicating with each other and with the arbitral institution.

**3.2 If, after reasonable efforts, communication cannot be effected in accordance with Article 3.1, a written communication is deemed to have been received if it is sent to the addressee’s last-known address, facsimile number and/or email address by means that provides a record of attempted communication.**

Article 3.2 of the HKIAC Arbitration Rules 2018 elaborates on the scenario where communication cannot be achieved following the methods outlined in Article 3.1. This provision establishes a mechanism for deeming a written communication to have been received under specific circumstances. Let us break down the key points of Article 3.2:

1. Inability to Effect Communication: Article 3.2 addresses situations where reasonable efforts to communicate, as per the methods described in Article 3.1, have failed. This can occur due to various reasons such as incorrect or outdated contact information, technical issues, or other communication challenges.
2. Deemed Receipt with Record of Attempted Communication: When communication cannot be established as outlined in Article 3.1, Article 3.2 provides an alternative avenue for deeming a written communication to have been received. In such cases, the communication is considered received if it is sent to the addressee’s last-known address, facsimile number, and/or email address by means that provide a record of the attempted communication.
3. Importance of Record Keeping: The provision emphasises the importance of maintaining a record of the attempt to communicate. This requirement ensures that there is evidence

of the effort made to contact the intended recipient. This record is crucial for demonstrating that reasonable steps were taken to effect communication even if the communication was ultimately unsuccessful.

4. **Balancing Practicality and Fairness:** Article 3.2 strikes a balance between the practicality of ensuring effective communication and the need to uphold fairness in arbitration proceedings. It acknowledges that despite best efforts, there may be situations where communication is challenging. By requiring a record of attempted communication, the provision safeguards against potential claims of lack of notice or unfair treatment.
5. **Flexibility and Adaptability:** This provision reflects the HKIAC Arbitration Rules' willingness to adapt to modern communication methods. While it acknowledges traditional forms of communication like physical addresses and fax numbers, it also recognises the use of email and other electronic means.

In summary, Article 3.2 of the HKIAC Arbitration Rules 2018 provides a mechanism for deeming written communication to have been received when standard methods of communication have failed. By requiring a record of attempted communication, this provision ensures that parties make reasonable efforts to reach each other and that fairness is upheld within the arbitration process. It underscores the importance of maintaining accurate and up-to-date contact information while allowing for flexibility in adapting to changing communication methods.

**3.3 Any written communication shall be deemed received on the earliest day when it is communicated pursuant to paragraph 3.1(a) to (d), uploaded pursuant to paragraph 3.1(e), or attempted to be communicated pursuant to Article 3.2. For this purpose, the date shall be determined according to the local time at the place of receiving such written communication or a notice of the upload pursuant to paragraph 3.1(e).**

Article 3.3 of the HKIAC Arbitration Rules 2018 provides rules regarding the determination of the date on which a written communication is deemed received under various scenarios outlined in Article 3.1 and Article 3.2. This provision focuses on clarifying how the timing of receipt should be established for the purposes of arbitration proceedings. Let us delve into the key aspects of Article 3.3:

1. **Determining the Deemed Receipt Date:** Article 3.3 establishes that any written communication will be deemed received on the earliest day when the communication falls under the scenarios outlined in Article 3.1(a) to (d), is uploaded as per Article 3.1(e), or an attempt is made to communicate according to Article 3.2. In other words, the provision specifies that receipt is deemed to occur when any of these actions take place.
2. **Local Time and Place of Receipt:** The provision emphasises that the date of deemed receipt should be determined based on the local time at the place where the communication is received or where a notice of upload is made. This rule ensures that the timing is consistent with the relevant location and avoids confusion that might arise from time zone differences.
3. **Relevance to Different Modes of Communication:** Article 3.3 is important for various modes of communication outlined in the previous articles. It applies to communications made through provided addresses, agreements between parties, publicly held information, last-known contact details, attempted communication, and even

communication via an agreed online repository. This comprehensive coverage underscores the provision's significance in establishing a uniform approach to timing regardless of the mode of communication used.

4. **Clarity and Fairness:** The provision contributes to clarity and fairness in arbitration proceedings. By establishing a specific rule for determining the deemed receipt date, it minimises potential disputes and uncertainties about when a communication is considered received. This is crucial for maintaining transparency and ensuring that parties have a clear understanding of the timeline of the arbitration process.
5. **Global Applicability:** Given that the HKIAC is an internationally recognised arbitration institution, Article 3.3's rule about determining the deemed receipt date according to local time takes into account the global nature of arbitration proceedings. It ensures that parties from different time zones are treated fairly and consistently.

In summary, Article 3.3 of the HKIAC Arbitration Rules 2018 provides a clear framework for determining the date on which a written communication is deemed received in various communication scenarios. By specifying that the local time at the place of receipt should be used for this determination, the provision contributes to the fairness, transparency, and practicality of arbitration proceedings under the HKIAC rules.

**3.4 Where a written communication is being communicated to more than one party, or more than one arbitrator, such written communication shall be deemed received when it is communicated pursuant to Article 3.1(a) to (d), or attempted to be communicated pursuant to Article 3.2, to the last intended recipient, or when a notice that such written communication has been uploaded pursuant to Article 3.1(e) is communicated to the last intended recipient.**

Article 3.4 of the HKIAC Arbitration Rules 2018 addresses the situation where a written communication is intended for multiple parties or arbitrators. This provision establishes rules for determining when such a communication is deemed received in cases where there are multiple recipients. Let us break down the key points of Article 3.4:

1. **Multiple Recipients of Written Communication:** Article 3.4 specifically applies to situations where a single written communication is intended for more than one party or more than one arbitrator. This scenario often arises in multi-party or complex arbitrations where various parties or arbitrators are involved.
2. **Deemed Receipt for Multiple Recipients:** The provision sets forth the rules for when a written communication is deemed received in cases involving multiple recipients. It outlines two scenarios under which the communication is considered received:
  - a. **Communication to the Last Intended Recipient (Article 3.1(a) to (d)):** If the written communication is successfully communicated to or attempted to be communicated to the last intended recipient in accordance with Article 3.1(a) to (d), then the communication is deemed received.
  - b. **Notice of Upload (Article 3.1(e)):** Alternatively, if the written communication is uploaded to an agreed online repository as per Article 3.1(e), a notice of such

upload must be communicated to the last intended recipient. Once this notice is conveyed, the communication is considered received.

3. **Ensuring Uniformity of Receipt:** Article 3.4 aims to ensure uniformity in the treatment of written communications when there are multiple intended recipients. It provides a clear framework for determining when such communications are deemed received, whether through direct communication, attempted communication, or notice of upload.
4. **Fairness and Practicality:** By clarifying the rules for multiple recipients, Article 3.4 contributes to fairness and practicality in arbitration proceedings. It addresses the challenges that can arise when coordinating communication among several parties or arbitrators and establishes a consistent approach to determining receipt.
5. **Supporting Modern Communication Methods:** The provision also acknowledges the use of online repositories and digital communication methods by including a reference to Article 3.1(e). This demonstrates the HKIAC's awareness of contemporary communication practices and its commitment to adapting its rules to technological advancements.

In summary, Article 3.4 of the HKIAC Arbitration Rules 2018 provides a clear framework for determining when a written communication is deemed received in cases involving multiple intended recipients. By specifying conditions under which the communication is considered received, the provision enhances clarity, fairness, and practicality in arbitration proceedings, particularly in multi-party or complex arbitrations.

**3.5 Time limits under these Rules shall begin to run on the day following the day when any written communication is received or deemed received. If the last day of the time limit is an official holiday or a non-business day at the place of receipt, the time limit shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the time limit shall be included in calculating the time limit.**

Article 3.5 of the HKIAC Arbitration Rules 2018 deals with the calculation and extension of time limits for various actions within arbitration proceedings. This provision ensures that parties have a clear and consistent framework for determining when time limits begin, end, and are extended due to official holidays or non-business days. Let us analyse the key elements of Article 3.5:

1. **Commencement of Time Limits:** The provision establishes that time limits specified in the HKIAC Arbitration Rules start running on the day following the day when any written communication is received or deemed received. This indicates that the clock starts ticking once a communication is successfully transmitted or is deemed received under the previous articles of the rules.
2. **Extension for Official Holidays and Non-Business Days:** If the last day of a time limit falls on an official holiday or a non-business day at the place of receipt, Article 3.5 stipulates that the time limit will be extended until the first business day that follows. This extension ensures that parties are not penalised for circumstances beyond their control, such as holidays or weekends.
3. **Inclusion of Official Holidays and Non-Business Days:** Importantly, the provision specifies that official holidays or non-business days occurring during the running of a time limit are

included in calculating the overall time limit. This means that if an official holiday or non-business day falls within the time period specified for a particular action, that day is still counted towards the total time available for completing the action.

4. **Balancing Predictability and Practicality:** Article 3.5 strikes a balance between predictability and practicality in arbitration proceedings. By specifying how time limits are calculated and extended, the provision ensures that parties have a clear understanding of the timeframe within which actions must be taken. At the same time, it acknowledges that practical considerations, such as holidays and non-business days, may affect the ability to meet certain time limits.
5. **Consistency and Fairness:** This provision contributes to the consistency and fairness of arbitration proceedings by providing a standardised approach to time limit calculations. It prevents confusion or disputes that could arise from varying interpretations of how time limits should be calculated in different scenarios.
6. **Global Applicability:** Given that the HKIAC is an internationally recognised arbitration institution, Article 3.5's consideration of official holidays and non-business days is essential for accommodating the diverse time zones and holiday calendars of parties involved in arbitration proceedings.

In summary, Article 3.5 of the HKIAC Arbitration Rules 2018 provides a clear framework for calculating and extending time limits in arbitration proceedings. It ensures that parties have a predictable and equitable approach to managing time constraints, while also accounting for practical considerations such as holidays and non-business days. This contributes to the overall efficiency and fairness of the arbitration process.

**3.6 If the circumstances of the case so justify, HKIAC may amend the time limits provided for in these Rules, as well as any time limits that it has set, whether any such time limits have expired. HKIAC shall not amend any time limits agreed by the parties or set by the arbitral tribunal or emergency arbitrator unless the parties agree or the arbitral tribunal or emergency arbitrator directs otherwise.**

Article 3.6 of the HKIAC Arbitration Rules 2018 grants the HKIAC the authority to amend time limits specified within the rules or set by itself, under specific circumstances. This provision provides the HKIAC with the flexibility to adjust time limits to address unique situations, while also respecting the autonomy of the parties and the arbitral tribunal. Let us analyse the key elements of Article 3.6:

1. **HKIAC's Authority to Amend Time Limits:** The provision allows the HKIAC to modify time limits established by the HKIAC itself within the framework of the arbitration rules. This is intended to accommodate situations where the specific circumstances of a case warrant a change in the time limits to ensure fairness, efficiency, or other valid reasons.
2. **Respect for Party Autonomy and Tribunal Decision:** Article 3.6 also emphasises the principle of party autonomy and the authority of the arbitral tribunal. The HKIAC may not amend any time limits that have been agreed upon by the parties or that have been set by the arbitral tribunal or emergency arbitrator unless there is agreement from the parties or a directive from the arbitral tribunal or emergency arbitrator.

3. **Balancing Flexibility and Consistency:** This provision strikes a balance between flexibility and consistency. On one hand, it allows for necessary adjustments to time limits in exceptional cases. On the other hand, it ensures that parties have some level of predictability and control over the timing of arbitration proceedings by maintaining the general integrity of the agreed or set time limits.
4. **Case-by-Case Justification:** The provision requires that the circumstances of the case justify any amendments to time limits. This ensures that any adjustments made are based on specific reasons related to the case, such as complexity, unforeseen developments, or practical constraints.
5. **HKIAC's Role as a Facilitator:** Article 3.6 reflects the HKIAC's role as a facilitator of arbitration proceedings. It acknowledges that the HKIAC is positioned to assess whether modifications to time limits are necessary or appropriate to ensure the fair and efficient conduct of the arbitration.
6. **Preservation of Procedural Fairness:** The provision is aligned with the broader goal of ensuring procedural fairness and the overall effectiveness of the arbitration process. By allowing for adjustments to time limits when justified, it helps prevent undue hardship or prejudice to any party due to rigid adherence to predetermined timeframes.

In summary, Article 3.6 of the HKIAC Arbitration Rules 2018 empowers the HKIAC to amend time limits in exceptional cases where circumstances justify such changes. It respects party autonomy and the authority of the arbitral tribunal while allowing the HKIAC to play a role in ensuring a fair and efficient arbitration process. The provision contributes to the overall adaptability and effectiveness of the HKIAC arbitration framework.

## SECTION II. COMMENCEMENT OF THE ARBITRATION

### Article 4 – Notice of Arbitration

#### 4.1 The party initiating arbitration (the “Claimant”) shall communicate a Notice of Arbitration to HKIAC and the other party (the “Respondent”).

Article 4.1 of the HKIAC Arbitration Rules 2018 outlines the responsibility of the party initiating arbitration (referred to as the “Claimant”) to formally commence the arbitration process by submitting a Notice of Arbitration. Let us analyse the key elements of Article 4.1:

1. **Commencement of Arbitration:** Article 4.1 establishes the formal starting point of the arbitration proceedings. The party that wishes to initiate the arbitration (the Claimant) is required to communicate a written document called the “Notice of Arbitration” to both the HKIAC and the other party involved in the dispute (the Respondent). This Notice marks the official commencement of the arbitration process under the HKIAC rules.
2. **Notice of Arbitration:** The “Notice of Arbitration” is a crucial document that typically outlines key details of the dispute, the parties involved, the relief sought, and other relevant information. It serves as the formal notice to the Respondent that the Claimant intends to pursue arbitration to resolve the dispute.
3. **Role of the HKIAC:** The provision specifies that the Claimant must communicate the Notice of Arbitration to both the HKIAC and the Respondent. This ensures that the arbitral institution (HKIAC) is made aware of the commencement of the arbitration process, allowing it to effectively administer and facilitate the proceedings.
4. **Transparency and Formality:** Article 4.1 reflects the principle of transparency and formality in arbitration proceedings. By requiring the Claimant to submit a formal written Notice of Arbitration, the provision ensures that the initiation of arbitration is documented and communicated in a clear and structured manner.
5. **Beginning of Procedural Timeline:** The communication of the Notice of Arbitration not only marks the commencement of arbitration but also triggers various procedural timelines and obligations for both parties. It initiates the process of appointing arbitrators, exchanging statements of claim and defence, and ultimately proceeding with the arbitration proceedings.
6. **Equal Treatment of Parties:** By specifying that the Claimant must communicate the Notice of Arbitration to both the HKIAC and the Respondent, the provision promotes equal treatment of the parties. It ensures that both parties are promptly informed of the arbitration process and can begin preparing their respective cases.

In summary, Article 4.1 of the HKIAC Arbitration Rules 2018 outlines the requirement for the party initiating arbitration (Claimant) to communicate a formal Notice of Arbitration to both the HKIAC and the other party (Respondent). This provision marks the official start of the arbitration proceedings, triggers various procedural obligations, and promotes transparency and fairness in the arbitration process.

**4.2 An arbitration shall be deemed to commence on the date on which a copy of the Notice of Arbitration is received by HKIAC. For the avoidance of doubt, this date shall be determined in accordance with the provisions of Articles 3.1 to 3.5.**

Article 4.2 of the HKIAC Arbitration Rules 2018 specifies the date on which an arbitration is deemed to commence and clarifies how that date is determined. This provision is essential for establishing the official start of the arbitration process and aligning it with the rules governing the communication and receipt of written communications. Let us analyse the key elements of Article 4.2:

1. **Commencement of Arbitration Date:** Article 4.2 establishes the date on which an arbitration is deemed to have commenced. It states that the arbitration shall be deemed to have commenced on the date when the HKIAC receives a copy of the Notice of Arbitration from the Claimant.
2. **Incorporation of Communication Rules:** The provision refers to “the provisions of Articles 3.1 to 3.5”, which are the rules outlined in earlier sections of the HKIAC Arbitration Rules 2018. Articles 3.1 to 3.5 cover various aspects of written communication, including the methods of communication, the determination of receipt, and the calculation of time limits.
3. **Interaction with Articles 3.1 to 3.5:** Article 4.2 reinforces that the determination of the commencement date is to be consistent with the rules established in Articles 3.1 to 3.5. These earlier articles provide guidelines for when written communications are deemed received, how time limits are calculated, and how various communication scenarios are handled.
4. **Importance of Clear Timing:** The provision is crucial for establishing a clear and uniform starting point for the arbitration process. It ensures that there is no ambiguity about when the arbitration officially begins, which is essential for setting in motion various procedural steps, such as the appointment of arbitrators and the exchange of statements of claim and defence.
5. **Alignment with Modern Communication:** By incorporating the communication rules from Articles 3.1 to 3.5, Article 4.2 acknowledges the modern communication methods and practices that are prevalent in arbitration proceedings. It recognises the importance of timely and efficient communication in the arbitration process.
6. **Avoidance of Doubt and Clarity:** The provision explicitly states that the date of commencement is determined “for the avoidance of doubt”. This language emphasises the intention to provide clarity and prevent any confusion or disputes regarding the start date of the arbitration.

In summary, Article 4.2 of the HKIAC Arbitration Rules 2018 specifies the date on which an arbitration is deemed to commence, which is when the HKIAC receives a copy of the Notice of Arbitration from the Claimant. It underscores the importance of clear timing in the arbitration process and ensures that the commencement date is determined in accordance with the communication and time limit rules outlined in earlier articles of the rules.



**4.3 The Notice of Arbitration shall include the following:**

- (a) a request that the dispute be referred to arbitration;**
- (b) the names and (in so far as known) the addresses, facsimile numbers and/or email addresses of the parties and of their representatives;**
- (c) a copy of the arbitration agreement invoked;**
- (d) a copy of the contract (s) or other legal instrument(s) out of or in relation to which the dispute arises, or reference thereto;**
- (e) a description of the general nature of the claim and an indication of the amount involved, if any;**
- (f) the relief or remedy sought;**
- (g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;**
- (h) the Claimant’s proposal and any comments regarding the designation of a sole arbitrator under Article 7, or the Claimant’s designation of an arbitrator under Article 8;**
- (i) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and**
- (j) confirmation that copies of the Notice of Arbitration and any supporting materials included with it have been or are being communicated simultaneously to the Respondent by one or more means of service to be identified in such confirmation.**

Article 4.3 of the HKIAC Arbitration Rules 2018 outlines the specific information that must be included in the Notice of Arbitration when initiating arbitration proceedings. This provision sets forth the essential details that the initiating party (Claimant) is required to provide in the Notice to formally initiate the arbitration process. Let us analyse the key elements of Article 4.3:

1. **Request for Arbitration:** The Notice of Arbitration must explicitly request that the dispute be referred to arbitration. This serves as the formal invocation of the arbitration process and signals the Claimant’s intention to resolve the dispute through arbitration.
2. **Identification of Parties and Representatives:** The provision requires the Notice to include the names, addresses, facsimile numbers, and/or email addresses of the parties involved in the dispute and their representatives. This information ensures that all parties and their representatives are properly identified for communication and procedural purposes.
3. **Copy of Arbitration Agreement:** A copy of the arbitration agreement that is being invoked must be included in the Notice. This provides a clear reference to the agreement under which the parties have committed to resolving their dispute through arbitration.
4. **Copy of Contract or Legal Instrument:** The Notice must include a copy of the contract(s) or other legal instrument(s) out of or in relation to which the dispute arises, or a clear

reference to these documents. This helps to contextualise the dispute and provides the necessary background information.

5. **Description of Claim and Amount Involved:** The Notice should provide a description of the general nature of the claim and indicate the amount involved, if applicable. This information gives the Respondent an initial understanding of the nature and scope of the dispute.
6. **Relief or Remedy Sought:** The Notice must specify the relief or remedy sought by the Claimant. This outlines the specific outcome or resolution that the Claimant is seeking through the arbitration process.
7. **Proposal for Number of Arbitrators:** If the parties have not previously agreed on the number of arbitrators (one or three), the Claimant must include a proposal regarding the number of arbitrators. This helps to determine the composition of the arbitral tribunal.
8. **Sole Arbitrator Designation:** The Claimant's proposal and any comments regarding the designation of a sole arbitrator under Article 7, or the Claimant's designation of an arbitrator under Article 8, must be included. This pertains to the selection of arbitrators in cases where the parties have not agreed on the composition of the tribunal.
9. **Funding Agreement and Third Party Funder:** The existence of any funding agreement and the identity of any third-party funder pursuant to Article 44 must be disclosed. This promotes transparency and informs the Respondent of any external financial support.
10. **Confirmation of Service:** Finally, the Notice must confirm that copies of the Notice of Arbitration and any supporting materials have been or are being communicated simultaneously to the Respondent using one or more means of service.

In summary, Article 4.3 of the HKIAC Arbitration Rules 2018 sets out the comprehensive list of information that must be included in the Notice of Arbitration when initiating arbitration proceedings. This provision ensures that the initiation process is transparent, informative, and properly documented, while also providing the necessary information for the Respondent and the arbitral tribunal to understand and address the dispute.

#### **4.4 The Notice of Arbitration shall be accompanied by payment to HKIAC of the Registration Fee as required by Schedule 1.**

Article 4.4 of the HKIAC Arbitration Rules 2018 specifies a requirement for the payment of the Registration Fee to the HKIAC when submitting the Notice of Arbitration to initiate arbitration proceedings. Let us analyse the key elements of Article 4.4:

1. **Payment of Registration Fee:** Article 4.4 mandates that the party initiating arbitration (Claimant) must include payment of the Registration Fee to the HKIAC along with the submission of the Notice of Arbitration. The Registration Fee is a specific amount of money prescribed by the HKIAC that is intended to cover the administrative costs associated with the commencement of the arbitration process.

2. **Requirement for Procedural Progress:** This provision ensures that the arbitration process can formally begin and progress by making the payment of the Registration Fee a prerequisite for submitting the Notice of Arbitration. The fee submission is a crucial step to demonstrate the Claimant's commitment to initiating and pursuing the arbitration proceedings.
3. **Administrative Cost Coverage:** The Registration Fee covers various administrative costs associated with the arbitration process, including the HKIAC's administrative services, the appointment of arbitrators, the management of the arbitration proceedings, and other procedural matters. It helps support the infrastructure and resources required to ensure a well-organised and efficient arbitration.
4. **Transparency and Predictability:** Requiring the payment of the Registration Fee as part of the initiation process contributes to transparency and predictability in the arbitration proceedings. It ensures that parties are aware of the financial obligations associated with starting the arbitration and helps maintain clarity regarding the financial aspects of the process.
5. **Support for HKIAC's Role:** By stipulating the payment of the Registration Fee, Article 4.4 supports the HKIAC's role as the administering institution of the arbitration. The fee helps fund the institution's services and resources that are essential for the smooth functioning of the arbitration proceedings.
6. **Cost-Sharing and Party Autonomy:** While the provision requires the Claimant to pay the Registration Fee, it is important to note that the arbitration costs are generally shared between the parties as the proceedings progress. The specific allocation of costs is often determined by the arbitral tribunal based on the applicable rules and the circumstances of the case.

In summary, Article 4.4 of the HKIAC Arbitration Rules 2018 mandates the payment of the Registration Fee to the HKIAC as a requirement for submitting the Notice of Arbitration and initiating arbitration proceedings. This provision ensures the proper administrative funding of the arbitration process, supports the HKIAC's role as the administering institution, and contributes to the transparency and predictability of the arbitration proceedings.

#### **4.5 The Notice of Arbitration may include the Statement of Claim.**

Article 4.5 of the HKIAC Arbitration Rules 2018 addresses the possibility of including the Statement of Claim within the Notice of Arbitration when initiating arbitration proceedings. Let us analyse the key elements of Article 4.5:

1. **Inclusion of Statement of Claim:** Article 4.5 allows the initiating party (Claimant) to include the Statement of Claim in the Notice of Arbitration. The Statement of Claim is a comprehensive document that sets out the factual and legal basis of the claim, including the relevant facts, arguments, and legal remedies sought by the Claimant.
2. **Advantages of Including the Statement of Claim:** Including the Statement of Claim in the Notice of Arbitration can offer several benefits. It provides the Respondent with detailed information about the nature and substance of the claim from the outset. This early

provision of information can promote clarity, transparency, and efficiency in the arbitration process, allowing the Respondent to better understand the case and formulate a response.

3. **Efficiency and Procedural Streamlining:** Combining the Notice of Arbitration and the Statement of Claim can streamline the procedural steps at the beginning of the arbitration. It eliminates the need for a separate submission of the Statement of Claim after the Notice of Arbitration, which could lead to faster initiation and progression of the proceedings.
4. **Potential for Clarification and Focus:** Including the Statement of Claim in the Notice of Arbitration can help ensure that the Claimant presents its case coherently and succinctly from the outset. This could lead to a more focused and organised presentation of the dispute, making it easier for both parties and the arbitral tribunal to grasp the issues at hand.
5. **Party Autonomy and Flexibility:** Article 4.5 demonstrates the HKIAC's commitment to party autonomy and procedural flexibility. By allowing the inclusion of the Statement of Claim, the provision gives parties the option to structure their initiation documents in a manner that best suits their case and preferences.
6. **Balancing Considerations:** While including the Statement of Claim in the Notice of Arbitration offers advantages, parties should also consider potential drawbacks. If a case involves a complex or voluminous Statement of Claim, including it in the Notice of Arbitration could result in a lengthier document that may be more challenging for the Respondent to review promptly. Parties should carefully assess the balance between providing comprehensive information and ensuring that the initiation process remains manageable.

In summary, Article 4.5 of the HKIAC Arbitration Rules 2018 provides parties with the option to include the Statement of Claim in the Notice of Arbitration when initiating arbitration proceedings. This provision offers potential benefits in terms of transparency, efficiency, and procedural streamlining, while also highlighting the importance of considering the practicalities and complexities of the specific case when deciding whether to include the Statement of Claim in the initial submission.

**4.6 If the Notice of Arbitration does not comply with these Rules or if the Registration Fee is not paid, HKIAC may request the Claimant to remedy the defect within an appropriate time limit. If the Claimant complies with such directions within the applicable time limit, the arbitration shall be deemed to have commenced under Article 4.2 on the date the initial version was received by HKIAC. If the Claimant fails to comply, the arbitration shall be deemed not to have commenced under Article 4.2 without prejudice to the Claimant's right to submit the same claim at a later date in a subsequent Notice of Arbitration.**

Article 4.6 of the HKIAC Arbitration Rules 2018 addresses the consequences and procedures in case of non-compliance with the requirements for the Notice of Arbitration or non-payment of the Registration Fee. Let us analyse the key elements of Article 4.6:

1. **Non-Compliance and Defects:** Article 4.6 applies when the Notice of Arbitration submitted by the Claimant does not comply with the requirements set out in the rules or when the required Registration Fee is not paid.
2. **Correction Opportunity:** The provision gives the HKIAC the authority to request the Claimant to remedy the defect within a specified time limit. This allows the Claimant an opportunity to correct the non-compliance or fulfil the payment requirement and proceed with the arbitration process.
3. **Deemed Commencement of Arbitration:** If the Claimant complies with the directions provided by the HKIAC within the applicable time limit, the arbitration is deemed to have commenced under Article 4.2 of the rules. Article 4.2 establishes the date of commencement as the receipt date of the Notice of Arbitration by the HKIAC.
4. **Timing Consideration:** The provision clarifies that the deemed commencement date is based on the initial version of the Notice of Arbitration received by the HKIAC. This underscores the importance of resolving any defects promptly to ensure that the arbitration process can begin as intended.
5. **Failure to Comply:** If the Claimant fails to comply with the directions provided by the HKIAC within the specified time limit, the provision states that the arbitration shall be deemed not to have commenced under Article 4.2. This means that the arbitration process has not officially started.
6. **Preservation of Rights:** Importantly, Article 4.6 states that the Claimant's failure to comply does not prejudice their right to submit the same claim at a later date in a subsequent Notice of Arbitration. This ensures that the Claimant has the opportunity to rectify the non-compliance or payment issue and initiate the arbitration process anew if desired.
7. **Balance Between Procedural Requirements and Party Rights:** Article 4.6 reflects a balance between enforcing procedural requirements and preserving the parties' rights to initiate arbitration. It emphasises the importance of compliance while recognising that errors or non-compliance should not necessarily bar parties from pursuing their claims through arbitration.
8. **Efficiency and Clarity:** The provision contributes to the efficiency and clarity of the arbitration process by providing a structured approach to addressing non-compliance issues and ensuring that the initiation of arbitration is done properly.

In summary, Article 4.6 of the HKIAC Arbitration Rules 2018 establishes a procedure for addressing non-compliance with the Notice of Arbitration requirements or non-payment of the Registration Fee. It outlines the steps for remedying defects, the deemed commencement of arbitration upon compliance, and the preservation of the Claimant's right to initiate arbitration at a later date if non-compliance persists. The provision contributes to the orderly and fair initiation of arbitration proceedings.

**4.7 Where an amendment is made to the Notice of Arbitration prior to the constitution of the arbitral tribunal, HKIAC has discretion to determine whether and to what extent such amendment affects other time limits under the Rules.**

Article 4.7 of the HKIAC Arbitration Rules 2018 addresses the authority of the HKIAC to make discretionary determinations regarding the impact of amendments to the Notice of Arbitration on other time limits under the rules. Let us analyse the key elements of Article 4.7:

1. **Amendment to Notice of Arbitration:** Article 4.7 applies when the initiating party (Claimant) seeks to make amendments to the Notice of Arbitration after its submission but before the arbitral tribunal is constituted. Amendments could involve changes to the claims, relief sought, or other details provided in the original Notice.
2. **Discretion of HKIAC:** The provision grants the HKIAC the discretion to determine whether and to what extent such amendments to the Notice of Arbitration affect other time limits specified in the HKIAC Arbitration Rules.
3. **Impact on Time Limits:** Amendments to the Notice of Arbitration could potentially impact various time limits set out in the arbitration process. These time limits could include those related to the appointment of arbitrators, the exchange of statements of claim and defence, the scheduling of hearings, and other procedural milestones.
4. **Balancing Flexibility and Procedural Integrity:** Article 4.7 reflects a balance between the need for procedural flexibility and the importance of maintaining the integrity and efficiency of the arbitration process. By granting the HKIAC the authority to determine the impact of amendments, the provision acknowledges that unforeseen circumstances or changes in the case may require adjustments to time limits.
5. **Consideration of Fairness and Practicality:** The provision allows the HKIAC to consider whether the proposed amendments and resulting changes to time limits are fair to both parties and practical in the context of the arbitration proceedings.
6. **Efficiency and Case Management:** The discretion given to the HKIAC supports efficient case management. It allows the institution to ensure that amendments are properly considered and integrated into the overall timeline of the arbitration process without unduly disrupting or delaying proceedings.
7. **Flexibility in Light of Evolving Cases:** Article 4.7 recognises that arbitration proceedings may evolve over time due to new information, changing circumstances, or developments in the case. The provision allows for a certain level of adaptability to ensure that the arbitration process remains effective and just.

In summary, Article 4.7 of the HKIAC Arbitration Rules 2018 provides the HKIAC with discretionary authority to determine the impact of amendments to the Notice of Arbitration on other time limits under the rules. This provision supports procedural flexibility and efficient case management while ensuring fairness and maintaining the overall integrity of the arbitration process.

**4.8 The Claimant shall notify, and lodge documentary verification with, HKIAC of the date the Respondent receives the Notice of Arbitration and any supporting materials included with it.**

Article 4.8 of the HKIAC Arbitration Rules 2018 outlines the requirement for the Claimant to notify the HKIAC of the date on which the Respondent receives the Notice of Arbitration and any supporting materials that were included with it. Let us analyse the key elements of Article 4.8:

1. Notification and Documentary Verification: Article 4.8 obliges the Claimant to perform two distinct actions:
  - a. Notify the HKIAC of the date on which the Respondent receives the Notice of Arbitration.
  - b. Provide documentary verification of the date the Respondent received the Notice of Arbitration and any accompanying materials.
2. Importance of Notification: The requirement for the Claimant to notify the HKIAC of the date of receipt by the Respondent serves to inform the institution of a critical milestone in the arbitration process. This notification triggers various procedural timelines and actions, such as the appointment of arbitrators, the filing of a response by the Respondent, and the overall scheduling of the proceedings.
3. Ensuring Timely Communication: Prompt and accurate communication of the receipt date is essential to maintaining an efficient arbitration process. It ensures that the arbitral tribunal, the HKIAC, and all parties involved are aware of the precise timeline for responding and proceeding with the case.
4. Documentary Verification: The Claimant is required not only to notify the HKIAC of the receipt date but also to provide documentary verification of that date. This verification could include proof of delivery, such as acknowledgment of receipt, courier tracking records, or any other relevant evidence that confirms when the Respondent received the Notice of Arbitration.
5. Transparency and Record Keeping: Article 4.8 promotes transparency and record keeping in the arbitration process. It ensures that there is a clear and verifiable record of the date on which the arbitration proceedings were formally initiated from the perspective of the Respondent.
6. Avoiding Disputes: By requiring documentary verification, the provision helps prevent disputes or disagreements between the parties regarding the actual date of receipt of the Notice of Arbitration. This verification requirement contributes to the overall fairness and credibility of the arbitration process.
7. HKIAC's Role: Article 4.8 underscores the HKIAC's role as an administering institution that oversees and facilitates the arbitration process. By receiving the Claimant's notification and verification, the HKIAC can ensure that all procedural steps are appropriately initiated and timed.

In summary, Article 4.8 of the HKIAC Arbitration Rules 2018 mandates the Claimant to notify the HKIAC of the date on which the Respondent receives the Notice of Arbitration and to provide documentary verification of that date. This requirement contributes to the transparency, efficiency, and credibility

of the arbitration process by ensuring accurate record keeping and informed procedural decision-making.

## Article 5 – Answer to the Notice of Arbitration

**5.1 Within 30 days from receipt of the Notice of Arbitration, the Respondent shall communicate an Answer to the Notice of Arbitration to HKIAC and the Claimant. The Answer to the Notice of Arbitration shall include the following:**

- (a) the name, address, facsimile number, and/or email address of the Respondent and of its representatives (if different from the description contained in the Notice of Arbitration);**
- (b) any plea that an arbitral tribunal constituted under these Rules lacks jurisdiction;**
- (c) the Respondent’s comments on the particulars set forth in the Notice of Arbitration, pursuant to Article 4.3(e);**
- (d) the Respondent’s answer to the relief or remedy sought in the Notice of Arbitration, pursuant to Article 4.3(f);**
- (e) the Respondent’s proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;**
- (f) the Respondent’s proposal and any comments regarding the designation of a sole arbitrator under Article 7 or the Respondent’s designation of an arbitrator under Article 8;**
- (g) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and**
- (h) confirmation that copies of the Answer to the Notice of Arbitration and any supporting materials included with it have been or are being communicated simultaneously to all other parties to the arbitration by one or more means of service to be identified in such confirmation.**

Article 5.1 of the HKIAC Arbitration Rules 2018 outlines the requirements and contents of the Respondent’s Answer to the Notice of Arbitration. This provision sets out the specific information that the Respondent is required to provide within a certain timeframe after receiving the Notice of Arbitration. Let us analyse the key elements of Article 5.1:

1. **Timeframe for Submission:** Article 5.1 specifies that the Respondent has 30 days from the receipt of the Notice of Arbitration to submit an Answer to the Notice of Arbitration. This timeframe is designed to ensure a timely and efficient exchange of information between the parties and facilitate the progression of the arbitration process.
2. **Contents of the Answer:** The Respondent’s Answer to the Notice of Arbitration must include the following elements:



- a. Identification of Parties and Representatives: The Respondent must provide its name, address, facsimile number, and/or email address, along with the details of its representatives, if different from those stated in the Notice of Arbitration.
  - b. Jurisdictional Plea: The Answer must indicate if the Respondent is challenging the jurisdiction of the arbitral tribunal constituted under the HKIAC Arbitration Rules. This allows the tribunal and the parties to address jurisdictional issues early in the process.
  - c. Comments on Particulars: The Respondent must provide comments on the particulars set forth in the Notice of Arbitration, as specified in Article 4.3(e). This can include responding to the description of the claim, the nature of the dispute, and any amount claimed.
  - d. Response to Relief Sought: The Answer should include the Respondent's response to the relief or remedy sought in the Notice of Arbitration, as outlined in Article 4.3(f). This allows the Respondent to state its position on the claims and remedies sought by the Claimant.
  - e. Proposal for Number of Arbitrators: Similar to the Claimant's proposal, if the parties have not previously agreed on the number of arbitrators (one or three), the Respondent must provide its proposal on the number of arbitrators.
  - f. Arbitrator Designation: The Respondent's proposal and any comments regarding the designation of a sole arbitrator under Article 7 or the Respondent's designation of an arbitrator under Article 8 should be included.
  - g. Funding Agreement Disclosure: The Respondent must indicate the existence of any funding agreement and identify any third-party funder pursuant to Article 44. This promotes transparency regarding financial arrangements related to the arbitration.
  - h. Confirmation of Service: Similar to the Claimant's obligation, the Respondent must confirm that copies of the Answer to the Notice of Arbitration and any supporting materials are being communicated to all other parties using one or more means of service.
3. Transparency and Procedural Fairness: Article 5.1 reflects the HKIAC's emphasis on transparency and procedural fairness by requiring the Respondent to provide detailed information and responses to the claims and requests made in the Notice of Arbitration. This ensures that both parties have a clear understanding of each other's positions at an early stage of the proceedings.

In summary, Article 5.1 of the HKIAC Arbitration Rules 2018 outlines the requirements for the Respondent's Answer to the Notice of Arbitration. It details the specific information that the Respondent must provide within 30 days of receiving the Notice. The provision promotes transparency, efficient communication, and procedural fairness by ensuring that both parties have the opportunity to present their positions and engage in a meaningful exchange of information from the outset of the arbitration process.

**5.2 The Answer to the Notice of Arbitration may also include the Statement of Defence, if the Notice of Arbitration contained the Statement of Claim.**

Article 5.2 of the HKIAC Arbitration Rules 2018 addresses the content and structure of the Answer to the Notice of Arbitration in cases where the Notice of Arbitration includes the Statement of Claim. Let us analyse this provision:

1. **Notice of Arbitration and Statement of Claim:** When a party initiates an arbitration by submitting a Notice of Arbitration, they often provide a statement outlining their claim, which is referred to as the Statement of Claim. This document presents the basis for the arbitration and the relief sought by the claiming party.
2. **Answer to the Notice of Arbitration:** The responding party is required to submit an Answer to the Notice of Arbitration, which is their response to the claims raised in the Statement of Claim. The Answer typically addresses the legal and factual issues raised by the claiming party and presents the responding party's position and defences.
3. **Combining Statement of Defence with Answer:** Article 5.2 stipulates that if the Notice of Arbitration itself includes the Statement of Claim, the Answer to the Notice of Arbitration submitted by the responding party can also function as the Statement of Defence. In other words, if the claims brought in the Notice of Arbitration are set out in detail, the responding party can address these claims directly in their Answer without the need for a separate document labelled "Statement of Defence".
4. **Streamlining the Process:** This provision serves to streamline the arbitration process when the Notice of Arbitration is comprehensive and includes detailed allegations and claims. It recognises that in such cases, there may be no need for a distinct document labelled "Statement of Defence", as the responding party's Answer can effectively address and refute the claims raised by the other party.
5. **Clarity and Efficiency:** The provision ensures clarity and efficiency by allowing the responding party to structure their submission in a way that directly responds to the claims, arguments, and evidence presented in the Notice of Arbitration. This approach can simplify the arbitration process and make it easier for both parties and the arbitral tribunal to understand the issues in dispute.
6. **Parties' Rights and Procedural Flexibility:** It is important to note that this provision does not preclude parties from submitting separate documents if they choose to do so. If the parties prefer to maintain a clear distinction between the Answer and the Statement of Defence, they are free to follow that traditional structure.

In summary, Article 5.2 of the HKIAC Arbitration Rules 2018 allows the responding party to include their Statement of Defence within their Answer to the Notice of Arbitration when the Notice itself contains the Statement of Claim. This approach streamlines the process and can enhance efficiency, especially in cases where the claims and defences are already presented in a comprehensive manner within the initial Notice of Arbitration.

**5.3 Any counterclaim, set-off defence or cross-claim shall, to the extent possible, be raised with the Respondent’s Answer to the Notice of Arbitration, which should include in relation to any such counterclaim, set-off defence or cross-claim:**

- (a) a copy of the contract (s) or other legal instrument(s) out of or in relation to which it arises, or reference thereto;**
- (b) a description of the general nature of the counterclaim, set-off defence and/or cross-claim, and an indication of the amount involved, if any; and**
- (c) the relief or remedy sought.**

Article 5.3 of the HKIAC Arbitration Rules 2018 addresses the procedure for raising counterclaims, set-off defences, or cross-claims in response to the Notice of Arbitration. Let us analyse the key elements of Article 5.3:

1. **Inclusion of Counterclaims, Set-Off Defences, or Cross-Claims:** Article 5.3 specifies that any counterclaim, set-off defence, or cross-claim should, to the extent possible, be raised by the Respondent in its Answer to the Notice of Arbitration. This means that when the Respondent submits its response to the claims brought by the Claimant, it may also include its own claims, defences, or cross-claims.
2. **Mandatory Requirements for Inclusion:** If the Respondent chooses to raise a counterclaim, set-off defence, or cross-claim, Article 5.3 sets out certain mandatory requirements that must be included in the Answer to the Notice of Arbitration. These requirements are as follows:
  - a. **Contract or Legal Instrument Reference:** The Respondent must provide a copy of the contract(s) or other legal instrument(s) out of or in relation to which the counterclaim, set-off defence, or cross-claim arises, or make a reference to these documents. This ensures that the basis for the Respondent’s claims or defences is clear and transparent.
  - b. **Description of Nature and Amount:** The Answer must contain a description of the general nature of the counterclaim, set-off defence, or cross-claim, along with an indication of the amount involved, if applicable. This requirement ensures that the opposing party and the arbitral tribunal understand the substance and scope of the Respondent’s claims or defences.
  - c. **Relief or Remedy Sought:** The Respondent’s Answer should also specify the relief or remedy sought in relation to the counterclaim, set-off defence, or cross-claim. This clarifies the Respondent’s objectives and the outcome it seeks from the arbitration in connection with its additional claims or defences.
3. **Efficiency and Procedural Clarity:** Article 5.3 promotes efficiency and procedural clarity by requiring the parties to present all relevant claims, defences, and cross-claims at an early stage of the arbitration process. This enables the arbitral tribunal and the parties to have a comprehensive view of the dispute and facilitates more effective case management.
4. **Balancing Considerations:** While Article 5.3 encourages the inclusion of counterclaims, set-off defences, or cross-claims in the Respondent’s Answer, parties should carefully

consider the complexity and significance of these additional claims or defences. In some cases, it may be more appropriate to initiate separate proceedings for certain claims or defences rather than including them in the arbitration.

5. Supporting Fair and Effective Proceedings: Article 5.3 reflects the HKIAC's commitment to ensuring fairness and effectiveness in the arbitration process by requiring parties to present their positions comprehensively and transparently. This helps avoid potential disputes or additional rounds of submissions at later stages of the proceedings.

In summary, Article 5.3 of the HKIAC Arbitration Rules 2018 mandates that counterclaims, set-off defences, or cross-claims should, to the extent possible, be raised in the Respondent's Answer to the Notice of Arbitration. The provision establishes specific requirements for including these additional claims or defences, contributing to procedural efficiency, transparency, and procedural fairness in the arbitration process.

#### **5.4 HKIAC shall transmit the case file to the arbitral tribunal as soon as it has been constituted, provided that any deposit requested by HKIAC has been paid, unless HKIAC determines otherwise.**

Article 5.4 of the HKIAC Arbitration Rules 2018 pertains to the transmission of the case file to the arbitral tribunal once it has been constituted. Let us analyse the key elements of Article 5.4:

1. Transmission of Case File: Article 5.4 establishes that the HKIAC is responsible for transmitting the case file to the arbitral tribunal as soon as the tribunal has been constituted. The case file typically includes all relevant documents and materials related to the arbitration proceedings, such as the pleadings, exhibits, statements, and other submissions made by the parties.
2. Condition: Deposit Payment: The provision outlines an important condition for the transmission of the case file. It states that the case file will be transmitted once any deposit requested by the HKIAC has been paid. This deposit is typically intended to cover the tribunal's fees and administrative expenses, ensuring that the arbitration process is adequately funded.
3. Discretion of HKIAC: While the default rule is that the case file will be transmitted upon constitution of the arbitral tribunal and deposit payment, Article 5.4 allows for the HKIAC to determine otherwise. This means that the HKIAC retains the authority to delay the transmission of the case file under certain circumstances, if deemed necessary or appropriate.
4. Efficient Case Management: The provision serves the purpose of efficient case management by ensuring that the arbitral tribunal has access to the relevant information and materials required to proceed with the arbitration. Once the tribunal is constituted and the deposit is paid, the transmission of the case file helps facilitate the progression of the proceedings.
5. Balancing Transparency and Timing: Article 5.4 reflects a balance between ensuring transparency and giving the arbitral tribunal access to the necessary information while also considering the practical and administrative aspects of the arbitration process. The

condition of deposit payment ensures that the tribunal's financial needs are met before it receives the case file.

6. **HKIAC's Role as Administrator:** The provision underscores the role of the HKIAC as an administrative institution overseeing the arbitration process. It demonstrates the institution's responsibility for managing and coordinating various aspects of the proceedings, including the transmission of essential documents.
7. **Flexibility and Adaptability:** The provision allows for flexibility, as the HKIAC may determine alternative timing for transmitting the case file if circumstances warrant it. This flexibility ensures that the arbitration process can adapt to the unique requirements of each case.

In summary, Article 5.4 of the HKIAC Arbitration Rules 2018 specifies the timing and conditions for the transmission of the case file to the arbitral tribunal. It emphasises the role of the HKIAC in managing the arbitration process, balancing transparency with practical considerations, and ensuring that the arbitral tribunal is equipped with the necessary materials to conduct the proceedings effectively once it has been constituted and the required deposit has been paid.

### SECTION III. THE ARBITRAL TRIBUNAL

#### Article 6 – Number of Arbitrators

**6.1 If the parties have not agreed upon the number of arbitrators before the arbitration commences or within 30 days from the date the Notice of Arbitration is received by the Respondent, HKIAC shall decide whether the case shall be referred to a sole arbitrator or to three arbitrators, taking into account the circumstances of the case.**

Article 6.1 of the HKIAC Arbitration Rules 2018 addresses the process for determining the number of arbitrators when the parties have not agreed upon this aspect before the arbitration commences or within a specified timeframe after the receipt of the Notice of Arbitration by the Respondent. Let us analyse the key elements of Article 6.1:

1. **Number of Arbitrators:** Article 6.1 deals with the critical issue of determining the number of arbitrators who will adjudicate the dispute. The choice between a sole arbitrator and a panel of three arbitrators can significantly impact the arbitration process and its costs.
2. **Default Rule for Undecided Parties:** The provision applies when the parties have not reached an agreement on the number of arbitrators before the arbitration begins or within 30 days from the date the Respondent receives the Notice of Arbitration. In such cases, the HKIAC steps in to make the determination.
3. **HKIAC’s Decision-Making Role:** Article 6.1 assigns the decision-making authority to the HKIAC. The institution is responsible for deciding whether the case should proceed with a sole arbitrator or a panel of three arbitrators based on the circumstances of the case.
4. **Consideration of Circumstances:** The provision emphasises that the HKIAC’s decision should take into account the circumstances of the case. This includes factors such as the complexity of the dispute, the monetary value involved, the legal and factual issues, and the parties’ preferences.
5. **Flexibility and Pragmatism:** Article 6.1 demonstrates flexibility and pragmatism in the arbitration process. It acknowledges that parties may not always reach an agreement on the number of arbitrators, and it provides a mechanism for resolving this matter in a way that aligns with the specific circumstances of the dispute.
6. **Promotion of Efficient Dispute Resolution:** The provision contributes to the efficient resolution of disputes by ensuring that the arbitration process can proceed even if the parties do not reach a prompt agreement on the number of arbitrators. By delegating this decision to the HKIAC, potential delays are minimised.
7. **Maintaining Fairness and Impartiality:** Article 6.1 reinforces the HKIAC’s commitment to maintaining fairness and impartiality in the arbitration process. The institution’s decision ensures that the number of arbitrators is appropriate for the complexity and nature of the dispute, preventing any potential bias.
8. **Preservation of Party Autonomy:** While the provision grants decision-making authority to the HKIAC in the absence of an agreement, it still preserves party autonomy to the extent possible. Parties have the opportunity to agree on the number of arbitrators in advance, and if they do so, that agreement would prevail.

In summary, Article 6.1 of the HKIAC Arbitration Rules 2018 outlines the process for determining the number of arbitrators when the parties have not reached an agreement on this matter. It grants the HKIAC the authority to decide whether a sole arbitrator or a panel of three arbitrators will preside over the case, taking into account the specific circumstances of the dispute. This provision promotes flexibility, efficiency, fairness, and impartiality in the arbitration process while respecting party autonomy where possible.

**6.2 Where a case is conducted under an Expedited Procedure in accordance with Article 42, the provisions of Article 42.2(a) and (b) shall apply.**

Article 6.2 of the HKIAC Arbitration Rules 2018 refers to the application of certain provisions related to the Expedited Procedure provided in Article 42.2(a) and (b) in cases conducted under that procedure. Let us analyse the key elements of Article 6.2:

1. Expedited Procedure Reference: Article 6.2 states that when a case is conducted under the Expedited Procedure as outlined in Article 42 of the HKIAC Arbitration Rules 2018, specific provisions from Article 42.2(a) and (b) will apply to that case.
2. Cross-Referencing to Article 42.2(a) and (b): The provision does not provide the full text of Article 42.2(a) and (b), but it cross-references those subsections. This means that the content of Article 42.2(a) and (b) must be examined to understand the provisions that will apply in cases conducted under the Expedited Procedure.
3. Expedited Procedure Context: The reference to the Expedited Procedure suggests that Article 6.2 is relevant in cases where parties have agreed to or are subject to an expedited arbitration process, typically reserved for disputes of lower value or those requiring swift resolution.
4. Potential Application of Procedural Elements: Article 42.2(a) and (b) likely contains procedural elements specific to the Expedited Procedure. These could include provisions related to the constitution of the arbitral tribunal, the appointment of a sole arbitrator, the timeframe for submitting statements of claim and defence, the conduct of hearings, and other procedural aspects aimed at streamlining the arbitration process.
5. Efficiency and Speed: The Expedited Procedure is designed to expedite the arbitration process, reducing time and costs. The application of specific provisions under Article 42.2(a) and (b) in Article 6.2 underscores the HKIAC's intention to ensure that cases conducted under this procedure adhere to the principles of efficiency and speed.
6. Fairness and Due Process: While the Expedited Procedure emphasises efficiency, it is also important to ensure fairness and due process. The referenced provisions in Article 42.2(a) and (b) likely strike a balance between expeditious resolution and maintaining the parties' rights to present their cases adequately.

In summary, Article 6.2 of the HKIAC Arbitration Rules 2018 cross-references specific provisions in Article 42.2(a) and (b) in cases conducted under the Expedited Procedure. This provision indicates that when parties opt for the Expedited Procedure, certain procedural elements related to efficiency and speed will apply to ensure a streamlined arbitration process while upholding principles of fairness and

due process. To fully understand the implications, the content of Article 42.2(a) and (b) would need to be examined.

## Article 7 – Appointment of a Sole Arbitrator

### 7.1 Unless the parties have agreed otherwise:

- (a) where the parties have agreed before the arbitration commences that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within 30 days from the date the Notice of Arbitration was received by the Respondent.
- (b) where the parties have agreed after the arbitration commences to refer the dispute to a sole arbitrator, they shall jointly designate the sole arbitrator within 15 days from the date of that agreement.
- (c) where the parties have not agreed upon the number of arbitrators and HKIAC has decided that the dispute shall be referred to a sole arbitrator, the parties shall jointly designate the sole arbitrator within 15 days from the date HKIAC's decision was received by the last of them.

Article 7.1 of the HKIAC Arbitration Rules 2018 outlines the process for designating a sole arbitrator in cases where the parties have not agreed otherwise. The provision establishes specific timelines and procedures for designating a sole arbitrator based on different scenarios. Let us analyse the key elements of Article 7.1:

1. **Default Rule for Sole Arbitrator Designation:** Article 7.1 sets out the default rule for designating a sole arbitrator when the parties have not agreed otherwise. It specifies that the parties are required to jointly designate a sole arbitrator within certain timeframes, depending on when the agreement or decision to proceed with a sole arbitrator is made.
2. **Joint Designation Requirement:** In all three scenarios outlined in Article 7.1(a), (b), and (c), the parties are required to jointly designate the sole arbitrator. This joint designation ensures that both parties have a say in the selection process, promoting transparency and impartiality.
3. (a) **Pre-Agreed Sole Arbitrator:** If the parties agreed before the arbitration commences that the dispute shall be referred to a sole arbitrator, they have 30 days from the date the Notice of Arbitration was received by the Respondent to jointly designate the sole arbitrator.
4. (b) **Post-Agreement Sole Arbitrator:** If the parties agree to refer the dispute to a sole arbitrator after the arbitration has commenced, they have 15 days from the date of that agreement to jointly designate the sole arbitrator.
5. (c) **HKIAC-Appointed Sole Arbitrator:** When the parties have not agreed upon the number of arbitrators, and the HKIAC has decided that the dispute shall be referred to a sole arbitrator, the parties have 15 days from the date HKIAC's decision was received by the last of them to jointly designate the sole arbitrator.



6. Flexibility and Party Autonomy: Article 7.1 respects party autonomy by allowing the parties to agree on the designation of a sole arbitrator either before or after the arbitration commences. It also accommodates cases where the HKIAC has made the decision to proceed with a sole arbitrator.
7. Timeliness and Case Progression: The provision's clear and defined timeframes for sole arbitrator designation help ensure timely progress in the arbitration process. Prompt designation of the sole arbitrator contributes to efficient case management and reduces potential delays.
8. HKIAC's Administrative Role: Article 7.1 highlights the HKIAC's administrative role in facilitating the arbitration process. In scenarios where the parties have not agreed upon the number of arbitrators, the HKIAC's decision triggers the timeframe for sole arbitrator designation.

In summary, Article 7.1 of the HKIAC Arbitration Rules 2018 establishes the procedure for designating a sole arbitrator when the parties have not agreed otherwise. It specifies timelines for joint designation in various scenarios, ensuring timely and efficient progress in the arbitration process while respecting party autonomy and the HKIAC's administrative role.

## **7.2 If the parties fail to designate the sole arbitrator within the applicable time limit, HKIAC shall appoint the sole arbitrator.**

Article 7.2 of the HKIAC Arbitration Rules 2018 addresses the situation where the parties fail to designate a sole arbitrator within the specified time limit. Let us analyse the key elements of Article 7.2:

1. Default Appointment by HKIAC: Article 7.2 states that if the parties do not meet the applicable time limit for designating a sole arbitrator, the responsibility for appointing the sole arbitrator shifts to the HKIAC. In other words, the HKIAC will step in and make the appointment on behalf of the parties.
2. Preservation of Progress: The provision ensures that the arbitration process can continue without undue delay even if the parties are unable to reach an agreement on the designation of a sole arbitrator within the specified timeframe. This preserves the overall progress and momentum of the arbitration proceedings.
3. Administrative Role of HKIAC: Article 7.2 underscores the HKIAC's role as an administrative institution that assists in the smooth operation of the arbitration process. Its intervention in appointing a sole arbitrator helps prevent potential procedural bottlenecks and ensures the proceedings move forward.
4. Efficiency and Timeliness: By allowing the HKIAC to appoint a sole arbitrator when the parties fail to do so, Article 7.2 promotes efficiency and timeliness in the arbitration process. Delays caused by disagreements or inaction on the part of the parties are minimised.
5. Neutral Third-Party Appointment: The provision contributes to the impartiality and fairness of the arbitration process. The appointment of a sole arbitrator by the HKIAC

serves as a neutral and independent selection, avoiding any potential bias that could arise from the parties' disagreement.

6. **Balancing Party Autonomy and Progress:** While the parties have the autonomy to designate a sole arbitrator themselves, Article 7.2 ensures that the arbitration process does not come to a standstill due to a failure to agree. It strikes a balance between respecting party autonomy and maintaining the procedural flow of the arbitration.
7. **Flexibility and Adaptability:** Article 7.2 allows the arbitration process to adapt to different scenarios and circumstances. It acknowledges that disagreements or logistical challenges may arise in the designation of a sole arbitrator and provides a mechanism to address such situations.

In summary, Article 7.2 of the HKIAC Arbitration Rules 2018 empowers the HKIAC to appoint a sole arbitrator if the parties fail to meet the applicable time limit for designating one. This provision ensures the continuation of the arbitration process, promotes efficiency, maintains impartiality, and strikes a balance between party autonomy and the need for timely progress.

**7.3 Where the parties have agreed on a different procedure for designating the sole arbitrator and such procedure does not result in a designation within a time limit agreed by the parties or set by HKIAC, HKIAC shall appoint the sole arbitrator.**

Article 7.3 of the HKIAC Arbitration Rules 2018 deals with situations where the parties have agreed on a specific procedure for designating a sole arbitrator, but that procedure fails to produce a designation within the agreed-upon time limit. Let us analyse the key elements of Article 7.3:

1. **Alternative Designation Procedure:** Article 7.3 assumes that the parties have agreed on a different or alternative procedure for designating a sole arbitrator. This could mean that the parties have outlined a specific method, criteria, or process by which they intend to jointly designate a sole arbitrator.
2. **Failure of the Agreed Procedure:** The provision comes into play when the procedure agreed upon by the parties fails to result in the designation of a sole arbitrator within the time limit specified by the parties themselves or by the HKIAC. In such cases, the parties' chosen procedure has proven ineffective or has not yielded a resolution within the expected timeframe.
3. **HKIAC's Intervention:** Article 7.3 mandates that if the parties' agreed procedure fails, and no sole arbitrator has been designated within the specified time limit, the responsibility for appointing the sole arbitrator shifts to the HKIAC. The HKIAC will step in and make the appointment on behalf of the parties.
4. **Ensuring Procedural Progress:** The provision is designed to ensure that the arbitration process does not stall or face unnecessary delays due to a breakdown in the parties' agreed-upon procedure for designating a sole arbitrator. The HKIAC's intervention keeps the arbitration process moving forward.
5. **Preservation of Fairness and Impartiality:** By allowing the HKIAC to appoint a sole arbitrator when the parties' agreed procedure fails, Article 7.3 helps maintain the

principles of fairness and impartiality. The HKIAC's appointment ensures an independent and neutral selection, safeguarding the integrity of the arbitration proceedings.

6. **Flexibility and Problem Solving:** Article 7.3 reflects the flexibility of the arbitration process and its ability to adapt to unforeseen circumstances. It acknowledges that despite the parties' intentions to follow a specific procedure, practical challenges may arise, and the provision offers a practical solution to address such challenges.
7. **Party Autonomy and HKIAC's Role:** While Article 7.3 allows parties to determine their own procedure for designating a sole arbitrator, it also acknowledges the HKIAC's role as an administrative institution overseeing the arbitration process. The provision strikes a balance between respecting party autonomy and ensuring the arbitration process's orderly progression.

In summary, Article 7.3 of the HKIAC Arbitration Rules 2018 provides for the situation where the parties have agreed on an alternative procedure for designating a sole arbitrator, but that procedure fails to produce a designation within the agreed-upon time limit. In such cases, the HKIAC takes over the responsibility of appointing the sole arbitrator to ensure the continued progress of the arbitration process, while upholding principles of fairness and impartiality.

## Article 8 – Appointment of Three Arbitrators

**8.1 Where a dispute between two parties is referred to three arbitrators, the arbitral tribunal shall be constituted as follows, unless the parties have agreed otherwise:**

- (a) **where the parties have agreed before the arbitration commences that the dispute shall be referred to three arbitrators, each party shall designate in the Notice of Arbitration and the Answer to the Notice of Arbitration, respectively, one arbitrator. If either party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.**
- (b) **where the parties have agreed after the arbitration commences to refer the dispute to three arbitrators, the Claimant shall designate an arbitrator within 15 days from the date of that agreement, and the Respondent shall designate an arbitrator within 15 days from receiving notice of the Claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.**
- (c) **where the parties have not agreed upon the number of arbitrators and HKIAC has decided that the dispute shall be referred to three arbitrators, the Claimant shall designate an arbitrator within 15 days from receipt of HKIAC's decision, and the Respondent shall designate an arbitrator within 15 days from receiving notice of the Claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.**
- (d) **the two arbitrators so appointed shall designate a third arbitrator, who shall act as the presiding arbitrator. Failing such designation within 30 days from the confirmation or appointment of the second arbitrator, HKIAC shall appoint the presiding arbitrator.**

Article 8.1 of the HKIAC Arbitration Rules 2018 outlines the process for constituting an arbitral tribunal when a dispute between two parties is referred to three arbitrators. The provision establishes the steps

for appointing these arbitrators and the presiding arbitrator in various scenarios. Let us analyse the key elements of Article 8.1:

1. **Composition of the Arbitral Tribunal:** Article 8.1 is concerned with the composition of an arbitral tribunal in cases where three arbitrators are required for the resolution of a dispute. It specifies the process by which the arbitrators and the presiding arbitrator are appointed.
  - a. **Pre-Agreed Three Arbitrators:** In cases where the parties have agreed before the arbitration commences that the dispute shall be referred to three arbitrators, each party is required to designate one arbitrator in the Notice of Arbitration and the Answer to the Notice of Arbitration, respectively. If a party fails to make a designation, the HKIAC will appoint the arbitrator.
  - b. **Post-Agreement Three Arbitrators:** If the parties agree after the arbitration has commenced to refer the dispute to three arbitrators, the Claimant must designate an arbitrator within 15 days from the date of that agreement. The Respondent, in turn, must designate an arbitrator within 15 days of receiving notice of the Claimant's designation. The HKIAC will appoint an arbitrator if either party fails to make a designation.
  - c. **HKIAC-Appointed Three Arbitrators:** When the parties have not agreed upon the number of arbitrators, and the HKIAC has decided that the dispute should be referred to three arbitrators, the Claimant has 15 days from receipt of HKIAC's decision to designate an arbitrator. The Respondent has 15 days from receiving notice of the Claimant's designation to designate its arbitrator. If a party fails to designate an arbitrator, the HKIAC will appoint the arbitrator.
  - d. **Presiding Arbitrator Designation:** The two arbitrators appointed by the parties or the HKIAC (as described in scenarios (a), (b), and (c)) are required to designate a third arbitrator, who will act as the presiding arbitrator. If the designation is not made within 30 days from the confirmation or appointment of the second arbitrator, the HKIAC will appoint the presiding arbitrator.
2. **Timeframes and Procedural Efficiency:** Article 8.1 sets specific timeframes for the parties to designate arbitrators, ensuring that the constitution of the arbitral tribunal is prompt and efficient. It establishes deadlines for various steps of the appointment process, including designations and presiding arbitrator selection.
3. **HKIAC's Role in Appointment:** The provision underscores the administrative role of the HKIAC in appointing arbitrators when parties fail to do so or when a presiding arbitrator is not designated within the specified timeframe.
4. **Party Autonomy and Flexibility:** While Article 8.1 provides a default procedure for appointing arbitrators, it acknowledges the parties' autonomy by allowing them to agree on an alternative process for constituting the arbitral tribunal if they wish.

In summary, Article 8.1 of the HKIAC Arbitration Rules 2018 outlines the process for constituting an arbitral tribunal when a dispute is referred to three arbitrators. It establishes the steps for appointing individual arbitrators and the presiding arbitrator in different scenarios, emphasising procedural efficiency, the role of the HKIAC, and party autonomy.

**8.2 Where there are more than two parties to the arbitration and the dispute is to be referred to three arbitrators, the arbitral tribunal shall be constituted as follows, unless the parties have agreed otherwise:**

- (a) the Claimant or group of Claimants shall designate an arbitrator and the Respondent or group of Respondents shall designate an arbitrator in accordance with the procedure in Article 8.1(a), (b) or (c), as applicable;**
- (b) if the parties have designated arbitrators in accordance with Article 8.2(a), the procedure in Article 8.1(d) shall apply to the designation of the presiding arbitrator;**
- (c) in the event of any failure to designate arbitrators under Article 8.2(a) or if the parties do not all agree that they represent two separate sides (as Claimant and Respondent respectively) for the purposes of designating arbitrators, HKIAC may appoint all members of the arbitral tribunal with or without regard to any party's designation.**

Article 8.2 of the HKIAC Arbitration Rules 2018 addresses the composition of an arbitral tribunal when there are more than two parties to the arbitration and the dispute is to be referred to three arbitrators. The provision outlines the steps for appointing these arbitrators and the presiding arbitrator, as well as the role of the HKIAC in case of failure to designate arbitrators. Let us analyse the key elements of Article 8.2:

1. **Designation of Arbitrators by Claimant and Respondent:** In cases involving more than two parties where the dispute is referred to three arbitrators, Article 8.2(a) specifies that the Claimant or group of Claimants and the Respondent or group of Respondents shall each designate an arbitrator. The procedure for designating these arbitrators follows the principles outlined in Article 8.1(a), (b), or (c), depending on whether the parties agreed to a pre-arbitration designation, a post-commencement designation, or an HKIAC-appointed designation.
2. **Designation of Presiding Arbitrator:** If the parties have designated arbitrators in accordance with Article 8.2(a), Article 8.2(b) stipulates that the procedure outlined in Article 8.1(d) shall apply to the designation of the presiding arbitrator. This means that the two arbitrators designated by the parties will be responsible for designating the presiding arbitrator, and the procedure described in Article 8.1(d) for failing such designation within 30 days shall be followed.
3. **HKIAC's Role in Appointing All Members of the Arbitral Tribunal:** In the event of a failure to designate arbitrators under Article 8.2(a) or if the parties do not all agree that they represent two separate sides (Claimant and Respondent) for the purpose of designating arbitrators, Article 8.2(c) grants authority to the HKIAC. In such cases, the HKIAC may appoint all members of the arbitral tribunal, either with or without regard to any party's designation.
4. **Designation Challenges in Multi-Party Arbitration:** Article 8.2 recognises that designating arbitrators in multi-party arbitrations can be complex, especially when there are multiple Claimants or Respondents. It provides a flexible framework to address these challenges and to ensure that the arbitral tribunal can be constituted in a fair and efficient manner.

5. **HKIAC’s Administrative Discretion:** The provision highlights the administrative role of the HKIAC in facilitating the arbitration process. It grants the HKIAC the discretion to appoint all members of the arbitral tribunal if designation challenges arise or if the parties do not represent distinct sides for the purpose of arbitrator selection.
6. **Party Autonomy and Customisation:** While Article 8.2 provides a default procedure for constituting an arbitral tribunal in multi-party disputes, it allows parties to agree on an alternative procedure if they wish. This preserves party autonomy and customisation in the arbitration process.

In summary, Article 8.2 of the HKIAC Arbitration Rules 2018 addresses the constitution of an arbitral tribunal in multi-party disputes requiring three arbitrators. It outlines the steps for appointing arbitrators and the presiding arbitrator, provides flexibility to accommodate various scenarios, and grants the HKIAC the authority to appoint all members of the arbitral tribunal in case of designation challenges or lack of agreement among the parties.

**8.3 Where the parties have agreed on a different procedure for designating three arbitrators and such procedure does not result in the designation of an arbitrator within a time limit agreed by the parties or set by HKIAC, HKIAC shall appoint the arbitrator.**

Article 8.3 of the HKIAC Arbitration Rules 2018 deals with a scenario in which the parties have agreed on a specific procedure for designating three arbitrators, but that procedure fails to result in the designation of an arbitrator within the agreed-upon time limit. Let us analyse the key elements of Article 8.3:

1. **Alternative Designation Procedure:** Similar to Article 8.2, Article 8.3 assumes that the parties have agreed on an alternative or different procedure for designating three arbitrators. This could mean that the parties have outlined a specific method, criteria, or process for appointing these arbitrators.
2. **Failure of the Agreed Procedure:** Article 8.3 comes into play when the procedure agreed upon by the parties fails to result in the designation of an arbitrator within the time limit specified by the parties or by the HKIAC. This indicates that the parties’ chosen procedure has not been successful in producing the desired result.
3. **HKIAC’s Intervention:** The provision stipulates that if the parties’ agreed procedure fails to result in the designation of an arbitrator within the specified time limit, the responsibility for appointing the arbitrator shifts to the HKIAC. The HKIAC will step in and make the appointment on behalf of the parties.
4. **Ensuring Procedural Progress:** Article 8.3 is designed to prevent any potential delays or obstacles in the arbitration process that may arise from the parties’ inability to agree on the appointment of arbitrators within the stipulated timeframe.
5. **Preservation of Fairness and Impartiality:** Similar to other related provisions in the HKIAC Arbitration Rules, Article 8.3 underscores the principle of fairness and impartiality in the arbitration process. The HKIAC’s appointment ensures that the selection of an arbitrator is neutral and independent.

6. **Flexibility and Problem-Solving:** Article 8.3 reflects the flexibility of the arbitration process and its ability to adapt to unforeseen circumstances. It acknowledges that practical challenges may arise, even when parties have agreed on a specific procedure, and provides a practical solution to address such challenges.
7. **Party Autonomy and HKIAC's Role:** While Article 8.3 allows parties to determine their own procedure for designating three arbitrators, it also acknowledges the HKIAC's role as an administrative institution overseeing the arbitration process. The provision strikes a balance between respecting party autonomy and ensuring the orderly progression of the arbitration.

In summary, Article 8.3 of the HKIAC Arbitration Rules 2018 provides for a situation where the parties have agreed on an alternative procedure for designating three arbitrators, but that procedure fails to result in a designation within the agreed-upon time limit. In such cases, the HKIAC takes over the responsibility of appointing the arbitrator to ensure the continued progress of the arbitration process, while upholding principles of fairness and impartiality.

## Article 9 – Confirmation of the Arbitral Tribunal

### 9.1 All designations of any arbitrator, whether made by the parties or the arbitrators, are subject to confirmation by HKIAC, upon which the appointments shall become effective.

Article 9.1 of the HKIAC Arbitration Rules 2018 addresses the process of confirming the appointment of arbitrators in the arbitration proceedings. Let us analyse the key elements of Article 9.1:

1. **Confirmation of Arbitrator Appointments:** Article 9.1 states that any designation of an arbitrator, whether made by the parties or the arbitrators themselves, is subject to confirmation by the HKIAC. Once the HKIAC confirms the appointment, the designated arbitrators' roles become effective within the arbitration proceedings.
2. **Role of HKIAC in Confirmation:** The provision highlights the role of the HKIAC as an administrative institution overseeing the arbitration process. The HKIAC ensures that the appointment of arbitrators is in line with the rules and procedures established by the HKIAC Arbitration Rules.
3. **Ensuring Compliance and Formality:** By requiring the confirmation of arbitrator appointments, Article 9.1 ensures that the process of designating arbitrators is compliant with the rules and formalities prescribed by the arbitration institution. This helps maintain the integrity and legitimacy of the arbitration process.
4. **Quality Control and Impartiality:** Confirmation by the HKIAC contributes to the quality control and impartiality of arbitrator appointments. It provides an additional layer of review to ensure that arbitrators are suitable, qualified, and unbiased, in line with the arbitration rules and principles.
5. **Avoiding Potential Conflicts or Disputes:** The requirement for confirmation may help prevent potential conflicts or disputes that could arise if a party or arbitrator challenges an appointment based on procedural or substantive grounds. HKIAC's confirmation helps mitigate such challenges by ensuring a standardised and regulated appointment process.

6. Streamlining the Process: While the confirmation requirement adds a step to the appointment process, it also helps streamline the process by ensuring that appointments are in accordance with the established rules and procedures, minimising the likelihood of challenges or delays due to improper appointments.
7. Party Autonomy and Institutional Oversight: Article 9.1 strikes a balance between party autonomy in designating arbitrators and the need for institutional oversight. It preserves parties' ability to select arbitrators while ensuring that those selections meet the necessary criteria and formalities.

In summary, Article 9.1 of the HKIAC Arbitration Rules 2018 establishes that all designations of arbitrators, whether made by parties or arbitrators themselves, are subject to confirmation by the HKIAC. This confirmation process contributes to compliance, impartiality, and quality control within the arbitration proceedings, while also streamlining the appointment process and balancing party autonomy with institutional oversight.

## **9.2 Where the parties have agreed that an arbitrator is to be appointed by one or more of the parties or by the arbitrators already confirmed or appointed, that agreement shall be deemed an agreement to designate an arbitrator under the Rules.**

Article 9.2 of the HKIAC Arbitration Rules 2018 addresses the situation where the parties have agreed that an arbitrator is to be appointed by one or more of the parties or by the arbitrators already confirmed or appointed. Let us analyse the key elements of Article 9.2:

1. Deemed Agreement to Designate an Arbitrator: Article 9.2 establishes a principle that an agreement between the parties that an arbitrator will be appointed by a specific party or group of parties, or by arbitrators who have already been confirmed or appointed, is treated as an agreement to designate an arbitrator under the HKIAC Arbitration Rules.
2. Clarification of Appointment Procedure: This provision clarifies that such an agreement falls within the framework of the rules for arbitrator appointment outlined in the HKIAC Arbitration Rules. In essence, the parties' agreed method of appointment is recognised as conforming to the rules and procedures set by the HKIAC.
3. Maintaining Consistency and Orderliness: By deeming the parties' agreement as an agreement to designate an arbitrator under the Rules, Article 9.2 ensures consistency and orderliness in the appointment process. It prevents any confusion or ambiguity that might arise from the parties' custom appointment agreement.
4. Incorporating Party Autonomy: While the provision outlines a deemed agreement, it still acknowledges the parties' autonomy to determine the method of appointing an arbitrator. The parties are free to agree on their preferred appointment mechanism, but that mechanism will be interpreted and processed in line with the HKIAC Arbitration Rules.
5. Supporting Flexibility and Customisation: Article 9.2 reflects the flexibility of the arbitration process and the HKIAC's willingness to accommodate parties' preferred appointment methods, as long as they align with the overall framework of the rules.



6. **Avoiding Ambiguity and Disputes:** The provision helps avoid potential disputes or disagreements that might arise from differing interpretations of the parties' appointment agreement. By clarifying that the agreed method is considered a designation under the Rules, it contributes to a smoother arbitration process.
7. **Streamlining the Appointment Process:** Article 9.2 streamlines the process by ensuring that agreed-upon appointment methods are treated as an integral part of the arbitration procedure, without requiring additional steps or formalities to establish the validity of the appointment.

In summary, Article 9.2 of the HKIAC Arbitration Rules 2018 establishes that an agreement between the parties for the appointment of an arbitrator by a specific party or group of parties, or by already confirmed or appointed arbitrators, is deemed an agreement to designate an arbitrator under the Rules. This provision maintains consistency, supports party autonomy, and ensures that the agreed appointment methods align with the overall framework of the HKIAC Arbitration Rules.

**9.3 The designation of an arbitrator shall be confirmed taking into account any agreement by the parties as to an arbitrator's qualifications, any information provided under Article 11.4, and in accordance with Article 10.**

Article 9.3 of the HKIAC Arbitration Rules 2018 pertains to the confirmation of the designation of an arbitrator and outlines the factors that are taken into account during the confirmation process. Let us analyse the key elements of Article 9.3:

1. **Confirmation of Arbitrator Designation:** Article 9.3 highlights that once an arbitrator has been designated by the parties or other means, the confirmation of this designation takes place. This step ensures that the designated arbitrator meets the necessary criteria and qualifications set forth by the arbitration rules and agreed upon by the parties.
2. **Consideration of Qualifications:** The provision emphasises the importance of an arbitrator's qualifications. During the confirmation process, any agreement by the parties regarding the qualifications or expertise required for the arbitrator is taken into account. This ensures that the chosen arbitrator possesses the necessary skills to effectively resolve the dispute.
3. **Information Provided Under Article 11.4:** Article 11.4 of the HKIAC Arbitration Rules relates to the disclosure of circumstances likely to give rise to justifiable doubts about an arbitrator's impartiality or independence. Article 9.3 states that such information is also considered during the confirmation process. This aligns with the broader principle of ensuring an impartial and unbiased arbitration tribunal.
4. **Alignment with Article 10:** Article 9.3 specifies that the confirmation of arbitrator designation is conducted in accordance with Article 10 of the HKIAC Arbitration Rules. Article 10 addresses the challenge of an arbitrator's appointment based on grounds of impartiality or independence.
5. **Ensuring a Qualified and Impartial Tribunal:** Article 9.3 underscores the significance of confirming arbitrator designations based on qualifications, impartiality, and

independence. The provision aims to ensure that the appointed arbitrator is not only well-qualified but also unbiased and capable of rendering a fair decision.

6. **Preserving Party Autonomy and Customisation:** While Article 9.3 outlines factors for confirmation, it does not diminish the parties' autonomy in selecting an arbitrator. Parties can still agree on qualifications and characteristics important to them, but these preferences are reviewed within the context of the rules and principles set by the HKIAC.
7. **Promoting Transparency and Fairness:** The requirement to consider arbitrator qualifications, disclosures, and the challenge procedure outlined in Article 10 contributes to transparency and fairness in the appointment process. This ensures that the tribunal is composed of individuals who are competent and free from conflicts of interest.

In summary, Article 9.3 of the HKIAC Arbitration Rules 2018 outlines the factors considered during the confirmation of an arbitrator's designation. It emphasises the importance of arbitrator qualifications, considers information disclosed under Article 11.4, and aligns with the challenge procedure in Article 10. The provision aims to ensure the appointment of qualified, impartial, and independent arbitrators while respecting party autonomy and promoting a transparent and fair arbitration process.

## Article 10 – Fees and Expenses of the Arbitral Tribunal

### 10.1 The fees and expenses of the arbitral tribunal shall be determined according to either:

- (a) an hourly rate in accordance with Schedule 2; or
- (b) the schedule of fees based on the sum in dispute in accordance with Schedule 3.

**The parties shall agree the method for determining the fees and expenses of the arbitral tribunal, and shall inform HKIAC of the applicable method within 30 days of the date on which the Respondent receives the Notice of Arbitration. If the parties fail to agree on the applicable method, the arbitral tribunal's fees and expenses shall be determined in accordance with Schedule 2.**

Article 10.1 of the HKIAC Arbitration Rules 2018 outlines the methods for determining the fees and expenses of the arbitral tribunal, as well as the process for agreement and resolution if the parties do not agree on the applicable method. Let us analyse the key elements of Article 10.1:

1. **Two Methods for Determining Fees and Expenses:** Article 10.1 provides parties with two options for determining the fees and expenses of the arbitral tribunal:
  - a. **Hourly Rate (Schedule 2):** The first option is to determine fees and expenses based on an hourly rate, as outlined in Schedule 2 of the HKIAC Arbitration Rules. This approach calculates the compensation for arbitrators based on the time spent on the arbitration proceedings.
  - b. **Sum in Dispute (Schedule 3):** The second option is to determine fees and expenses based on a schedule of fees linked to the sum in dispute, in accordance with Schedule 3. This method correlates the compensation to the amount of money at stake in the arbitration.

2. **Agreement and Notification Requirement:** The parties are required to agree on the method for determining the fees and expenses of the arbitral tribunal. Additionally, they must inform the HKIAC of the chosen method within 30 days from the date the Respondent receives the Notice of Arbitration. This ensures that the chosen method is established early in the arbitration process.
3. **Resolution in Case of Non-Agreement:** If the parties fail to agree on the applicable method within the stipulated timeframe, Article 10.1 stipulates that the fees and expenses of the arbitral tribunal shall be determined according to the hourly rate method outlined in Schedule 2. This provides a default method in case of disagreement between the parties.
4. **Balance Between Party Autonomy and Regulation:** Article 10.1 strikes a balance between party autonomy and the need for a standardised approach to determining arbitrator fees and expenses. While parties have the freedom to choose between two methods, the provision ensures that a method is chosen promptly to avoid delays.
5. **Flexibility and Customisation:** By providing two alternative methods for determining fees and expenses, Article 10.1 acknowledges the diverse preferences and needs of the parties involved in arbitration. It allows parties to select the method that aligns with their specific circumstances.
6. **Promoting Efficiency and Clarity:** The provision's requirement for timely agreement and notification of the chosen method promotes efficiency and clarity in the arbitration process. It helps streamline administrative procedures and facilitates a smooth arbitration experience.

In summary, Article 10.1 of the HKIAC Arbitration Rules 2018 presents two methods for determining the fees and expenses of the arbitral tribunal: an hourly rate (Schedule 2) or a schedule based on the sum in dispute (Schedule 3). Parties are required to agree on the method and inform the HKIAC, ensuring early clarity. In case of non-agreement, the default method is the hourly rate. This provision balances party autonomy with standardisation, promoting efficiency, flexibility, and transparency in the determination of arbitrator fees and expenses.

## **10.2 Where the fees of the arbitral tribunal are to be determined in accordance with Schedule 2,**

- (a) the applicable rate for each co-arbitrator shall be the rate agreed between that co-arbitrator and the designating party;**
- (b) the applicable rate for a sole or presiding arbitrator designated by the parties or the co-arbitrators, as applicable, shall be the rate agreed between that arbitrator and the parties, subject to paragraphs 9.3 to 9.5 of Schedule 2. Where the rate of an arbitrator is not agreed in accordance with Article 10.2(a) or (b), or where HKIAC appoints an arbitrator, HKIAC shall determine the rate of that arbitrator.**

Article 10.2 of the HKIAC Arbitration Rules 2018 addresses the determination of arbitrator fees when using Schedule 2 for fee calculation. It outlines how the applicable rates for co-arbitrators and sole/presiding arbitrators are determined, as well as the role of HKIAC in cases where rates are not agreed upon. Let us analyse the key elements of Article 10.2:

1. **Determination of Applicable Rates:** Article 10.2 specifies that when the fees of the arbitral tribunal are to be determined in accordance with Schedule 2 (hourly rate method), the applicable rates for arbitrators are to be determined through agreements between the respective parties and arbitrators.
2. **Co-Arbitrator’s Applicable Rate (Article 10.2(a)):** (a) Co-arbitrators’ rates are determined based on an agreement between each co-arbitrator and the designating party (the party who designated the co-arbitrator). This acknowledges the importance of co-arbitrators’ consent and input in determining their own rates.
3. **Sole or Presiding Arbitrator’s Applicable Rate (Article 10.2(b)):** (b) The applicable rate for a sole or presiding arbitrator designated by the parties or the co-arbitrators (as applicable) is determined through an agreement between that arbitrator and the parties. However, this agreement is subject to certain provisions outlined in paragraphs 9.3 to 9.5 of Schedule 2. These provisions likely address matters such as variations in rates based on the complexity of the case or the arbitrator’s qualifications.
4. **HKIAC’s Role in Determining Arbitrator Rates:** If an arbitrator’s rate is not agreed upon in accordance with the provisions of Article 10.2(a) or (b), or if HKIAC appoints an arbitrator, then HKIAC has the authority to determine the rate of that arbitrator. This underscores the administrative role of HKIAC in ensuring fairness and consistency in arbitrator compensation, particularly in cases where parties or arbitrators do not reach an agreement.
5. **Balancing Autonomy with Regulatory Oversight:** Article 10.2 strikes a balance between preserving the autonomy of parties and arbitrators in determining compensation rates and ensuring a regulated framework. While parties and arbitrators have the freedom to agree on rates, the provision ensures that rates are established fairly and transparently, especially in cases of non-agreement.
6. **Transparent and Efficient Fee Determination:** By outlining the process for determining applicable rates and addressing cases of non-agreement, Article 10.2 promotes transparency, efficiency, and consistency in the fee determination process.

In summary, Article 10.2 of the HKIAC Arbitration Rules 2018 governs the determination of arbitrator fees when using Schedule 2. It highlights the role of agreements between parties and arbitrators in setting rates, particularly for co-arbitrators and sole/presiding arbitrators. It also empowers HKIAC to determine rates when agreements are not reached, ensuring a balanced approach between party autonomy and regulatory oversight in arbitrator fee determination.

**10.3 Where the fees of the arbitral tribunal are determined in accordance with Schedule 3, HKIAC shall fix the fees in accordance with that Schedule and the following rules:**

- (a) **the fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitral tribunal and any secretary appointed under Article 13.4, and any other circumstances**

of the case, including, but not limited to, the discontinuation of the arbitration in case of settlement or for any other reason;

- (b) where a case is referred to three arbitrators, HKIAC, at its discretion, shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of a sole arbitrator;
- (c) the arbitral tribunal's fees may exceed the amounts calculated in accordance with Schedule 3 where, in the opinion of HKIAC, there are exceptional circumstances, which include, but are not limited to, the parties conducting the arbitration in a manner not reasonably contemplated at the time when the arbitral tribunal was constituted.

Article 10.3 of the HKIAC Arbitration Rules 2018 pertains to the determination of arbitral tribunal fees when using Schedule 3, which is based on the sum in dispute. The article outlines the criteria and considerations for setting reasonable fees, provides guidelines for cases involving three arbitrators, and addresses circumstances where the arbitral tribunal's fees may exceed the amounts calculated in Schedule 3. Let us analyse the key elements of Article 10.3:

1. Reasonableness and Fee Calculation: (a) Article 10.3(a) underscores the principle that the fees of the arbitral tribunal should be reasonable, taking into account various factors. These factors include:
  - a. The amount in dispute: The financial stakes involved in the arbitration.
  - b. Complexity of the subject matter: The technical or legal intricacies of the case.
  - c. Time spent by the arbitral tribunal: The duration of the arbitration proceedings.
  - d. Involvement of a secretary: The use of a secretary appointed under Article 13.4.
  - e. Other case-specific circumstances: Any relevant factors, such as settlement or discontinuation.
2. Guidelines for Three-Arbitrator Cases: (b) Article 10.3(b) empowers HKIAC to exercise discretion in cases where three arbitrators are involved. It allows HKIAC to increase the total fees, normally up to a maximum of three times the fees of a sole arbitrator. This provision recognises the increased complexity and resources required for three-arbitrator panels.
3. Exceptional Circumstances and Exceeding Schedule 3 Amounts: (c) Article 10.3(c) outlines that the arbitral tribunal's fees may exceed the amounts calculated in Schedule 3 under exceptional circumstances. These circumstances include instances where parties conduct the arbitration in a manner not reasonably contemplated at the time of the tribunal's constitution. This provision acknowledges that unanticipated developments may require adjustments to the fee calculation.
4. Balancing Fairness and Complexity: Article 10.3 seeks to strike a balance between ensuring that arbitral tribunal fees are reasonable and proportionate to the case's complexity while allowing for flexibility in circumstances that warrant adjustments.

5. **HKIAC's Role in Fee Determination:** The article acknowledges HKIAC's supervisory role in determining reasonable fees, especially in complex cases involving three arbitrators or exceptional circumstances.
6. **Transparency and Predictability:** Article 10.3 contributes to the transparency and predictability of the fee determination process by setting out factors and guidelines for assessing the reasonableness of fees.
7. **Encouraging Settlement and Efficient Arbitration:** The provision's reference to settlement and other circumstances emphasises the importance of encouraging efficient dispute resolution and settlement efforts.

In summary, Article 10.3 of the HKIAC Arbitration Rules 2018 outlines the principles and criteria for determining arbitral tribunal fees when using Schedule 3. It emphasises the reasonableness of fees based on factors such as the amount in dispute, complexity, time spent, and other case-specific elements. The provision also recognises the discretion of HKIAC in adjusting fees for three-arbitrator cases and exceptional circumstances. This approach aims to ensure fairness, transparency, and flexibility in the determination of arbitral tribunal fees.

## **Article 11 – Qualifications and Challenge of the Arbitral Tribunal**

### **11.1 An arbitral tribunal confirmed under these Rules shall be and remain at all times impartial and independent of the parties.**

Article 11 (11.1) of the HKIAC Arbitration Rules 2018 addresses the fundamental principles of impartiality and independence that apply to an arbitral tribunal appointed under these rules. Let us analyse this provision:

An arbitral tribunal confirmed under these Rules shall be and remain at all times impartial and independent of the parties: This statement emphasises the critical principles of impartiality and independence that arbitral tribunals must adhere to. It asserts that an arbitral tribunal formed under the HKIAC Arbitration Rules is obligated to maintain its impartiality and independence throughout the entirety of the arbitration proceedings. These principles ensure that the tribunal's decisions are made objectively and without any undue influence or bias from any of the parties involved in the dispute.

In essence, Article 11 (11.1) underscores the importance of the impartiality and independence of the arbitral tribunal. This provision is aligned with international standards and best practices in arbitration, which aim to uphold the integrity and fairness of the arbitration process by requiring arbitrators to act objectively and without favouritism towards any party. This provision is essential for maintaining the credibility and legitimacy of the arbitration process and the resulting awards.

**11.2 Subject to Article 11.3, as a general rule, where the parties to an arbitration under these Rules are of different nationalities, a sole or presiding arbitrator shall not have the same nationality as any party unless specifically agreed otherwise by all parties.**

Article 11 (11.2) of the HKIAC Arbitration Rules 2018 addresses the issue of arbitrator nationality in cases where the parties involved in an arbitration have different nationalities. Let us analyse this provision:

Subject to Article 11.3, as a general rule, where the parties to an arbitration under these Rules are of different nationalities, a sole or presiding arbitrator shall not have the same nationality as any party unless specifically agreed otherwise by all parties: This provision establishes a general rule regarding the nationality of the sole or presiding arbitrator in situations where the parties involved in the arbitration come from different countries. The provision stipulates that, as a default principle, an arbitrator should not share the same nationality as any of the parties unless all parties involved explicitly agree to the contrary.

This rule seeks to ensure fairness and prevent potential bias in the arbitration process. By requiring an arbitrator to have a different nationality than any of the parties, the provision aims to avoid any perceived conflicts of interest that might arise due to a shared national identity between the arbitrator and a party. This principle contributes to maintaining the impartiality and integrity of the arbitration proceedings, in line with international best practices.

The reference to Article 11.3 indicates that there may be exceptions or modifications to this general rule outlined in Article 11.2, which should be reviewed for a complete understanding of the provisions related to arbitrator nationality in the HKIAC Arbitration Rules 2018.

**11.3 Notwithstanding the general rule in Article 11.2, in appropriate circumstances and provided that none of the parties objects within a time limit set by HKIAC, a sole or presiding arbitrator may be of the same nationality as any of the parties.**

Article 11 (11.3) of the HKIAC Arbitration Rules 2018 introduces an exception to the general rule regarding the nationality of arbitrators in cases where the parties to the arbitration are of different nationalities. Let us analyse this provision:

1. Notwithstanding the general rule in Article 11.2, in appropriate circumstances and provided that none of the parties objects within a time limit set by HKIAC, a sole or presiding arbitrator may be of the same nationality as any of the parties: This provision establishes an exception to the general rule stated in Article 11.2. While Article 11.2 generally requires that an arbitrator not share the same nationality as any party, Article 11.3 introduces flexibility under certain conditions.
2. In appropriate circumstances: This phrase indicates that the exception can be invoked when specific circumstances justify departing from the general rule. The determination of appropriateness is likely to consider factors such as the complexity of the case, the availability of qualified arbitrators, and the absence of potential conflicts of interest.
3. Provided that none of the parties objects within a time limit set by HKIAC: This condition indicates that the exception can only be applied if none of the parties raises an objection within a specified time frame established by the HKIAC (Hong Kong International

Arbitration Centre). This time limit ensures that the parties have the opportunity to raise concerns if they believe that having an arbitrator with the same nationality as a party might impact the impartiality or fairness of the arbitration.

In essence, Article 11 (11.3) recognises that while maintaining diverse nationalities among arbitrators and parties is a general principle to avoid potential bias, there might be situations where having an arbitrator of the same nationality as a party is acceptable. This provision introduces a flexible mechanism to accommodate such circumstances, while ensuring transparency and fairness through the opportunity for parties to raise objections within a set timeframe. This balance between the general rule and exceptions contributes to a more tailored and effective arbitration process under the HKIAC rules.

**11.4 Before confirmation or appointment, a prospective arbitrator shall (a) sign a statement confirming his or her availability to decide the dispute and his or her impartiality and independence; and (b) disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once confirmed or appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances.**

Article 11 (11.4) of the HKIAC Arbitration Rules 2018 outlines the obligations of prospective and appointed arbitrators in relation to their availability, impartiality, and independence. Let us analyse this provision:

1. Before confirmation or appointment, a prospective arbitrator shall (a) sign a statement confirming his or her availability to decide the dispute and his or her impartiality and independence: This part emphasises the preliminary responsibilities of a prospective arbitrator. Before being officially confirmed or appointed, the prospective arbitrator is required to provide a signed statement confirming two key aspects:
  - a. Availability: The arbitrator must confirm that they are available to preside over the dispute. This ensures that the arbitrator has the necessary time and commitment to handle the arbitration proceedings.
  - b. Impartiality and Independence: The arbitrator must confirm their impartiality and independence, assuring that they are not biased toward any party and are free from any conflicts of interest.
2. and (b) disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence: This part mandates the prospective arbitrator to disclose any circumstances that could reasonably lead to doubts about their impartiality or independence. This disclosure ensures transparency and allows the parties to assess the arbitrator's suitability for the case.
3. An arbitrator, once confirmed or appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances: Once an arbitrator is confirmed or appointed, the obligation to disclose any circumstances that might raise doubts about their impartiality or independence continues throughout the arbitration proceedings. If



such circumstances arise, the arbitrator is required to promptly disclose them to the parties unless the parties were already informed by the arbitrator of these circumstances.

In essence, Article 11 (11.4) underscores the importance of maintaining the integrity and fairness of the arbitration process. Prospective arbitrators are required to confirm their availability, impartiality, and independence before being confirmed or appointed. They must also disclose any potential conflicts of interest or other circumstances that might impact their impartiality or independence. Appointed arbitrators are similarly obligated to continue disclosing such circumstances throughout the arbitration. This provision helps ensure that the arbitration proceedings are conducted in an unbiased and transparent manner and that the parties have confidence in the integrity of the arbitrator.

**11.5 No party or its representatives shall have any ex parte communication relating to the arbitration with any arbitrator, or with any candidate to be designated as arbitrator by a party, except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence, or to discuss the suitability of candidates for the designation of a third arbitrator where the parties or party-designated arbitrators are to designate that arbitrator. No party or its representatives shall have any ex parte communication relating to the arbitration with any candidate for the presiding arbitrator.**

Article 11 (11.5) of the HKIAC Arbitration Rules 2018 addresses the prohibition of ex parte communication between parties and arbitrators, as well as candidates for arbitrator positions. Let us analyse this provision:

1. No party or its representatives shall have any ex parte communication relating to the arbitration with any arbitrator, or with any candidate to be designated as arbitrator by a party: This statement establishes a fundamental rule that prohibits parties and their representatives from engaging in any communication about the arbitration directly with an arbitrator or a candidate who is being considered for appointment as an arbitrator by a party. Ex parte communication refers to conversations or communications that involve only one party or one side of the dispute.
2. except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence, or to discuss the suitability of candidates for the designation of a third arbitrator where the parties or party-designated arbitrators are to designate that arbitrator: This part enumerates the limited circumstances under which communication with a candidate for arbitrator is permissible:
  - a. Advising the candidate about the general nature of the dispute.
  - b. Discussing the candidate's qualifications, availability, impartiality, or independence.
  - c. Discussing the suitability of candidates for the designation of a third arbitrator, if such designation is within the parties' or party-appointed arbitrators' responsibilities.
3. No party or its representatives shall have any ex parte communication relating to the arbitration with any candidate for the presiding arbitrator: This sentence extends the

prohibition to ex parte communications with candidates specifically for the role of the presiding arbitrator. The presiding arbitrator is a critical position in the arbitration tribunal, and maintaining the integrity and impartiality of this process is of utmost importance.

In essence, Article 11 (11.5) emphasises the need for transparency, fairness, and integrity in the arbitration process by prohibiting ex parte communications between parties and arbitrators or candidates. While there are exceptions for limited types of communications with candidates, the rule aims to prevent any undue influence, bias, or inappropriate interactions that could compromise the impartiality and independence of the arbitrators and the overall integrity of the arbitration proceedings.

**11.6 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence, or if the arbitrator does not possess qualifications agreed by the parties, or if the arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay. A party may challenge the arbitrator designated by it or in whose appointment it has participated only for reasons of which it becomes aware after the designation has been made.**

Article 11 (11.6) of the HKIAC Arbitration Rules 2018 outlines the conditions under which an arbitrator may be challenged and the process for challenging arbitrators. Let us analyse this provision:

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence, or if the arbitrator does not possess qualifications agreed by the parties, or if the arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay: This part establishes the grounds on which an arbitrator can be challenged:
  - a. Impartiality or Independence: If circumstances arise that raise justifiable doubts about the arbitrator’s impartiality or independence, a challenge can be made.
  - b. Qualifications: If the arbitrator does not possess qualifications that were agreed upon by the parties, a challenge can be raised.
  - c. Inability to Perform Functions: If the arbitrator becomes legally (de jure) or practically (de facto) unable to fulfil their duties or if they fail to act promptly, a challenge can be initiated.
2. A party may challenge the arbitrator designated by it or in whose appointment it has participated only for reasons of which it becomes aware after the designation has been made: This sentence limits the timing for raising a challenge to an arbitrator. A party can challenge an arbitrator they have designated or participated in appointing, but only based on reasons that emerged after the arbitrator’s designation. This is to prevent parties from strategically challenging arbitrators based on pre-existing reasons.

In summary, Article 11 (11.6) provides a framework for challenging arbitrators based on grounds related to their impartiality, independence, qualifications, ability to perform functions, or delays in their actions. The provision aims to ensure that the arbitration process is conducted by arbitrators who maintain the necessary attributes and capabilities. Additionally, it places restrictions on when a party

can challenge an arbitrator they have been involved in designating, preventing abuse of the challenge process. This mechanism contributes to the credibility and integrity of the arbitration proceedings under the HKIAC rules.

**11.7 A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after the confirmation or appointment of that arbitrator has been communicated to the challenging party or within 15 days after that party became aware of the circumstances mentioned in Article 11.6.**

Article 11 (11.7) of the HKIAC Arbitration Rules 2018 sets out the timeline and requirements for notifying challenges to arbitrators. Let us analyse this provision:

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after the confirmation or appointment of that arbitrator has been communicated to the challenging party or within 15 days after that party became aware of the circumstances mentioned in Article 11.6: This statement establishes the timing and procedure for raising challenges to an arbitrator’s appointment:
  - a. 15 Days After Confirmation or Appointment: If a party intends to challenge an arbitrator, they must send notice of the challenge within 15 days after being officially notified of the confirmation or appointment of that arbitrator.
  - b. 15 Days After Becoming Aware of Relevant Circumstances: Alternatively, if a party becomes aware of circumstances that make a challenge justifiable (as outlined in Article 11.6), they have 15 days from the date they became aware of these circumstances to send the challenge notice.

In essence, Article 11 (11.7) emphasises the importance of timeliness in raising challenges to arbitrators. The provision ensures that parties have a reasonable and fixed period within which they can communicate any concerns they have about an arbitrator’s impartiality, independence, qualifications, or other grounds for challenge. This timeline is designed to maintain the efficiency of the arbitration process while allowing parties an adequate window to respond to potential challenges. The provision encourages parties to promptly address any issues related to arbitrators to prevent unnecessary delays and disruptions in the arbitration proceedings.

**11.8 The notice of challenge shall be communicated to HKIAC, all other parties, the challenged arbitrator and any other members of the arbitral tribunal. The notice of challenge shall state the reasons for the challenge.**

Article 11 (11.8) of the HKIAC Arbitration Rules 2018 outlines the requirements for the content and recipients of a notice of challenge to an arbitrator. Let us analyse this provision:

1. The notice of challenge shall be communicated to HKIAC, all other parties, the challenged arbitrator and any other members of the arbitral tribunal: This statement specifies the recipients of the notice of challenge. When a party decides to challenge an arbitrator, they are required to communicate the challenge to several parties involved in the arbitration process:

- a. HKIAC: The notice of challenge must be sent to the HKIAC (Hong Kong International Arbitration Centre), which administers the arbitration proceedings.
  - b. All Other Parties: The notice must also be communicated to all the other parties involved in the arbitration.
  - c. The Challenged Arbitrator: The notice must be sent to the arbitrator being challenged.
  - d. Any Other Members of the Arbitral Tribunal: If there are other members in the arbitral tribunal (e.g., co-arbitrators), they must also receive the notice of challenge.
2. The notice of challenge shall state the reasons for the challenge: This requirement mandates that the notice of challenge must include the specific reasons for challenging the arbitrator. The challenging party must provide clear and detailed explanations for why they believe the arbitrator's impartiality, independence, qualifications, or other grounds specified in Article 11.6 are in question.

In essence, Article 11 (11.8) sets out the procedural aspects of raising a challenge to an arbitrator. The provision ensures that the challenge is properly communicated to all relevant parties, including the HKIAC, and that the reasons for the challenge are clearly articulated. This transparency and communication are crucial to maintaining the fairness and integrity of the arbitration process. By providing detailed reasons for the challenge, the challenging party gives all parties the opportunity to understand and assess the validity of the challenge, which contributes to the overall credibility of the arbitration proceedings.

**11.9 Unless the arbitrator being challenged resigns or the non-challenging party agrees to the challenge within 15 days from receiving the notice of challenge, HKIAC shall decide on the challenge. Pending the determination of the challenge, the arbitral tribunal (including the challenged arbitrator) may continue the arbitration.**

Article 11 (11.9) of the HKIAC Arbitration Rules 2018 outlines the process for addressing challenges to arbitrators and the continued arbitration proceedings in the meantime. Let us analyse this provision:

1. Unless the arbitrator being challenged resigns or the non-challenging party agrees to the challenge within 15 days from receiving the notice of challenge: This statement establishes two circumstances in which the challenge can be resolved without the intervention of the HKIAC:
  - a. Arbitrator Resignation: If the arbitrator being challenged voluntarily resigns within 15 days of receiving the notice of challenge, the challenge is resolved.
  - b. Non-Challenging Party Agreement: If the non-challenging party (the party not raising the challenge) agrees to the challenge within 15 days, the challenge is resolved.

2. HKIAC shall decide on the challenge: If neither of the above scenarios occurs, the responsibility for deciding on the challenge rests with the HKIAC. The HKIAC will make a determination regarding the challenge raised by the party.
3. Pending the determination of the challenge, the arbitral tribunal (including the challenged arbitrator) may continue the arbitration: This part addresses the continuation of the arbitration proceedings during the challenge process. The arbitral tribunal, which includes the challenged arbitrator, is allowed to continue the arbitration while the challenge is being resolved by the HKIAC. This is to ensure that the arbitration process does not come to a halt while the challenge is under consideration.

In essence, Article 11 (11.9) provides a structured approach to handling challenges to arbitrators. If the challenged arbitrator resigns or the non-challenging party agrees to the challenge, the issue is resolved promptly. If not, the HKIAC steps in to make a determination. Importantly, the provision allows the arbitration proceedings to continue during this period, recognising the importance of maintaining the progress of the dispute resolution process while addressing challenges. This approach strikes a balance between resolving potential issues with arbitrators and avoiding unnecessary delays in the arbitration proceedings.

**11.10 If an arbitrator resigns or a party agrees to a challenge under Article 11.9, no acceptance of the validity of any ground referred to in Article 11.6 shall be implied.**

Article 11 (11.10) of the HKIAC Arbitration Rules 2018 addresses the implications of an arbitrator’s resignation or a party’s agreement to a challenge on the validity of the grounds for the challenge. Let us analyse this provision:

1. If an arbitrator resigns or a party agrees to a challenge under Article 11.9, no acceptance of the validity of any ground referred to in Article 11.6 shall be implied: This statement clarifies the impact of an arbitrator’s resignation or a party’s agreement to a challenge on the grounds for the challenge. Specifically:
  - a. Arbitrator’s Resignation: If an arbitrator resigns from their position after being challenged, this does not imply that they accept the validity of the grounds for the challenge as outlined in Article 11.6. In other words, their resignation is not an admission of any wrongdoing or bias.
  - b. Party’s Agreement to Challenge: Similarly, if a party agrees to a challenge raised by another party under Article 11.9, it does not mean that the party accepts the validity of the grounds for the challenge. The party’s agreement to the challenge does not imply any acknowledgment of the alleged issues.

In essence, Article 11 (11.10) ensures that actions such as an arbitrator’s resignation or a party’s agreement to a challenge are not construed as admissions of the validity of the grounds for the challenge. This provision safeguards the process from any unintended implications that might arise from such actions and reinforces the principle that challenges and resolutions are procedural steps rather than acknowledgments of wrongdoing or bias.

## Article 12 – Replacement of an Arbitrator

**12.1 Subject to Articles 12.2, 27.13 and 28.8, where an arbitrator dies, has been successfully challenged, has been otherwise removed or has resigned, a substitute arbitrator shall be appointed pursuant to the rules that were applicable to the appointment of the arbitrator being replaced. These rules shall apply even if, during the process of appointing the arbitrator being replaced, a party had failed to exercise its right to designate or to participate in the appointment.**

Article 12.1 of the HKIAC Arbitration Rules 2018 addresses the procedure for appointing a substitute arbitrator in cases where an arbitrator dies, is successfully challenged, is removed, or resigns from the arbitral tribunal. This article outlines the framework for selecting a replacement arbitrator and underscores the importance of consistency in the appointment process. Let us analyse the key elements of Article 12.1:

Replacement of Arbitrator: Article 12.1 establishes the principle that when an arbitrator’s position becomes vacant due to factors such as death, successful challenge, removal, or resignation, a substitute arbitrator must be appointed to fill that vacancy.

1. **Application of Applicable Rules:** The article specifies that the rules that were applicable to the appointment of the arbitrator being replaced shall also govern the process of appointing the substitute arbitrator. This ensures consistency and uniformity in the procedure and criteria used for selecting the replacement.
2. **Inclusion of Designation and Participation Rights:** Article 12.1 emphasises that the rules for appointing a substitute arbitrator apply even if, during the original process of appointing the arbitrator being replaced, a party had failed to exercise its right to designate or to participate in the appointment. This provision ensures that a party’s failure to participate or designate an arbitrator during the original appointment process does not preclude that party from participating in the selection of the replacement arbitrator.
3. **Preserving Party Autonomy and Balance:** By allowing parties to participate in the replacement arbitrator appointment process even if they did not initially exercise their rights, Article 12.1 seeks to preserve party autonomy and ensure that the tribunal remains balanced and representative of the parties’ choices.
4. **Maintaining Consistency and Procedural Fairness:** The provision’s requirement for applying the same rules for the replacement arbitrator as for the original appointment enhances procedural fairness and consistency. It ensures that the same criteria and procedures that were deemed suitable for selecting the original arbitrator are applied to the selection of the replacement.
5. **Efficiency and Streamlined Process:** Article 12.1 contributes to the efficiency of the arbitration process by providing a clear and standardised framework for appointing substitute arbitrators. This helps avoid unnecessary delays or confusion in the event of a vacancy within the arbitral tribunal.

In summary, Article 12.1 of the HKIAC Arbitration Rules 2018 outlines the procedure for appointing a substitute arbitrator in cases of vacancy due to death, successful challenge, removal, or resignation. It emphasises the application of the same rules that governed the original appointment process and

ensures that parties retain the right to participate in the appointment of the replacement arbitrator, regardless of their previous participation or designation. This provision promotes fairness, consistency, and procedural clarity in the selection of substitute arbitrators.

**12.2 If, at the request of a party, HKIAC determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to designate a substitute arbitrator, HKIAC may, after giving an opportunity to the parties and the remaining arbitrators to express their views:**

- (a) appoint the substitute arbitrator; or**
- (b) authorise the other arbitrators to proceed with the arbitration and make any decision or award.**

Article 12.2 of the HKIAC Arbitration Rules 2018 addresses a situation where, due to exceptional circumstances, a party's right to designate a substitute arbitrator may be deprived. This provision grants HKIAC the authority to make a decision in cases where it is deemed justified to limit a party's right to appoint a replacement arbitrator. Let us analyse the key elements of Article 12.2:

1. **Exceptional Circumstances Justifying Deprivation:** Article 12.2 is invoked when exceptional circumstances exist that would warrant depriving a party of its right to designate a substitute arbitrator. These exceptional circumstances would need to be sufficiently compelling to warrant such a departure from the normal process of allowing parties to appoint arbitrators.
2. **HKIAC's Discretion and Decision-Making Process:** The article empowers HKIAC to make a determination regarding the deprivation of a party's right to designate a substitute arbitrator. It outlines a process that HKIAC must follow before making such a decision. This process includes giving all parties and the remaining arbitrators an opportunity to express their views. This emphasises procedural fairness and transparency in HKIAC's decision-making.
3. **Two Options for HKIAC's Decision:** Upon evaluating the exceptional circumstances and considering the parties' and arbitrators' input, HKIAC may take one of two actions:
  - a. **Appoint the Substitute Arbitrator:** HKIAC may appoint the substitute arbitrator itself. This ensures that the vacancy is filled by a qualified arbitrator even if the party's right to designate is deprived.
  - b. **Authorise Other Arbitrators to Proceed:** Alternatively, HKIAC may authorise the remaining arbitrators to proceed with the arbitration and make any necessary decisions or awards. This option allows the arbitration to continue without appointing a substitute arbitrator.
4. **Balancing Flexibility and Neutrality:** Article 12.2 reflects a balance between ensuring the flexibility of the arbitration process and upholding the principle of neutrality and fairness. By providing HKIAC with the authority to make a decision in exceptional cases, the provision ensures that the arbitration process can continue despite unforeseen circumstances.

5. Preserving the Integrity of the Arbitration: This article safeguards the integrity of the arbitration process by ensuring that, even in situations of exceptional circumstances, the proceedings can proceed in a manner that is consistent with the parties' expectations and the principles of due process.

In summary, Article 12.2 of the HKIAC Arbitration Rules 2018 addresses exceptional circumstances where a party's right to designate a substitute arbitrator may be deprived. It grants HKIAC the authority to make a decision in such cases, either by appointing the substitute arbitrator itself or authorising the remaining arbitrators to proceed. This provision aims to balance flexibility and fairness in the arbitration process and ensures that exceptional circumstances do not unduly hinder the proceedings.

**12.3 If an arbitrator is replaced, the arbitration shall resume at the stage where the arbitrator was replaced or ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.**

Article 12.3 of the HKIAC Arbitration Rules 2018 addresses the procedural implications of replacing an arbitrator during an ongoing arbitration. This provision outlines the general rule for resuming the arbitration process after an arbitrator is replaced and grants discretion to the arbitral tribunal to deviate from this rule under certain circumstances. Let us analyse the key elements of Article 12.3:

1. Resumption of Arbitration Process: The article establishes a default principle that when an arbitrator is replaced, the arbitration proceedings should resume at the stage where the arbitrator was replaced or ceased to perform their functions. In other words, the arbitration should pick up from the point at which the replacement occurred, in order to maintain the procedural continuity of the case.
2. Tribunal's Discretion to Deviate: The provision grants discretion to the arbitral tribunal to decide whether the arbitration should resume at the stage of replacement or whether an alternative approach is more appropriate. This discretion recognises that there may be circumstances in which it is necessary or practical to deviate from the default rule, such as when a substantial change in circumstances or the nature of the dispute warrants a different approach.
3. Flexibility and Procedural Fairness: Article 12.3 balances the need for procedural fairness and flexibility. While the default rule ensures consistency and a smooth continuation of proceedings, the tribunal's discretion acknowledges that each case is unique and that there may be valid reasons to adapt the procedural timeline.
4. Mitigating Potential Delays: The provision aims to mitigate any potential delays that may arise from the replacement of an arbitrator. By allowing the tribunal to decide whether to resume at the stage of replacement, the article facilitates the efficient progression of the arbitration.
5. Case-Specific Considerations: The tribunal's decision under Article 12.3 should be guided by the specific circumstances of the case, such as the nature of the dispute, the progress of the proceedings, and the impact of the replacement on the overall timeline.
6. Maintaining the Integrity of Proceedings: By providing a framework for resuming the arbitration process after an arbitrator's replacement, the article contributes to



maintaining the integrity and coherence of the proceedings. It ensures that the parties' and tribunal's efforts up to that point are preserved to the extent possible.

In summary, Article 12.3 of the HKIAC Arbitration Rules 2018 establishes a general rule that, when an arbitrator is replaced, the arbitration should resume at the stage where the replacement occurred. However, the provision grants the arbitral tribunal the discretion to deviate from this rule based on case-specific considerations. This approach balances the need for procedural continuity with the flexibility required to address unique circumstances that may arise during the course of the arbitration.

## SECTION IV. CONDUCT OF ARBITRATION

## Article 13 – General Provisions

**13.1 Subject to these Rules, the arbitral tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues, the amount in dispute and the effective use of technology, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.**

Article 13.1 of the HKIAC Arbitration Rules 2018 outlines the principle that guides the arbitral tribunal's actions in determining the procedures for conducting arbitration. This article emphasises the need for the tribunal to strike a balance between efficiency and fairness in the arbitration process. Let us break down the key components of this provision:

1. **Suitable Procedures:** The article starts by mandating that the arbitral tribunal must adopt "suitable procedures" for the arbitration. This means that the tribunal has the authority and responsibility to design and implement the procedural framework that best fits the specific circumstances of the case.
2. **Avoiding Unnecessary Delay or Expense:** The primary goal of the tribunal's chosen procedures is to prevent unnecessary delays or expenses in the arbitration process. This is in line with the modern trend in international arbitration towards expeditious resolution. Parties generally expect timely and cost-effective resolutions, and this provision underscores the importance of efficiency.
3. **Considering Complexity, Amount in Dispute, and Technology:** The article lists three factors that the tribunal should take into account when determining the appropriate procedures:
4. **Complexity of the Issues:** The tribunal should consider how intricate the legal or factual issues are. More complex cases might require additional time and resources for a thorough resolution.
5. **Amount in Dispute:** The value of the dispute matters, as it could influence the extent of procedures required. Higher-stakes cases might warrant more detailed procedures.
6. **Effective Use of Technology:** In line with the contemporary trend of integrating technology into arbitration processes, the article recognises the importance of utilising technology effectively. This can contribute to efficiency by streamlining communications, document sharing, and virtual hearings.
7. **Equal Treatment of Parties:** This provision emphasises the principle of equal treatment of the parties. It ensures that neither party is unfairly favoured or disadvantaged by the chosen procedures. This aligns with the fundamental principle of due process in arbitration, where both parties must have a level playing field.
8. **Reasonable Opportunity to Present Case:** Parties must be given a "reasonable opportunity" to present their case. This underscores the importance of ensuring that both sides have a fair chance to present evidence, make arguments, and respond to the other side's submissions.

In summary, Article 13.1 of the HKIAC Arbitration Rules 2018 provides guidance for the arbitral tribunal to establish appropriate procedures that balance efficiency and fairness. It encourages the tribunal to consider the complexity of the issues, the amount in dispute, and the effective use of technology while ensuring equal treatment of the parties and affording them a reasonable opportunity to present their case. This article reflects the modern approach to arbitration, which aims to deliver timely and cost-effective resolutions while maintaining the integrity of due process.

**13.2 At an early stage of the arbitration and in consultation with the parties, the arbitral tribunal shall prepare a provisional timetable for the arbitration, which shall be provided to the parties and HKIAC.**

Article 13.2 of the HKIAC Arbitration Rules 2018 focuses on the procedural aspect of preparing a provisional timetable for the arbitration process. This provision highlights the importance of early planning and communication between the arbitral tribunal and the parties. Let us break down the key components of this provision:

1. **Early Stage and Consultation:** The article emphasises that the arbitral tribunal is required to prepare a provisional timetable for the arbitration at an “early stage”. This underscores the significance of initiating the procedural planning process as soon as practicable. Additionally, the tribunal is directed to undertake this task in consultation with the parties. Involving the parties in the planning process reflects a collaborative and transparent approach to procedural decision-making.
2. **Provisional Timetable:** The provisional timetable refers to a preliminary schedule that outlines the anticipated sequence and timing of key procedural steps in the arbitration process. This could include deadlines for filing submissions, exchanging evidence, conducting hearings, and issuing awards. The term “provisional” acknowledges that adjustments may be necessary as the arbitration progresses.
3. **Communication with Parties and HKIAC:** The provision emphasises that the prepared provisional timetable must be provided not only to the parties but also to the HKIAC (Hong Kong International Arbitration Centre). This communication to the HKIAC likely serves to ensure that the institution overseeing the arbitration is informed about the procedural plan and can assist in its administration if needed.
4. **The purpose of this provision is to facilitate efficient case management and coordination of the arbitration process.** By creating a preliminary timetable in consultation with the parties, the tribunal aims to provide a clear procedural roadmap for the parties, which can help manage expectations, allocate resources effectively, and avoid unnecessary delays.

In summary, Article 13.2 of the HKIAC Arbitration Rules 2018 mandates that the arbitral tribunal, in collaboration with the parties, prepares a provisional timetable for the arbitration at an early stage. This provision underscores the significance of timely procedural planning and transparent communication in ensuring the smooth progression of the arbitration process.

**13.3 Subject to Article 11.5, all written communications between any party and the arbitral tribunal shall be communicated to all other parties and HKIAC.**

Article 13.3 of the HKIAC Arbitration Rules 2018 focuses on the transparency and equal sharing of written communications within the arbitration process. This provision aims to ensure that all parties and the arbitral institution are kept informed about the communications exchanged between the parties and the arbitral tribunal. Let us break down the key components of this provision:

1. **Written Communications:** The provision pertains to all written communications exchanged between any party and the arbitral tribunal. Written communications can include formal submissions, requests, motions, notifications, and any other documented correspondence related to the arbitration proceedings.
2. **Communication to All Parties:** The article emphasises the principle that any written communication sent between a party and the arbitral tribunal must be communicated to all other parties involved in the arbitration. This requirement ensures transparency and prevents the possibility of one party having access to information that the other parties are not aware of.
3. **Communication to HKIAC:** In addition to communicating written communications to all parties, the provision also requires that these communications be shared with the HKIAC (Hong Kong International Arbitration Centre). This requirement serves to keep the arbitral institution informed about the ongoing communication and developments within the arbitration, which can aid in the management and administration of the case.
4. **Subject to Article 11.5:** The provision contains a reference to Article 11.5, indicating that this requirement is subject to the exceptions or limitations outlined in that specific article. Article 11.5 likely contains provisions related to confidentiality or the protection of sensitive information within the arbitration process.

In summary, Article 13.3 of the HKIAC Arbitration Rules 2018 establishes the principle of transparency and equal sharing of written communications within the arbitration process. It mandates that all written communications between any party and the arbitral tribunal must be communicated to all other parties involved in the arbitration, as well as to the HKIAC. This provision promotes fairness, openness, and effective communication among all parties and the arbitral institution throughout the course of the arbitration proceedings.

**13.4 The arbitral tribunal may, after consulting with the parties, appoint a secretary. The secretary shall remain at all times impartial and independent of the parties and shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence prior to his or her appointment. A secretary, once appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances.**

Article 13.4 of the HKIAC Arbitration Rules 2018 focuses on the appointment and role of a secretary within the arbitration process. This provision outlines the process by which an arbitral tribunal can appoint a secretary, sets forth the qualifications and duties of the secretary, and emphasises the importance of impartiality and independence. Let us break down the key components of this provision:

1. **Appointment of a Secretary:** The article grants the arbitral tribunal the authority to appoint a secretary for assistance in administrative and procedural matters related to the arbitration. A secretary can help with tasks such as organising documents, preparing drafts, and facilitating communication.
2. **Consultation with the Parties:** Before appointing a secretary, the arbitral tribunal is required to consult with the parties. This ensures transparency and involves the parties in the decision-making process regarding the appointment of a secretary.
3. **Impartiality and Independence:** The provision emphasises that the appointed secretary must remain impartial and independent of the parties throughout the arbitration process. This requirement is crucial to maintaining the integrity and fairness of the proceedings.
4. **Disclosure of Circumstances:** Prior to the appointment, the secretary is obligated to disclose any circumstances that might give rise to justifiable doubts about their impartiality or independence. This disclosure requirement ensures that all parties are aware of any potential conflicts of interest or bias that the secretary might have.
5. **Ongoing Disclosure:** Once appointed, the secretary must continue to disclose any circumstances that could cast doubt on their impartiality or independence. This includes promptly disclosing such circumstances to the parties, unless the parties have already been informed by the secretary about these circumstances.

In summary, Article 13.4 of the HKIAC Arbitration Rules 2018 outlines the procedure and principles for appointing a secretary in arbitration proceedings. It highlights the importance of the secretary's impartiality and independence, and it establishes a mechanism for disclosing any circumstances that might compromise these qualities. This provision contributes to the overall fairness, transparency, and integrity of the arbitration process by ensuring that the secretary's role is carried out without bias and that any potential conflicts of interest are promptly addressed.

### **13.5 The arbitral tribunal and the parties shall do everything necessary to ensure the fair and efficient conduct of the arbitration.**

Article 13.5 of the HKIAC Arbitration Rules 2018 focuses on the shared responsibility of both the arbitral tribunal and the parties to ensure the fair and efficient conduct of the arbitration proceedings. This provision underscores the collaborative nature of the arbitration process and the commitment required from all involved parties. Let us break down the key components of this provision:

1. **Shared Responsibility:** The provision establishes a dual obligation for both the arbitral tribunal and the parties. It emphasises that all parties involved have a role to play in ensuring the arbitration is conducted fairly and efficiently.
2. **Fair Conduct:** The article emphasises the importance of fairness in the conduct of the arbitration. This includes ensuring that both parties have equal opportunities to present their case, submit evidence, and respond to each other's arguments.
3. **Efficient Conduct:** The provision also highlights the need for efficiency throughout the arbitration process. This involves timely submissions, adherence to procedural deadlines, and avoiding unnecessary delays that could prolong the resolution of the dispute.

4. Collaborative Effort: The wording “the arbitral tribunal and the parties shall do everything necessary” indicates that the success of the arbitration process depends on the collaborative efforts of all parties involved. This includes the active engagement of the arbitral tribunal and the parties to address any challenges that may arise during the arbitration.
5. Compliance with Rules: This provision aligns with the overarching principles of arbitration rules to ensure that the proceedings are conducted in accordance with established rules and guidelines. It is a reminder that both the arbitral tribunal and the parties are bound by these rules to maintain the integrity and effectiveness of the arbitration process.

In summary, Article 13.5 of the HKIAC Arbitration Rules 2018 emphasises the joint responsibility of the arbitral tribunal and the parties to ensure the fair and efficient conduct of the arbitration proceedings. It highlights the need for cooperation, fairness, and adherence to established procedures, all of which contribute to the successful resolution of disputes through arbitration.

**13.6 The parties may be represented by persons of their choice, subject to Article 13.5. The names, addresses, facsimile numbers and/or email addresses of party representatives shall be communicated to all other parties, HKIAC, any emergency arbitrator, and the arbitral tribunal once constituted. The arbitral tribunal, emergency arbitrator or HKIAC may require proof of authority of any party representatives.**

Article 13.6 of the HKIAC Arbitration Rules 2018 addresses the representation of parties in arbitration proceedings. This provision highlights the parties’ right to choose their representatives, establishes the necessity of communication and disclosure of representative details, and outlines the potential requirements for proof of authority. Let us break down the key components of this provision:

1. Right to Choose Representatives: The article affirms the parties’ right to be represented in the arbitration proceedings by individuals or legal entities of their choice. This reflects the principle of party autonomy, allowing parties to engage legal professionals or representatives who can best advocate for their interests.
2. Subject to Article 13.5: Reference to Article 13.5 suggests that the choice of representatives should be in alignment with the overarching obligation of both parties and the arbitral tribunal to ensure fair and efficient conduct of the arbitration. It implies that while parties have the freedom to choose representatives, this choice should not compromise the fairness and efficiency of the proceedings.
3. Communication of Representative Details: The provision requires that the names, addresses, facsimile numbers, and/or email addresses of party representatives be communicated to all other parties, the HKIAC, any emergency arbitrator (if applicable), and the constituted arbitral tribunal. This disclosure ensures transparency in the representation process and allows effective communication among all parties and relevant entities.
4. Verification of Authority: The article acknowledges that the arbitral tribunal, emergency arbitrator, or the HKIAC may request proof of authority of any party representatives. This requirement is aimed at preventing unauthorised representation and maintaining the integrity of the proceedings.

In summary, Article 13.6 of the HKIAC Arbitration Rules 2018 focuses on the representation of parties in arbitration and the procedural aspects associated with it. It emphasises the parties' right to choose their representatives while also emphasising the importance of transparency, effective communication, and the requirement to verify the authority of representatives. This provision seeks to strike a balance between party autonomy and the need to ensure the fairness and efficiency of the arbitration process.

**13.7 After the arbitral tribunal is constituted, any change or addition by a party to its legal representatives shall be communicated promptly to all other parties, the arbitral tribunal and HKIAC.**

Article 13.7 of the HKIAC Arbitration Rules 2018 addresses the situation where a party wishes to change or add legal representatives after the arbitral tribunal has been constituted. This provision emphasises the importance of transparency, effective communication, and procedural fairness when making such changes. Let us break down the key components of this provision:

1. **Change or Addition of Legal Representatives:** The article deals with situations where a party intends to modify its legal representation by either changing existing representatives or adding new ones to its team.
2. **Prompt Communication:** The provision mandates that any such change or addition by a party to its legal representatives must be communicated promptly to various entities:
  - a. **All Other Parties:** This requirement ensures that all parties involved in the arbitration are informed of the change, maintaining transparency and ensuring that all parties are on the same page.
  - b. **The Arbitral Tribunal:** The arbitral tribunal needs to be updated about changes in legal representation to manage the proceedings effectively and to ensure that there is no disruption or delay.
  - c. **HKIAC:** Communication to the HKIAC ensures that the institution overseeing the arbitration is aware of changes in representation and can manage administrative aspects accordingly.
3. This provision reinforces the importance of transparent communication and cooperation within the arbitration process. Changes in legal representation can have implications for the course of the proceedings, and prompt communication helps in avoiding misunderstandings and potential disruptions.

In summary, Article 13.7 of the HKIAC Arbitration Rules 2018 underscores the need for transparency and efficient communication when parties intend to change or add legal representatives after the arbitral tribunal has been constituted. This requirement ensures that all parties, the arbitral tribunal, and the arbitral institution are kept informed of such changes, promoting fairness and effective case management in the arbitration proceedings.

**13.8 Where the parties agree to pursue other means of settling their dispute after the arbitration commences, HKIAC, the arbitral tribunal or emergency arbitrator may, at the request of any party, suspend the arbitration or Emergency Arbitrator Procedure, as applicable, on such terms as it considers appropriate. The arbitration or Emergency Arbitrator Procedure shall resume at the request of any party to HKIAC, the arbitral tribunal or emergency arbitrator.**

Article 13.8 of the HKIAC Arbitration Rules 2018 addresses the scenario where parties in an arbitration decide to pursue alternative dispute resolution methods after the arbitration has commenced. This provision allows for the suspension and resumption of the arbitration or Emergency Arbitrator Procedure if the parties agree to explore other ways of resolving their dispute. Let us break down the key components of this provision:

1. **Alternative Dispute Resolution (ADR) After Commencement:** The article acknowledges that parties might choose to explore other means of settling their dispute even after the arbitration process has already started. This could involve negotiation, mediation, or any other form of alternative dispute resolution.
2. **Authority to Suspend the Arbitration:** If the parties agree to pursue alternative dispute resolution methods, the HKIAC, the arbitral tribunal, or an emergency arbitrator (if applicable) has the authority to suspend the arbitration or Emergency Arbitrator Procedure, as appropriate.
3. **Request for Suspension:** Any party can request the suspension of the arbitration or Emergency Arbitrator Procedure if the parties mutually agree to pursue alternative methods of settlement. The requesting party may approach HKIAC, the arbitral tribunal, or emergency arbitrator to initiate the suspension.
4. **Terms of Suspension:** The provision does not prescribe specific terms for the suspension, but rather, it states that the suspension will occur “on such terms as it considers appropriate”. This gives flexibility to the institution or individuals making the decision to tailor the suspension to the specific circumstances of the case.
5. **Resumption of Arbitration:** Once the parties have pursued their alternative dispute resolution efforts and wish to resume the arbitration or Emergency Arbitrator Procedure, any party can request the resumption of the proceedings by reaching out to HKIAC, the arbitral tribunal, or emergency arbitrator.

In summary, Article 13.8 of the HKIAC Arbitration Rules 2018 accommodates scenarios where parties decide to explore alternative dispute resolution methods after the commencement of arbitration. It permits the suspension of the arbitration or Emergency Arbitrator Procedure upon the request of any party, and outlines that the proceedings can be resumed at the request of any party as well. This provision provides parties with the flexibility to adapt their approach to dispute resolution and aligns with the principle of party autonomy in the arbitration process.

**13.9 In all matters not expressly provided for in these Rules, HKIAC, the arbitral tribunal, emergency arbitrator and the parties shall act in the spirit of these Rules.**

Article 13.9 of the HKIAC Arbitration Rules 2018 addresses the approach to be taken when dealing with matters that are not specifically covered by the arbitration rules. This provision emphasises the



overarching principle that parties, the arbitral tribunal, and the HKIAC should operate in alignment with the spirit of the rules in situations where specific guidance is not provided. Let us break down the key components of this provision:

1. **Gap-Filling Principle:** The article acknowledges that arbitration rules cannot cover every possible situation that may arise during the arbitration process. It recognises that there may be instances where the rules do not offer explicit guidance.
2. **Guiding Spirit of the Rules:** In such cases, the provision directs all parties involved—including the HKIAC, the arbitral tribunal, and an emergency arbitrator if applicable—to act in the “spirit” of the arbitration rules. This implies that decisions should be made with the overarching principles, objectives, and values of the rules in mind, even if there is no direct rule addressing the specific issue.
3. **Promotion of Consistency and Fairness:** The intent behind this provision is to ensure that the arbitration process remains consistent with the philosophy, goals, and intentions of the rules. It also aims to maintain fairness and procedural integrity even in situations where specific procedures may not be explicitly outlined.
4. **Flexibility and Adaptation:** This provision acknowledges the dynamic nature of arbitration proceedings and the need for flexibility in responding to unforeseen circumstances. It allows for a more adaptable approach to addressing issues that may not have been foreseen when drafting the rules.

In summary, Article 13.9 of the HKIAC Arbitration Rules 2018 serves as a guiding principle for situations not explicitly covered by the rules. It calls for the parties, the arbitral tribunal, and the HKIAC to follow the spirit and intent of the rules, even in the absence of specific provisions. This approach aims to ensure that the arbitration process remains consistent, fair, and effective, while also allowing for flexibility in addressing unforeseen matters.

### **13.10 The arbitral tribunal or emergency arbitrator shall make every reasonable effort to ensure that an award is valid.**

Article 13.10 of the HKIAC Arbitration Rules 2018 emphasises the responsibility of the arbitral tribunal or emergency arbitrator to take all necessary measures to ensure that the final award rendered is valid. This provision underscores the significance of producing a legally sound and enforceable award in the arbitration process. Let us break down the key components of this provision:

1. **Ensuring Validity of the Award:** The article places a duty on the arbitral tribunal or emergency arbitrator to make “every reasonable effort” to ensure the validity of the award they render. This implies that the tribunal should take proactive steps to avoid issues that could compromise the award’s legality, enforceability, or integrity.
2. **Legal Soundness:** The provision emphasises the importance of ensuring that the award complies with all applicable legal requirements, including those related to form, substance, and procedural fairness. This might involve careful consideration of the evidence presented, adherence to the relevant laws, and proper application of legal principles.

3. **Enforceability:** The term “valid” likely includes considerations of enforceability, as an award that is not valid may face challenges when it comes to enforcement in courts or under international treaties.
4. **Reasonable Effort:** The requirement to make “every reasonable effort” acknowledges that while the arbitral tribunal or emergency arbitrator should take proactive steps to ensure validity, they are not expected to guarantee absolute perfection. The standard is one of reasonable diligence.
5. **Importance of Integrity:** This provision underscores the integrity of the arbitration process and the duty of the tribunal to uphold the standards of fairness, due process, and legal legitimacy.

In summary, Article 13.10 of the HKIAC Arbitration Rules 2018 emphasises the obligation of the arbitral tribunal or emergency arbitrator to strive for a valid and legally sound award. This provision reflects the importance of upholding the credibility and effectiveness of arbitration as a method of dispute resolution by ensuring that the final award is reliable, enforceable, and consistent with legal principles.

## Article 14 – Seat and Venue of the Arbitration

### **14.1 The parties may agree on the seat of arbitration. Where there is no agreement as to the seat, the seat of arbitration shall be Hong Kong, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate.**

Article 14.1 of the HKIAC Arbitration Rules 2018 addresses the important matter of determining the seat of arbitration in cases where the parties have not explicitly agreed upon it. This provision establishes the default seat of arbitration and allows for the possibility of a different seat being determined by the arbitral tribunal under specific circumstances. Let us analyse the key elements of Article 14.1:

1. **Parties’ Agreement on Seat:** The provision recognises the principle of party autonomy by allowing the parties to agree on the seat of arbitration. This means that the parties have the freedom to select a specific location as the legal venue for conducting the arbitration proceedings.
2. **Default Seat: Hong Kong:** In the absence of an agreement between the parties regarding the seat of arbitration, Article 14.1 designates Hong Kong as the default seat. This implies that, if the parties do not expressly decide on a seat, the arbitration proceedings will be deemed to be seated in Hong Kong.
3. **Arbitral Tribunal’s Discretion for Another Seat:** The provision introduces an element of flexibility by allowing the arbitral tribunal to determine a different seat of arbitration if it deems another location to be more appropriate based on the circumstances of the case. This discretion reflects the importance of considering practical, logistical, and legal factors when determining the appropriate seat.
4. **Circumstances of the Case:** The arbitral tribunal’s decision to determine a different seat must be based on the circumstances of the specific case. This may include factors such as the physical location of relevant parties and evidence, the convenience of the parties and

witnesses, the enforceability of awards in different jurisdictions, and other practical considerations.

5. **Ensuring Equitable and Effective Proceedings:** The provision's flexibility in allowing the arbitral tribunal to select a different seat when warranted by the circumstances aims to ensure that the arbitration proceedings are conducted in a manner that is equitable and effective for all parties involved.
6. **Balancing Party Autonomy and Practical Considerations:** Article 14.1 strikes a balance between upholding party autonomy by respecting their agreement on the seat of arbitration and recognising the need for practical considerations to determine the most suitable seat when parties have not agreed.
7. **International and Cross-Border Considerations:** Given that international arbitrations often involve parties from different jurisdictions, the provision acknowledges the global nature of arbitration and the potential need to select a seat that facilitates the efficient conduct of proceedings.

In summary, Article 14.1 of the HKIAC Arbitration Rules 2018 outlines the rules for determining the seat of arbitration. It allows the parties to agree on the seat, designates Hong Kong as the default seat in the absence of an agreement, and empowers the arbitral tribunal to determine a different seat if the circumstances of the case warrant it. This provision ensures a balance between party autonomy and practical considerations to facilitate a fair and efficient arbitration process.

**14.2 Unless the parties have agreed otherwise, the arbitral tribunal may meet at any location outside of the seat of arbitration which it considers appropriate for consultation among its members, hearing witnesses, experts or the parties, or the inspection of goods, other property or documents. The arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the seat.**

Article 14.2 of the HKIAC Arbitration Rules 2018 addresses the flexibility of the arbitral tribunal to convene meetings or hearings at locations outside the designated seat of arbitration. This provision recognises that the arbitration process may require physical presence at various locations for consultation, evidence gathering, or other purposes. Let us analyse the key elements of Article 14.2:

1. **Flexibility in Tribunal Meetings and Hearings:** The provision acknowledges that the arbitral tribunal has the authority to convene meetings, hearings, or other proceedings at locations outside the seat of arbitration. This recognises the practical necessity of having flexibility in deciding where certain proceedings should take place, especially considering the global nature of modern arbitration.
2. **Purposes of Convening Outside the Seat:** The article enumerates several purposes for which the tribunal may meet outside the seat of arbitration. These include consultation among tribunal members, hearing witnesses and experts, interacting with the parties, and inspecting goods, property, or documents relevant to the dispute. This flexibility is crucial for the tribunal to effectively gather evidence and make informed decisions.
3. **Seat of Arbitration Remains Unchanged:** Despite convening meetings or hearings outside the seat, the arbitration proceedings shall still be treated for all purposes as an arbitration

conducted at the designated seat. This ensures legal clarity and maintains the integrity of the arbitration process, particularly with regard to the legal framework, procedural rules, and any potential challenges to the arbitration.

4. **Party Autonomy: Agreement on Location:** The provision emphasises that the arbitral tribunal's discretion to meet outside the seat is subject to any agreement reached by the parties. This recognises the principle of party autonomy and respects any prior understanding the parties may have regarding the locations where proceedings will take place.
5. **Practical Considerations:** By allowing meetings and hearings to be held outside the seat of arbitration, Article 14.2 accommodates the practical realities of international arbitration. It acknowledges that certain proceedings, such as witness testimony or inspections, may be more effectively conducted at specific locations relevant to the case.
6. **Harmonising Flexibility with Legal Framework:** The article reflects a harmonious approach that combines the necessity of flexible proceedings with the legal principles underpinning the arbitration process. It ensures that the proceedings are efficient and effective while maintaining the formal legal framework associated with the designated seat.

In summary, Article 14.2 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the flexibility to meet, hold hearings, and undertake various activities outside the seat of arbitration for specific purposes. This provision ensures that the arbitration process remains practical and responsive to the needs of the case while preserving the legal framework associated with the designated seat.

## Article 15 – Language

### **15.1 The arbitration shall be conducted in the language of the arbitration. Where the parties have not previously agreed on such language, any party shall communicate in English or Chinese prior to any determination by the arbitral tribunal under Article 15.2.**

Article 15.1 of the HKIAC Arbitration Rules 2018 addresses the language of the arbitration proceedings. This provision establishes the language in which the arbitration shall be conducted and outlines the default languages to be used by the parties prior to a determination by the arbitral tribunal. Let us analyse the key elements of Article 15.1:

1. **Language of Arbitration:** The article states that the arbitration proceedings shall be conducted in the language of the arbitration. This means that all written and oral communications, documents, submissions, and proceedings related to the arbitration should be conducted in the specified language.
2. **Default Languages: English and Chinese:** In cases where the parties have not previously agreed upon the language of the arbitration, Article 15.1 designates English or Chinese as the default languages to be used by the parties before the arbitral tribunal determines the official language.
3. **Communication in Default Languages:** The provision requires that any party communicate in either English or Chinese until a determination is made by the arbitral tribunal regarding the official language of the arbitration. This ensures that there is a functional

language for communication and that the proceedings can move forward even before the language issue is resolved.

4. **Arbitral Tribunal's Determination:** Article 15.2: Article 15.1 sets the stage for Article 15.2, which outlines the arbitral tribunal's role in determining the language of the arbitration in cases where the parties have not previously agreed. Article 15.2 addresses the process by which the tribunal makes this determination.
5. **Flexibility and Practicality:** By designating English or Chinese as default languages, the provision takes into consideration the international nature of arbitration proceedings and the common usage of these languages in cross-border disputes. It provides a practical approach to enable communication while the language issue is resolved.
6. **Balancing Party Autonomy and Efficiency:** While Article 15.1 recognises the importance of party autonomy in selecting the language of the arbitration, it also aims to ensure the efficient progression of proceedings by designating default languages. The arbitral tribunal's determination in Article 15.2 will ultimately respect party preferences while considering the practical aspects of conducting the arbitration.
7. **Ensuring Effective Communication:** The provision ensures that parties can effectively communicate and participate in the arbitration proceedings even if the language issue has not yet been resolved. This is important for maintaining a fair and transparent process.

In summary, Article 15.1 of the HKIAC Arbitration Rules 2018 establishes the default languages (English or Chinese) to be used by the parties in cases where the language of the arbitration has not been agreed upon. This provision enables effective communication and proceedings while allowing the arbitral tribunal to later determine the official language of the arbitration under Article 15.2. It strikes a balance between party autonomy and practicality in the conduct of international arbitration.

**15.2 Subject to agreement by the parties, the arbitral tribunal shall, promptly after its constitution, determine the language of the arbitration. This determination shall apply to all written communications and the language to be used in any hearing.**

Article 15.2 of the HKIAC Arbitration Rules 2018 addresses the important issue of determining the official language of the arbitration proceedings. This provision outlines the role of the arbitral tribunal in making this determination and its implications for written communications and hearings. Let us analyse the key elements of Article 15.2:

1. **Prompt Determination of Language:** The provision emphasises the promptness with which the arbitral tribunal must determine the language of the arbitration. This underscores the importance of clarifying the language issue early in the proceedings to ensure effective communication and a smooth arbitration process.
2. **Tribunal's Authority to Determine Language:** Article 15.2 grants the arbitral tribunal the authority to determine the official language of the arbitration. This determination is subject to any agreement reached by the parties regarding the language, thereby respecting party autonomy.

3. **Scope of Determination:** The language determination made by the arbitral tribunal applies to two key aspects:
  - a. **All written communications:** This includes all documents, submissions, pleadings, evidence, and correspondence exchanged between the parties and the tribunal during the arbitration process.
  - b. **Language of hearings:** The determination also applies to the language to be used during any hearings conducted as part of the arbitration proceedings.
4. **Party Agreement and Flexibility:** The provision recognises the importance of party agreement in the determination of the language of the arbitration. Parties are given the opportunity to agree on the language, which can streamline the process and align with their preferences.
5. **Balancing Language Competency and Efficiency:** The arbitral tribunal's determination takes into account factors such as the parties' language competency, the location of the parties and evidence, the practicality of translation, and the overall efficiency of the proceedings.
6. **Impartial and Neutral Language:** The determination of the language by the arbitral tribunal helps ensure that all parties, regardless of their linguistic background, can participate fully and fairly in the arbitration process. It also contributes to maintaining the neutrality and impartiality of the proceedings.
7. **Ensuring Consistency:** By having a single official language for written communications and hearings, the provision helps ensure consistency, clarity, and accuracy in the exchange of information and the conduct of proceedings.
8. **Party Autonomy and Tribunal's Decision:** While the parties may have input on the language determination, the ultimate decision rests with the arbitral tribunal. This respects both party autonomy and the tribunal's authority to manage the proceedings effectively.

In summary, Article 15.2 of the HKIAC Arbitration Rules 2018 outlines the process and implications of determining the language of the arbitration. The provision grants the arbitral tribunal the authority to promptly decide on the language for written communications and hearings, taking into account party agreement, language competency, efficiency, and the overall fairness of the proceedings. This ensures effective communication and a balanced approach to language issues in international arbitration.

**15.3 The arbitral tribunal may order that any supporting materials submitted in their original language shall be accompanied by a translation, in whole or in part, into the language of the arbitration as agreed by the parties or determined by the arbitral tribunal.**

Article 15.3 of the HKIAC Arbitration Rules 2018 addresses the issue of translating supporting materials submitted in an arbitration. This provision gives the arbitral tribunal the authority to order translations of such materials, striking a balance between the parties' ability to submit evidence in their preferred language and the need for effective communication in the arbitration proceedings. Let us analyse the key elements of Article 15.3:

1. **Translation of Supporting Materials:** The provision allows the arbitral tribunal to order that any supporting materials submitted in their original language be accompanied by a translation into the language of the arbitration. These supporting materials may include documents, evidence, exhibits, or other relevant materials that are presented as part of the arbitration process.
2. **Discretion of the Arbitral Tribunal:** The decision to order a translation is within the discretion of the arbitral tribunal. This reflects the tribunal's role in managing the proceedings and ensuring that the arbitration is conducted efficiently and fairly.
3. **Scope of Translation:** The translation may cover the entirety of the supporting materials or only a portion of them. This flexibility allows the tribunal to tailor the translation requirement based on the relevance and significance of the materials to the issues under consideration.
4. **Agreement of the Parties:** The provision acknowledges that the parties may agree on the need for translation and the specific scope of translation. This reflects the principle of party autonomy and allows the parties to collaboratively determine whether translation is necessary.
5. **Efficiency and Effective Communication:** The provision addresses the practical need for effective communication within the arbitration proceedings. Translations help ensure that all parties and tribunal members have a clear understanding of the materials presented, particularly when different languages are involved.
6. **Maintaining Neutrality and Fairness:** Ordering translations can contribute to the neutrality and fairness of the proceedings, ensuring that all parties can fully comprehend and respond to the evidence presented by others, regardless of language differences.
7. **Cost Considerations:** While the provision grants the arbitral tribunal the authority to order translations, it also acknowledges the potential cost implications. The tribunal may take into account factors such as the complexity of the case and the resources available to the parties.

In summary, Article 15.3 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to order translations of supporting materials submitted in their original language. This provision strikes a balance between the need for effective communication and the practical considerations of translation, while also respecting party autonomy and the tribunal's role in managing the proceedings. It ensures that all parties can fully participate in the arbitration process, regardless of linguistic differences.

## Article 16 – Statement of Claim

**16.1 Unless the Statement of Claim was contained in the Notice of Arbitration (or the Claimant elects to treat the Notice of Arbitration as the Statement of Claim), the Claimant shall communicate its Statement of Claim to all other parties and to the arbitral tribunal within a time limit to be determined by the arbitral tribunal.**

Article 16.1 of the HKIAC Arbitration Rules 2018 addresses the requirement for the Claimant to submit a Statement of Claim in arbitration proceedings. This provision outlines the timing and process for

submitting the Statement of Claim to the arbitral tribunal and the other parties. Let us analyse the key elements of Article 16.1:

1. **Submission of Statement of Claim:** The provision mandates that the Claimant must submit a Statement of Claim in the arbitration proceedings. The Statement of Claim is a formal written document that outlines the party's allegations, legal arguments, and the relief or remedies sought from the arbitral tribunal.
2. **Timing of Submission:** Unless the Statement of Claim was already included in the Notice of Arbitration, the Claimant is required to submit the Statement of Claim within a time limit determined by the arbitral tribunal. This ensures that the arbitral proceedings move forward in an organised and timely manner.
3. **Relationship with Notice of Arbitration:** The provision acknowledges that the Notice of Arbitration may also serve as the Statement of Claim if the Claimant elects to treat it as such. This provides flexibility and avoids unnecessary duplication of information if the Notice of Arbitration already contains the necessary details.
4. **Communication to Other Parties and Tribunal:** In addition to submitting the Statement of Claim to the arbitral tribunal, the Claimant is also required to communicate the Statement of Claim to all other parties involved in the arbitration. This ensures that all parties have a clear understanding of the claims being made and can adequately respond.
5. **Arbitral Tribunal's Role:** The arbitral tribunal plays a key role in determining the time limit for submitting the Statement of Claim. This allows the tribunal to adapt the timeline based on the specific circumstances of the case, ensuring fairness and efficiency.
6. **Preservation of Procedural Fairness:** Article 16.1 contributes to the procedural fairness of the arbitration process. By requiring the Claimant to provide a clear and detailed account of their claims, the provision enables other parties and the arbitral tribunal to understand and address the issues effectively.
7. **Ensuring Clarity and Predictability:** The provision helps ensure that the arbitration proceedings are conducted in an orderly and predictable manner. It sets clear expectations for the Claimant's submission of the Statement of Claim, which facilitates the overall case management.

In summary, Article 16.1 of the HKIAC Arbitration Rules 2018 establishes the requirement for the Claimant to submit a Statement of Claim in arbitration proceedings, either as a separate document or as part of the Notice of Arbitration. The provision outlines the timing for submission, the communication of the Statement of Claim to other parties and the tribunal, and the arbitral tribunal's role in setting the time limit. This contributes to procedural fairness, effective communication, and the orderly progression of the arbitration process.



**16.2 The Statement of Claim shall include the following particulars:**

- (a) a statement of the facts supporting the claim;**
- (b) the points at issue;**
- (c) the legal arguments supporting the claim; and**
- (d) the relief or remedy sought.**

Article 16.2 of the HKIAC Arbitration Rules 2018 outlines the specific particulars that must be included in the Statement of Claim submitted by the Claimant in arbitration proceedings. This provision sets forth the essential elements that the Claimant must address when presenting its case to the arbitral tribunal. Let us analyse the key components of Article 16.2:

1. **Statement of Facts (Paragraph (a)):** The provision requires the Claimant to provide a comprehensive and clear statement of the facts that form the basis of their claim. This includes detailing the events, circumstances, and incidents that led to the dispute. A well-articulated factual account helps the arbitral tribunal and the other parties understand the context and background of the dispute.
2. **Points at Issue (Paragraph (b)):** The Claimant is also obligated to identify the key points at issue in the dispute. These are the specific matters of contention between the parties that need to be resolved through the arbitration process. Clearly delineating the points at issue helps define the scope of the dispute and guides the tribunal's focus during the proceedings.
3. **Legal Arguments (Paragraph (c)):** The provision mandates that the Claimant articulates the legal arguments that support their claim. This includes explaining the legal principles, statutes, contracts, or other legal sources on which the claim is based. Providing well-reasoned and coherent legal arguments helps the tribunal assess the legal merits of the claim.
4. **Relief or Remedy Sought (Paragraph (d)):** The Statement of Claim must specify the relief or remedy sought by the Claimant. This includes detailing the specific forms of relief, such as damages, injunctions, specific performance, or any other appropriate remedy. Clearly stating the relief sought ensures that the tribunal understands the nature of the requested remedy and its potential impact.
5. **Importance of Completeness and Clarity:** Article 16.2 emphasises the importance of presenting a complete and clear Statement of Claim. By requiring the inclusion of specific particulars, the provision promotes transparency, efficient case management, and procedural fairness.
6. **Facilitating Adjudication:** A well-structured Statement of Claim aids the arbitral tribunal in its deliberations and decision-making process. The particulars specified in the provision enable the tribunal to assess the factual and legal aspects of the claim and to make informed determinations.
7. **Supporting Fair and Efficient Proceedings:** Clear and comprehensive particulars in the Statement of Claim facilitate effective communication among the parties and the tribunal.

This, in turn, contributes to the overall fairness and efficiency of the arbitration proceedings.

8. **Balancing Party Autonomy and Tribunal's Role:** While the provision outlines the required particulars, it also respects the Claimant's autonomy in presenting its case. The Claimant is given the flexibility to shape its arguments and define the relief sought, while adhering to the specified particulars.

In summary, Article 16.2 of the HKIAC Arbitration Rules 2018 outlines the essential particulars that must be included in the Statement of Claim submitted by the Claimant. These particulars encompass the factual background, points at issue, legal arguments, and relief sought. By mandating the inclusion of these elements, the provision promotes transparency, effective communication, and procedural fairness in the arbitration process.

### **16.3 The Claimant shall annex to its Statement of Claim all supporting materials on which it relies.**

Article 16.3 of the HKIAC Arbitration Rules 2018 addresses the requirement for the Claimant to annex all supporting materials to its Statement of Claim in arbitration proceedings. This provision underscores the importance of providing evidence and documentation that substantiate the claims being made. Let us analyse the key aspects of Article 16.3:

1. **Annexation of Supporting Materials:** The provision unequivocally requires the Claimant to attach all supporting materials to its Statement of Claim. These supporting materials include documents, records, contracts, correspondence, and any other evidence that is relevant to the case. By annexing these materials, the Claimant provides a complete and comprehensive presentation of its case.
2. **Promoting Transparency and Efficiency:** Annexing supporting materials enhances the transparency and clarity of the Claimant's case. The arbitral tribunal and the other parties are able to review the evidence first-hand, promoting a more efficient and focused examination of the issues in dispute.
3. **Facilitating Fact-Finding and Decision-Making:** The availability of supporting materials enables the arbitral tribunal to assess the factual basis of the claims and make well-informed decisions. This is crucial for rendering a fair and accurate judgment on the merits of the case.
4. **Ensuring Equal Opportunity:** By requiring the Claimant to provide all supporting materials, the provision ensures that the other parties have equal access to the evidence being relied upon. This contributes to the principle of equality of arms in arbitration proceedings.
5. **Preventing Surprise and Unfair Advantage:** Annexing supporting materials prevents any party from springing new evidence or documents at a later stage, which could catch other parties off guard and compromise the fairness of the proceedings.
6. **Preservation of the Right to Present Evidence:** The provision preserves the Claimant's right to present evidence and make its case by requiring the attachment of supporting materials. This contributes to the overall integrity of the arbitration process.

7. Respecting Procedural Fairness: Article 16.3 contributes to the overarching principle of procedural fairness in arbitration. It ensures that all parties have access to the relevant evidence and are able to address and respond to the claims effectively.
8. Alignment with Best Practices: The requirement to annex supporting materials is consistent with best practices in arbitration and legal proceedings. It reflects a standard approach to presenting evidence in a clear and organised manner.

In summary, Article 16.3 of the HKIAC Arbitration Rules 2018 mandates the annexation of supporting materials to the Claimant's Statement of Claim. This requirement promotes transparency, efficient fact-finding, and procedural fairness in the arbitration process. It ensures that all parties have access to the evidence being relied upon and contributes to the overall integrity of the proceedings.

#### **16.4 The arbitral tribunal may vary any of the requirements in Article 16 as it deems appropriate.**

Article 16.4 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the authority to vary any of the requirements outlined in Article 16, which pertains to the Claimant's Statement of Claim and its annexation of supporting materials. This provision acknowledges the tribunal's discretion in tailoring the procedural requirements to the specific circumstances of the case. Let us analyse the key aspects of Article 16.4:

1. Tribunal's Discretion: Article 16.4 recognises that the arbitral tribunal possesses discretionary powers to adjust or modify the procedural aspects related to the Claimant's Statement of Claim. This allows the tribunal to adapt the procedural rules to suit the unique characteristics of each arbitration.
2. Flexibility in Procedure: The provision acknowledges that a one-size-fits-all approach may not always be appropriate. The arbitral tribunal is given the flexibility to consider the specifics of the case and the needs of the parties when determining how the Statement of Claim and supporting materials should be presented.
3. Case-Specific Considerations: The arbitral tribunal is best positioned to assess whether any variations are necessary or beneficial for a particular case. This could include situations where adhering strictly to the requirements of Article 16 may not serve the interests of justice, efficiency, or fairness.
4. Promoting Efficient Proceedings: Granting the tribunal the authority to vary the requirements allows for procedural efficiency. The tribunal can streamline the process, eliminate unnecessary formalities, and focus on the substantive issues in dispute.
5. Balancing Party Autonomy and Tribunal's Role: Article 16.4 strikes a balance between respecting the parties' autonomy and giving the tribunal the discretion to manage the proceedings effectively. This balance is crucial in achieving a fair and efficient arbitration process.
6. Tailoring to Complex or Unique Cases: Some disputes may involve complex legal or technical issues, multiple parties, or diverse languages and cultures. The arbitral tribunal can adjust the procedural requirements to accommodate these complexities and ensure a fair and thorough consideration of the case.

7. Ensuring Fairness and Equal Treatment: While the tribunal has the discretion to vary the requirements, it must do so in a manner that maintains fairness and equal treatment of the parties. Any variations should not result in one party being unfairly disadvantaged.
8. Consistency with Arbitration Principles: Granting the arbitral tribunal the authority to vary procedural requirements aligns with the principles of party autonomy and procedural flexibility that are often emphasised in international arbitration.

In summary, Article 16.4 of the HKIAC Arbitration Rules 2018 allows the arbitral tribunal to exercise discretion in varying the requirements pertaining to the Claimant’s Statement of Claim and annexation of supporting materials. This provision acknowledges the tribunal’s role in shaping the arbitration process to meet the specific needs of the case, while still ensuring fairness and procedural integrity.

## Article 17 – Statement of Defence

### **17.1 Unless the Statement of Defence was contained in the Answer to the Notice of Arbitration (or the Respondent elects to treat the Answer to the Notice of Arbitration as the Statement of Defence), the Respondent shall communicate its Statement of Defence to all other parties and to the arbitral tribunal within a time limit to be determined by the arbitral tribunal.**

Article 17.1 of the HKIAC Arbitration Rules 2018 outlines the procedural requirement for the Respondent to submit its Statement of Defence in arbitration proceedings. This provision emphasises the importance of allowing the Respondent to provide a comprehensive response to the claims made by the Claimant. Let us analyse the key aspects of Article 17.1:

1. Submission of Statement of Defence: The provision stipulates that the Respondent is required to communicate its Statement of Defence to all other parties and the arbitral tribunal. This submission is essential for the Respondent to present its arguments, address the claims, and provide its perspective on the dispute.
2. Time Limit Determined by Tribunal: Article 17.1 grants the arbitral tribunal the authority to determine the time limit within which the Respondent must submit its Statement of Defence. This allows the tribunal to tailor the timeline to the specific circumstances of the case, promoting procedural fairness and efficiency.
3. Equal Opportunity to Respond: Requiring the Respondent to submit a Statement of Defence ensures that both parties have an equal opportunity to present their respective positions. It supports the principle of equality of arms in arbitration proceedings.
4. Balancing Flexibility and Structure: While the time limit for submitting the Statement of Defence is determined by the tribunal, this provision adds a degree of structure to the proceedings by specifying the need for the Respondent’s response within a reasonable time.
5. Promoting Efficient Proceedings: Requiring the submission of a Statement of Defence ensures that the proceedings move forward in an orderly and efficient manner. It prevents unnecessary delays and allows the tribunal to proceed with a full understanding of the parties’ positions.

6. **Preserving Due Process:** Article 17.1 contributes to upholding due process in arbitration by ensuring that both parties have the opportunity to fully present their cases and respond to each other's arguments.
7. **Facilitating a Complete Record:** The provision helps create a comprehensive record of the proceedings by capturing the arguments, facts, and legal positions of both parties. This is important for the arbitral tribunal's decision-making process.
8. **Supporting Informed Decision-Making:** By providing both parties with the opportunity to present their cases, the tribunal is better equipped to make well-informed and fair decisions on the merits of the dispute.
9. **Adapting to Complex Cases:** In cases involving complex legal or factual issues, the provision allows the tribunal to allocate an appropriate amount of time for the Respondent to prepare and present its Statement of Defence.

In summary, Article 17.1 of the HKIAC Arbitration Rules 2018 mandates the submission of a Statement of Defence by the Respondent. The provision underscores the importance of providing the Respondent with an opportunity to respond to the claims raised by the Claimant, ensuring procedural fairness, efficiency, and a complete record of the proceedings.

**17.2 The Statement of Defence shall reply to the particulars of the Statement of Claim (set out in Article 16.2(a) to (c)). If the Respondent has raised an objection to the jurisdiction or to the proper constitution of the arbitral tribunal, the Statement of Defence shall contain the factual and legal basis of such objection.**

Article 17.2 of the HKIAC Arbitration Rules 2018 outlines the contents and purpose of the Respondent's Statement of Defence in arbitration proceedings. This provision ensures that the Respondent's response addresses the claims made by the Claimant and any jurisdictional or tribunal constitution objections raised. Let us analyse the key aspects of Article 17.2:

1. **Addressing Particulars of Statement of Claim:** The provision mandates that the Respondent's Statement of Defence must specifically reply to the particulars of the Statement of Claim, as outlined in Article 16.2(a) to (c). This requirement ensures that the Respondent provides a comprehensive response to the factual allegations, legal arguments, and points at issue raised by the Claimant.
2. **Jurisdictional and Tribunal Constitution Objections:** Article 17.2 emphasises that if the Respondent has raised objections to the jurisdiction of the arbitral tribunal or challenges the proper constitution of the tribunal, the Statement of Defence must include the factual and legal basis for such objections. This enables the Respondent to present its position on matters that go to the very authority and legitimacy of the arbitration process.
3. **Promoting Clarity and Efficiency:** Requiring the Respondent to address the particulars of the Statement of Claim and raise any jurisdictional or tribunal constitution objections in the Statement of Defence contributes to the clarity and efficiency of the proceedings. It ensures that both parties' positions are clearly articulated from the outset.

4. **Equal Opportunity to Present Legal Arguments:** By stipulating that the Respondent's jurisdictional and tribunal constitution objections must be included in the Statement of Defence, the provision ensures that both parties have an equal opportunity to present their legal arguments on these important procedural issues.
5. **Fostering a Complete Record:** Requiring the Respondent to address jurisdictional and tribunal constitution objections in the Statement of Defence contributes to creating a complete and well-documented record of the arbitration proceedings. This is important for the arbitral tribunal's decision-making process.
6. **Preserving Due Process:** Article 17.2 supports the principle of due process by ensuring that both parties have the opportunity to present their positions on jurisdictional and tribunal constitution matters, thereby safeguarding their procedural rights.
7. **Efficient Resolution of Preliminary Issues:** By outlining the requirement for jurisdictional and tribunal constitution objections to be raised in the Statement of Defence, the provision helps expedite the resolution of preliminary issues that could impact the overall course of the arbitration.
8. **Facilitating Informed Decision-Making:** Ensuring that jurisdictional and tribunal constitution objections are raised and addressed early in the proceedings allows the arbitral tribunal to make well-informed decisions on these critical matters.

In summary, Article 17.2 of the HKIAC Arbitration Rules 2018 outlines the contents of the Respondent's Statement of Defence, emphasising the need for a comprehensive response to the particulars of the Statement of Claim and the inclusion of jurisdictional and tribunal constitution objections, where applicable. This provision promotes clarity, fairness, efficiency, and the creation of a complete record in the arbitration proceedings.

**17.3 Where there is a counterclaim, set-off defence or cross-claim, the Statement of Defence shall also include the following particulars:**

- (a) **a statement of the facts supporting the counterclaim, set-off defence or cross-claim;**
- (b) **the points at issue;**
- (c) **the legal arguments supporting the counterclaim, set-off defence or cross-claim; and**
- (d) **the relief or remedy sought.**

Article 17.3 of the HKIAC Arbitration Rules 2018 outlines the requirements for the contents of the Respondent's Statement of Defence when a counterclaim, set-off defence, or cross-claim is involved in the arbitration proceedings. This provision ensures that the Respondent's response addresses not only the original claims but also any additional claims or defences raised by the Respondent. Let us analyse the key aspects of Article 17.3:

1. **Addressing Additional Claims or Defences:** The provision mandates that when there is a counterclaim, set-off defence, or cross-claim, the Respondent's Statement of Defence must include a response to these additional claims or defences. This ensures that all

aspects of the dispute are addressed comprehensively, and the arbitral tribunal has a clear understanding of the parties' positions.

2. **Completing the Picture:** Requiring the Respondent to provide specific particulars for the counterclaim, set-off defence, or cross-claim, including facts, points at issue, legal arguments, and relief sought, contributes to creating a complete picture of the entire dispute. This is crucial for the arbitral tribunal's decision-making process.
3. **Equity and Balance:** By outlining the requirements for addressing additional claims or defences in the Statement of Defence, the provision maintains equity and balance between the parties. Both the Claimant and Respondent have the opportunity to present their respective claims and arguments in a structured manner.
4. **Clarity and Efficiency:** Article 17.3 promotes clarity and efficiency by ensuring that all relevant claims and defences are addressed in a single document – the Statement of Defence. This prevents fragmentation of arguments and promotes a clear presentation of each party's case.
5. **Preserving Due Process:** The provision supports due process by ensuring that the Respondent has an opportunity to respond fully to any counterclaim, set-off defence, or cross-claim raised by the Claimant. This contributes to the overall fairness of the proceedings.
6. **Facilitating Informed Decision-Making:** Requiring the inclusion of particulars for additional claims or defences in the Statement of Defence allows the arbitral tribunal to make well-informed decisions on the entirety of the dispute. This ensures that all relevant factors are considered.
7. **Promoting Consistency:** By stipulating that all relevant particulars should be included in the Statement of Defence, the provision promotes consistency and clarity in the presentation of each party's case, enhancing the overall organisation of the proceedings.
8. **Comprehensive Record:** Requiring the inclusion of particulars for additional claims or defences contributes to creating a comprehensive record of the arbitration proceedings. This is important for the transparency and accountability of the arbitration process.

In summary, Article 17.3 of the HKIAC Arbitration Rules 2018 ensures that when there is a counterclaim, set-off defence, or cross-claim, the Respondent's Statement of Defence includes specific particulars addressing these additional claims or defences. This provision supports equity, procedural fairness, clarity, and efficiency in the arbitration proceedings.

#### **17.4 The Respondent shall annex to its Statement of Defence all supporting materials on which it relies.**

Article 17.4 of the HKIAC Arbitration Rules 2018 emphasises the importance of transparency and completeness in arbitration proceedings by requiring the Respondent to attach supporting materials to its Statement of Defence. This provision ensures that the arbitral tribunal and the opposing party have access to all relevant evidence and documents at an early stage of the proceedings. Let us analyse the key aspects of Article 17.4:

1. **Complete Presentation of Evidence:** Requiring the Respondent to annex supporting materials to its Statement of Defence ensures that all relevant documents and evidence are presented to the arbitral tribunal and the opposing party in a structured manner. This promotes a clear and comprehensive understanding of the Respondent's case.
2. **Efficiency and Transparency:** By attaching supporting materials to the Statement of Defence, the provision contributes to the efficiency of the arbitration proceedings. It allows the arbitral tribunal and the opposing party to review the evidence simultaneously with the Respondent's arguments, promoting transparency and avoiding delays.
3. **Preventing Surprise:** Requiring the early submission of supporting materials prevents any last-minute surprises or ambush tactics. Both parties are informed of the evidence and documents relied upon by the Respondent, ensuring a level playing field and allowing for effective preparation and response.
4. **Informed Decision-Making:** The provision facilitates informed decision-making by ensuring that all relevant materials are available to the arbitral tribunal when it assesses the merits of the case. This supports the tribunal in making well-reasoned and fair decisions.
5. **Streamlining Proceedings:** Requiring the attachment of supporting materials to the Statement of Defence reduces the need for additional document production requests or delays in obtaining evidence. This can lead to a more streamlined and efficient arbitration process.
6. **Transparency and Accountability:** Requiring the Respondent to provide supporting materials upfront enhances the transparency and accountability of the arbitration proceedings. Both parties have a clear view of the evidence relied upon by each other, contributing to the overall fairness of the process.
7. **Fair Opportunity to Respond:** The provision ensures that the Claimant has a fair opportunity to review and respond to the supporting materials attached to the Statement of Defence. This supports the principles of procedural fairness and due process.
8. **Enhancing the Record:** By attaching supporting materials to the Statement of Defence, a comprehensive record of the evidence and arguments is created, which can be particularly useful for any potential challenges or enforcement actions related to the arbitration award.

In summary, Article 17.4 of the HKIAC Arbitration Rules 2018 underscores the importance of transparency, efficiency, and completeness in arbitration proceedings by requiring the Respondent to annex supporting materials to its Statement of Defence. This provision promotes fairness, informed decision-making, and a well-organised arbitration process.

#### **17.5 The arbitral tribunal may vary any of the requirements in Article 17 as it deems appropriate.**

Article 17.5 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the authority to exercise discretion in varying any of the requirements outlined in Article 17, which pertains to the Respondent's Statement of Defence. This provision provides the arbitral tribunal with flexibility to adapt to the



specific circumstances of the case while ensuring a fair and efficient arbitration process. Let us analyse the key aspects of Article 17.5:

1. **Tribunal's Discretion:** Article 17.5 recognises the arbitral tribunal as the decision-making body with the authority to determine whether any of the requirements set forth in Article 17 should be adjusted or modified based on the unique circumstances of the arbitration.
2. **Case-Specific Adaptation:** The provision acknowledges that each arbitration case may present distinct features, complexities, or nuances that warrant a tailored approach to the Respondent's Statement of Defence. This adaptability is crucial for the tribunal to effectively manage the proceedings.
3. **Balancing Procedural Efficiency and Fairness:** By allowing the arbitral tribunal to vary the requirements, Article 17.5 promotes a balance between procedural efficiency and the parties' right to a fair and adequate presentation of their cases. The tribunal can make adjustments to best serve the interests of both parties.
4. **Streamlining the Process:** In cases where strict adherence to the requirements of Article 17 might lead to inefficiencies or unnecessary delays, the arbitral tribunal can exercise its discretion to streamline the proceedings without compromising the fundamental principles of fairness and due process.
5. **Responding to Unforeseen Situations:** Article 17.5 provides the tribunal with the flexibility to respond to unforeseen situations or developments that may arise during the arbitration, allowing it to make informed decisions that ensure the proceedings remain effective and just.
6. **Customised Approaches:** The provision enables the arbitral tribunal to adopt creative or customised approaches to meet the specific needs of the case, taking into account the parties' submissions, the nature of the dispute, and any practical considerations.
7. **Judicious Use of Discretion:** While the provision grants discretion to the arbitral tribunal, it is subject to the tribunal's duty to ensure that any variations are fair, reasonable, and consistent with the principles of arbitration and due process.
8. **Consistent with International Practice:** Providing the arbitral tribunal with the authority to vary procedural requirements aligns with international arbitration practices, which often prioritise flexibility and adaptability to achieve a just and efficient resolution of disputes.

In summary, Article 17.5 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to vary the requirements outlined in Article 17 regarding the Respondent's Statement of Defence. This provision reflects the tribunal's authority to tailor the arbitration process to the specific circumstances of the case, while maintaining procedural fairness and efficiency.

## Article 18 – Amendments to the Claim or Defence

**18.1 During the course of the arbitration, a party may amend or supplement its claim or defence, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard**

**to the circumstances of the case. However, a claim or defence may not be amended in such a manner that the amended claim or defence falls outside the jurisdiction of the arbitral tribunal.**

Article 18.1 of the HKIAC Arbitration Rules 2018 addresses the issue of amending or supplementing a party's claim or defence during the course of arbitration. This provision is designed to strike a balance between ensuring the fairness and efficiency of the arbitration process while also maintaining the boundaries of the arbitral tribunal's jurisdiction. Let us analyse the key elements of Article 18.1:

1. **Amendment and Supplement of Claims or Defences:** The provision allows a party to request amendments or supplements to its claim or defence after the arbitration has commenced. This reflects the recognition that the evolution of the case may necessitate adjustments to the parties' arguments or positions.
2. **Tribunal's Discretion:** While parties have the option to amend or supplement their claims or defences, the discretion to allow such amendments rests with the arbitral tribunal. The tribunal considers whether the circumstances of the case warrant permitting the proposed changes.
3. **Appropriateness and Jurisdictional Limits:** The arbitral tribunal has the authority to assess the appropriateness of allowing amendments. Importantly, the provision imposes a constraint that any amendment should not result in the amended claim or defence falling outside the jurisdiction of the tribunal. This ensures that the tribunal's mandate remains intact and that any newly introduced claims or defences remain within the scope of the arbitration agreement.
4. **Balancing Fairness and Efficiency:** By permitting amendments or supplements, the provision aims to balance the principle of fairness, allowing parties to present their case as it evolves, with the need for procedural efficiency. The tribunal assesses whether the proposed amendments serve the interests of justice without unduly delaying the proceedings.
5. **Preservation of Party Autonomy:** While the tribunal has discretion, Article 18.1 respects party autonomy. It acknowledges that parties may have valid reasons to adjust their claims or defences as the proceedings unfold.
6. **Circumstances of the Case:** The provision emphasises that the tribunal's decision to allow amendments is context-specific and depends on the circumstances of each case. This recognises that different cases may have varying complexities and considerations that influence the appropriateness of allowing amendments.
7. **Fair Hearing and Due Process:** Article 18.1 aligns with the principles of providing parties with a fair hearing and upholding due process. It ensures that parties have the opportunity to present their case effectively and respond to new developments.
8. **Preservation of Jurisdiction:** The provision ensures that amendments do not undermine the arbitral tribunal's jurisdiction or authority. The tribunal remains empowered to hear and decide on matters that fall within its mandate.

In summary, Article 18.1 of the HKIAC Arbitration Rules 2018 addresses the amendment or supplementation of claims or defences during arbitration. It underscores the arbitral tribunal's

discretion to allow amendments while safeguarding the jurisdiction of the tribunal and maintaining the balance between fairness and efficiency in the arbitration process. The provision reflects the fundamental principles of arbitration, including party autonomy, due process, and the tribunal's authority.

**18.2 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) if a party amends its claim or defence.**

Article 18.2 of the HKIAC Arbitration Rules 2018 addresses the potential financial implications of amending a claim or defence during the course of arbitration. This provision recognises that changes to the claims or defences may impact the costs associated with the arbitration process. Here is an analysis of the key aspects of Article 18.2:

1. **Financial Consequences of Amendments:** The provision acknowledges that amending a claim or defence can have financial implications, affecting not only the allocation of administrative fees by HKIAC but also the fees of the arbitral tribunal.
2. **Authority of HKIAC:** Article 18.2 grants HKIAC the authority to make adjustments to both its own Administrative Fees and the fees of the arbitral tribunal when a party amends its claim or defence. This reflects HKIAC's role in administering the arbitration and ensuring that the financial aspects of the proceedings are appropriately aligned with any changes in the scope or complexity of the dispute.
3. **Flexibility and Adaptability:** By allowing adjustments to fees, the provision emphasises the flexibility and adaptability of the arbitration process. It recognises that the financial aspects of the case may need to be recalibrated to accommodate new developments that arise due to amended claims or defences.
4. **Fairness and Cost Management:** Article 18.2 contributes to the fair allocation of costs and ensures that parties are responsible for the financial consequences of their choices. It also promotes cost management within the arbitration process by aligning fees with the actual work required based on the amended claims or defences.
5. **Proportionality:** The provision embodies the principle of proportionality by linking the financial adjustments to the scope and nature of the amendments. This aligns with the broader trend in international arbitration to ensure that costs are proportionate to the complexity and value of the dispute.
6. **Preservation of Neutrality:** Article 18.2 underscores HKIAC's role as a neutral and impartial institution by having it oversee the adjustment of fees. This helps maintain the integrity and credibility of the arbitral process.
7. **Incentive for Informed Decisions:** The provision may incentivise parties to carefully consider their decisions to amend claims or defences, taking into account the potential financial consequences. This contributes to a more thoughtful and informed approach to the evolution of the case.

In summary, Article 18.2 of the HKIAC Arbitration Rules 2018 addresses the financial ramifications of amending claims or defences during arbitration. It grants HKIAC the authority to adjust both its own

Administrative Fees and the fees of the arbitral tribunal to reflect changes in the scope of the dispute. This provision promotes fairness, cost management, and proportionality within the arbitration process, while also encouraging parties to make informed decisions about amending their claims or defences.

## Article 19 – Jurisdiction of the Arbitral Tribunal

### 19.1 The arbitral tribunal may rule on its own jurisdiction under these Rules, including any objections with respect to the existence, validity or scope of the arbitration agreement.

Article 19.1 of the HKIAC Arbitration Rules 2018 pertains to the arbitral tribunal’s authority to make decisions regarding its own jurisdiction, particularly concerning objections related to the existence, validity, or scope of the arbitration agreement. Let us break down and analyse this provision:

1. **Arbitral Tribunal’s Jurisdiction:** This article deals with the arbitral tribunal’s power to determine whether it has the authority to hear and decide a particular dispute submitted to it. This power is known as “jurisdiction”, and it involves assessing whether the tribunal has been properly constituted and whether the subject matter of the dispute falls within the scope of the arbitration agreement.
2. **Scope of Review:** Article 19.1 empowers the arbitral tribunal to rule on its own jurisdiction “under these Rules”. This means that the provision pertains specifically to the rules and procedures established by the HKIAC for conducting arbitration proceedings. The tribunal’s authority to rule on its jurisdiction is not unlimited; it is confined to the framework provided by the HKIAC Arbitration Rules.
3. **Objections to Jurisdiction:** The provision allows the arbitral tribunal to address objections raised by the parties regarding the existence, validity, or scope of the arbitration agreement. These objections may include disputes over whether a valid arbitration agreement exists between the parties, whether the subject matter of the dispute falls within the agreed scope of arbitration, or whether the arbitration agreement itself is legally binding and enforceable.
4. **Kompetenz-Kompetenz Principle:** This provision embodies the “Kompetenz-Kompetenz” principle, which is a fundamental concept in international arbitration. It means that the arbitral tribunal has the authority to decide its own jurisdiction before any court or other authority does. This principle recognises the autonomy of arbitration and prevents parties from evading arbitration by seeking court intervention on jurisdictional matters.
5. **Efficiency and Autonomy:** Allowing the arbitral tribunal to determine its jurisdiction promotes efficiency in arbitration proceedings. It enables the tribunal to promptly resolve jurisdictional disputes, reducing the need for parties to engage in parallel court proceedings. Moreover, it upholds the autonomy of the arbitral process, ensuring that disputes are resolved within the chosen arbitration framework rather than in national courts.
6. **Potential Challenges:** While the principle of “Kompetenz-Kompetenz” is widely recognised and supported, there can be situations where parties may contest the

tribunal's jurisdiction. For instance, if one party believes that the arbitration agreement is invalid or the dispute falls outside its scope, that party might challenge the tribunal's authority to proceed. Such challenges might lead to further legal proceedings, either within the arbitration or in national courts, to resolve the jurisdictional issue.

In conclusion, Article 19.1 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to rule on its own jurisdiction, including objections related to the existence, validity, or scope of the arbitration agreement. This provision aligns with the principles of efficiency and autonomy in international arbitration and embodies the well-established "Kompetenz-Kompetenz" principle.

**19.2 The arbitral tribunal shall have the power to determine the existence or validity of any contract of which an arbitration agreement forms a part. For the purposes of Article 19, an arbitration agreement which forms part of a contract, and which provides for arbitration under these Rules, shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not necessarily entail the invalidity of the arbitration agreement.**

Article 19.2 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal's authority to determine the existence or validity of a contract that includes an arbitration agreement. This provision also underscores the independence of the arbitration agreement from the other terms of the contract. Let us analyse its key components:

1. **Determining Contract Existence and Validity:** Article 19.2 grants the arbitral tribunal the power to ascertain whether the underlying contract that contains an arbitration agreement actually exists and whether it is valid. This means that the tribunal is not limited to only considering the arbitration agreement itself; it can also examine the broader context of the contract that hosts the arbitration agreement.
2. **Independence of the Arbitration Agreement:** The provision establishes that an arbitration agreement included in a contract, which stipulates arbitration under the HKIAC Arbitration Rules, is to be treated as an entity separate and independent from the other terms of the contract. This concept is often referred to as "separability" or "autonomy" of the arbitration agreement. It ensures that even if the contract as a whole is found to be unenforceable, the arbitration agreement may still be upheld.
3. **Contract Nullity and Arbitration Agreement:** The provision clarifies that if the arbitral tribunal determines that the underlying contract is null and void, this does not necessarily mean that the arbitration agreement within that contract is also invalid. In other words, the invalidity or non-existence of the broader contract does not automatically render the arbitration agreement ineffective.
4. **Preservation of Arbitration Agreement:** This aspect of the provision aligns with the pro-arbitration approach commonly taken in international arbitration. It emphasises the importance of preserving the parties' intention to arbitrate, even if issues arise with the validity or enforceability of the main contract.
5. **Application to Invalid Contracts:** The provision ensures that the arbitration agreement's enforceability is not compromised by the potential invalidity of the contract due to issues

such as fraud, duress, or illegality. This principle safeguards the arbitration process from challenges that might affect the underlying contract.

6. **Complexity and Challenges:** The relationship between the arbitration agreement and the underlying contract can become intricate, especially in cases where the parties' obligations and rights under the contract are intertwined with the arbitration agreement. The arbitral tribunal's task of assessing contract validity and preserving the arbitration agreement's autonomy can lead to complex legal analysis and potentially contentious disputes between the parties.

In summary, Article 19.2 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to determine the existence and validity of the contract containing an arbitration agreement. It emphasises the autonomy of the arbitration agreement from the rest of the contract and states that the invalidity of the contract does not necessarily affect the validity of the arbitration agreement. This provision aims to safeguard the parties' choice to arbitrate even when issues arise with the underlying contract.

**19.3 A plea that the arbitral tribunal does not have jurisdiction shall be raised if possible in the Answer to the Notice of Arbitration, and shall be raised no later than in the Statement of Defence, or, with respect to a counterclaim, in the Defence to the Counterclaim. A party is not precluded from raising such a plea by the fact that it has designated or appointed, or participated in the designation or appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.**

Article 19.3 of the HKIAC Arbitration Rules 2018 addresses the timing and procedure for raising objections related to the arbitral tribunal's jurisdiction and the scope of its authority. The article outlines when and how these objections should be brought up during the arbitration process. Let us break down and analyse this provision:

1. **Timing for Raising Objections to Jurisdiction:** This section specifies that if a party believes that the arbitral tribunal lacks jurisdiction over the dispute, it should ideally raise this objection in its Answer to the Notice of Arbitration. If not raised at that stage, the objection should be raised no later than in the Statement of Defence. This timeline is meant to ensure that objections to jurisdiction are brought to the tribunal's attention early in the proceedings.
2. **Timing for Raising Objections to Exceeding Authority:** If a party believes that the arbitral tribunal is exceeding the scope of its authority, it should raise this objection as soon as the matter alleged to be beyond the tribunal's authority is raised during the arbitration. This provision acknowledges that objections to an arbitrator's overreach should be promptly addressed to prevent the tribunal from proceeding outside its intended mandate.
3. **No Preclusion Due to Arbitrator Appointment:** The provision clarifies that a party's ability to raise an objection regarding the tribunal's jurisdiction is not precluded by the fact that the party has participated in the appointment of an arbitrator or even if it has designated

or appointed an arbitrator. This ensures that parties do not feel restricted in raising legitimate jurisdictional concerns.

4. **Admission of Late Pleas:** While the provision establishes clear timelines for raising objections, it also acknowledges that there might be circumstances that justify a delay in raising such objections. The arbitral tribunal is granted the discretion to admit a later objection if it deems the delay to be justified. This flexibility takes into consideration that parties might encounter unforeseen challenges that could affect their ability to raise objections within the prescribed timeframe.
5. **Procedural Efficiency and Fairness:** Article 19.3 serves the dual purpose of promoting procedural efficiency and ensuring fairness in arbitration proceedings. By setting time limits for raising objections, the provision aims to prevent parties from unduly delaying the proceedings by raising jurisdictional challenges at a later stage. Simultaneously, it recognises that there may be valid reasons for delayed objections and provides the tribunal with discretion to address such situations.
6. **Importance of Objection Timing:** The timing of raising jurisdictional and authority-related objections is crucial in arbitration. Addressing these matters early ensures that the tribunal's composition and scope of authority are clarified from the outset, avoiding potential complications as the proceedings progress.

In summary, Article 19.3 of the HKIAC Arbitration Rules 2018 outlines the appropriate timing and procedure for raising objections related to the arbitral tribunal's jurisdiction and the scope of its authority. It balances the need for procedural efficiency with the flexibility to accommodate valid reasons for delayed objections, ultimately contributing to a fair and well-regulated arbitration process.

#### **19.4 Subject to Article 19.5, if a question arises as to:**

- (a) the existence, validity or scope of the arbitration agreement; or**
- (b) whether all of the claims have been properly made in a single arbitration pursuant to Article 29; or**
- (c) the competence of HKIAC to administer an arbitration;**

**before the constitution of the arbitral tribunal, the arbitration shall proceed and any such question shall be decided by the arbitral tribunal once constituted.**

Article 19.4 of the HKIAC Arbitration Rules 2018 outlines the procedure for handling certain questions that may arise before the constitution of the arbitral tribunal. This provision specifically addresses issues related to the existence, validity, or scope of the arbitration agreement, the proper consolidation of claims, and the competence of the HKIAC to administer the arbitration. Let us analyse this provision:

1. **Questions Covered:** The provision enumerates three types of questions that fall under its purview:
  - a. The existence, validity, or scope of the arbitration agreement.

- b. Whether all claims have been properly consolidated into a single arbitration according to Article 29 of the HKIAC Arbitration Rules.
  - c. The competence of the HKIAC to administer the arbitration.
2. Pre-Arbitral Tribunal Constitution: This provision specifically addresses issues that arise before the arbitral tribunal has been fully constituted. In other words, it pertains to situations where the tribunal has not yet been formed by the appointment of arbitrators.
3. Continuation of Arbitration: The article states that even if one of the questions mentioned in (a), (b), or (c) arises before the arbitral tribunal is fully constituted, the arbitration proceedings shall still proceed. This ensures that disputes are not unduly delayed due to preliminary questions that can be addressed at a later stage.
4. Arbitral Tribunal's Role: The key feature of this provision is that it assigns the task of deciding these preliminary questions to the arbitral tribunal once it is constituted. In other words, the tribunal, once formed, will make determinations on the existence, validity, or scope of the arbitration agreement, as well as other issues mentioned in the provision.
5. Exceptions — Article 19.5: The provision is subject to Article 19.5, which likely addresses situations where there may be exceptional circumstances that warrant a departure from the standard procedure outlined in Article 19.4. Unfortunately, Article 19.5 is not provided in the text you shared, so its specifics are not clear.
6. Procedural Efficiency: Article 19.4 is designed to ensure that arbitration proceedings are not unnecessarily delayed due to preliminary issues that can be addressed by the arbitral tribunal once it is constituted. This promotes procedural efficiency and prevents parties from exploiting preliminary matters to hinder the progress of the arbitration.
7. Tribunal's Authority: By empowering the arbitral tribunal to address these questions, the provision emphasises the tribunal's role as the primary decision-maker in arbitration proceedings. This authority is consistent with the principle of "Kompetenz-Kompetenz", which recognises the tribunal's competence to determine its own jurisdiction.

In summary, Article 19.4 of the HKIAC Arbitration Rules 2018 outlines the procedure for handling certain questions related to the arbitration agreement, consolidation of claims, and HKIAC's competence to administer the arbitration before the arbitral tribunal is constituted. It ensures that arbitration proceedings continue even if these questions arise early in the process, with the tribunal being responsible for deciding these issues once it is formed. This approach balances procedural efficiency with the tribunal's authority in determining preliminary matters.

**19.5 The arbitration shall proceed only if and to the extent that HKIAC is satisfied, prima facie, that an arbitration agreement under the Rules may exist or the arbitration has been properly commenced under Article 29. Any question as to the jurisdiction of the arbitral tribunal shall be decided by the arbitral tribunal once constituted, pursuant to Article 19.1.**

Article 19.5 of the HKIAC Arbitration Rules 2018 sets out the conditions under which an arbitration will proceed in cases where questions arise about the existence of an arbitration agreement or whether



the arbitration has been properly initiated. This article also clarifies how questions about the jurisdiction of the arbitral tribunal are to be resolved. Let us analyse this provision:

1. Prerequisites for Proceeding: The provision establishes a two-fold requirement that must be met for the arbitration to proceed:
  - a. HKIAC Satisfaction: The arbitration will continue only if HKIAC (Hong Kong International Arbitration Centre) is satisfied, on a prima facie basis (meaning a preliminary assessment that is not conclusive), that either an arbitration agreement under the Rules could potentially exist or that the arbitration has been properly commenced under Article 29 of the HKIAC Arbitration Rules.
  - b. Existence of Arbitration Agreement: This refers to situations where it is unclear whether a valid arbitration agreement exists between the parties. The requirement for a prima facie assessment by HKIAC emphasises that the arbitration should not be automatically halted due to uncertainties regarding the existence of an arbitration agreement.
2. Proper Commencement of Arbitration: This pertains to situations where parties have initiated arbitration proceedings according to Article 29, which deals with the consolidation of claims. HKIAC must assess whether these proceedings have been properly initiated before allowing the arbitration to proceed.
3. Jurisdictional Questions: The article emphasises that any question related to the jurisdiction of the arbitral tribunal, as outlined in Article 19.1, will be decided by the tribunal once it is fully constituted. This reinforces the principle of “Kompetenz-Kompetenz”, where the tribunal has the authority to decide its own jurisdiction.
4. Balancing Prima Facie Assessment and Tribunal Decision: Article 19.5 strikes a balance between HKIAC’s preliminary assessment and the ultimate authority of the arbitral tribunal. While HKIAC’s satisfaction is necessary for the arbitration to continue, the provision ensures that the final determination of jurisdictional questions is reserved for the tribunal.
5. Ensuring Procedural Integrity: By requiring HKIAC to make a preliminary assessment of whether an arbitration agreement could exist or whether the arbitration has been properly commenced, the provision safeguards against frivolous or baseless claims disrupting the proceedings.
6. Preserving Party Rights: The provision protects parties’ rights by ensuring that the arbitration is not unilaterally halted solely based on preliminary uncertainties. Instead, parties have the opportunity to proceed with arbitration if HKIAC determines a prima facie basis for an arbitration agreement or proper commencement.

In summary, Article 19.5 of the HKIAC Arbitration Rules 2018 outlines the conditions under which arbitration can proceed when questions arise about the existence of an arbitration agreement or the proper commencement of arbitration. It balances HKIAC’s preliminary assessment with the authority of the arbitral tribunal to ultimately decide questions related to jurisdiction. This provision helps ensure the integrity of the arbitration process while respecting the roles of both the institution and the tribunal.

**19.6 HKIAC’s decision pursuant to Article 19.5 is without prejudice to the admissibility or merits of any party’s claim or defence.**

Article 19.6 of the HKIAC Arbitration Rules 2018 clarifies the impact of HKIAC’s decision made under Article 19.5 on the admissibility and merits of the parties’ claims and defences. Let us analyse this provision:

1. **Impact on Admissibility:** The provision emphasises that HKIAC’s decision, which is made pursuant to Article 19.5, does not affect the admissibility of any party’s claim or defence. This means that even if HKIAC determines that an arbitration agreement could exist or that the arbitration has been properly commenced, this decision does not inherently render a party’s claim or defence admissible. The arbitration tribunal will still have the authority to review the admissibility of claims and defences based on its own determination.
2. **Impact on Merits:** Similarly, the provision states that HKIAC’s decision under Article 19.5 also has no bearing on the merits of the parties’ claims or defences. In other words, whether HKIAC finds that an arbitration agreement might exist or that the arbitration was properly commenced, this decision does not prejudice or influence the substantive arguments or merits of the dispute. The arbitral tribunal will separately assess and decide the substantive aspects of the case.
3. **Protection of Party Rights:** Article 19.6 aims to ensure that parties’ rights and arguments are preserved throughout the arbitration process. It prevents parties from interpreting HKIAC’s preliminary decision as an indication of the tribunal’s view on the underlying merits of their claims and defences.
4. **Separation of Jurisdictional Issues and Merits:** The provision underscores the importance of maintaining a clear distinction between jurisdictional issues and the substantive merits of a case. Jurisdictional matters relate to the authority of the tribunal to hear the case, while merits pertain to the actual content and validity of the parties’ claims and defences.
5. **Promotion of Fairness and Impartiality:** By stating that HKIAC’s decision has no prejudicial effect on the admissibility or merits, the provision reinforces the principles of fairness and impartiality in arbitration proceedings. It underscores that parties’ positions and arguments should be evaluated by the arbitral tribunal independently and without any presumption based on preliminary decisions.

In summary, Article 19.6 of the HKIAC Arbitration Rules 2018 clarifies that the decision made by HKIAC under Article 19.5 regarding the existence of an arbitration agreement or the proper commencement of arbitration does not influence the admissibility or merits of the parties’ claims and defences. This provision underscores the separation between jurisdictional matters and the substantive aspects of the dispute, preserving parties’ rights and promoting a fair and impartial arbitration process.

## Article 20 – Further Written Statements

**The arbitral tribunal shall decide which further written statements, if any, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties and shall set the time limits for communicating such statements.**

Article 20 of the HKIAC Arbitration Rules 2018 outlines the authority of the arbitral tribunal to determine the scope and timing of further written statements beyond the initial Statement of Claim and Statement of Defence. This article contributes to the efficient and structured progression of the arbitration process. Let us analyse the key features of Article 20:

1. **Flexibility and Case Management:** Article 20 recognises the importance of flexibility and case management in arbitration proceedings. It empowers the arbitral tribunal to tailor the submission of further written statements according to the specific needs and complexities of the case.
2. **Informed Decision-Making:** By allowing the tribunal to determine whether additional written statements are necessary, Article 20 promotes informed decision-making. The tribunal can request specific information or arguments from the parties to better understand the issues at hand and make well-informed decisions.
3. **Balancing Information Exchange:** The provision aims to strike a balance between allowing the parties to present their case fully and efficiently, while avoiding unnecessary delay or excessive document production.
4. **Preservation of Due Process:** While the tribunal has discretion to decide on additional written statements, Article 20 ensures that the parties' right to be heard and present their case is preserved. The parties have the opportunity to provide further written submissions as determined by the tribunal.
5. **Time Limits:** In addition to determining the need for further written statements, the arbitral tribunal sets the time limits for communicating such statements. This provision enhances predictability and procedural orderliness by ensuring that both parties are aware of the deadlines for submitting additional materials.
6. **Efficiency and Timeliness:** By entrusting the tribunal with the responsibility of managing the scope and timing of further written statements, Article 20 contributes to the efficient progression of the arbitration process. The tribunal can adapt the procedure to the specific circumstances of the case, thereby helping to ensure a timely resolution.
7. **Expertise of the Tribunal:** The provision acknowledges the tribunal's expertise in assessing the information needed for a comprehensive and fair resolution of the dispute. The tribunal's decisions regarding additional written statements are guided by its understanding of the legal and factual complexities of the case.
8. **Party Autonomy:** While the tribunal has the authority to order further written statements, it does not prevent the parties from voluntarily submitting additional materials, should they deem it necessary to support their arguments or positions.

In summary, Article 20 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the discretion to decide whether additional written statements are required beyond the initial Statement of Claim

and Statement of Defence. This provision reflects the principles of efficiency, flexibility, and due process in arbitration proceedings, while allowing the tribunal to manage the case and ensure that the parties' arguments are fully considered within a structured and timely framework.

## Article 21 – Time Limits

### **21.1 The time limits set by the arbitral tribunal for the communication of written statements should not exceed 45 days, unless the arbitral tribunal considers otherwise.**

Article 21.1 of the HKIAC Arbitration Rules 2018 focuses on the establishment of time limits for the communication of written statements during the arbitration process. Here is an analysis of its key points:

1. **Time Limits for Written Statements:** This provision emphasises the importance of efficient case management by setting a general guideline for the time limits within which parties should communicate their written statements. It addresses the need to strike a balance between allowing parties sufficient time to present their arguments and ensuring a timely progression of the arbitration proceedings.
2. **Flexibility:** Article 21.1 provides flexibility to the arbitral tribunal by stating that the time limits “should not exceed 45 days, unless the arbitral tribunal considers otherwise”. This acknowledges that different cases may have varying complexities and requirements that might warrant different time frames for submitting written statements.
3. **Arbitral Tribunal’s Discretion:** The provision grants discretion to the arbitral tribunal to determine whether the standard 45-day time limit is appropriate for the specific circumstances of the case. This recognises that the arbitral tribunal, being familiar with the case’s intricacies, is best positioned to decide on an appropriate time frame for the submission of written statements.
4. **Efficiency and Expediency:** By emphasising reasonable time limits, Article 21.1 promotes the efficient and expeditious conduct of the arbitration. It reflects the importance of avoiding unnecessary delays and ensuring that the proceedings move forward in a timely manner.
5. **Procedural Fairness:** While promoting efficiency, the provision also ensures that parties are given a reasonable opportunity to prepare and present their cases through written statements. This helps maintain the principle of procedural fairness and gives parties a meaningful chance to present their arguments.
6. **Balancing the Interests:** The provision aims to strike a balance between the interests of efficiency and fairness. It acknowledges that while efficiency is important, parties’ rights to present their cases fully and effectively must also be respected.
7. **Case-Specific Approach:** The provision underscores the case-specific nature of arbitration proceedings. It recognises that the arbitral tribunal must assess the unique characteristics of each case to determine the appropriate time limits for written statements.

In summary, Article 21.1 of the HKIAC Arbitration Rules 2018 emphasises the establishment of reasonable time limits for the communication of written statements during arbitration. It provides flexibility to the arbitral tribunal to adjust these time limits based on the specific circumstances of the case, striking a balance between efficiency and procedural fairness. This provision contributes to the effective management of the arbitration process while ensuring that parties have a meaningful opportunity to present their arguments.

**21.2 The arbitral tribunal may, even in circumstances where the relevant time limit has expired, extend time limits where it concludes that an extension is justified.**

Article 21.2 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal's authority to extend time limits for submitting written statements, even in situations where the original time limit has already expired. Here is an analysis of this provision:

1. **Discretion to Extend Time Limits:** This article grants the arbitral tribunal the discretionary power to extend time limits for submitting written statements. It recognises that there may be situations where parties require additional time to fulfil their procedural obligations due to unforeseen circumstances or other justifiable reasons.
2. **Flexibility in Case Management:** By allowing time limit extensions, the provision contributes to flexible and effective case management. It acknowledges that the arbitral tribunal is best positioned to assess the specific circumstances of the case and determine whether an extension is warranted to ensure fairness and procedural integrity.
3. **Exceptional or Justified Circumstances:** The article implies that an extension may be granted when the arbitral tribunal concludes that such an extension is justified. This suggests that the arbitral tribunal should consider whether there are exceptional or reasonable grounds that warrant granting the extension.
4. **Balancing Interests:** The provision aims to balance the interests of procedural efficiency and the parties' right to present their cases fully. While promoting timely proceedings, it acknowledges that unforeseen events or genuine difficulties may arise that necessitate an extension of time.
5. **Preserving Due Process:** By providing the arbitral tribunal with the authority to extend time limits, the article upholds the principle of due process. It ensures that parties are not unfairly prejudiced by strict adherence to time limits, especially when circumstances beyond their control affect their ability to comply.
6. **Arbitral Tribunal's Decision:** The decision to extend a time limit is within the discretion of the arbitral tribunal. The article places trust in the arbitral tribunal's judgment and expertise to make informed decisions that serve the interests of justice and the efficient conduct of the arbitration.
7. **Party Awareness:** Parties should be aware that while time limit extensions are possible, they are not automatic. Parties should make a request for an extension and provide sufficient justification for why additional time is needed.

In summary, Article 21.2 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to extend time limits for submitting written statements, even after the original time limit has expired. This provision reflects the need for flexibility in arbitration proceedings, ensuring fairness and due process while also maintaining efficiency. The arbitral tribunal's authority to grant such extensions strikes a balance between the parties' procedural rights and the effective management of the arbitration process.

## Article 22 – Evidence and Hearings

### 22.1 Each party shall have the burden of proving the facts relied on to support its claim or defence.

Article 22.1 of the HKIAC Arbitration Rules 2018 addresses the allocation of the burden of proof in arbitration proceedings. This provision outlines which party bears the responsibility of demonstrating the facts necessary to substantiate their claims or defences. Let us analyse this provision:

1. **Allocation of Burden of Proof:** The article states that each party in the arbitration shall have the burden of proving the facts that they rely on to support their claims or defences. In other words, it is the responsibility of each party to provide evidence and arguments to establish the factual basis for their case.
2. **Principle of Proof:** This provision embodies the fundamental principle of evidence and proof in legal proceedings, which is that the party making an assertion must provide sufficient evidence to convince the decision-maker (in this case, the arbitral tribunal) of the truth of their claim or defence. This principle is essential for ensuring fairness and an objective evaluation of the case.
3. **Impartial Adjudication:** By assigning the burden of proof to each party for their respective claims and defences, the provision contributes to the impartiality of the arbitration process. It prevents one party from unfairly shifting the responsibility onto the other party to disprove allegations, ensuring that both sides have an equal opportunity to present their case.
4. **Consistency with Legal Principles:** The principle of burden of proof is well-established in legal systems worldwide and is a cornerstone of fair proceedings. It applies in both litigation and arbitration and helps maintain consistency in how evidence is assessed and decisions are reached.
5. **Facilitation of Presentation:** Assigning the burden of proof helps structure the proceedings and the presentation of evidence. It requires parties to diligently gather and present evidence that supports their case, promoting the efficiency and effectiveness of the arbitration process.
6. **Flexibility in Complex Cases:** While Article 22.1 establishes the general rule that each party bears the burden of proving their claims and defences, there might be situations where the distribution of the burden is not straightforward. In complex cases or cases involving multiple claims and defences, the arbitral tribunal might need to assess the allocation of the burden of proof on a more granular basis.

7. Collaboration with Evidentiary Rules: The provision complements the evidentiary rules and standards that typically govern arbitration proceedings. It guides parties on how to present their evidence and ensures that the tribunal can make decisions based on a well-supported factual record.

In summary, Article 22.1 of the HKIAC Arbitration Rules 2018 articulates the principle that each party in an arbitration has the responsibility of proving the facts underlying their claims or defences. This allocation of the burden of proof contributes to the fairness, objectivity, and efficiency of the arbitration process while aligning with well-established legal principles.

## **22.2 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence, including whether to apply strict rules of evidence.**

Article 22.2 of the HKIAC Arbitration Rules 2018 addresses the authority of the arbitral tribunal regarding the assessment of evidence in arbitration proceedings. This provision outlines the tribunal's role in making decisions related to the admissibility, relevance, materiality, and weight of the evidence, as well as whether strict rules of evidence should be applied. Let us analyse this provision:

1. Tribunal's Role in Evidentiary Decisions: The provision establishes that the arbitral tribunal has the responsibility to make determinations on various aspects of the evidence presented during the arbitration proceedings. These aspects include the admissibility, relevance, materiality, and weight of the evidence.
2. Admissibility: The tribunal's role in assessing the admissibility of evidence is crucial. It means that the tribunal decides whether the evidence submitted by the parties is legally acceptable and can be considered as part of the case. This determination is often based on whether the evidence was obtained through legal means and is consistent with any procedural rules governing the arbitration.
3. Relevance and Materiality: The tribunal must assess whether the evidence is relevant to the issues in dispute and whether it has a material impact on the outcome of the case. Evidence that is not directly connected to the issues at hand or does not significantly contribute to the decision may be deemed irrelevant or immaterial.
4. Weight of the Evidence: The provision acknowledges that the arbitral tribunal is responsible for evaluating the weight or significance of the evidence. This involves considering factors such as credibility, reliability, consistency, and persuasiveness of the evidence. The tribunal weighs the evidence to reach an informed decision on the merits of the case.
5. Flexibility in Evidence Rules: The provision also grants the arbitral tribunal the discretion to decide whether strict rules of evidence, as commonly observed in court proceedings, should be applied. This flexibility allows the tribunal to consider a broader range of evidence and adapt the evidentiary standards to the arbitration context, which might be less formal than court proceedings.
6. Procedural Autonomy: Article 22.2 empowers the tribunal to determine how evidence is admitted, assessed, and given weight. This reflects the principle of party autonomy and procedural flexibility that often characterises arbitration proceedings.

7. **Arbitration's Informal Nature:** The provision acknowledges that arbitration proceedings can be less formal than court litigation, allowing the arbitral tribunal to adopt a more adaptable approach to evidentiary rules. This aligns with the objective of arbitration to provide a quicker and more efficient alternative to traditional litigation.
8. **Fairness and Due Process:** While the arbitral tribunal has authority over evidentiary decisions, it is also bound by principles of fairness and due process. The tribunal must ensure that both parties have an opportunity to present their case and respond to evidence presented by the other party.

In summary, Article 22.2 of the HKIAC Arbitration Rules 2018 establishes the arbitral tribunal's role in assessing evidence. The tribunal has the authority to determine the admissibility, relevance, materiality, and weight of evidence, as well as whether strict rules of evidence should be applied. This provision acknowledges the tribunal's crucial role in ensuring a fair and informed decision-making process while allowing flexibility in adapting evidence rules to the arbitration context.

**22.3 At any time during the arbitration, the arbitral tribunal may allow or require a party to produce documents, exhibits or other evidence that the arbitral tribunal determines to be relevant to the case and material to its outcome. The arbitral tribunal shall have the power to admit or exclude any documents, exhibits or other evidence.**

Article 22.3 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal's authority to manage and control the production and admission of documents, exhibits, and other evidence during the course of arbitration proceedings. Let us analyse this provision:

1. **Tribunal's Discretion:** The provision grants the arbitral tribunal the discretion to determine the relevancy and materiality of documents, exhibits, or other evidence that a party wishes to produce during the arbitration. This discretion allows the tribunal to decide whether the evidence is pertinent to the case and has a meaningful impact on its outcome.
2. **Document Production:** The article permits the arbitral tribunal to allow or even require a party to produce documents, exhibits, or evidence if the tribunal deems them relevant and material to the case. This authority enables the tribunal to ensure that all relevant evidence is presented before it for consideration.
3. **Relevance and Materiality:** The concepts of relevance and materiality are key factors in the tribunal's decision-making. Relevance pertains to whether the evidence bears a direct connection to the issues in dispute, while materiality considers whether the evidence has a significant impact on the outcome of the case.
4. **Admission and Exclusion of Evidence:** The provision also empowers the arbitral tribunal to admit or exclude any documents, exhibits, or other evidence presented by the parties. This authority is consistent with the tribunal's role in determining the admissibility and weight of evidence, as outlined in Article 22.2.
5. **Timeliness and Efficiency:** The provision's flexibility in allowing the tribunal to admit evidence at any time during the arbitration reflects the tribunal's mandate to manage the



proceedings efficiently. This is particularly important in dynamic and complex arbitration cases, where new evidence might emerge over the course of the proceedings.

6. **Balancing the Interests:** Article 22.3 emphasises the tribunal’s role in ensuring a balanced and fair presentation of evidence. It allows the tribunal to ensure that both parties have the opportunity to submit relevant and material evidence while preventing the introduction of unnecessary or irrelevant evidence that could delay the proceedings.
7. **Arbitral Tribunal’s Independence:** The provision reinforces the arbitral tribunal’s independence in managing the evidence presented. The tribunal’s authority to determine what evidence is admitted aligns with its role as the decision-maker in the case.
8. **Due Process and Fairness:** While the arbitral tribunal has broad authority to manage the evidence, it is also bound by principles of due process and fairness. This means that both parties must have an opportunity to respond to evidence presented by the other party and to challenge evidence that they consider to be irrelevant or inadmissible.

In summary, Article 22.3 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the discretion to manage the production and admission of evidence. The tribunal has the authority to determine the relevancy and materiality of evidence, allowing it to ensure a balanced and efficient presentation of evidence while upholding principles of fairness and due process.

**22.4 The arbitral tribunal shall decide whether to hold hearings for presenting evidence or for oral arguments, or whether the arbitration shall be conducted solely on the basis of documents and other materials. The arbitral tribunal shall hold such hearings at an appropriate stage of the arbitration, if so requested by a party or if it considers fit. In the event of a hearing, the arbitral tribunal shall give the parties adequate advance notice of the relevant date, time and place.**

Article 22.4 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal’s authority to determine the conduct of hearings for presenting evidence, oral arguments, or conducting the arbitration based solely on documents and materials. The article also outlines the procedures related to hearings, including the timing and notice requirements. Let us analyse this provision:

1. **Hearings and Proceedings Options:** The provision empowers the arbitral tribunal to decide on the format of the proceedings, specifically whether hearings will be held for presenting evidence and oral arguments or if the arbitration will be conducted solely based on documents and other materials. This decision-making authority allows the tribunal to adapt the proceedings to the specific circumstances of the case.
2. **Flexibility in Proceedings:** The provision recognises that arbitration proceedings can take different forms depending on the nature of the dispute, the complexity of the issues, and the preferences of the parties involved. This flexibility allows for a tailored approach that suits the needs of the case.
3. **Timing of Hearings:** The arbitral tribunal has discretion to determine the appropriate stage of the arbitration for holding hearings. The timing of the hearings is intended to ensure that all relevant evidence has been gathered before presenting arguments or making decisions.

4. **Request and Discretion:** The tribunal may hold hearings if a party requests it or if the tribunal itself deems it appropriate. This discretionary authority enables the tribunal to take into consideration the parties' preferences and the specific circumstances of the case when deciding whether to hold hearings.
5. **Notice Requirements:** In the event that the arbitral tribunal decides to hold a hearing, the provision emphasises the importance of providing the parties with adequate advance notice of the relevant date, time, and place. This requirement ensures that all parties have sufficient time to prepare and participate effectively in the hearing.
6. **Principles of Natural Justice:** The provision reflects the principles of natural justice and due process by allowing parties an opportunity to present their case, whether through hearings or written submissions. It prevents decisions from being made without giving parties a fair opportunity to present their arguments and evidence.
7. **Communication and Transparency:** By specifying the procedures for holding hearings and providing notice, the provision contributes to open communication and transparency in the arbitration process. It ensures that all parties are informed and have the chance to participate fully.
8. **Efficiency and Effectiveness:** The flexibility in choosing between hearings and conducting proceedings based on documents and materials is aligned with the objective of arbitration to provide a more efficient and effective dispute resolution mechanism compared to traditional court litigation.

In summary, Article 22.4 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the authority to decide on the format of proceedings, including whether to hold hearings for presenting evidence and oral arguments or to proceed based solely on documents and materials. The provision emphasises flexibility, transparency, and due process while allowing the tribunal to tailor the proceedings to the unique circumstances of the case.

## **22.5 The arbitral tribunal may determine the manner in which a witness or expert is examined.**

Article 22.5 of the HKIAC Arbitration Rules 2018 addresses the authority of the arbitral tribunal to determine how witnesses or experts are examined during the arbitration proceedings. This provision grants the tribunal the discretion to establish the manner in which testimonies from witnesses and experts are obtained. Let us analyse this provision:

1. **Witness and Expert Examination:** The provision focuses on the examination of witnesses and experts, who play a crucial role in presenting evidence and opinions related to the dispute. Witnesses provide factual information, while experts offer specialised knowledge and opinions.
2. **Tribunal's Discretion:** Article 22.5 explicitly grants the arbitral tribunal the power to decide how the examination of witnesses and experts will be conducted. This authority allows the tribunal to adopt an approach that is most suitable for the specific case, considering factors such as the complexity of the issues, the parties' preferences, and the efficiency of the proceedings.

3. **Manner of Examination:** The provision encompasses various aspects of examination, such as whether the examination will be conducted orally, through written statements, or by videoconference. The tribunal can also determine the order and scope of questioning, the duration of testimonies, and the extent to which cross-examination is permitted.
4. **Adaptation to Circumstances:** The flexibility provided by Article 22.5 enables the tribunal to adapt the examination process to the unique circumstances of the case. For instance, in complex technical disputes, expert testimonies might require a different approach compared to simpler factual matters.
5. **Balance of Interests:** The provision serves as a means to balance the parties' interests and ensure a fair and efficient examination process. The tribunal's discretion prevents one party from unduly burdening the other party with unnecessary or excessive examination procedures.
6. **Consistency with Procedural Flexibility:** The provision aligns with the procedural flexibility that is often a hallmark of arbitration. It allows the tribunal to adopt methods of examination that might deviate from strict courtroom procedures, promoting an arbitration process that is tailored to the parties' needs.
7. **Efficiency and Effectiveness:** By allowing the arbitral tribunal to determine the manner of witness and expert examination, the provision contributes to the efficiency and effectiveness of the arbitration process. It ensures that the examination process is conducted in a manner that serves the interests of the parties and the resolution of the dispute.
8. **Respect for Expertise:** The provision recognises the expertise of the arbitral tribunal in managing the examination of witnesses and experts. This acknowledges the tribunal's understanding of how to best elicit relevant information and opinions to make informed decisions.

In summary, Article 22.5 of the HKIAC Arbitration Rules 2018 provides the arbitral tribunal with the authority to determine the manner in which witnesses and experts are examined during arbitration proceedings. This provision enhances the flexibility, efficiency, and fairness of the examination process by allowing the tribunal to tailor its approach to the specific needs of the case.

#### **22.6 The arbitral tribunal may make directions for the translation of oral statements made at a hearing and for a record of the hearing if it deems that either is necessary in the circumstances of the case.**

Article 22.6 of the HKIAC Arbitration Rules 2018 addresses the authority of the arbitral tribunal to issue directions related to the translation of oral statements made at a hearing and the creation of a record of the hearing. This provision enables the tribunal to take measures to ensure accurate documentation and understanding of the proceedings. Let us analyse this provision:

1. **Translation of Oral Statements:** The provision grants the arbitral tribunal the power to issue directions for the translation of oral statements made during a hearing. This means that the tribunal can require that statements made in a language other than the official

language of the proceedings be translated to facilitate understanding by all parties involved.

2. **Importance of Clarity:** In arbitration proceedings involving parties from different linguistic backgrounds, ensuring clear communication is essential to maintaining fairness and transparency. Translating oral statements helps prevent misunderstandings and ensures that parties and the tribunal accurately comprehend the content of statements.
3. **Record of the Hearing:** Additionally, Article 22.6 allows the tribunal to issue directions for creating a record of the hearing. This implies a written record or transcript that accurately captures the discussions, testimonies, arguments, and other proceedings that occurred during the hearing.
4. **Need-Based Authority:** The tribunal's authority under this provision is need-based. The tribunal has the discretion to determine whether translation or a record of the hearing is necessary based on the circumstances of the case. Factors such as language barriers, complexity of the case, and the parties' preferences might influence this decision.
5. **Preservation of Proceedings:** The creation of a record of the hearing is important for preserving the proceedings. It can serve as a reference point for the parties and the tribunal when considering arguments, evidence, and other aspects of the case during the deliberation phase.
6. **Transparency and Due Process:** The provision aligns with principles of transparency and due process. By allowing the tribunal to ensure that all parties understand the proceedings and have access to an accurate record, the provision enhances the fairness of the arbitration process.
7. **Procedural Adaptation:** Article 22.6 reflects the procedural adaptability that is a characteristic of arbitration. The tribunal's authority to issue directions for translation or creating a record responds to the unique needs and circumstances of each case.
8. **Efficiency and Effective Communication:** Implementing translation or recording measures contributes to efficient and effective communication in arbitration. Clear communication is essential for parties to present their cases and for the tribunal to reach a well-informed decision.

In summary, Article 22.6 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to issue directions for the translation of oral statements and for creating a record of the hearing. This provision underscores the importance of accurate communication and documentation in arbitration proceedings and allows the tribunal to adapt to the specific linguistic and procedural needs of each case.

**22.7 Hearings shall be held in private unless the parties agree otherwise. The arbitral tribunal may require any witness or expert to leave the hearing room at any time during the hearing.**

Article 22.7 of the HKIAC Arbitration Rules 2018 addresses the issue of the privacy of hearings in arbitration proceedings, as well as the authority of the arbitral tribunal to manage the presence of witnesses and experts during the hearing. Let us analyse this provision:

1. **Private Hearings:** The provision establishes a default rule that hearings in arbitration shall be held in private, unless the parties agree otherwise. This means that the general presumption is that arbitration proceedings are not open to the public, and the hearings are conducted confidentially.
2. **Party Consent for Public Hearings:** The provision recognises the importance of party autonomy in arbitration. If the parties mutually agree, they can choose to hold hearings in public, allowing observers or the public to attend. This flexibility respects the parties' preferences while maintaining the option for private hearings.
3. **Confidentiality and Discretion:** Private hearings contribute to maintaining the confidentiality of the arbitration process. Parties often choose arbitration to keep their disputes and sensitive information out of the public eye. Private hearings help preserve this confidentiality and discretion.
4. **Witness and Expert Exclusion:** The second part of the provision addresses the tribunal's authority to manage the presence of witnesses and experts during the hearing. The tribunal has the discretion to require any witness or expert to leave the hearing room at any time. This might be done to prevent potential influence on testimony or to avoid a witness hearing another witness's testimony.
5. **Ensuring Independence of Testimony:** The provision acknowledges the tribunal's role in ensuring that witnesses and experts provide their testimony independently, without being influenced by the testimony of others. This supports the credibility and authenticity of the evidence presented.
6. **Party Fairness:** The tribunal's authority to exclude witnesses or experts from the hearing room contributes to maintaining fairness between the parties. It prevents one party from strategizing their testimony based on what they have heard from other witnesses or experts.
7. **Procedural Flexibility:** Article 22.7 reflects the flexibility that arbitration offers in terms of procedure and process. It allows the parties and the tribunal to tailor the hearing format to their needs, whether it is maintaining privacy or facilitating public access.
8. **Balancing Confidentiality and Transparency:** The provision seeks to strike a balance between the parties' need for confidentiality and the principle of transparency in dispute resolution. The option for public hearings, if agreed upon, allows for transparency while still respecting the parties' confidentiality interests.

In summary, Article 22.7 of the HKIAC Arbitration Rules 2018 sets the default rule that hearings in arbitration are held in private, but parties can agree to hold them in public. The provision also empowers the tribunal to exclude witnesses or experts from the hearing room as needed. This provision supports both confidentiality and transparency, allowing parties to choose the appropriate level of visibility for their arbitration proceedings while maintaining procedural fairness.

## Article 23 – Interim Measures of Protection and Emergency Relief

### 23.1 A party may apply for urgent interim or conservatory relief (“Emergency Relief”) prior to the constitution of the arbitral tribunal pursuant to Schedule 4.

Article 23.1 of the HKIAC Arbitration Rules 2018 focuses on the provision for a party to seek urgent interim or conservatory relief, also known as “Emergency Relief”, before the arbitral tribunal is formally constituted. This provision recognises the need for parties to obtain swift measures to protect their rights and interests in urgent situations. Let us break down the key components of this provision:

1. **Urgent Interim or Conservatory Relief:** The article pertains to situations where a party seeks immediate and temporary measures from the arbitral tribunal to prevent irreparable harm or preserve the status quo until the formal arbitral tribunal is constituted. Such measures are typically known as “interim” or “conservatory” relief and can include injunctions, orders to preserve evidence, or asset freezes, among others.
2. **Emergency Relief:** The term “Emergency Relief” indicates that this provision is specifically designed to address urgent situations where immediate action is required before the arbitration proceedings formally begin.
3. **Prior to Constitution of the Arbitral Tribunal:** The provision allows parties to apply for Emergency Relief even before the arbitral tribunal is constituted. This recognises that urgent situations may arise where immediate relief is necessary, and waiting for the constitution of the tribunal could lead to irreparable harm.
4. **Pursuant to Schedule 4:** Reference is made to “Schedule 4”, which presumably contains detailed procedures and guidelines for applying for Emergency Relief before the arbitral tribunal is constituted. This schedule likely outlines the process, requirements, and conditions for making such applications.

In summary, Article 23.1 of the HKIAC Arbitration Rules 2018 provides parties with the option to seek urgent interim or conservatory relief, known as Emergency Relief, before the formal constitution of the arbitral tribunal. This provision acknowledges the need for swift measures in urgent situations and ensures that parties have a mechanism to address potential harm or maintain the status quo while awaiting the full arbitration process.

### 23.2 At the request of either party, the arbitral tribunal may order any interim measures it deems necessary or appropriate.

Article 23.2 of the HKIAC Arbitration Rules 2018 pertains to the authority of the arbitral tribunal to issue interim measures upon the request of a party. This provision empowers the tribunal to take necessary or appropriate actions to preserve the rights and interests of the parties during the course of the arbitration proceedings. Let us break down the key components of this provision:

1. **Request for Interim Measures:** The article starts by outlining that either party can request the arbitral tribunal to issue interim measures. Interim measures are temporary measures designed to prevent harm, maintain the status quo, or secure assets until the final award is rendered.

2. **Arbitral Tribunal’s Authority:** The provision confers authority on the arbitral tribunal to order any interim measures it considers “necessary or appropriate”. This indicates that the tribunal has the discretion to determine the nature and scope of the measures based on the specific circumstances of the case.
3. **Flexibility:** The use of terms like “necessary” and “appropriate” allows the tribunal to exercise flexibility and adapt the measures to the unique situation of each case. This ensures that the measures ordered are tailored to address the specific risks or concerns presented.
4. **Preservation of Rights and Interests:** The provision recognises the importance of maintaining the rights and interests of the parties throughout the arbitration process. The interim measures are intended to ensure that the outcome of the arbitration is not prejudiced due to irreparable harm that might occur in the meantime.
5. **Procedural Implications:** While the provision does not explicitly address the procedural aspects of requesting and issuing interim measures, it implies that parties must present their requests to the arbitral tribunal and demonstrate the need for the measures they are seeking.

In summary, Article 23.2 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the authority to order interim measures at the request of either party. The provision underscores the tribunal’s discretion to determine the necessity and appropriateness of such measures and ensures that parties have a mechanism to protect their rights and interests throughout the arbitration proceedings.

**23.3 An interim measure, whether in the form of an order or award or in another form, is any temporary measure ordered by the arbitral tribunal at any time before it issues the award by which the dispute is finally decided, that a party, for example and without limitation:**

- (a) **maintain or restore the status quo pending determination of the dispute; or**
- (b) **take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself; or**
- (c) **provide a means of preserving assets out of which a subsequent award may be satisfied; or**
- (d) **preserve evidence that may be relevant and material to the resolution of the dispute.**

Article 23.3 of the HKIAC Arbitration Rules 2018 defines and outlines the scope of an interim measure, describing the temporary actions that the arbitral tribunal can order to address various scenarios and prevent harm during the arbitration proceedings. This provision offers a comprehensive understanding of what constitutes an interim measure and the situations for which such measures can be sought. Let us break down the key components of this provision:

1. **Definition of Interim Measure:** The article starts by providing a clear definition of an interim measure. An interim measure is described as a “temporary measure ordered by the arbitral tribunal at any time before it issues the award by which the dispute is finally

decided”. This emphasises that interim measures are intended to address immediate concerns and prevent harm until the final award is rendered.

2. **Scope of Interim Measures:** The provision proceeds to outline the scenarios in which interim measures can be ordered. These scenarios include, but are not limited to:
  - a. **Maintaining or Restoring Status Quo (a):** This refers to measures that help preserve the existing state of affairs until the dispute is resolved. This could involve preventing parties from taking actions that might alter the situation during the arbitration process.
  - b. **Preventing Harm or Prejudice (b):** This involves measures that can prevent harm to either party or to the arbitral process itself. It may require a party to refrain from certain actions that could negatively impact the ongoing arbitration proceedings.
  - c. **Preserving Assets (c):** This includes measures to secure assets that could be used to satisfy a subsequent award. It ensures that the losing party will have the means to comply with the eventual decision.
  - d. **Preserving Evidence (d):** Interim measures can also involve the preservation of evidence that may be relevant to the resolution of the dispute. This prevents parties from destroying or altering evidence that could affect the outcome.
3. **Flexibility and Adaptability:** The provision acknowledges that the list of scenarios provided is not exhaustive. The phrase “for example and without limitation” suggests that the arbitral tribunal’s authority to order interim measures extends beyond the mentioned situations, allowing the tribunal to adapt measures to unique circumstances.
4. **Protection of Arbitral Process:** The provision recognises the importance of protecting the integrity of the arbitration process itself, ensuring that actions taken by the parties or external factors do not undermine the fairness or effectiveness of the proceedings.

In summary, Article 23.3 of the HKIAC Arbitration Rules 2018 defines interim measures comprehensively and outlines the situations in which such measures can be ordered. It emphasises the temporary nature of these measures and the broad spectrum of scenarios they are designed to address. This provision ensures that parties have a mechanism to protect their rights and interests during the arbitration process, even before a final award is rendered.



**23.4 When deciding a party’s request for an interim measure under Article 23.2, the arbitral tribunal shall take into account the circumstances of the case. Relevant factors may include, but are not limited to:**

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and**
- (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.**

Article 23.4 of the HKIAC Arbitration Rules 2018 provides guidelines for the arbitral tribunal’s decision-making process when considering a party’s request for an interim measure under Article 23.2. This provision outlines the factors and considerations that the tribunal should take into account while evaluating the necessity and appropriateness of granting such measures. Let us break down the key components of this provision:

1. **Decision-Making Criteria:** The article mandates that when the arbitral tribunal is deciding whether to grant a party’s request for an interim measure, it must take into account the specific circumstances of the case. This reflects the tribunal’s duty to carefully assess the situation before making a decision.
2. **Relevant Factors for Consideration:** The provision enumerates certain factors that the arbitral tribunal should consider when evaluating a request for an interim measure. These factors include, but are not limited to:
  - a. **Harm Not Adequately Reparable (a):** The tribunal should consider whether the harm that would result from not granting the interim measure cannot be adequately compensated by a future award of damages. Additionally, the harm that the requesting party might suffer should be significantly greater than the harm the opposing party might experience if the measure is granted.
  - b. **Reasonable Possibility of Success (b):** The tribunal should assess whether there is a reasonable possibility that the party requesting the interim measure will ultimately succeed on the merits of their claim. This consideration is not intended to predetermine the outcome of the case but rather to evaluate the likelihood of success.
3. **Balancing of Interests:** The provision highlights the principle of balancing interests. The tribunal must weigh the potential harm to both parties and evaluate which party’s interests should take precedence based on the magnitude of harm.
4. **Flexibility and Discretion:** While the factors mentioned are relevant, the provision clarifies that the determination of a reasonable possibility of success does not affect the tribunal’s discretion to make any subsequent determinations. This emphasises that the tribunal retains the flexibility to adapt its decisions as the case develops.

In summary, Article 23.4 of the HKIAC Arbitration Rules 2018 outlines the criteria and considerations the arbitral tribunal should take into account when deciding on a party’s request for an interim measure. This provision ensures that the tribunal’s decisions are well-informed, balanced, and

responsive to the specific circumstances of each case. It also emphasises the flexibility of the tribunal to assess the potential for success without prejudging the ultimate outcome of the arbitration.

**23.5 The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal’s own initiative.**

Article 23.5 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal’s authority to modify, suspend, or terminate interim measures that it has previously granted. This provision outlines the circumstances under which such modifications or terminations can occur and who can initiate the process. Let us break down the key components of this provision:

1. **Authority of the Arbitral Tribunal:** The article confers authority upon the arbitral tribunal to make changes to interim measures that it has previously granted. This demonstrates the tribunal’s control over the measures and its ability to adapt them as the circumstances evolve.
2. **Modification, Suspension, or Termination:** The provision allows the arbitral tribunal to undertake three actions with respect to previously granted interim measures:
  - a. **Modification:** The tribunal can alter the terms or conditions of the interim measure if the circumstances warrant a change.
  - b. **Suspension:** The tribunal can temporarily halt the enforcement of the interim measure for a specific period.
  - c. **Termination:** The tribunal can completely end the interim measure.
3. **Initiating the Process:** The process of modifying, suspending, or terminating an interim measure can be initiated in two ways:
  - a. **Party Application:** Any party involved in the arbitration can apply for modification, suspension, or termination of the interim measure.
  - b. **Tribunal’s Initiative:** In exceptional circumstances, the arbitral tribunal can decide to modify, suspend, or terminate an interim measure on its own initiative. However, this is subject to the condition that prior notice is provided to the parties, allowing them an opportunity to present their views on the proposed change.
4. **Exceptional Circumstances:** The provision highlights that the tribunal’s own initiative to modify, suspend, or terminate an interim measure should occur only in “exceptional circumstances”. This suggests that the tribunal’s decision to initiate changes without a party’s application is intended to be infrequent and reserved for situations where it is clearly necessary.

In summary, Article 23.5 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the authority to modify, suspend, or terminate interim measures that it has granted. This provision emphasises the tribunal’s role in maintaining the appropriateness of the measures as the case evolves and the parties’ circumstances change. It also safeguards the parties’ rights by requiring prior notice and allowing them

an opportunity to respond, particularly when the tribunal takes the initiative to modify or terminate an interim measure.

### **23.6 The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.**

Article 23.6 of the HKIAC Arbitration Rules 2018 addresses the authority of the arbitral tribunal to request a party seeking an interim measure to provide security in connection with that measure. This provision acknowledges the tribunal's discretion to ensure that the requesting party provides adequate security to cover any potential adverse effects that might arise from the granted interim measure. Let us break down the key components of this provision:

1. **Security Requirement:** The article states that the arbitral tribunal has the power to require the party that is requesting an interim measure to provide "appropriate security". This refers to financial or other forms of guarantees that can serve as collateral to cover any potential costs or damages that might arise if the interim measure is later found to be unnecessary or unjustified.
2. **Connection with the Measure:** The security is to be provided "in connection with the measure". This means that the security requirement is tied to the specific interim measure that the party is seeking. It ensures that if the measure has an adverse impact on the opposing party and is later determined to have been unnecessary or inappropriate, the requesting party is financially responsible.
3. **Discretion of the Arbitral Tribunal:** The provision grants the arbitral tribunal the discretion to determine whether security is necessary and to assess the adequacy of the security provided by the requesting party. This reflects the tribunal's role in balancing the interests of both parties and ensuring fairness in the arbitration process.
4. **Ensuring Fairness and Balance:** Requiring security from the requesting party helps prevent potential misuse of interim measures and safeguards against any unjustified or excessive harm that could result from such measures.
5. **Appropriate Security:** The term "appropriate security" implies that the security requested should be commensurate with the potential harm that the opposing party might suffer due to the interim measure. The tribunal's decision will likely take into account the nature of the measure and the potential impact on the opposing party.

In summary, Article 23.6 of the HKIAC Arbitration Rules 2018 provides the arbitral tribunal with the authority to require the party seeking an interim measure to provide appropriate security. This provision aims to strike a balance between ensuring that parties have access to interim relief when necessary and preventing misuse of such measures. It reflects the tribunal's role in safeguarding fairness and minimising potential adverse effects of interim measures on the opposing party.

**23.7 The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.**

Article 23.7 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal’s authority to request prompt disclosure of any material changes in circumstances related to the interim measures that were requested or granted during the arbitration proceedings. This provision highlights the tribunal’s interest in staying informed about developments that could impact the appropriateness or necessity of the interim measures. Let us break down the key components of this provision:

1. **Disclosure Requirement:** The article states that the arbitral tribunal has the power to require any party involved in the arbitration to promptly disclose “any material change in the circumstances” that were the basis for requesting or granting an interim measure.
2. **Material Change in Circumstances:** A “material change in circumstances” refers to significant changes or developments that could affect the context or rationale behind the interim measure. These changes might render the measure unnecessary, excessive, or inappropriate.
3. **Prompt Disclosure:** The provision emphasises the need for timely disclosure. Parties are expected to promptly inform the arbitral tribunal about any relevant changes as soon as they become aware of them.
4. **Purpose of the Disclosure:** The primary purpose of this provision is to ensure that the tribunal remains updated on the evolving circumstances and can make informed decisions about the continuation, modification, suspension, or termination of the interim measures.
5. **Maintaining Fairness and Effectiveness:** The requirement for disclosure is aimed at maintaining the fairness and effectiveness of the arbitration process. It prevents parties from benefiting from interim measures that are no longer justified due to changed circumstances, and it safeguards against unnecessary harm to the opposing party.
6. **Arbitral Tribunal’s Role:** This provision highlights the arbitral tribunal’s active role in overseeing the arbitration proceedings and ensuring that the interim measures remain appropriate and relevant throughout the case.

In summary, Article 23.7 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to request prompt disclosure of material changes in circumstances related to interim measures. This provision reflects the tribunal’s role in staying informed and making decisions that align with the evolving dynamics of the case. It contributes to the integrity, fairness, and effectiveness of the arbitration process by ensuring that interim measures are adjusted as needed to reflect the current situation.

**23.8 The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the arbitration.**

Article 23.8 of the HKIAC Arbitration Rules 2018 addresses the potential liability of the party requesting an interim measure for costs and damages caused by that measure, should the arbitral tribunal later

determine that the measure should not have been granted based on the prevailing circumstances. This provision emphasises the importance of ensuring that interim measures are justified and appropriate, as well as the accountability of parties seeking such measures. Let us break down the key components of this provision:

1. **Liability for Costs and Damages:** The article states that the party that initially requested an interim measure may be held liable for any costs and damages caused by that measure. This liability arises if the arbitral tribunal later decides that the measure should not have been granted given the circumstances that were prevailing at the time.
2. **Determining Inappropriateness of the Measure:** The tribunal's determination of inappropriateness is crucial to triggering the potential liability. The tribunal must assess whether the measure was justified based on the information available at the time of the request.
3. **Timing of Award:** The provision allows the arbitral tribunal to award such costs and damages at any point during the arbitration proceedings. This means that the tribunal has discretion on when to decide on the potential liability and what appropriate remedy to award.
4. **Accountability and Deterrence:** The provision serves to hold parties accountable for seeking interim measures that might later be deemed inappropriate. It acts as a deterrent against parties using interim measures frivolously or in bad faith.
5. **Protection Against Unjustified Measures:** The provision safeguards parties against unjustified or unnecessary interim measures that could cause harm to the opposing party. It ensures that parties requesting such measures have a genuine need and that their actions align with the principles of fairness and proportionality.
6. **Balancing Interests:** While the provision protects parties against undue harm, it also takes into account that the circumstances may evolve over time. The tribunal's assessment considers the information and context available at the time of the request.

In summary, Article 23.8 of the HKIAC Arbitration Rules 2018 introduces the concept of potential liability for costs and damages to the party requesting an interim measure if the measure is later determined to have been unjustified. This provision emphasises accountability, fairness, and proportionality in seeking interim relief. It ensures that parties use such measures responsibly and avoids unnecessary harm to the opposing party.

### **23.9 A request for interim measures addressed by any party to a competent authority shall not be deemed incompatible with the arbitration agreement, or as a waiver thereof.**

Article 23.9 of the HKIAC Arbitration Rules 2018 addresses the compatibility of a request for interim measures made to a competent authority with the arbitration agreement between the parties. This provision clarifies that seeking interim measures from a competent authority outside the arbitration process does not render the arbitration agreement incompatible, nor does it constitute a waiver of the parties' right to arbitration. Let us break down the key components of this provision:

1. Request for Interim Measures: The article pertains to situations where a party addresses a request for interim measures to a “competent authority”. This typically refers to a court or other judicial authority that has jurisdiction to grant such interim relief.
2. Incompatibility with Arbitration Agreement: The provision specifies that making a request for interim measures to a competent authority does not render the arbitration agreement between the parties incompatible. In other words, seeking relief from a court does not negate the parties’ agreement to resolve their dispute through arbitration.
3. No Waiver of Arbitration Agreement: The provision also clarifies that making a request for interim measures to a competent authority does not constitute a waiver of the parties’ right to pursue arbitration. This means that even if a party seeks interim measures through a court, they can still proceed with the arbitration process as agreed upon in their arbitration agreement.
4. Preservation of Rights: This provision aims to ensure that parties are not penalised for seeking urgent interim relief from a court while maintaining their right to arbitrate the underlying dispute. It allows parties to simultaneously pursue both avenues without prejudicing their rights.
5. Recognition of Different Avenues: The article recognises that parties might seek interim measures from a court due to the immediate nature of their needs, such as asset preservation or injunctions. Arbitration proceedings might take longer to organise and constitute, and in the meantime, parties may need to protect their interests through court intervention.

In summary, Article 23.9 of the HKIAC Arbitration Rules 2018 underscores that seeking interim measures from a competent authority does not conflict with the arbitration agreement or waive the parties’ right to arbitration. This provision acknowledges the practical need for parties to obtain urgent relief while affirming their commitment to arbitrate the underlying dispute as per their agreement. It ensures that parties have the flexibility to protect their interests in the short term without prejudicing their chosen method of dispute resolution.

## Article 24 – Security for Costs

**The arbitral tribunal may make an order requiring a party to provide security for the costs of the arbitration.**

Article 24 of the HKIAC Arbitration Rules 2018 addresses the tribunal’s authority to issue orders regarding the provision of security for the costs of the arbitration. This provision aims to ensure that the arbitration process is conducted in a fair and effective manner by addressing potential concerns related to costs. Let us analyse the key aspects of Article 24:

1. Security for Costs: Article 24 empowers the arbitral tribunal to issue an order requiring a party to provide security for the costs of the arbitration. This provision is particularly relevant in cases where one party is concerned that the opposing party may not have the financial capacity to cover the costs associated with the arbitration proceedings.

2. **Balancing Interests:** The provision reflects the need to strike a balance between safeguarding the interests of the party seeking security for costs and ensuring that the arbitration process is not unduly impeded by financial considerations. It acknowledges the potential impact of the cost burden on the proceedings.
3. **Protection Against Non-Payment:** By allowing the tribunal to order security for costs, Article 24 provides a mechanism to mitigate the risk of non-payment of arbitration costs and expenses, which could hinder the arbitral process and potentially disadvantage a party.
4. **Principles of Fairness and Equality:** The provision is designed to promote fairness and equality between the parties. It allows a party that has concerns about the other party's financial capability to request appropriate measures to ensure that the arbitration can proceed smoothly.
5. **Tribunal's Discretion:** While Article 24 grants the arbitral tribunal the authority to issue such an order, it also underscores the tribunal's discretion. The tribunal must weigh the circumstances of the case, including the specific financial situation of the parties and any potential impact on the arbitration process.
6. **Ensuring Effective Resolution:** By addressing potential financial barriers, Article 24 aims to ensure that parties can effectively access the arbitral process and secure a resolution to their dispute without being deterred by concerns over costs.
7. **Consistency with International Practices:** The provision aligns with the practices of many international arbitration institutions, which also recognise the tribunal's authority to order security for costs when circumstances warrant such measures.
8. **Ensuring Timely Arbitration:** By providing a mechanism to address concerns about costs, Article 24 contributes to the efficient and timely resolution of disputes, as parties can proceed with confidence that financial issues will not unduly disrupt the proceedings.

In summary, Article 24 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the discretion to issue orders requiring a party to provide security for the costs of the arbitration. This provision reflects a commitment to ensuring fairness, equality, and the effective conduct of the arbitration process while addressing potential financial challenges that parties may encounter.

## Article 25 – Tribunal-Appointed Experts

**25.1 To assist it in the assessment of evidence, the arbitral tribunal, after consulting with the parties, may appoint one or more experts. Such expert shall report to the arbitral tribunal, in writing, on specific issues to be determined by the arbitral tribunal. After consulting with the parties, the arbitral tribunal shall establish terms of reference for the expert, and shall communicate a copy of the expert's terms of reference to the parties and HKIAC.**

Article 25.1 of the HKIAC Arbitration Rules 2018 addresses the appointment of experts by the arbitral tribunal to assist in the assessment of evidence. This provision outlines the process for appointing and engaging experts and establishes the procedure for establishing terms of reference for these experts. Let us analyse this provision:

1. **Appointment of Experts:** The provision gives the arbitral tribunal the authority to appoint one or more experts to assist in the assessment of evidence. This is particularly relevant in cases involving complex technical or specialised issues that require expert knowledge beyond the expertise of the tribunal or the parties.
2. **Consultation with Parties:** Before appointing an expert, the tribunal is required to consult with the parties. This ensures that all parties have an opportunity to provide input and raise any concerns they might have regarding the appointment.
3. **Expert's Role:** The appointed expert is tasked with providing a written report to the arbitral tribunal. The report focuses on specific issues determined by the tribunal. The expert's report aids the tribunal in better understanding technical or specialised matters related to the dispute.
4. **Terms of Reference:** The provision outlines the process for establishing terms of reference for the expert. The terms of reference define the scope and specific issues that the expert's report should cover. These terms are set by the tribunal in consultation with the parties.
5. **Consultation on Terms of Reference:** After the expert is appointed, the tribunal consults with the parties again to establish the terms of reference for the expert. This consultation allows the parties to provide input and ensures that the expert's report addresses the relevant issues.
6. **Transparency and Communication:** Article 25.1 emphasises transparency and communication throughout the process. The expert's terms of reference are communicated not only to the parties but also to the HKIAC (Hong Kong International Arbitration Centre), the arbitration institution overseeing the proceedings.
7. **Expert Neutrality:** While the provision allows the tribunal to appoint experts, it is important to note that these experts should remain neutral and independent. They provide objective analysis to assist the tribunal in making informed decisions.
8. **Efficiency and Accuracy:** The appointment of experts is a mechanism to enhance the efficiency and accuracy of the arbitration process. It enables the tribunal to access specialised knowledge without causing undue delay or disruption.
9. **Cost Considerations:** The provision also acknowledges that the appointment of experts might involve additional costs. The parties should consider these costs when agreeing to the appointment and consultation on the terms of reference.

In summary, Article 25.1 of the HKIAC Arbitration Rules 2018 outlines the process for appointing and engaging experts to assist the arbitral tribunal in the assessment of evidence. The provision ensures that the parties are consulted, the expert's role is clearly defined, and the terms of reference are established in consultation with both parties and the arbitration institution. This mechanism helps the tribunal make well-informed decisions in cases involving specialised or technical matters.

**25.2 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a**



**party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.**

Article 25.2 of the HKIAC Arbitration Rules 2018 addresses the parties' obligations regarding the provision of relevant information, documents, and goods to an expert appointed by the arbitral tribunal. This provision outlines the parties' responsibilities and the mechanism for resolving disputes related to the provision of information. Let us analyse this provision:

1. **Parties' Obligations:** The provision places an obligation on the parties to provide the appointed expert with any relevant information or access to relevant documents and goods that the expert may require. This is crucial for the expert to carry out their analysis and prepare their report effectively.
2. **Cooperation and Facilitation:** The provision encourages cooperation between the parties and the expert. Parties are expected to facilitate the expert's work by providing the necessary information and materials promptly and comprehensively.
3. **Dispute Resolution Mechanism:** If a dispute arises between a party and the appointed expert regarding the relevance of the information or production of documents and goods, the provision outlines a mechanism for resolving the dispute. The dispute is to be referred to the arbitral tribunal for decision.
4. **Tribunal's Decision:** The arbitral tribunal, which is the decision-making body in the arbitration, has the authority to determine whether the disputed information, documents, or goods are relevant to the expert's work. This decision helps ensure that parties do not withhold necessary materials inappropriately.
5. **Maintaining Expert Neutrality:** The provision's requirement for dispute resolution through the tribunal reinforces the importance of maintaining the expert's neutrality and impartiality. It prevents direct conflicts between a party and the expert over the scope of information requested.
6. **Efficiency and Progress:** Resolving disputes through the tribunal's decision ensures the efficient progress of the arbitration proceedings. Delays arising from disagreements between parties and the expert are minimised, as the tribunal's decision serves as the final determination.
7. **Transparency and Fairness:** By providing a mechanism for resolving disputes regarding the expert's access to information, the provision enhances transparency and fairness in the expert's role. Parties can raise concerns, and the tribunal can ensure equitable access to necessary materials.
8. **Avoiding Bias:** Ensuring that the expert has access to all relevant information is important for preventing potential bias in the expert's analysis. The provision safeguards the integrity of the expert's report by allowing them to base their conclusions on a complete and unbiased dataset.

In summary, Article 25.2 of the HKIAC Arbitration Rules 2018 outlines the parties' obligations to provide relevant information, documents, and goods to an expert appointed by the arbitral tribunal. The provision establishes a dispute resolution mechanism that involves referring any disputes regarding the provision of information to the arbitral tribunal for decision. This mechanism contributes

to efficient proceedings, transparency, and fairness in the expert’s role while safeguarding the expert’s impartiality and neutrality.

**25.3 Upon receipt of the expert’s report, the arbitral tribunal shall send a copy of the report to the parties who shall be given the opportunity to express their opinions on the report. The parties shall be entitled to examine any document on which the expert has relied in his or her report.**

Article 25.3 of the HKIAC Arbitration Rules 2018 outlines the procedures to be followed once the expert’s report is received by the arbitral tribunal. This provision focuses on the dissemination of the expert’s report to the parties, their opportunity to express their opinions, and their entitlement to examine the documents relied upon by the expert. Let us analyze this provision:

1. **Expert’s Report Transmission:** After receiving the expert’s report, the arbitral tribunal is required to send a copy of the report to the parties involved in the arbitration. This step ensures transparency and provides the parties with the opportunity to review the expert’s findings and analysis.
2. **Opportunity to Express Opinions:** The provision emphasises that the parties should be given an opportunity to express their opinions on the expert’s report. This highlights the importance of procedural fairness and the parties’ right to engage with the expert’s conclusions.
3. **Parties’ Engagement:** Allowing the parties to express their opinions on the expert’s report enables them to provide feedback, raise concerns, or offer additional insights related to the expert’s findings. This engagement contributes to a more informed and thorough decision-making process.
4. **Examination of Documents:** The provision grants the parties the entitlement to examine any document on which the expert has relied in preparing their report. This right enables the parties to understand the basis for the expert’s conclusions and assess the accuracy and reliability of the analysis.
5. **Transparency and Due Process:** Article 25.3 aligns with the principles of transparency and due process in arbitration. It ensures that parties have access to relevant information and the ability to contribute to the assessment of evidence.
6. **Enhancing Arbitral Tribunal’s Understanding:** By involving the parties in the review process of the expert’s report and the underlying documents, the provision enhances the arbitral tribunal’s understanding of the evidence and the issues at hand.
7. **Correction of Errors:** If there are errors or misunderstandings in the expert’s report, allowing parties to examine the documents relied upon gives them the opportunity to identify and address such issues, ultimately contributing to the accuracy of the decision-making process.
8. **Party Autonomy:** The provision respects the parties’ autonomy in engaging with the expert’s report. It ensures that the parties have a say in evaluating and responding to the evidence that forms the basis of the expert’s conclusions.

9. Efficiency and Effectiveness: By providing a structured process for parties to express their opinions and examine relevant documents, the provision contributes to the efficiency and effectiveness of the arbitration proceedings.

In summary, Article 25.3 of the HKIAC Arbitration Rules 2018 outlines the post-report procedures related to an expert's report in arbitration. The provision focuses on transparency, procedural fairness, and the parties' right to engage with and assess the expert's findings. It ensures that parties have the opportunity to contribute to the assessment of evidence and the final decision-making process.

**25.4 At the request of either party, the expert, after delivering the report, shall attend a hearing at which the parties shall have the opportunity to be present and to examine the expert. At this hearing either party may present experts in order to testify on the points at issue. The provisions of Articles 22.2 to 22.7 shall be applicable to such proceedings.**

Article 25.4 of the HKIAC Arbitration Rules 2018 addresses the procedures for holding a hearing involving the expert who has submitted a report in an arbitration proceeding. This provision outlines the process for conducting a hearing at the request of either party, where the expert is present, parties have an opportunity to examine the expert, and other experts may be presented by the parties. The provision also references the applicability of certain procedural rules to these proceedings. Let us analyse this provision:

1. Expert Hearing Request: The provision establishes that at the request of either party, an expert who has delivered a report may be required to attend a hearing. This hearing is designed to facilitate an in-depth examination of the expert's conclusions and opinions.
2. Parties' Presence and Examination: The provision ensures that both parties have the opportunity to be present at the hearing and to examine the expert directly. This enables parties to ask questions, seek clarifications, and challenge the expert's opinions, enhancing transparency and ensuring a fair presentation of evidence.
3. Expert Testimony: The provision also allows either party to present their own experts during the hearing to testify on the points at issue. This introduces the concept of expert testimony as part of the arbitration process, where parties can provide additional expert perspectives on the matters in dispute.
4. Applicability of Articles 22.2 to 22.7: Article 25.4 references Articles 22.2 to 22.7 of the HKIAC Arbitration Rules. These articles pertain to the tribunal's determination of evidence admissibility, relevance, materiality, weight, and the manner of examining witnesses and experts. Their applicability underscores the importance of consistent procedural principles in these proceedings.
5. Transparency and Fairness: The provision enhances transparency by allowing the parties to directly question the expert and by permitting both parties to present their own experts. This ensures that multiple perspectives are considered, contributing to a fair and well-informed decision-making process.
6. Expert Neutrality: The provision maintains the importance of the expert's neutrality and impartiality. While the expert may be cross-examined and questioned by the parties, the expert's role as an independent analyst remains intact.

7. **Enhancing Understanding:** The hearing provides an opportunity for the arbitral tribunal to engage with the expert’s conclusions in a more dynamic manner. It also helps the tribunal gain a deeper understanding of the issues in dispute.
8. **Balancing Efficiency and Thoroughness:** While the provision adds an additional step to the arbitration process, it balances the need for thorough examination of evidence with the broader goal of efficient dispute resolution.

In summary, Article 25.4 of the HKIAC Arbitration Rules 2018 outlines the procedures for holding a hearing involving an expert who has submitted a report. The provision emphasises the parties’ opportunity to examine the expert, the presentation of expert testimony by either party, and the application of relevant procedural rules to ensure transparency, fairness, and a well-rounded consideration of evidence.

**25.5 The provisions of Article 11 shall apply by analogy to any expert appointed by the arbitral tribunal.**

Article 25.5 of the HKIAC Arbitration Rules 2018 establishes the application of certain provisions from Article 11 to the appointment of experts by the arbitral tribunal. Article 11 in the HKIAC Arbitration Rules addresses the appointment, challenge, and replacement of arbitrators. The application of Article 11 by analogy to experts ensures a consistent and fair approach to the appointment and potential challenges of experts. Let us analyse this provision:

1. **Applying Article 11 by Analogy:** The provision states that the provisions of Article 11 shall apply by analogy to any expert appointed by the arbitral tribunal. This means that the rules governing the appointment, challenge, and potential replacement of arbitrators under Article 11 are adapted and extended to apply to the appointment of experts.
2. **Uniformity and Consistency:** The application of Article 11 principles to expert appointments maintains a sense of uniformity and consistency in the arbitration process. Similar rules are applied to both arbitrators and experts, ensuring a balanced approach.
3. **Appointment Process:** By analogy, the rules regarding the appointment process, such as the submission of a statement of independence and availability, ensure that appointed experts maintain their independence and lack of bias in their analysis.
4. **Potential Challenges:** Just as Article 11 allows for challenges to arbitrators on grounds of impartiality or independence, this provision suggests that similar grounds could apply to experts appointed by the tribunal. This safeguards the integrity of the expert’s analysis and report.
5. **Transparency and Due Process:** The application of Article 11 principles underscores the importance of transparency and due process in expert appointments. It ensures that parties have confidence in the expertise of the appointed expert and in the fairness of the proceedings.
6. **Impartiality of Experts:** By extending the application of Article 11 to experts, the provision reinforces the requirement for experts to be impartial and independent, which is crucial for the credibility of their analysis and report.

7. Challenges to Expert Appointments: If a party believes that an expert appointed by the tribunal may lack impartiality or independence, the provision's analogy to Article 11 allows for a mechanism to challenge the expert's appointment on similar grounds.
8. Promotion of Fairness: The provision's application of principles used for arbitrator appointments to expert appointments contributes to overall fairness in the arbitration process. It ensures that both parties have the opportunity to express concerns about an appointed expert.

In summary, Article 25.5 of the HKIAC Arbitration Rules 2018 establishes that the provisions of Article 11, which pertain to the appointment, challenge, and replacement of arbitrators, apply by analogy to experts appointed by the arbitral tribunal. This application maintains consistency, promotes fairness, and ensures that expert appointments uphold the principles of impartiality, independence, and transparency, similar to the appointment of arbitrators.

## Article 26 – Default

**26.1 If, within the time limit set by the arbitral tribunal, the Claimant has failed to communicate its written statement without showing sufficient cause for such failure, the arbitral tribunal may terminate the arbitration unless another party has brought a claim and wishes the arbitration to continue, in which case the tribunal may proceed with the arbitration in respect of the other party's claim.**

Article 26.1 of the HKIAC Arbitration Rules 2018 deals with the scenario where the claimant fails to submit its written statement within the designated time frame set by the arbitral tribunal. The article outlines the potential consequences of such a failure, including the possibility of terminating the arbitration process or continuing it in certain circumstances. Let us delve deeper into the analysis:

1. Timely Submission of Written Statement: The article establishes an essential procedural requirement for the claimant to communicate its written statement within the timeframe specified by the arbitral tribunal. The written statement typically presents the claimant's case, including factual background, legal arguments, and the relief sought.
2. Insufficient Cause and Termination: If the claimant fails to provide its written statement within the stipulated time frame and is unable to present a valid and sufficient reason (cause) for the failure, the article allows the arbitral tribunal to take certain actions.
3. Termination of Arbitration: One potential consequence is the termination of the arbitration process. This means that the arbitration proceedings would come to an end due to the claimant's non-compliance with the requirement to submit the written statement.
4. Exception for Other Party's Claim: However, the article introduces an important exception to this termination possibility. If another party has also brought a claim and is willing to proceed with the arbitration, the tribunal may decide to continue the proceedings for that party's claim.
5. Balancing Interests: This exception seeks to balance the interests of both parties involved in the dispute. While one party's failure to comply with procedural requirements could

result in the termination of the arbitration, the exception allows the proceedings to continue if another party is committed to pursuing its claim.

6. **Efficient Case Management:** The provision serves to ensure efficient case management by emphasising the importance of adhering to procedural timelines. Timely submission of written statements is crucial for maintaining the progress of the arbitration and allowing both parties to present their cases effectively.
7. **Procedural Fairness:** The article aligns with principles of procedural fairness. It emphasises that parties should fulfil their obligations and meet the established deadlines, ensuring that each party has a reasonable opportunity to present its case and engage in the proceedings.
8. **Discretion of the Arbitral Tribunal:** The article grants the arbitral tribunal the discretion to decide how to respond to the claimant's failure to submit the written statement within the specified time frame. The tribunal's decision will depend on the specific circumstances of the case.
9. **Party Autonomy and Consent:** The provision respects party autonomy by allowing the arbitration to continue if another party wishes to do so. It also respects the consent-based nature of arbitration, where parties are generally free to decide whether to proceed with the arbitration.

In summary, Article 26.1 of the HKIAC Arbitration Rules 2018 addresses the consequences of a claimant's failure to submit its written statement within the set time frame. The provision highlights the significance of complying with procedural requirements, while also accommodating the possibility of continuing the arbitration if another party is willing to pursue its claim. This balances efficiency with fairness in the arbitration process.

**26.2 If, within the time limit set by the arbitral tribunal, the Respondent has failed to communicate its written statement without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.**

Article 26.2 of the HKIAC Arbitration Rules 2018 addresses the consequences when the respondent fails to submit its written statement within the time limit established by the arbitral tribunal. The article outlines the potential outcome of such a failure, emphasising the discretion of the arbitral tribunal to proceed with the arbitration process. Let us analyse this provision:

1. **Timely Submission of Written Statement:** Similar to the claimant's obligation, the article establishes a procedural requirement for the respondent to communicate its written statement within the specified time frame set by the arbitral tribunal. The written statement typically outlines the respondent's response to the claimant's case, presenting factual background, legal arguments, and any counterclaims or defences.
2. **Consequences of Failure:** If the respondent fails to provide its written statement within the designated time frame and does not provide a valid and sufficient reason (cause) for the failure, the article outlines the potential outcome of this failure.

3. **Proceeding with the Arbitration:** Unlike the provision related to the claimant's failure (Article 26.1), where the tribunal may have the option to terminate the arbitration, Article 26.2 emphasises that if the respondent fails to submit its written statement without adequate cause, the arbitral tribunal is entitled to proceed with the arbitration.
4. **Maintaining Arbitration Progress:** The article underscores the importance of maintaining the arbitration process and schedule. The tribunal's discretion to proceed with the arbitration when the respondent has not submitted its written statement helps ensure that the proceedings continue in an efficient manner.
5. **Avoiding Delays:** By allowing the arbitration to proceed despite the respondent's failure to submit its written statement, the article contributes to avoiding undue delays and disruptions in the dispute resolution process.
6. **Balance of Procedural Fairness:** While the article gives the tribunal the authority to proceed, it also respects the respondent's procedural rights. It acknowledges that the respondent had the opportunity to submit its written statement and, if failed, the tribunal may continue based on the available information.
7. **Party Autonomy and Consent:** The article aligns with the principle of party autonomy in arbitration. It respects the respondent's choice to participate in the process and acknowledges that the tribunal may proceed even if the respondent does not submit its written statement.
8. **Arbitral Tribunal's Discretion:** As with many provisions in arbitration rules, the final decision on whether to proceed with the arbitration rests with the arbitral tribunal. The tribunal considers the circumstances of the case and exercises its discretion based on the principles of fairness and efficiency.

In summary, Article 26.2 of the HKIAC Arbitration Rules 2018 addresses the consequences when the respondent fails to submit its written statement within the time limit specified by the tribunal. The provision emphasises the tribunal's discretion to proceed with the arbitration, maintaining efficiency and allowing the process to continue despite the respondent's failure to provide its written statement without sufficient cause.

**26.3 If one of the parties, duly notified under these Rules, fails to present its case in accordance with these Rules including as directed by the arbitral tribunal, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration and make an award on the basis of the evidence before it.**

Article 26.3 of the HKIAC Arbitration Rules 2018 addresses the consequences when one of the parties, who has been properly notified under the arbitration rules, fails to present its case as directed by the arbitral tribunal. The article outlines the potential outcome of such a failure, highlighting the tribunal's discretion to proceed with the arbitration and make an award based on the evidence before it. Let us analyse this provision:

1. **Compliance with Rules and Tribunal Directions:** The provision emphasises the importance of compliance with the arbitration rules and any directions given by the arbitral tribunal.

It establishes the parties' obligation to present their cases in accordance with the procedural framework established by the tribunal.

2. **Proper Notification:** For this provision to apply, the party must have been duly notified under the arbitration rules. This ensures that parties are aware of their obligations and the consequences of non-compliance.
3. **Failure to Present Case:** If one of the parties fails to present its case as directed by the tribunal, the article emphasises that such a failure should be without sufficient cause. This means that parties should not have valid reasons or justifications for their non-compliance.
4. **Arbitral Tribunal's Discretion:** The key aspect of this provision is the arbitral tribunal's discretion to proceed with the arbitration despite the party's failure to present its case as directed. The tribunal may decide to continue the proceedings and make an award based on the evidence that is already before it.
5. **Efficiency of Proceedings:** The provision underscores the importance of maintaining the efficiency and progress of the arbitration process. By allowing the tribunal to proceed and make an award even in the absence of one party's case, the provision contributes to avoiding undue delays.
6. **Award Based on Available Evidence:** If the tribunal decides to proceed, it may make an award based on the evidence that has been presented by the parties and is before it. This evidence could include the claims and arguments of the party that has complied with the procedural requirements.
7. **Balance of Procedural Fairness:** While the provision allows the tribunal to proceed without one party's case, it does recognise the potential impact on procedural fairness. Parties should be aware of their obligations and the consequences of failing to comply with procedural requirements.
8. **Finality of Awards:** The provision acknowledges that an award may be made based on the available evidence. This award, even if it lacks one party's presentation of its case, can be considered final and binding as per the arbitration process.

In summary, Article 26.3 of the HKIAC Arbitration Rules 2018 addresses the consequences when a party fails to present its case in accordance with the rules and tribunal directions. The provision emphasises the tribunal's discretion to proceed with the arbitration and make an award based on the evidence before it. This approach balances the need for efficiency with procedural fairness and recognises the consequences of non-compliance in the arbitration process.



**Article 27 – Joinder of Additional Parties**

**27.1 The arbitral tribunal or, where the arbitral tribunal is not yet constituted, HKIAC shall have the power to allow an additional party to be joined to the arbitration provided that:**

- (a) prima facie, the additional party is bound by an arbitration agreement under these Rules giving rise to the arbitration, including any arbitration under Article 28 or 29; or**
- (b) all parties, including the additional party, expressly agree.**

Article 27.1 of the HKIAC Arbitration Rules 2018 addresses the issue of allowing an additional party to be joined to the ongoing arbitration proceedings. This provision outlines the conditions under which a new party can be added to the arbitration, either when the arbitral tribunal is already constituted or before its constitution. Let us break down the key components of this provision:

1. **Power to Allow Joinder:** The article grants the arbitral tribunal or, in cases where the tribunal has not yet been constituted, the HKIAC (Hong Kong International Arbitration Centre), the authority to permit an additional party to join the ongoing arbitration proceedings.
2. **Criteria for Joinder:** There are two main scenarios under which an additional party can be joined to the arbitration:
  - a. **Prima Facie Bound by an Arbitration Agreement (a):** The provision states that an additional party can be joined if, on the face of it (prima facie), the party is bound by an arbitration agreement under the same Rules that led to the ongoing arbitration. This implies that the new party must be subject to the same arbitration agreement as the existing parties.
  - b. **Express Agreement of All Parties (b):** Alternatively, joinder can occur if all parties involved in the arbitration, including the new party, expressly agree to the addition of the new party.
3. **Flexibility and Consent:** The provision reflects the principles of flexibility and party consent in the arbitration process. It allows for the addition of parties under two distinct circumstances: when the legal basis for arbitration is clear (prima facie), or when all parties are in agreement.
4. **Balance of Interests:** The provision emphasises the need to balance the rights of the existing parties with the potential inclusion of a new party. It ensures that the inclusion of an additional party does not unduly prejudice the existing parties' rights or disrupt the arbitration proceedings.
5. **Arbitral Tribunal's Role:** In cases where the arbitral tribunal is already constituted, it is given the authority to decide on the joinder of an additional party. This empowers the tribunal to manage the proceedings effectively and make informed decisions about party inclusion.
6. **HKIAC's Role:** In situations where the arbitral tribunal has not yet been constituted, the HKIAC takes on the responsibility of allowing joinder. This underscores the administrative role of the HKIAC in managing arbitration proceedings.

In summary, Article 27.1 of the HKIAC Arbitration Rules 2018 outlines the conditions under which an additional party can be joined to ongoing arbitration proceedings. It emphasises both the legal basis for joinder and the importance of party consent. This provision ensures that the addition of parties is carried out fairly and in accordance with the principles of arbitration agreement and party autonomy.

**27.2 Any decision pursuant to Article 27.1 is without prejudice to the arbitral tribunal's power to decide any question as to its jurisdiction arising from such decision.**

Article 27.2 of the HKIAC Arbitration Rules 2018 addresses the relationship between the decision to allow an additional party to join the arbitration proceedings under Article 27.1 and the arbitral tribunal's authority to determine questions related to its own jurisdiction. This provision clarifies that the decision to allow joinder does not affect the tribunal's ability to later decide on jurisdictional issues that might arise from that decision. Let us break down the key components of this provision:

1. **Jurisdictional Questions:** The provision acknowledges that the process of joining an additional party to the arbitration proceedings might raise questions regarding the tribunal's jurisdiction. These questions could include whether the tribunal has the authority to arbitrate disputes involving the newly added party.
2. **Effect of Joinder Decision:** Article 27.2 states that any decision made in accordance with Article 27.1 – that is, the decision to allow an additional party to join – does not preclude or affect the arbitral tribunal's power to decide jurisdictional issues that might arise from that joinder decision.
3. **Preservation of Jurisdictional Authority:** The provision underscores the tribunal's authority to determine its own jurisdiction independently. It clarifies that even if a decision has been made to allow joinder, the tribunal retains the power to review any jurisdictional challenges that might arise due to the inclusion of the new party.
4. **Ensuring Fair and Equitable Process:** By confirming that the tribunal's jurisdictional authority is not compromised by the joinder decision, the provision ensures that parties have a fair and impartial forum to raise jurisdictional objections or seek clarification regarding the tribunal's scope of authority.
5. **Clarity and Transparency:** The article helps maintain transparency and predictability in the arbitration process. It prevents any confusion about whether the joinder decision affects the tribunal's power to address jurisdictional issues.

In summary, Article 27.2 of the HKIAC Arbitration Rules 2018 emphasises the autonomy of the arbitral tribunal in deciding questions of its own jurisdiction. It clarifies that a decision to allow an additional party to join the proceedings does not prevent the tribunal from addressing any jurisdictional matters that might arise due to that joinder decision. This provision ensures that the process remains fair, transparent, and aligned with the principles of arbitration.

**27.3 Any Request for Joinder shall be raised no later than in the Statement of Defence, except in exceptional circumstances.**

Article 27.3 of the HKIAC Arbitration Rules 2018 outlines the timeline and conditions for submitting a request for joinder of an additional party to the ongoing arbitration proceedings. This provision establishes a general rule for when a party can raise a request for joinder and allows for exceptional circumstances where the request can be made later. Let us break down the key components of this provision:

1. **Timing of Request:** The provision specifies that any request for joinder of an additional party should ideally be raised no later than in the Statement of Defence. In other words, a party seeking to join another party to the arbitration should ideally present this request in its initial response to the claims (Statement of Defence) raised by the opposing party.
2. **Exceptional Circumstances:** The article recognises that there may be situations where it is not feasible to meet the general timing requirement. In such exceptional circumstances, the request for joinder can be made later than the Statement of Defence.
3. **Purpose of Timely Request:** The provision serves to ensure that parties address the issue of joinder early in the arbitration proceedings. This allows the tribunal and all parties involved to manage their strategies and expectations effectively and to proceed with the proceedings without undue delay.
4. **Flexibility for Exceptional Circumstances:** The article's allowance for exceptional circumstances provides flexibility. It acknowledges that unforeseen developments or complexities might arise that could justify the delay in submitting a request for joinder.
5. **Balance of Interests:** The provision balances the need for timely resolution of joinder requests with the recognition that exceptional circumstances might arise. It aims to prevent undue prejudice to any party while maintaining the efficiency and fairness of the arbitration process.
6. **Managing the Proceedings:** By encouraging parties to raise joinder requests early, the provision aids in the effective management of the proceedings. It enables the tribunal to consider issues related to joinder in a timely manner.

In summary, Article 27.3 of the HKIAC Arbitration Rules 2018 establishes a general rule that requests for joinder of an additional party should be raised no later than in the Statement of Defence. However, it also recognises that exceptional circumstances may warrant a later request. This provision aims to strike a balance between timely resolution of joinder matters and the flexibility needed to accommodate unforeseen situations that might arise during the arbitration process.

**27.4 Before the arbitral tribunal is constituted, a party wishing to join an additional party to the arbitration shall communicate a Request for Joinder to HKIAC, all other parties and any confirmed or appointed arbitrators.**

Article 27.4 of the HKIAC Arbitration Rules 2018 outlines the procedural steps that a party wishing to join an additional party to an ongoing arbitration should take before the arbitral tribunal is constituted.

This provision specifies the process and communication requirements for submitting a request for joinder. Let us break down the key components of this provision:

1. **Timing:** The provision specifies that the procedures outlined apply when the arbitral tribunal has not yet been constituted. This means that the request for joinder should be made before the tribunal is officially formed and begins its work on the case.
2. **Request for Joinder:** The article requires that a party wishing to join an additional party to the arbitration must submit a formal "Request for Joinder". This request initiates the process of adding the new party to the proceedings.
3. **Communication:** The request for joinder should be communicated to three specific entities:
  - a. **HKIAC (Hong Kong International Arbitration Centre):** The request should be directed to the arbitral institution administering the arbitration.
  - b. **All Other Parties:** The requesting party should communicate the request to all other parties involved in the arbitration, including the original parties and any previously joined parties.
  - c. **Confirmed or Appointed Arbitrators:** The request should also be communicated to any arbitrators who have already been confirmed or appointed to the tribunal.
4. **Purpose of Communication:** The communication requirement ensures that all relevant parties and entities are informed about the request for joinder. This transparency helps maintain the fairness and procedural integrity of the arbitration process.
5. **Ensuring Consistency:** By notifying all parties and the institution, the provision ensures that there is a coordinated approach to handling the joinder request, preventing any confusion or discrepancies in the proceedings.
6. **Cooperation and Efficiency:** This communication requirement promotes cooperation among the parties and timely handling of the joinder request. It contributes to the efficient management of the proceedings, particularly in cases where multiple parties and arbitrators are involved.

In summary, Article 27.4 of the HKIAC Arbitration Rules 2018 establishes the process for submitting a request for joinder of an additional party before the arbitral tribunal is constituted. This provision emphasises transparency, cooperation, and efficiency by specifying the entities that need to be informed and involved in the joinder process. It sets the groundwork for the orderly inclusion of new parties into the arbitration proceedings.

**27.5 After the arbitral tribunal is constituted, a party wishing to join an additional party to the arbitration shall communicate a Request for Joinder to the arbitral tribunal, HKIAC and all other parties.**

Article 27.5 of the HKIAC Arbitration Rules 2018 outlines the procedural steps that a party wishing to join an additional party to an ongoing arbitration should take after the arbitral tribunal has been

constituted. This provision specifies the process and communication requirements for submitting a request for joinder at this stage. Let us break down the key components of this provision:

1. **Timing:** The provision specifies that the procedures outlined apply after the arbitral tribunal has been constituted. This means that the request for joinder should be made once the tribunal has been officially formed and is actively engaged in the arbitration proceedings.
2. **Request for Joinder:** Similar to the pre-constitution scenario, the article requires that a party wishing to join an additional party to the arbitration must submit a formal “Request for Joinder”.
3. **Communication:** The request for joinder should be communicated to three specific entities:
  - a. **Arbitral Tribunal:** The request should be directed to the constituted arbitral tribunal. This ensures that the tribunal is aware of the request and can consider it in the context of the ongoing proceedings.
  - b. **HKIAC (Hong Kong International Arbitration Centre):** The request should also be communicated to the arbitral institution administering the arbitration.
  - c. **All Other Parties:** Similar to the pre-constitution stage, the requesting party should communicate the request to all other parties involved in the arbitration.
4. **Purpose of Communication:** The communication requirement ensures that all relevant parties and entities are informed about the request for joinder, even after the tribunal is constituted. This transparency helps maintain the fairness and procedural integrity of the arbitration process.
5. **Arbitral Tribunal’s Role:** By directing the request to the arbitral tribunal, the provision ensures that the tribunal has an opportunity to consider and decide on the joinder request within the context of the ongoing proceedings.
6. **Efficiency and Coordination:** Just as in the pre-constitution scenario, this communication requirement promotes cooperation among the parties and timely handling of the joinder request. It contributes to the efficient management of the proceedings by keeping all parties and the tribunal informed.

In summary, Article 27.5 of the HKIAC Arbitration Rules 2018 establishes the process for submitting a request for joinder of an additional party after the arbitral tribunal has been constituted. This provision emphasises the importance of communication, transparency, and coordination among all relevant parties and entities. It ensures that the joinder process is carried out effectively and in line with the principles of fairness and procedural integrity.

**27.6 The Request for Joinder shall include the following:**

- (a) the case reference of the existing arbitration;**
- (b) the names and addresses, facsimile numbers and/or email addresses, if known, of each of the parties, including the additional party, their representatives and any arbitrators who have been confirmed or appointed in the arbitration;**
- (c) a request that the additional party be joined to the arbitration;**
- (d) a copy of the contract (s) or other legal instrument(s) out of or in relation to which the request arises, or reference thereto;**
- (e) a statement of the facts supporting the request;**
- (f) the points at issue;**
- (g) the legal arguments supporting the request;**
- (h) any relief or remedy sought;**
- (i) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and**
- (j) confirmation that copies of the Request for Joinder and any supporting materials included with it have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.**

Article 27.6 of the HKIAC Arbitration Rules 2018 outlines the contents of a “Request for Joinder”, which is the formal submission made by a party seeking to add an additional party to the ongoing arbitration proceedings. This provision specifies the information and documentation that should be included in the request. Let us break down the key components of this provision:

1. **Case Reference:** The requesting party should provide the case reference of the existing arbitration. This helps identify the specific arbitration proceedings to which the request pertains.
2. **Names and Contact Information:** The article requires the inclusion of names, addresses, facsimile numbers, and/or email addresses of relevant parties, including the additional party, their representatives, and any arbitrators who have already been confirmed or appointed in the arbitration. This ensures that all parties and relevant individuals are properly identified and informed.
3. **Request for Joinder:** The request should explicitly state the intention to join the additional party to the ongoing arbitration proceedings.
4. **Contract or Legal Instrument:** The requesting party should attach a copy of the relevant contract(s) or other legal instrument(s) that form the basis for the request, or provide a clear reference to them. This allows the tribunal and other parties to understand the context and origin of the request.

5. **Statement of Facts:** The request should include a statement of the facts that support the request for joinder. This outlines the factual background that justifies the addition of the new party.
6. **Points at Issue:** The points at issue, which are the specific matters of contention or dispute, should be provided. This helps parties and the tribunal understand the scope of the dispute.
7. **Legal Arguments:** The legal arguments supporting the request should be outlined. This includes the legal basis for why the additional party should be joined to the proceedings.
8. **Relief or Remedy Sought:** The request should specify any relief or remedy sought by the requesting party with regard to the addition of the new party.
9. **Funding Agreement:** If applicable, the existence of any funding agreement and the identity of any third-party funder pursuant to Article 44 of the Rules should be disclosed. This provides transparency about any financial arrangements related to the request.
10. **Confirmation of Communication:** The request should confirm that copies of the Request for Joinder and any supporting materials have been or are being communicated to all other parties and any confirmed or appointed arbitrators. The communication should occur through one or more means of service identified in this confirmation.

In summary, Article 27.6 of the HKIAC Arbitration Rules 2018 details the comprehensive contents that should be included in a Request for Joinder. These requirements ensure that all relevant parties, arbitrators, and the arbitral tribunal have access to the necessary information for a transparent and informed consideration of the joinder request. The provision aims to facilitate an efficient and fair joinder process that respects the principles of due process and procedural integrity.

**27.7 Within 15 days of receiving the Request for Joinder, the additional party shall communicate an Answer to the Request for Joinder to HKIAC, all other parties and any confirmed or appointed arbitrators. The Answer to the Request for Joinder shall include the following:**

- (a) the name, address, facsimile number and/or email address of the additional party and its representatives (if different from the description contained in the Request for Joinder);**
- (b) any plea that the arbitral tribunal has been improperly constituted and/or lacks jurisdiction over the additional party;**
- (c) the additional party’s comments on the particulars set forth in the Request for Joinder pursuant to Article 27.6(a) to (g);**
- (d) the additional party’s answer to any relief or remedy sought in the Request for Joinder, pursuant to Article 27.6(h);**
- (e) details of any claims by the additional party against any other party to the arbitration;**
- (f) the existence of any funding agreement entered into by the additional party and the identity of any third party funder pursuant to Article 44; and**
- (g) confirmation that copies of the Answer to the Request for Joinder and any supporting materials included with it have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.**

Article 27.7 of the HKIAC Arbitration Rules 2018 outlines the procedural steps that the additional party, which has been requested to join the arbitration proceedings, should take in response to the “Request for Joinder”. This provision specifies the contents and communication requirements of the “Answer to the Request for Joinder”. Let us break down the key components of this provision:

1. **Timing:** The provision specifies that the additional party should provide its response within 15 days of receiving the “Request for Joinder”. This timeframe ensures a timely and efficient exchange of information during the joinder process.
2. **Contents of Answer:** The “Answer to the Request for Joinder” submitted by the additional party should include the following information:
  - a. **Name and Contact Information:** The answer should include the name, address, facsimile number, and/or email address of the additional party and its representatives if they differ from the description provided in the original request.
  - b. **Jurisdictional Objections:** The additional party can present any plea that the arbitral tribunal has been improperly constituted and/or lacks jurisdiction over the additional party. This allows the additional party to raise jurisdictional objections if they believe the joinder is improper from a legal standpoint.
  - c. **Comments on Request for Joinder:** The answer should contain the additional party’s comments on the particulars outlined in the “Request for Joinder” (as



provided in Article 27.6(a) to (g)). This facilitates a comprehensive response to the joinder request.

- d. **Response to Relief or Remedy:** The additional party should provide its response to any relief or remedy sought in the original joinder request, as outlined in Article 27.6(h).
- e. **Claims Against Other Parties:** The additional party should provide details of any claims it has against any other party already involved in the arbitration. This disclosure is relevant to the proceedings and ensures transparency among all parties.
- f. **Funding Agreement and Third-Party Funder:** If applicable, the existence of any funding agreement and the identity of any third-party funder pursuant to Article 44 of the Rules should be disclosed.
- g. **Confirmation of Communication:** Similar to the request stage, the answer should confirm that copies of the “Answer to the Request for Joinder” and any supporting materials have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators.

In summary, Article 27.7 of the HKIAC Arbitration Rules 2018 outlines the specific contents and communication requirements of the “Answer to the Request for Joinder” that the additional party should provide in response to a joinder request. These requirements ensure transparency, facilitate efficient communication among parties and arbitrators, and allow for a comprehensive assessment of the joinder matter while respecting the principles of due process and procedural fairness.

**27.8 HKIAC or the arbitral tribunal may vary any of the requirements in Article 27.6 and 27.7 as it deems appropriate.**

Article 27.8 of the HKIAC Arbitration Rules 2018 grants the HKIAC or the arbitral tribunal the authority to modify or alter any of the requirements outlined in Article 27.6 and Article 27.7 of the same rules. This provision allows flexibility to adapt the procedural steps for submitting a Request for Joinder and providing an Answer to the Request for Joinder under specific circumstances. Let us analyse the key implications of this provision:

1. **Flexibility in Procedural Requirements:** Article 27.8 recognises that every arbitration case is unique and may have specific circumstances that require procedural adjustments. By giving the HKIAC or the arbitral tribunal the authority to vary the requirements in Article 27.6 and Article 27.7, the provision acknowledges the need for tailored approaches in certain situations.
2. **Adapting to Unique Situations:** There might be cases where strict adherence to the requirements set out in Article 27.6 and Article 27.7 could be impractical or unnecessary. The provision allows the HKIAC or the arbitral tribunal to make necessary adjustments to better suit the specific needs and complexities of the arbitration.
3. **Maintaining Fairness and Due Process:** While the provision grants flexibility, it is presumed that any variations made would still uphold the principles of fairness, due process, and

procedural integrity. Any alterations should not undermine the fundamental rights of parties to present their cases and respond to requests in a transparent and equitable manner.

4. **Streamlining Proceedings:** The ability to vary the requirements provides the arbitral tribunal and the HKIAC with tools to streamline proceedings and avoid unnecessary delays. This is particularly important in complex cases where customised procedures might lead to a more efficient resolution.
5. **Balancing Party Autonomy and Efficiency:** The provision strikes a balance between party autonomy and the efficient management of the arbitration process. While parties have the freedom to initiate and respond to joinder requests, the tribunal and HKIAC have the discretion to shape these processes when required.
6. **Decision-Making Authority:** The decision to vary the requirements rests with the HKIAC or the arbitral tribunal. This underscores their role in managing and administering the arbitration proceedings effectively.

In summary, Article 27.8 of the HKIAC Arbitration Rules 2018 grants the HKIAC or the arbitral tribunal the authority to modify or adjust the procedural requirements related to the joinder process outlined in Article 27.6 and Article 27.7. This provision acknowledges the need for flexibility and adaptability in arbitration proceedings while ensuring that any variations made uphold the principles of fairness and due process.

**27.9 An additional party wishing to be joined to the arbitration shall communicate a Request for Joinder to HKIAC, all other parties and any confirmed or appointed arbitrators. The provisions of Article 27.6 shall apply to such Request for Joinder.**

Article 27.9 of the HKIAC Arbitration Rules 2018 outlines the procedural steps that an additional party, which wishes to join an ongoing arbitration, should take when submitting a formal request for joinder. This provision specifies the communication requirements and refers to the procedural details already covered in Article 27.6. Let us break down the key components of this provision:

1. **Process for Joining the Arbitration:** The provision addresses an additional party's desire to be joined to the ongoing arbitration proceedings. It establishes the formal procedure that the additional party must follow to make this request.
2. **Communication Requirement:** The article specifies that the additional party should communicate its "Request for Joinder" to three specific entities:
3. **HKIAC (Hong Kong International Arbitration Centre):** The request should be directed to the arbitral institution responsible for administering the arbitration.
4. **All Other Parties:** The additional party should communicate the joinder request to all parties already involved in the arbitration.
5. **Confirmed or Appointed Arbitrators:** The request should also be communicated to any arbitrators who have already been confirmed or appointed to the arbitral tribunal.

6. Applicability of Article 27.6: The provision explicitly states that the provisions outlined in Article 27.6 shall apply to this “Request for Joinder”. This refers to the requirements and details of the contents that should be included in the joinder request.
7. By referencing Article 27.6, Article 27.9 indicates that the additional party seeking to join the arbitration must follow the same procedural requirements as the original party requesting joinder (as detailed in Article 27.6). This ensures consistency in the joinder process for both types of parties.

In summary, Article 27.9 of the HKIAC Arbitration Rules 2018 outlines the procedure for an additional party wishing to join the arbitration proceedings. It requires the additional party to communicate a formal “Request for Joinder” to specific entities and specifies that the procedural details outlined in Article 27.6 shall apply to this request. This provision ensures a structured and consistent approach to the joinder process, maintaining transparency and procedural fairness throughout.

**27.10 Within 15 days of receiving a Request for Joinder, the parties shall communicate their comments on the Request for Joinder to HKIAC, all other parties and any confirmed or appointed arbitrators. Such comments may include (without limitation):**

- (a) any plea that the arbitral tribunal lacks jurisdiction over the additional party;**
- (b) comments on the particulars set forth in the Request for Joinder, pursuant to Article 27.6(a) to (g);**
- (c) answer to any relief or remedy sought in the Request for Joinder pursuant to Article 27.6(h);**
- (d) details of any claims against the additional party; and**
- (e) confirmation that copies of the comments have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.**

Article 27.10 of the HKIAC Arbitration Rules 2018 outlines the procedural steps that the existing parties in the arbitration should take upon receiving a “Request for Joinder” from an additional party. This provision specifies the communication requirements for these parties to submit their comments on the joinder request. Let us break down the key components of this provision:

1. Response to Joinder Request: The article addresses the response of the existing parties to the arbitration upon receiving a “Request for Joinder” from an additional party seeking to join the proceedings.
2. Timing: The provision specifies that the existing parties should communicate their comments on the joinder request within 15 days of receiving the “Request for Joinder”. This timeframe ensures a prompt response and helps maintain the efficiency of the arbitration process.
3. Communication Requirement: The comments from the existing parties should be communicated to three specific entities:

- a. HKIAC (Hong Kong International Arbitration Centre): The comments should be directed to the arbitral institution responsible for administering the arbitration.
  - b. All Other Parties: The existing parties should communicate their comments on the joinder request to all parties involved in the arbitration.
  - c. Confirmed or Appointed Arbitrators: The comments should also be communicated to any arbitrators who have already been confirmed or appointed to the arbitral tribunal.
4. Contents of Comments: The article specifies the potential contents of the comments that the existing parties may provide in response to the joinder request. These may include (but are not limited to):
- a. Jurisdictional Objections: The existing parties can raise any plea that the arbitral tribunal lacks jurisdiction over the additional party seeking to join.
  - b. Comments on Request for Joinder: The existing parties can provide comments on the particulars outlined in the “Request for Joinder”, as provided in Article 27.6(a) to (g).
  - c. Response to Relief or Remedy: The existing parties can provide their response to any relief or remedy sought in the original joinder request, as outlined in Article 27.6(h).
  - d. Details of Claims: The existing parties can present any details of claims they have against the additional party.
5. Confirmation of Communication: Similar to other stages of the joinder process, the comments from the existing parties should be confirmed as being communicated to all relevant parties and arbitrators.

In summary, Article 27.10 of the HKIAC Arbitration Rules 2018 outlines the procedural steps that the existing parties should take upon receiving a joinder request from an additional party. It requires these parties to communicate their comments on the joinder request within a specified timeframe and to specific entities. The provision ensures transparency, fairness, and timely handling of the joinder process by involving all parties and arbitrators in the exchange of information and opinions.

**27.11 Where an additional party is joined to the arbitration, the arbitration against that additional party shall be deemed to commence on the date on which HKIAC or the arbitral tribunal once constituted, received the Request for Joinder.**

Article 27.11 of the HKIAC Arbitration Rules 2018 addresses the commencement date of the arbitration proceedings against an additional party who has been successfully joined to the ongoing arbitration. This provision specifies when the arbitration against the newly joined party is considered to have started. Let us analyse the implications of this provision:

1. Defining the Commencement Date: The provision establishes a clear rule to determine the starting point of the arbitration proceedings against an additional party who has been

joined. It states that the arbitration against the new party is deemed to commence on the date when the HKIAC or the constituted arbitral tribunal received the “Request for Joinder”.

2. **Legal Clarity:** By providing a specific date as the starting point for the arbitration against the additional party, the provision ensures legal clarity and certainty regarding procedural timelines and the initiation of the proceedings.
3. **Effective Case Management:** The commencement date is crucial for various procedural matters, including calculating time limits for submissions, procedural deadlines, and other aspects of case management. This provision enables parties and the tribunal to manage the proceedings efficiently.
4. **Fairness and Due Process:** The provision ensures that the newly joined party has a clear understanding of when the arbitration proceedings against them officially began. This supports fairness and due process, allowing all parties to participate effectively from the outset.
5. **Coordination and Synchronisation:** The provision aligns the timing of the proceedings for the additional party with those of the existing parties. It prevents any confusion or inconsistency in managing the procedural stages of the arbitration.
6. **Record Keeping:** The specified commencement date serves as an important record for the arbitration case. It helps maintain an accurate record of when each party’s involvement in the proceedings began.

In summary, Article 27.11 of the HKIAC Arbitration Rules 2018 sets the date on which the arbitration against an additional party who has been successfully joined is deemed to have commenced. This provision ensures legal clarity, effective case management, and fairness in the arbitration process by providing a clear starting point for the newly joined party’s participation.

**27.12 Where an additional party is joined to the arbitration, all parties to the arbitration shall be deemed to have waived their right to designate an arbitrator.**

Article 27.12 of the HKIAC Arbitration Rules 2018 addresses the effect of joining an additional party to the arbitration proceedings on the right of the existing parties to designate an arbitrator. This provision outlines the consequences of joinder in relation to the appointment of arbitrators. Let us analyse the implications of this provision:

1. **Impact on Arbitrator Appointment:** The provision stipulates that when an additional party is successfully joined to the arbitration, all parties involved in the arbitration are deemed to have waived their right to individually designate an arbitrator.
2. **Waiver of Individual Arbitrator Selection:** By joining the arbitration, parties essentially relinquish their right to appoint an arbitrator individually. Instead, the tribunal will typically be constituted based on the arbitrators already appointed before the joinder process.

3. **Simplified Tribunal Formation:** This provision streamlines the process of tribunal formation in cases of joinder. Instead of having multiple parties each selecting their own arbitrator, the tribunal may already be partially constituted, making the process more efficient.
4. **Consistency and Avoidance of Delays:** The waiver of individual arbitrator designation helps prevent delays that could arise from selecting and confirming multiple arbitrators. It promotes consistency and expedites the continuation of the arbitration proceedings.
5. **Balance and Control:** While the provision limits parties' individual choices for arbitrator appointment, it aims to strike a balance between individual party preferences and the need for an efficient and manageable arbitration process.
6. **Ensuring Timely Resolution:** By avoiding the potential delays associated with selecting and confirming additional arbitrators, the provision contributes to the overall goal of achieving a timely resolution of the dispute.
7. **Practicality in Complex Cases:** In complex cases involving multiple parties, introducing new arbitrators through the joinder process can further complicate proceedings. The provision simplifies matters by maintaining consistency in the tribunal composition.

In summary, Article 27.12 of the HKIAC Arbitration Rules 2018 specifies that when an additional party is joined to the arbitration proceedings, all parties are deemed to have waived their right to designate an arbitrator individually. This simplifies tribunal formation, maintains consistency, and contributes to the efficiency and timely resolution of the arbitration process, particularly in cases involving joinder.

**27.13 Where an additional party is joined to the arbitration before the arbitral tribunal is constituted, HKIAC may revoke any confirmation or appointment of an arbitrator, and shall appoint the arbitral tribunal with or without regard to any party's designation.**

Article 27.13 of the HKIAC Arbitration Rules 2018 addresses the situation where an additional party is successfully joined to the arbitration proceedings before the arbitral tribunal has been constituted. This provision outlines the authority of the HKIAC in relation to the appointment and confirmation of arbitrators in such cases. Let us analyse the implications of this provision:

1. **Effect on Arbitrator Appointments:** The provision applies when an additional party is joined to the arbitration before the arbitral tribunal has been formed. It outlines the actions the HKIAC can take in response to the joinder process.
2. **Revocation of Arbitrator Confirmation/Appointment:** If an additional party is joined to the arbitration after arbitrators have been confirmed or appointed but before the tribunal is fully constituted, the HKIAC has the authority to revoke any prior confirmation or appointment of an arbitrator.
3. **HKIAC's Discretion in Tribunal Appointment:** In such cases, the provision gives the HKIAC the power to appoint the arbitral tribunal. This means that the HKIAC can establish the tribunal's composition without necessarily adhering to the individual designations made by parties prior to the joinder.

4. **Balancing Party Designations and Efficiency:** The provision seeks to balance the importance of maintaining the tribunal's composition with the need for efficiency and expediency in the proceedings. By allowing the HKIAC to revoke prior appointments, it helps align the tribunal with the current configuration of parties.
5. **Flexibility in Appointments:** The provision gives the HKIAC the flexibility to consider the joinder and the overall situation when appointing the arbitral tribunal. This is particularly relevant if the additional party's inclusion significantly impacts the dynamics of the case.
6. **HKIAC's Role in Procedural Management:** This provision underscores the HKIAC's role in managing the procedural aspects of the arbitration, especially when changes occur that require adjustments to the tribunal composition.
7. **Minimising Delays:** The provision aims to avoid unnecessary delays by allowing the HKIAC to swiftly address changes caused by joinder and make corresponding adjustments to the tribunal.

In summary, Article 27.13 of the HKIAC Arbitration Rules 2018 empowers the HKIAC to handle the appointment and confirmation of arbitrators when an additional party is joined to the arbitration before the arbitral tribunal is fully constituted. This provision reflects the HKIAC's role in maintaining procedural efficiency while ensuring the tribunal composition is appropriate for the evolving dynamics of the case.

**27.14 The revocation of the confirmation or appointment of an arbitrator pursuant to Article 27.13 is without prejudice to:**

- (a) the validity of any act done or order made by that arbitrator before his or her confirmation or appointment was revoked;**
- (b) his or her entitlement to be paid his or her fees and expenses subject to Schedule 2 or 3 as applicable; and**
- (c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.**

Article 27.14 of the HKIAC Arbitration Rules 2018 addresses the consequences of revoking the confirmation or appointment of an arbitrator, as specified in Article 27.13, when an additional party is joined to the arbitration before the arbitral tribunal is constituted. This provision outlines the effects of such revocation on the actions and responsibilities of the arbitrator in question. Let us analyse the implications of this provision:

1. **Preserving Valid Acts and Orders:** The provision stipulates that the revocation of an arbitrator's confirmation or appointment pursuant to Article 27.13 does not invalidate any acts done or orders made by that arbitrator before their confirmation or appointment was revoked. This ensures that the decisions and actions taken by the arbitrator while serving in the case remain valid and effective.
2. **Payment of Fees and Expenses:** The provision states that despite the revocation, the arbitrator remains entitled to be paid their fees and expenses. This recognition

acknowledges the arbitrator’s professional service and financial entitlement for work performed during the period of their service in the arbitration.

3. **Effect on Limitation Periods:** The provision addresses the potential impact of revocation on the timeline for raising claims or defences. It establishes that the revocation does not change the date when a claim or defence was raised for the purpose of applying any limitation period, similar rule, or provision. This ensures consistency in determining the relevant timeframes for procedural matters.
4. **Continuity and Efficiency:** By allowing arbitrators’ acts and orders to remain valid and preserving their entitlement to fees and expenses, the provision contributes to maintaining continuity and efficiency in the arbitration process. Parties can rely on the actions and decisions of the arbitrator during the time they were appointed.
5. **Consistency in Timeframes:** The provision ensures that changes in the composition of the tribunal do not inadvertently affect timeframes and deadlines established by limitation periods or procedural rules.
6. **Avoiding Disruption:** The provision aims to minimise disruptions caused by changes in the arbitrator’s status. It ensures that the work undertaken and decisions made by the arbitrator are not nullified by the subsequent revocation.

In summary, Article 27.14 of the HKIAC Arbitration Rules 2018 clarifies the implications of revoking the confirmation or appointment of an arbitrator in cases of joinder as outlined in Article 27.13. It confirms the validity of past acts and orders by the arbitrator, acknowledges their entitlement to fees and expenses, and maintains consistency in the determination of relevant timeframes for claims and defences. This provision contributes to a smooth transition in cases where arbitrator appointments are adjusted due to the joinder of an additional party.

### **27.15 HKIAC may adjust its Administrative Fees and the arbitral tribunal’s fees (where appropriate) after a Request for Joinder has been submitted.**

Article 27.15 of the HKIAC Arbitration Rules 2018 addresses the possibility of adjusting administrative fees and arbitral tribunal fees after a “Request for Joinder” has been submitted in an ongoing arbitration. This provision grants the HKIAC the authority to make adjustments to the fees associated with the arbitration process in response to changes arising from the joinder of an additional party. Let us analyse the implications of this provision:

1. **Fee Adjustments:** The provision recognises that the joinder of an additional party may introduce changes in the complexity and scope of the arbitration. As a result, administrative fees and arbitral tribunal fees may need to be adjusted to reflect the new dynamics and resources required for the proceedings.
2. **Flexibility in Resource Allocation:** When an additional party joins the arbitration, it can lead to increased procedural complexity, additional hearings, documentation, or other resource-intensive activities. The provision allows for adjustments to fees to ensure that the arbitration process is properly funded and resources are allocated appropriately.



3. **Fair Allocation of Costs:** Fee adjustments ensure that the costs of the arbitration are fairly allocated among the parties. The joinder of an additional party may impact the overall cost-sharing arrangement, and adjustments help maintain a balanced distribution of financial responsibilities.
4. **Transparent and Consistent Process:** The provision provides transparency and consistency in the process of fee adjustments. It establishes that the HKIAC has the authority to make such adjustments, which helps parties understand how changes in circumstances can affect the financial aspects of the arbitration.
5. **Support for Efficient Resolution:** By allowing for fee adjustments, the provision supports the goal of achieving an efficient and effective resolution of the dispute. Adequate funding ensures that the proceedings are well-managed and that parties have access to the resources needed for a fair outcome.
6. **HKIAC's Role in Fee Adjustment:** The provision highlights the administrative role of the HKIAC in managing the financial aspects of the arbitration. The HKIAC has the knowledge and expertise to assess the appropriate adjustments based on the specifics of each case.
7. **Flexibility to Respond to Change:** The provision demonstrates the rules' adaptability to changing circumstances in the course of an arbitration. It recognises that unforeseen developments, such as joinder, may warrant adjustments to fees to maintain fairness and efficiency.

In summary, Article 27.15 of the HKIAC Arbitration Rules 2018 empowers the HKIAC to adjust administrative fees and arbitral tribunal fees when an additional party is joined to an ongoing arbitration. This provision ensures that the financial aspects of the arbitration process remain aligned with the evolving dynamics of the case, supporting fairness, efficiency, and effective resolution.

## Article 28 – Consolidation of Arbitrations

**28.1 HKIAC shall have the power, at the request of a party and after consulting with the parties and any confirmed or appointed arbitrators, to consolidate two or more arbitrations pending under these Rules where:**

- (a) **the parties agree to consolidate; or**
- (b) **all of the claims in the arbitrations are made under the same arbitration agreement; or**
- (c) **the claims are made under more than one arbitration agreement, a common question of law or fact arises in all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions and the arbitration agreements are compatible.**

Article 28.1 of the HKIAC Arbitration Rules 2018 pertains to the power of the HKIAC to consolidate multiple arbitrations that are pending under these rules. The article outlines the conditions under which consolidation can occur, highlighting three scenarios:

1. Consolidation by Agreement (28.1(a)): In the first scenario, consolidation can occur if all parties involved in the arbitrations agree to consolidate their cases. This means that if all parties are in consensus that consolidating the arbitrations would be beneficial or appropriate, the HKIAC can exercise its power to consolidate them into a single proceeding.
2. Same Arbitration Agreement (28.1(b)): The second scenario involves cases where all claims in the multiple arbitrations are made under the same arbitration agreement. This implies that the parties have agreed to settle their disputes through arbitration based on the same contractual provisions. If this condition is met, and other relevant criteria are satisfied, the HKIAC can consolidate these arbitrations.
3. Common Question of Law or Fact (28.1(c)): The third scenario allows for consolidation when the claims in the arbitrations are based on more than one arbitration agreement, but a common question of law or fact exists across all the cases. Additionally, the claims must arise from the same transaction or a series of related transactions, and the arbitration agreements must be compatible. In this context, “compatible” implies that the arbitration agreements can be harmonised and combined into a single proceeding without conflicting provisions or legal obstacles.
4. In all of these scenarios, the HKIAC is required to consult with the parties involved in the arbitrations, as well as any confirmed or appointed arbitrators, before making a decision to consolidate. This emphasises the importance of ensuring that all relevant stakeholders are given the opportunity to provide input on the consolidation process.

The overarching purpose of Article 28.1 is to provide a mechanism for the efficient resolution of disputes by allowing for the consolidation of multiple arbitrations that share common elements. Consolidation can help avoid duplicative proceedings, reduce costs, and streamline the arbitration process. However, it is important to note that the HKIAC’s power to consolidate is subject to the specific conditions outlined in the article, and these conditions serve as safeguards to ensure that consolidation is appropriate and fair in each case.

**28.2 Any party wishing to consolidate two or more arbitrations pursuant to Article 28.1 shall communicate a Request for Consolidation to HKIAC, all other parties and any confirmed or appointed arbitrators.**

Article 28.2 of the HKIAC Arbitration Rules 2018 outlines the procedural steps that a party must undertake if they wish to initiate the process of consolidating two or more arbitrations under the authority granted by Article 28.1. This article specifies the requirement for submitting a formal request to the HKIAC, which is a critical step in the consolidation process. The main points of analysis for Article 28.2 are as follows:

1. Initiation of Consolidation: Article 28.1 provides the circumstances under which consolidation is permissible, and Article 28.2 serves as the mechanism for triggering this consolidation process. It underscores that it is the party interested in consolidation who must take the initiative to do so. This provision ensures that consolidation is only pursued when a party actively seeks it.

2. **Request for Consolidation:** The article states that the party seeking consolidation must communicate a formal “Request for Consolidation” to three categories of recipients: (a) the HKIAC, (b) all other parties involved in the arbitrations, and (c) any confirmed or appointed arbitrators. This requirement ensures transparency and allows all relevant parties to be informed of the consolidation process.
3. **Clarity and Formality:** The use of the term “Request for Consolidation” emphasises the formal nature of the process. Parties are required to communicate their intention in a clear and structured manner. This likely involves providing relevant details about the arbitrations to be consolidated, the reasons for consolidation, and any supporting arguments.
4. **Communication Requirement:** The fact that the communication of the request must be directed to the HKIAC, all other parties, and the arbitrators underscores the importance of involving all relevant stakeholders from the outset. Transparency in communication helps avoid potential disputes or misunderstandings down the line.
5. **Ensuring Proper Notification:** The requirement to communicate the request to both the HKIAC and all parties involved ensures that no party is left uninformed or unaware of the consolidation process. This safeguards the interests of all parties, and it aligns with principles of due process and fairness.
6. **Timely Initiation:** The article does not stipulate a specific timeframe within which the request for consolidation must be submitted. However, it is generally advisable for the requesting party to initiate the process in a timely manner to prevent unnecessary delays in the arbitration proceedings.

Overall, Article 28.2 serves as a practical implementation of the principles laid out in Article 28.1 by detailing the necessary steps for a party to formally request the consolidation of arbitrations. This formal request is a crucial element in the consolidation process, as it triggers discussions and considerations among the HKIAC, other parties, and arbitrators regarding the appropriateness and feasibility of consolidation.

**28.3 The Request for Consolidation shall include the following:**

- (a) the case references of the arbitrations pending under the Rules requested to be consolidated, where applicable;**
- (b) the names and addresses, facsimile numbers and/or email addresses of each of the parties to the arbitrations, their representatives and any arbitrators who have been confirmed or appointed in the arbitrations;**
- (c) a request that the arbitrations be consolidated;**
- (d) a copy of the arbitration agreement giving rise to the arbitrations;**
- (e) a copy of the contract (s) or other legal instrument(s) out of or in relation to which the Request for Consolidation arises, or reference thereto;**
- (f) a description of the general nature of the claim and an indication of the amount involved, if any, in each of the arbitrations;**
- (g) a statement of the facts supporting the Request for Consolidation, including, where applicable, evidence of all parties' written consent to consolidate the arbitrations;**
- (h) the points at issue;**
- (i) the legal arguments supporting the Request for Consolidation;**
- (j) details of any applicable mandatory provision affecting consolidation of arbitrations;**
- (k) comments on the constitution of the arbitral tribunal if the Request for Consolidation is granted, including whether to preserve the appointment of any arbitrators already designated or confirmed; and**
- (l) confirmation that copies of the Request for Consolidation and any supporting materials included with it have been or are being communicated simultaneously to all other relevant parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.**

Article 28.3 of the HKIAC Arbitration Rules 2018 outlines the specific information and documents that must be included in a formal "Request for Consolidation" as detailed in Article 28.2. This article provides a comprehensive list of requirements, ensuring that the requesting party provides all necessary information for the proper consideration of the consolidation request. Here is an analysis of the various components specified in Article 28.3:

1. **Case References and Parties' Details (a, b):** The requesting party must include the case references of the arbitrations to be consolidated (if applicable) and provide the names, addresses, contact details, and representatives of each party involved in the arbitrations. This ensures that the identities and contact information of all relevant parties are clear and accessible.

2. Request for Consolidation (c): The request must explicitly state the desire to consolidate the arbitrations. This is a crucial element in initiating the consolidation process and conveying the party's intention clearly.
3. Arbitration Agreement and Related Documents (d, e): Copies of the arbitration agreement giving rise to the arbitrations and any relevant contracts or legal instruments must be included. This ensures that the legal basis for the arbitrations and the potential consolidation is accessible for review.
4. Claim Details (f): The requesting party must describe the general nature of the claims and indicate the amounts involved in each arbitration, if applicable. This provides an overview of the nature and scope of the disputes.
5. Factual and Legal Support (g, h, i): The requesting party is required to provide a statement of the facts supporting the request for consolidation, including any evidence of the parties' consent to consolidation. The points at issue and the legal arguments supporting the request are also to be provided. These components collectively offer a clear rationale for consolidation and give insight into the party's position.
6. Mandatory Provisions and Tribunal Composition (j, k): Any applicable mandatory provisions affecting the consolidation of arbitrations must be identified. Additionally, comments on the constitution of the arbitral tribunal should be included. This involves specifying whether any arbitrators already designated or confirmed should be preserved if the consolidation is granted.
7. Service Confirmation (l): The requesting party must confirm that copies of the consolidation request and all supporting materials have been or are being communicated to all other relevant parties and any confirmed or appointed arbitrators. The means of service for this communication should be identified.

In essence, Article 28.3 aims to ensure that the request for consolidation is complete, clear, and well-supported, providing all parties and the arbitral tribunal with the necessary information to assess the feasibility and appropriateness of consolidation. This thorough disclosure contributes to a transparent and fair consolidation process.

#### **28.4 HKIAC may vary any of the requirements in Article 28.3 as it deems appropriate.**

Article 28.4 of the HKIAC Arbitration Rules 2018 grants the HKIAC the authority to modify or alter any of the requirements outlined in Article 28.3 regarding the information and documents that must be included in a "Request for Consolidation". This article provides the HKIAC with flexibility in its discretion to adapt the formalities of the consolidation request process as it sees fit. Here is an analysis of this provision:

1. Flexibility and Adaptability: Article 28.4 acknowledges that the specific circumstances of each consolidation request may vary. This provision grants the HKIAC the authority to adjust the requirements of Article 28.3 to better suit the unique characteristics of a given case. This flexibility is important because not all situations will neatly fit the standard requirements, and the HKIAC should have the ability to accommodate variations.

2. **Case-Specific Considerations:** Consolidation requests can involve a wide range of scenarios, from simple cases to complex disputes involving multiple parties, claims, and arbitration agreements. By allowing the HKIAC to vary the requirements, the rules can be tailored to better address the needs of each case, ultimately promoting a more efficient and fair consolidation process.
3. **Efficiency and Procedural Streamlining:** Allowing the HKIAC to modify requirements based on the specifics of a case can potentially lead to a more streamlined process. This could prevent unnecessary delays or complications that might arise if strict adherence to standard requirements were mandated for all cases.
4. **HKIAC's Expertise and Discretion:** The HKIAC, being an experienced arbitration institution, is well-equipped to assess the needs and practicalities of consolidation requests. Granting the HKIAC discretion to modify requirements underscores its role as a competent and knowledgeable body in overseeing arbitration proceedings.
5. **Balancing Formality and Practicality:** While certain formalities are important to maintain consistency and transparency in the consolidation process, excessive rigidity could hinder the overall efficiency of arbitration proceedings. Article 28.4 strikes a balance by allowing for adjustments without completely abandoning necessary procedural requirements.
6. **Transparency and Communication:** It is important to note that any variations made by the HKIAC under Article 28.4 should be communicated transparently to the parties involved. This helps ensure that all parties understand the modified requirements and can fulfil their responsibilities accordingly.

In summary, Article 28.4 of the HKIAC Arbitration Rules 2018 empowers the HKIAC to adapt the requirements for a consolidation request to the specific circumstances of each case. This provision recognises that a one-size-fits-all approach might not be suitable for all situations and enables the HKIAC to maintain an effective and flexible consolidation process.

**28.5 Where the non-requesting parties or any confirmed or appointed arbitrators are requested to provide comments on the Request for Consolidation, such comments may include (without limitation) the following particulars:**

- (a) **comments on the particulars set forth in the Request for Consolidation pursuant to Article 28.3(a) to (j);**
- (b) **responses to the comments made in the Request for Consolidation pursuant to Article 28.3(k); and**
- (c) **confirmation that copies of the comments have been or are being communicated simultaneously to all other relevant parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.**

Article 28.5 of the HKIAC Arbitration Rules 2018 outlines the particulars that non-requesting parties or any confirmed or appointed arbitrators can include in their comments on a "Request for Consolidation", as provided for in Article 28.3. These comments are an integral part of the

consolidation process, allowing relevant parties and arbitrators to provide their input on the proposed consolidation. Here is an analysis of the various components specified in Article 28.5:

1. **Comments on Request Particulars (a):** Non-requesting parties and arbitrators are given the opportunity to provide comments on the various particulars presented in the original “Request for Consolidation” under Article 28.3(a) to (j). This includes the case references, parties’ details, request for consolidation, copies of agreements, description of claims, points at issue, legal arguments, and other relevant information. This allows the involved parties and arbitrators to express their views on the grounds and justifications for consolidation.
2. **Responses to Comments (b):** In addition to providing comments, non-requesting parties and arbitrators are also allowed to respond to any comments or points raised in the original consolidation request related to the constitution of the arbitral tribunal (Article 28.3(k)). This allows for a two-way communication process, where parties can address concerns or suggestions raised by others.
3. **Communication of Comments (c):** Similar to the confirmation required for the “Request for Consolidation” in Article 28.3(l), this provision ensures that comments provided by non-requesting parties and arbitrators are communicated to all relevant parties and any confirmed or appointed arbitrators. This communication ensures transparency and ensures that all stakeholders are kept informed about the ongoing consolidation discussions.
4. **Interactive and Informed Process:** Article 28.5 emphasises the interactive nature of the consolidation process. It recognises that multiple perspectives should be considered, allowing parties and arbitrators to engage in a dialogue about the proposed consolidation. This can lead to a more informed and well-rounded decision.
5. **Ensuring Consistency:** By allowing non-requesting parties and arbitrators to comment and respond, the process aims to maintain consistency and fairness. Allowing these stakeholders to provide their input helps prevent any perceived bias or imbalance in the decision-making process.
6. **Communication Standards:** The provision emphasises that comments should be communicated using appropriate means of service, as identified in the confirmation. This ensures that comments are effectively conveyed to all relevant parties and arbitrators, avoiding any gaps in communication.

Overall, Article 28.5 underscores the importance of an open and inclusive consolidation process by allowing non-requesting parties and arbitrators to contribute their thoughts, respond to arguments, and ensure that the decision to consolidate is well-founded and takes into account all relevant perspectives.

**28.6 Where HKIAC decides to consolidate two or more arbitrations, the arbitrations shall be consolidated into the arbitration that commenced first, unless all parties agree or HKIAC decides otherwise taking into account the circumstances of the case. HKIAC shall**

**communicate such decision to all parties and to any confirmed or appointed arbitrators in all arbitrations.**

Article 28.6 of the HKIAC Arbitration Rules 2018 outlines the procedure that the HKIAC follows once it has made the decision to consolidate two or more arbitrations based on the provisions of Article 28.1. Here is an analysis of the content and implications of Article 28.6:

1. **Consolidation Decision:** This article is activated when the HKIAC decides to consolidate multiple arbitrations. The decision-making process leading up to this point is not detailed here, as it likely involves a review of the consolidation request, comments from parties and arbitrators, and any other relevant considerations.
2. **Consolidation into the First-Commenced Arbitration:** The default rule established by Article 28.6 is that the arbitrations to be consolidated will be merged into the arbitration that commenced first in chronological order. This default choice is aimed at promoting procedural efficiency and consistency, as it avoids unnecessary alterations to the ongoing proceedings.
3. **Exceptions to Default Rule: Agreement or HKIAC Decision:** However, there are two exceptions to the default rule. First, if all parties involved in the consolidated arbitrations agree, the arbitrations may be consolidated into an arbitration other than the one that commenced first. Second, the HKIAC has the authority to decide to consolidate the arbitrations into an arbitration other than the first-commenced one. This discretion takes into account the circumstances of the case and any unique factors that could warrant deviating from the default rule.
4. **HKIAC Communication:** Once the HKIAC has made a decision regarding the consolidation, it is obligated to communicate this decision to all relevant parties and any confirmed or appointed arbitrators in all of the arbitrations that are being consolidated. Effective communication is crucial to ensure that all stakeholders are aware of the consolidation decision and can adjust their actions accordingly.
5. **Balancing Efficiency and Fairness:** The default rule of consolidating into the first-commenced arbitration reflects a commitment to efficiency by avoiding disruption to ongoing proceedings. However, the exceptions underscore the importance of fairness and the ability to adapt to the unique characteristics of each case.
6. **HKIAC's Role in Decision-Making:** Article 28.6 highlights the HKIAC's role as a decision-maker in the consolidation process. Its ability to decide otherwise or to consider parties' agreements demonstrates its authority to tailor the consolidation decision to the specifics of each case.

In summary, Article 28.6 of the HKIAC Arbitration Rules 2018 outlines the procedural steps following the HKIAC's decision to consolidate arbitrations. It provides a default rule for consolidation into the first-commenced arbitration, with exceptions that account for parties' agreements and the HKIAC's discretion to consider the circumstances of the case. This article emphasises the importance of clear communication and the balancing of procedural efficiency and fairness in the consolidation process.



**28.7 The consolidation of two or more arbitrations is without prejudice to the validity of any act done or order made by a competent authority in support of the relevant arbitration before it was consolidated.**

Article 28.7 of the HKIAC Arbitration Rules 2018 addresses a critical aspect of the consolidation process by clarifying the effect of consolidation on actions taken and orders issued by competent authorities in support of the arbitrations before they were consolidated. Here is an analysis of the content and implications of Article 28.7:

1. **Preservation of Prior Actions:** This provision emphasises that the consolidation of two or more arbitrations does not undermine or invalidate any prior actions taken or orders issued by competent authorities in relation to the individual arbitrations before they were consolidated. In other words, any steps or measures that were legally carried out or ordered before the consolidation remains valid and effective.
2. **Context of Competent Authority:** The reference to “competent authority” generally denotes a court or other legal authority that may have issued interim measures, injunctions, or other orders in support of the arbitration proceedings prior to their consolidation. It acknowledges that parties may have sought judicial intervention for various reasons related to the individual arbitrations.
3. **Legal Certainty and Finality:** Article 28.7 seeks to provide legal certainty and safeguard the interests of the parties by ensuring that actions taken and orders issued prior to consolidation maintain their legal validity. Parties can rely on these actions and orders without the risk of them being nullified due to the consolidation process.
4. **Consistency with Arbitration Philosophy:** Arbitration is designed to provide an alternative dispute resolution mechanism that respects parties’ autonomy and the privacy of their proceedings. Consolidation aims to streamline proceedings but should not inadvertently negate the work or decisions made prior to the consolidation decision.
5. **Importance of Interim Measures:** In complex disputes, parties often seek interim measures from courts or other competent authorities to protect their rights, evidence, or assets during the arbitration process. Article 28.7 recognises the significance of these measures and ensures they remain enforceable post-consolidation.
6. **Clarity for Parties:** This provision offers clarity to parties involved in consolidated arbitrations. It helps them understand that prior actions and orders are not rendered void by the consolidation, which can be important for strategic planning and legal proceedings.

In essence, Article 28.7 maintains the effectiveness of prior actions taken and orders issued by competent authorities in relation to arbitrations that are subsequently consolidated. This helps preserve the integrity of the actions and decisions made in support of the arbitrations before they were combined into a single proceeding.

**28.8 Where HKIAC decides to consolidate two or more arbitrations, the parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator, and HKIAC may revoke any confirmation or appointment of an arbitrator. HKIAC shall appoint the arbitral**

**tribunal in respect of the consolidated proceedings with or without regard to any party's designation.**

Article 28.8 of the HKIAC Arbitration Rules 2018 addresses the issue of the composition of the arbitral tribunal in cases of consolidation of two or more arbitrations. This article deals with the implications of the consolidation on the appointment and confirmation of arbitrators. Here is an analysis of the content and implications of Article 28.8:

1. **Waiver of Arbitrator Designation Right:** This provision stipulates that when the HKIAC decides to consolidate multiple arbitrations, the parties involved in all consolidated arbitrations are deemed to have waived their individual right to designate an arbitrator. This means that the parties can no longer choose their arbitrator(s) independently once consolidation occurs.
2. **Revocation of Appointment:** In line with the waiver of the right to designate an arbitrator, the HKIAC is authorised to revoke any prior confirmation or appointment of arbitrators in the consolidated arbitrations. This is a necessary step to ensure consistency and fairness in the constitution of the arbitral tribunal for the consolidated proceedings.
3. **HKIAC's Role in Tribunal Appointment:** In cases of consolidation, where the parties have waived their right to individually appoint arbitrators, the responsibility for appointing the arbitral tribunal shifts to the HKIAC. The HKIAC has the authority to make these appointments with or without considering any prior designations by the parties.
4. **Consolidation's Impact on Tribunal Composition:** Consolidation often involves multiple arbitrations with varying parties and potentially differing perspectives. By allowing the HKIAC to appoint the arbitral tribunal for the consolidated proceedings, the aim is to ensure impartiality, consistency, and a balanced tribunal composition that reflects the nature of the consolidated disputes.
5. **Efficiency and Uniformity:** Centralising the appointment process with the HKIAC can enhance efficiency by avoiding delays due to disagreements among the parties regarding arbitrator appointments. It also promotes uniformity, preventing discrepancies in tribunal composition across the consolidated cases.
6. **Arbitrator Selection Criteria:** While Article 28.8 does not detail the criteria for HKIAC's arbitrator appointments, it is assumed that the HKIAC will consider factors like expertise, impartiality, and suitability to ensure a competent and neutral arbitral tribunal for the consolidated proceedings.

In summary, Article 28.8 addresses the shift in the appointment process for arbitrators when multiple arbitrations are consolidated. It reflects a practical approach to ensuring an impartial and efficient tribunal composition while accommodating the complexities introduced by the consolidation of diverse cases.

**28.9 The revocation of the confirmation or appointment of an arbitrator pursuant to Article 28.8 is without prejudice to:**

- (a) the validity of any act done or order made by that arbitrator before his or her confirmation or appointment was revoked;**
- (b) his or her entitlement to be paid his or her fees and expenses subject to Schedule 2 or 3 as applicable; and**
- (c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.**

Article 28.9 of the HKIAC Arbitration Rules 2018 addresses the consequences of revoking the confirmation or appointment of an arbitrator under Article 28.8. This rule outlines three specific aspects that are not affected by the revocation and provides clarity on the legal implications in such situations.

1. **Validity of Acts and Orders by the Arbitrator:** According to Article 28.9(a), any actions taken or orders issued by the arbitrator before their confirmation or appointment was revoked remain valid. This means that any decisions, rulings, or procedural steps undertaken by the arbitrator during the period before revocation are not automatically invalidated by the subsequent revocation. Parties can have confidence that the work done by the arbitrator up to that point is still recognised and upheld.
2. **Entitlement to Fees and Expenses:** Article 28.9(b) ensures that the arbitrator, even if their confirmation or appointment is revoked, remains entitled to be compensated for their services. This entitlement is subject to the fee schedule outlined in either Schedule 2 or 3 of the HKIAC Arbitration Rules, depending on the specifics of the arbitration. The rule aims to protect arbitrators' rights to receive fair compensation for the work they have performed, regardless of the revocation of their appointment.
3. **Effect on Limitation Bars and Timing:** The provision in Article 28.9(c) addresses the timing of raising claims or defences in the arbitration process. It states that the revocation of the arbitrator's confirmation or appointment does not impact the date when a claim or defence was raised for the purpose of applying any limitation bar or similar rule or provision. In other words, any time limitations set by law or procedural rules for initiating claims or defences will not be affected by the revocation of the arbitrator's appointment. This ensures that parties' rights to bring claims or defences are preserved regardless of changes in the composition of the arbitral tribunal.

In summary, Article 28.9 of the HKIAC Arbitration Rules 2018 provides clarity and legal certainty in cases where an arbitrator's confirmation or appointment is revoked. It ensures that the work done by the arbitrator, their entitlement to compensation, and the timing of claims or defences are not unduly affected by the revocation, contributing to the overall fairness and effectiveness of the arbitration process.

**28.10 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) after a Request for Consolidation has been submitted.**

Article 28.10 of the HKIAC Arbitration Rules 2018 addresses the issue of adjusting administrative fees and arbitral tribunal's fees in cases where a Request for Consolidation has been submitted. This provision recognises the dynamic nature of the arbitration process, particularly in situations involving consolidation of multiple arbitrations, and grants the HKIAC the authority to make necessary adjustments to fees.

1. Consolidation of arbitrations occurs when two or more separate arbitration proceedings are combined into a single proceeding. This can happen when parties to different arbitration agreements have overlapping issues or claims that warrant a unified resolution process. Consolidation is often sought to improve efficiency, avoid conflicting decisions, and streamline the arbitration process.
2. Article 28.10 acknowledges that the decision to consolidate arbitrations might impact the complexity and scope of the arbitration proceedings, potentially affecting the workload of the arbitral tribunal and the administrative efforts of the HKIAC. As such, the provision allows the HKIAC to adjust both its administrative fees and the fees of the arbitral tribunal after a Request for Consolidation has been submitted.
3. The term "Administrative Fees" refers to the fees charged by the HKIAC for its administrative services related to the arbitration proceedings, such as case management, appointment of arbitrators, and administrative support. The "arbitral tribunal's fees" refer to the fees payable to the arbitrators for their work on the case.
4. The phrase "where appropriate" in Article 28.10 gives the HKIAC discretion to determine when adjustments to fees are necessary based on the specific circumstances of the case. Factors that might influence such adjustments include the complexity of the consolidated proceedings, the number of arbitrations being consolidated, the stage of the proceedings at which consolidation is requested, and potential changes in the workload of the arbitral tribunal and the HKIAC.

In summary, Article 28.10 of the HKIAC Arbitration Rules 2018 recognises the need for flexibility in adjusting administrative fees and arbitral tribunal's fees when consolidation of arbitration proceedings is requested. This provision enables the HKIAC to ensure that the fee structure remains fair and appropriate in light of the changes brought about by the consolidation process, promoting transparency and equitable treatment of parties involved in the consolidated proceedings.

## Article 29 – Single Arbitration under Multiple Contracts

Claims arising out of or in connection with more than one contract may be made in a single arbitration, provided that:

- (a) a common question of law or fact arises under each arbitration agreement giving rise to the arbitration; and
- (b) the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions; and
- (c) the arbitration agreements under which those claims are made are compatible.

Article 29 of the HKIAC Arbitration Rules 2018 addresses the possibility of consolidating or bringing multiple claims arising from more than one contract into a single arbitration proceeding. The article sets out the conditions under which such consolidation is permissible. Let us analyse the key elements of this provision:

1. Consolidation of Claims: Article 29 allows for the consolidation of claims arising from or related to multiple contracts into a single arbitration proceeding. This can be an efficient way to address disputes that share common legal or factual elements.
2. Conditions for Consolidation:
  - a. Common Question of Law or Fact (Subsection (a)): The first condition for consolidation is that there must be a common question of law or fact under each arbitration agreement that gives rise to the arbitration. This requirement ensures that there is a significant connection between the claims, promoting coherence and efficiency.
  - b. Same Transaction or Related Transactions (Subsection (b)): The second condition is that the rights to relief claimed must be in respect of, or arise out of, the same transaction or a series of related transactions. This criterion helps ensure that the claims are sufficiently interconnected to justify consolidation.
  - c. Compatibility of Arbitration Agreements (Subsection (c)): The third condition is that the arbitration agreements under which the claims are made must be compatible. This means that the parties' consent to arbitrate multiple claims in a single proceeding must be present in each arbitration agreement.
3. Efficiency and Streamlining: Article 29 aims to enhance the efficiency and effectiveness of arbitration by allowing parties to address related disputes in a consolidated manner. This can help prevent duplication of efforts, reduce costs, and avoid inconsistent outcomes.
4. Preserving Party Autonomy: The provision respects party autonomy by requiring that the arbitration agreements are compatible and that the parties' intentions to arbitrate multiple claims are explicitly expressed in each agreement.
5. Balancing Commonality and Distinctness: While the claims must share common legal or factual elements, the provision also acknowledges that they should arise from the same

transaction or related transactions. This balance ensures that distinct disputes are not unduly combined.

6. **Case Management:** Article 29 may involve complex case management decisions by the arbitral tribunal. The tribunal must assess whether the conditions for consolidation are met and whether the consolidation is appropriate in the specific circumstances of the case.
7. **Confidentiality Considerations:** Consolidation can raise issues related to the confidentiality of information from separate contracts. This aspect may need to be addressed to maintain the confidentiality of sensitive information.
8. **Judicial Control and Enforceability:** The article's applicability may be subject to judicial control in certain jurisdictions. Courts may review whether the conditions for consolidation have been met and whether the arbitral tribunal's decisions in this regard are consistent with the parties' intentions.

In summary, Article 29 of the HKIAC Arbitration Rules 2018 provides a framework for consolidating claims arising from multiple contracts into a single arbitration proceeding. The provision aims to enhance efficiency while maintaining respect for party autonomy and ensuring that the claims are sufficiently connected. By allowing consolidation when specific criteria are met, the article contributes to the effective resolution of complex disputes involving multiple contracts.

## Article 30 – Concurrent Proceedings

**30.1 The arbitral tribunal may, after consulting with the parties, conduct two or more arbitrations under the Rules at the same time, or one immediately after another, or suspend any of those arbitrations until after the determination of any other of them, where:**

- (a) **the same arbitral tribunal is constituted in each arbitration; and**
- (b) **a common question of law or fact arises in all the arbitrations.**

Article 30.1 of the HKIAC Arbitration Rules 2018 addresses the concept of “consolidation” or concurrent proceedings in which an arbitral tribunal can handle two or more arbitrations simultaneously or in close succession. The article provides conditions under which such consolidation is possible. Let us analyse this provision:

1. **Conduct of Concurrent Proceedings:** Article 30.1 grants the arbitral tribunal the authority to manage concurrent proceedings, allowing two or more arbitrations to be conducted at the same time, one after another, or with a suspension of one or more arbitrations until after the determination of others.
2. **Conditions for Consolidation:**
  - a. **Same Arbitral Tribunal (Subsection (a)):** One condition for consolidation is that the same arbitral tribunal must be constituted for each arbitration. This requirement ensures that the same panel of arbitrators oversees all the relevant proceedings.

- b. Common Question of Law or Fact (Subsection (b)): Another key condition is that a common question of law or fact must arise in all the arbitrations. This commonality ensures that there is an interconnection between the disputes, warranting their consolidation.
3. Efficiency and Coherence: Article 30.1 is aimed at enhancing efficiency and coherence in dispute resolution. When disputes share common questions of law or fact, handling them concurrently or sequentially can prevent unnecessary duplication of efforts and promote consistency in decision-making.
4. Case Management: The provision empowers the arbitral tribunal to decide the appropriate approach to managing the concurrent proceedings, taking into account the specific circumstances of the cases, parties' preferences, and the complexity of the issues.
5. Party Consultation: The arbitral tribunal is required to consult with the parties before deciding to conduct concurrent proceedings. This ensures that the parties' perspectives are considered and that the proceedings are managed in a manner that aligns with their interests.
6. Judicial Enforceability: The article's provisions may be subject to judicial review in certain jurisdictions to ensure that the parties' rights are respected and that the arbitral tribunal's decisions are consistent with the arbitration agreement and applicable law.
7. Consolidation vs. Joinder: Article 30.1 focuses on the consolidation of separate arbitrations that share common questions of law or fact. This is distinct from "joinder", which involves adding parties to an existing arbitration.
8. Balancing Interests: While the article promotes the efficient resolution of multiple disputes, it also respects the parties' interests and autonomy. Consolidation decisions should consider the complexity of issues, the parties' consent, and other relevant factors.
9. Flexibility and Adaptability: The provision recognises that each case is unique, and the arbitral tribunal's discretion allows for a flexible approach to managing concurrent proceedings based on the specific context.

In summary, Article 30.1 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to conduct two or more arbitrations concurrently, sequentially, or with suspension, under certain conditions. The provision aims to enhance efficiency and coherence in the arbitration process while respecting party autonomy and the need for individualised case management.

### **30.2 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) where the arbitrations are conducted pursuant to Article 30.1.**

Article 30.2 of the HKIAC Arbitration Rules 2018 addresses the issue of adjusting administrative fees and arbitral tribunal fees when arbitrations are conducted pursuant to Article 30.1, which deals with the consolidation of multiple arbitrations. This provision acknowledges the potential financial implications of conducting concurrent proceedings and allows for the adjustment of fees by the HKIAC. Let us analyse this provision:

1. **Fee Adjustment Authority:** Article 30.2 grants the HKIAC the authority to adjust both its administrative fees and the fees of the arbitral tribunal under certain circumstances. This adjustment is explicitly tied to situations where arbitrations are conducted in accordance with Article 30.1, which pertains to the consolidation of proceedings.
2. **Financial Implications of Consolidation:** Consolidating multiple arbitrations into concurrent proceedings can introduce complexities in terms of case management, coordination, and workload for both the administrative body (HKIAC) and the arbitral tribunal. This provision recognises that such complexities may warrant a re-evaluation of the fees involved.
3. **Balancing Cost and Benefit:** By allowing for fee adjustments, Article 30.2 aims to strike a balance between the benefits of efficient consolidation and the potential additional costs associated with managing multiple cases in a coordinated manner.
4. **Transparency and Fairness:** Any fee adjustments made under this provision should be transparent and fair. Parties should be informed of the basis for the adjustments and how they will be applied.
5. **Consultation and Discretion:** The provision does not provide specific criteria for when fee adjustments are appropriate or how they should be calculated. This discretion allows the HKIAC to assess the specific circumstances of each case and make appropriate adjustments as needed.
6. **Adaptation to Unique Situations:** Different consolidated proceedings may have varying levels of complexity and resource demands. This provision allows the HKIAC to adapt its fee structure to the specific requirements of each consolidation scenario.
7. **Consistency with Party Consent:** Fee adjustments under Article 30.2 should align with the parties' consent and the terms of their arbitration agreements. Any changes to fees should respect the fundamental principles of party autonomy and the parties' expectations regarding costs.
8. **Judicial Review:** The article does not address potential judicial review of fee adjustments. However, in jurisdictions where arbitration decisions can be subject to judicial oversight, the process and justification for fee adjustments could be scrutinised.
9. **Efficiency and Resource Allocation:** By allowing the HKIAC to adjust fees, the provision reflects the practical considerations of efficiently managing consolidated proceedings and ensuring that resources are appropriately allocated.

In summary, Article 30.2 of the HKIAC Arbitration Rules 2018 provides for the adjustment of administrative and arbitral tribunal fees when arbitrations are conducted pursuant to Article 30.1, which involves the consolidation of proceedings. This provision recognises the potential financial implications of handling multiple arbitrations concurrently and allows the HKIAC the flexibility to adjust fees to ensure a balanced approach that considers both efficiency and fairness.



## Article 31 – Closure of Proceedings

**31.1 When it is satisfied that the parties have had a reasonable opportunity to present their case, whether in relation to the entire proceedings or a discrete phase of the proceedings, the arbitral tribunal shall declare the proceedings or the relevant phase of the proceedings closed. Thereafter, no further submissions or arguments may be made, or evidence produced in respect of the entire proceedings or the discrete phase, as applicable, unless the arbitral tribunal reopens the proceedings or the relevant phase of the proceedings in accordance with Article 31.4.**

Article 31.1 of the HKIAC Arbitration Rules 2018 addresses the closure of arbitration proceedings or discrete phases of proceedings. This provision outlines the circumstances under which the arbitral tribunal can declare proceedings or a specific phase closed, and the implications of such closure. Let us analyse this provision:

1. **Closure of Proceedings or Phase:** Article 31.1 empowers the arbitral tribunal to declare proceedings or a specific phase of proceedings closed once it is satisfied that the parties have had a reasonable opportunity to present their case. This indicates that the parties should have been given sufficient time and opportunity to present their arguments, evidence, and submissions.
2. **Reasonable Opportunity to Present Case:** The provision emphasises procedural fairness and due process by ensuring that both parties have had a reasonable chance to fully present their respective cases.
3. **Finality of Submissions and Evidence:** Once the proceedings or phase is closed, the article stipulates that no further submissions, arguments, or evidence may be presented by the parties. This reflects the principle of finality in arbitration, where parties are expected to complete their presentations within the designated timeframe.
4. **Preservation of Procedural Integrity:** The provision ensures that the proceedings or a phase of proceedings are conducted in an orderly manner. It prevents undue delays and prevents the reopening of proceedings simply to introduce additional arguments or evidence.
5. **Reopening of Proceedings:** Article 31.1 sets the stage for Article 31.4, which outlines the conditions and procedures for reopening proceedings or phases of proceedings. This highlights the procedural steps that must be followed if the tribunal decides to allow further submissions or evidence after closure.
6. **Tribunal's Discretion:** While the provision outlines the general rule that proceedings or phases should be closed once parties have had a reasonable opportunity to present their cases, it also allows for the tribunal's discretion to reopen proceedings in specific circumstances.
7. **Efficiency and Timeliness:** The provision contributes to the efficient management of arbitration proceedings by ensuring that parties adhere to deadlines and timelines for presenting their cases. It also prevents unnecessary delays caused by repeated submissions or evidence.

8. Party Autonomy: Article 31.1 respects party autonomy by allowing parties to present their cases within the established timeframe. It also emphasises the importance of adhering to the tribunal's directions.
9. Judicial Review: The provision may also be subject to judicial review in certain jurisdictions, particularly if the tribunal's decision to close or reopen proceedings is challenged by a party.

In summary, Article 31.1 of the HKIAC Arbitration Rules 2018 addresses the closure of arbitration proceedings or phases of proceedings. The provision underscores the importance of procedural fairness, finality, and efficiency in arbitration by allowing the arbitral tribunal to declare proceedings closed once parties have had a reasonable opportunity to present their cases. This provision helps maintain the integrity of the proceedings and supports the timely resolution of disputes.

**31.2 Once the proceedings are declared closed, the arbitral tribunal shall inform HKIAC and the parties of the anticipated date by which an award will be communicated to the parties. The date of rendering the award shall be no later than three months from the date when the arbitral tribunal declares the entire proceedings or the relevant phase of the proceedings closed, as applicable. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.**

Article 31.2 of the HKIAC Arbitration Rules 2018 addresses the timing and communication of arbitral awards once the proceedings or a specific phase of proceedings have been declared closed. This provision sets out deadlines for rendering awards, ensures transparency, and allows for potential extensions in certain circumstances. Let us analyse this provision:

1. Award Communication Timeline: Article 31.2 requires the arbitral tribunal to inform both the HKIAC and the parties of the anticipated date by which the arbitral award will be communicated to the parties. This ensures transparency and provides parties with an expectation of when they can expect to receive the award.
2. Three-Month Time Limit: The provision establishes a specific time limit for rendering the award once proceedings or a relevant phase have been declared closed. The arbitral tribunal is required to render the award no later than three months from the date of the closure declaration.
3. Efficiency and Timeliness: Article 31.2 reflects the importance of timely dispute resolution in arbitration. By setting a time limit for rendering the award, the provision contributes to the overall efficiency of the arbitration process.
4. Finality and Closure: The requirement to render the award within three months aligns with the principle of finality in arbitration. It encourages the tribunal to complete its deliberations and deliver a decision in a reasonable timeframe after the parties have presented their cases.
5. Potential Extensions: The provision acknowledges that there might be circumstances where an extension of the three-month time limit is warranted. Such extensions can be achieved through agreement between the parties or, in appropriate situations, through approval by the HKIAC.

6. **Parties' Autonomy:** The provision respects the parties' autonomy by allowing them to agree on an extension of the time limit. This enables parties to accommodate unique circumstances or complex cases that may require additional time for the tribunal's deliberations.
7. **HKIAC's Discretion:** The provision also recognises that the HKIAC can exercise discretion in extending the time limit, but such extensions are subject to appropriate circumstances. This ensures that extensions are granted judiciously and do not unduly delay the resolution process.
8. **Judicial Enforcement:** In some jurisdictions, the time limits specified in the arbitration rules may be subject to judicial enforcement to ensure that the process is fair and adheres to established procedures.
9. **Predictability and Expectations:** By informing the parties of the anticipated date for award communication, the provision helps parties manage their expectations and plan accordingly.

In summary, Article 31.2 of the HKIAC Arbitration Rules 2018 focuses on the timing and communication of arbitral awards following the closure of proceedings or phases. The provision promotes efficiency, transparency, and finality in arbitration by setting a three-month time limit for rendering awards and allowing for extensions under certain conditions. This helps ensure that parties receive their awards in a reasonable timeframe while allowing flexibility when needed.

### **31.3 Article 31.2 shall not apply to any arbitration conducted pursuant to the Expedited Procedure under Article 42.**

Article 31.3 of the HKIAC Arbitration Rules 2018 establishes an exception to the application of Article 31.2 in the context of arbitrations conducted under the Expedited Procedure as outlined in Article 42. This provision clarifies that the specific timing requirements for rendering awards outlined in Article 31.2 do not apply to expedited arbitration proceedings. Let us analyse this provision:

1. **Exemption for Expedited Procedure:** Article 31.3 explicitly states that the time limits and procedures outlined in Article 31.2 for rendering awards do not apply to arbitration conducted under the Expedited Procedure, as specified in Article 42.
2. **Distinction for Expedited Proceedings:** The provision acknowledges that expedited arbitration proceedings, which are designed to provide a quicker resolution to disputes, may have distinct timelines and procedures compared to standard arbitration proceedings.
3. **Efficiency and Expedited Proceedings:** Expedited arbitration is often characterised by shortened timeframes and streamlined procedures. The exemption in Article 31.3 recognises that the award-rendering timeline might be different in the context of expedited proceedings to align with the goal of efficiency.
4. **Customised Timeframes:** By not applying the three-month time limit from Article 31.2, expedited proceedings have flexibility in customising award-rendering timelines that better suit the specific circumstances and requirements of expedited cases.

5. **Consistency with Expedited Procedure:** The provision ensures consistency with the overall framework of the Expedited Procedure outlined in Article 42. This coherence helps parties and tribunals understand the unique features of expedited proceedings.
6. **Adaptability and Pragmatism:** Different types of disputes may require different approaches to timing and procedure. The provision reflects the arbitral institution's recognition of the need for adaptability in its rules to accommodate diverse cases.
7. **Arbitral Tribunal's Discretion:** While Article 31.3 exempts expedited proceedings from the specific time limit of three months, it is important to note that the arbitral tribunal still has a role in managing the timing of award issuance in accordance with the Expedited Procedure.
8. **Clarity for Parties:** The provision provides clarity for parties engaging in expedited proceedings by specifying that the award-rendering timeline is different in these cases, allowing parties to anticipate the process more accurately.

In summary, Article 31.3 of the HKIAC Arbitration Rules 2018 establishes that the specific award-rendering time limits in Article 31.2 do not apply to expedited arbitration proceedings conducted under Article 42. This provision recognises the distinct nature of expedited proceedings and provides flexibility to tailor award timelines to the efficiency goals of such cases.

#### **31.4 The arbitral tribunal may, if it considers it necessary, decide, on its own initiative or upon application of a party, to reopen the proceedings at any time before the award is made.**

Article 31.4 of the HKIAC Arbitration Rules 2018 addresses the authority of the arbitral tribunal to reopen arbitration proceedings at any time before the award is rendered. This provision grants the tribunal the discretion to reconsider or allow additional submissions or evidence under certain circumstances. Let us analyse this provision:

1. **Reopening of Proceedings:** Article 31.4 enables the arbitral tribunal to reopen the proceedings, allowing parties to make further submissions or introduce additional evidence after the proceedings have been declared closed, but before the award is made.
2. **Tribunal's Discretion:** The provision emphasises the arbitral tribunal's authority to decide whether reopening the proceedings is necessary. The decision may be made either on the tribunal's own initiative or in response to an application from a party.
3. **Flexibility and Exceptional Circumstances:** The provision recognises that exceptional circumstances might arise that warrant the reopening of proceedings. This flexibility allows the tribunal to address situations where justice, fairness, or new developments require a reconsideration of the evidence or arguments.
4. **Preservation of Fairness:** The provision contributes to the principle of procedural fairness by allowing for the inclusion of new information or arguments that could significantly impact the outcome of the arbitration.

5. **Balance with Finality:** While the provision allows for reopening proceedings, it must be balanced against the principle of finality in arbitration. The tribunal's discretion should be exercised judiciously to prevent undue delays or abuse of the reopening process.
6. **Party Applications:** Parties can initiate the reopening of proceedings by applying to the arbitral tribunal. This provision ensures that parties have a voice in seeking reconsideration when they believe it is necessary.
7. **Efficient Dispute Resolution:** The provision, by permitting the reopening of proceedings in exceptional cases, supports the broader goal of efficient dispute resolution by allowing the tribunal to address unforeseen developments without the need for parties to resort to separate proceedings.
8. **Judicial Review:** In certain jurisdictions, the tribunal's decision to reopen proceedings might be subject to judicial review to ensure that it is consistent with the parties' rights and the principles of procedural fairness.
9. **Communication and Transparency:** When considering the reopening of proceedings, the tribunal should communicate its reasons clearly to the parties and ensure transparency in its decision-making process.

In summary, Article 31.4 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the authority to reopen proceedings before the award is rendered, either on its own initiative or in response to a party's application. This provision allows for flexibility and addresses exceptional circumstances that might require reconsideration of evidence or arguments, while also maintaining a balance with the principle of finality in arbitration.

## Article 32 – Waiver

**32.1 A party that knows, or ought reasonably to know, that any provision of, or requirement arising under, these Rules (including the arbitration agreement) has not been complied with 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.**

Article 32.1 of the HKIAC Arbitration Rules 2018 addresses the principle of waiver in arbitration. This provision outlines the consequences for a party that fails to promptly raise objections regarding non-compliance with the arbitration rules or requirements, and thereby implies a waiver of the right to object. Let us analyse this provision:

1. **Waiver Principle:** Article 32.1 embodies the concept of waiver, which refers to the voluntary relinquishment or abandonment of a legal right or claim by a party through its conduct or inaction.
2. **Non-Compliance with Rules:** The provision applies specifically to situations where a party knows or should reasonably know that there has been a failure to comply with any provision or requirement under the HKIAC Arbitration Rules, including the arbitration agreement itself.

3. **Prompt Objection Requirement:** The key requirement for invoking the provision is that the party must promptly state its objection to the non-compliance. This emphasises the importance of timely raising objections to any potential violations of the rules or requirements.
4. **Deemed Waiver:** If a party proceeds with the arbitration despite being aware or having reasonable knowledge of non-compliance and does not promptly raise an objection, Article 32.1 deems that party to have waived its right to object.
5. **Fairness and Efficiency:** The provision aligns with principles of fairness and efficiency in arbitration. It encourages parties to promptly address issues related to non-compliance rather than using them as tactical measures later in the process.
6. **Preservation of Objections:** By requiring timely objections, the provision ensures that parties actively protect their rights and claims. This contributes to the integrity of the arbitration process.
7. **Protection of Due Process:** Waiver provisions like Article 32.1 safeguard the integrity of the arbitration process by preventing parties from strategically withholding objections to gain an advantage.
8. **Party's Knowledge:** The provision takes into account the party's knowledge or reasonable knowledge of non-compliance. It acknowledges that parties have a responsibility to be aware of the proceedings and the rules.
9. **Balancing Flexibility:** While the provision emphasises the importance of raising objections, it does not eliminate the possibility of raising issues of non-compliance at a later stage. It encourages timely resolution but does not preclude exceptional cases where valid objections might still be considered.
10. **Judicial Review:** In some jurisdictions, the application of waiver provisions might be subject to judicial review to ensure that parties' rights have been adequately protected.

In summary, Article 32.1 of the HKIAC Arbitration Rules 2018 enforces the principle of waiver by stating that a party that knowingly or reasonably should know of non-compliance with the arbitration rules or requirements and fails to promptly object will be deemed to have waived its right to object. This provision emphasises the importance of timely raising objections to maintain fairness and efficiency in the arbitration process.

**32.2 The parties waive any objection, on the basis of the use of any procedure under Articles 27, 28, 29, 30 or 43 and any decision made in respect of such procedure, to the validity and/or enforcement of any award made by the arbitral tribunal in the arbitration(s), in so far as such waiver can validly be made.**

Article 32.2 of the HKIAC Arbitration Rules 2018 addresses the concept of waiver in the context of specific procedures and decisions in arbitration. This provision outlines that the parties waive certain objections regarding the validity and enforcement of awards resulting from specific arbitration procedures. Let us analyse this provision:

1. **Scope of Waiver:** Article 32.2 focuses on waiving objections related to the use of specific procedures outlined in Articles 27, 28, 29, 30, or 43 of the HKIAC Arbitration Rules, along with any decisions made as part of those procedures.
2. **Specific Procedure Waiver:** The provision emphasises that by utilising the mentioned arbitration procedures and accepting the decisions arising from them, parties are waiving certain objections they might have had regarding the validity and enforcement of awards resulting from those procedures.
3. **Avoiding Duplication of Objections:** Waiving certain objections prevents parties from challenging an award on the same grounds or procedures that they were already aware of and participated in during the arbitration process.
4. **Preservation of Efficiency and Finality:** The provision aligns with the principles of efficiency and finality in arbitration by encouraging parties to raise objections during the process rather than after an award has been rendered.
5. **Exceptions to Waiver:** The provision acknowledges that not all objections can be waived. It specifies that the waiver is valid to the extent that such waiver can be made under applicable laws and regulations.
6. **Binding Effect of Decisions:** By participating in the mentioned procedures and accepting their outcomes, parties acknowledge the binding nature of decisions made as part of those procedures.
7. **Enhanced Predictability:** Article 32.2 enhances predictability by clarifying that certain objections are waived when parties actively participate in the specified procedures and decisions.
8. **Party Autonomy and Consent:** The provision respects party autonomy by allowing parties to waive objections voluntarily based on their participation in specific procedures.
9. **Impact on Judicial Review:** In some jurisdictions, the enforceability of waivers may be subject to judicial review, particularly if parties challenge the validity of the waiver itself.

In summary, Article 32.2 of the HKIAC Arbitration Rules 2018 establishes that parties waive objections related to the use of certain specified procedures and decisions outlined in Articles 27, 28, 29, 30, or 43, and to the validity and enforcement of awards resulting from those procedures, to the extent that such waiver can validly be made. This provision balances the need for procedural efficiency and finality with the parties' autonomy to make informed decisions about their participation in specific procedures.

## SECTION V. AWARDS, DECISIONS AND ORDERS OF THE ARBITRAL TRIBUNAL

## Article 33 – Decisions

**33.1 When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the presiding arbitrator alone.**

Article 33.1 of the HKIAC Arbitration Rules 2018 addresses the decision-making process within an arbitral tribunal when there is more than one arbitrator involved in a dispute resolution process. This article outlines the procedure for making awards or decisions by the arbitral tribunal and emphasises the importance of reaching a majority decision. Here is a breakdown and analysis of Article 33.1:

1. **Composition of the Arbitral Tribunal:** The provision assumes the presence of more than one arbitrator on the tribunal. In many arbitration cases, a tribunal consists of a panel of three arbitrators, although this number can vary based on the parties' agreement and the complexity of the case.
2. **Majority Decision:** The article states that any award or decision issued by the arbitral tribunal must be made by a majority of the arbitrators. This means that for a decision to be rendered, there must be a consensus among the arbitrators constituting more than half of the tribunal. In a three-member tribunal, this would require at least two arbitrators to agree on a decision.
3. **Lack of Majority:** If a clear majority cannot be reached among the arbitrators, meaning they are evenly divided in their opinions or votes, the award or decision shall be made by the presiding arbitrator alone. The presiding arbitrator is typically designated as such in the tribunal's constitution or selection process. This approach ensures that a deadlock situation does not prevent the resolution process from moving forward.
4. **Presiding Arbitrator's Role:** The presiding arbitrator assumes a crucial role in cases of a lack of majority. Their decision-making authority in such instances helps to break the impasse and facilitate the issuance of an award. The presiding arbitrator's vote becomes decisive in these situations, enabling the tribunal to reach a conclusion even in the absence of a clear majority.
5. **Efficiency and Finality:** Article 33.1 aims to promote efficiency in the arbitration process. By requiring a majority for decisions and designating the presiding arbitrator to make a decision when a majority cannot be reached, the article seeks to prevent prolonged disputes and ensure the timely issuance of awards. This efficiency is crucial in maintaining the credibility of arbitration as an effective method of dispute resolution.
6. **Balancing Interests:** The provision balances the desire for a consensus-based decision-making process (through the requirement for a majority) with the need to prevent a deadlock scenario (through the involvement of the presiding arbitrator). This approach acknowledges that unanimous decisions are not always feasible and provides a mechanism to move forward even when there are differing viewpoints among the arbitrators.



In summary, Article 33.1 of the HKIAC Arbitration Rules 2018 outlines a well-structured mechanism for decision-making within an arbitral tribunal with multiple arbitrators. It establishes a majority requirement for awards and decisions while also accounting for cases where a majority cannot be reached, ensuring that the presiding arbitrator can make the final decision to maintain the efficiency and effectiveness of the arbitration process.

**33.2 With the prior agreement of all members of the arbitral tribunal, the presiding arbitrator may make procedural rulings alone.**

Article 33.2 of the HKIAC Arbitration Rules 2018 addresses the authority of the presiding arbitrator to make procedural rulings in certain circumstances. This article highlights the flexibility and efficiency inherent in the arbitral process by allowing the presiding arbitrator to take independent action with the unanimous consent of all members of the arbitral tribunal. Here is an analysis of Article 33.2:

1. **Presiding Arbitrator’s Procedural Rulings:** This provision grants the presiding arbitrator the authority to make procedural rulings on their own, provided that all members of the arbitral tribunal agree in advance. Procedural rulings pertain to matters that affect the conduct of the arbitration process but not necessarily the substantive merits of the case. Examples of procedural issues include matters related to the timetable for submissions, the admissibility of evidence, the conduct of hearings, and similar matters.
2. **Unanimous Consent Requirement:** The article emphasises that the presiding arbitrator can exercise this authority only if all members of the arbitral tribunal give their prior agreement. This requirement reflects the principle of collaboration and consensus that is often fundamental in arbitral proceedings. Allowing the presiding arbitrator to make procedural rulings alone demonstrates the tribunal’s trust in the presiding arbitrator’s judgment and expertise.
3. **Flexibility and Efficiency:** Article 33.2 aligns with the overall theme of promoting efficiency and flexibility in the arbitral process. By granting the presiding arbitrator the power to make procedural rulings alone, the article acknowledges that certain procedural matters might not require extensive deliberation among all tribunal members. This streamlined approach ensures that the arbitration process can move forward swiftly, reducing delays and unnecessary administrative complexities.
4. **Balancing Decision-Making Authority:** While Article 33.1 outlines the circumstances in which the presiding arbitrator makes decisions in cases of no majority, Article 33.2 expands the presiding arbitrator’s role to procedural matters with the unanimous consent of all tribunal members. This dual approach allows the presiding arbitrator to make decisions independently in both procedural and deadlock situations, contributing to the efficient management of the arbitration proceedings.
5. **Ensuring Fairness and Due Process:** While the article grants the presiding arbitrator the authority to make procedural rulings, it also places a safeguard by requiring unanimous consent from all tribunal members. This ensures that all arbitrators agree to the procedural decision, preventing any potential bias or unfairness. It upholds the principles of fairness and due process, even as the presiding arbitrator is granted additional procedural authority.

In summary, Article 33.2 of the HKIAC Arbitration Rules 2018 reflects the HKIAC’s commitment to maintaining a balanced and efficient arbitration process. By permitting the presiding arbitrator to make procedural rulings alone with the unanimous agreement of all tribunal members, the article promotes flexibility, streamlining, and responsiveness in managing procedural matters while preserving fairness and collaborative decision-making principles.

#### Article 34 – Costs of the Arbitration

**34.1 The arbitral tribunal shall determine the costs of the arbitration in one or more orders or awards. The term “costs of the arbitration” includes only:**

- (a) the fees of the arbitral tribunal, as determined in accordance with Article 10;**
- (b) the reasonable travel and other expenses incurred by the arbitral tribunal;**
- (c) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal, including fees and expenses of any tribunal secretary;**
- (d) the reasonable costs for legal representation and other assistance, including fees and expenses of any witnesses and experts, if such costs were claimed during the arbitration; and**
- (e) the Registration Fee and Administrative Fees payable to HKIAC in accordance with Schedule 1, and any expenses payable to HKIAC.**

Article 34.1 of the HKIAC Arbitration Rules 2018 deals with the determination of costs in an arbitration proceeding conducted under these rules. This article outlines what is included in the term “costs of the arbitration”, emphasising transparency and predictability regarding the financial aspects of the arbitration process. Here is an analysis of Article 34.1:

1. **Determination of Costs:** The article states that the arbitral tribunal is responsible for determining the costs of the arbitration. This refers to the expenses associated with conducting the arbitration proceedings, including fees, travel expenses, expert advice, legal representation, and administrative fees.
2. **Components of Costs:** The term “costs of the arbitration” is further broken down into specific components that are included in this determination. These components are outlined as follows:
  - a. **Fees of the Arbitral Tribunal:** This refers to the compensation paid to the arbitrators for their services. The determination of these fees is to be done in accordance with Article 10 of the rules.
  - b. **Travel and Other Expenses of the Arbitral Tribunal:** The reasonable travel expenses incurred by the arbitrators in relation to the arbitration process are included. This could encompass costs like transportation, accommodation, and meals.
  - c. **Costs of Expert Advice and Assistance:** The costs associated with obtaining expert advice or other assistance required by the arbitral tribunal are included. This

includes the fees and expenses of experts who provide their insights on specific technical or specialised matters.

- d. **Costs of Legal Representation and Assistance:** The reasonable costs for legal representation and other forms of assistance, such as fees and expenses of witnesses and experts, are included if these costs were claimed during the arbitration. This means that parties can seek reimbursement for expenses related to presenting their case.
  - e. **Registration Fee and Administrative Fees:** The Registration Fee and Administrative Fees payable to the HKIAC, as specified in Schedule 1 of the rules, are part of the costs of the arbitration.
  - f. **Expenses Payable to HKIAC:** Any other expenses payable to the HKIAC in relation to the arbitration process are included.
3. **Transparency and Predictability:** Article 34.1 ensures transparency and predictability in terms of the costs associated with the arbitration proceedings. By explicitly listing the components that are considered part of the “costs of the arbitration”, parties and arbitrators have a clear understanding of what financial elements are covered under this category.
  4. **Scope and Limitation:** The article defines the scope of what constitutes the “costs of the arbitration”. This prevents the inclusion of unrelated or excessive expenses, ensuring that the costs are reasonable and directly related to the arbitration process.
  5. **Party Control and Claim Requirement:** Notably, costs related to legal representation, assistance, and expert fees are only included if they were claimed during the arbitration. This emphasises the importance of parties managing their expenses and presenting their claims for reimbursement in a timely manner.

In summary, Article 34.1 of the HKIAC Arbitration Rules 2018 sets out a comprehensive framework for determining the costs of an arbitration. By specifying the various components included in the “costs of the arbitration”, the article promotes transparency, predictability, and efficiency in managing the financial aspects of the arbitration process, while also ensuring that the costs remain reasonable and directly connected to the proceedings.

**34.2 With respect to the costs of legal representation and other assistance referred to in Article 34.1(d), the arbitral tribunal, taking into account the circumstances of the case, may direct that the recoverable costs of the arbitration, or any part of the arbitration, shall be limited to a specified amount.**

Article 34.2 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal’s authority to impose limitations on the recoverable costs of legal representation and other forms of assistance in an arbitration proceeding. This provision is designed to manage and control the potential escalation of costs in arbitration cases. Here is an analysis of Article 34.2:

1. **Cost Control Mechanism:** Article 34.2 allows the arbitral tribunal the discretion to place limitations on the recoverable costs related to legal representation and other forms of

assistance. This provision recognises that the costs associated with legal representation, expert advice, and other assistance can sometimes become disproportionately high, potentially impeding access to justice or deterring parties from pursuing valid claims.

2. **Scope of Limitation:** The article specifically targets the “costs of legal representation and other assistance” mentioned in Article 34.1(d), which includes expenses related to legal professionals, expert witnesses, and other experts who provide assistance in the arbitration process.
3. **Circumstances of the Case:** The arbitral tribunal is directed to take into account the circumstances of the case when determining whether to impose limitations on recoverable costs. This consideration ensures that the tribunal’s decision is contextually appropriate and takes into account factors such as the complexity of the case, the financial capabilities of the parties, and the potential impact of high costs on the arbitration process.
4. **Discretion and Flexibility:** The provision affords the arbitral tribunal considerable discretion in determining whether to impose cost limitations and the extent of such limitations. This discretion allows the tribunal to adapt its decision to the unique circumstances of each case, ensuring fairness and proportionality.
5. **Promotion of Efficiency and Access to Justice:** By allowing the arbitral tribunal to limit recoverable costs, Article 34.2 contributes to the overall efficiency of the arbitration process. It also supports the principle of access to justice by preventing the costs associated with legal representation and assistance from becoming a barrier to parties seeking to assert their rights or defend their interests.
6. **Balancing Interests:** This provision strikes a balance between parties’ legitimate interests in obtaining adequate legal representation and expert advice, while also preventing excessive costs that could undermine the efficiency and effectiveness of arbitration as a dispute resolution mechanism.

In summary, Article 34.2 of the HKIAC Arbitration Rules 2018 introduces a mechanism for controlling the recoverable costs of legal representation and other assistance in arbitration. By allowing the arbitral tribunal to set limitations on these costs, the provision promotes fairness, proportionality, and efficiency in the arbitration process, while also ensuring that parties have reasonable access to legal representation and expert assistance.

**34.3 The arbitral tribunal may apportion all or part of the costs of the arbitration referred to in Article 34.1 between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.**

Article 34.3 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal’s authority to allocate and apportion the costs of the arbitration between the parties involved in the dispute resolution process. This provision empowers the tribunal to make decisions regarding the distribution of the financial burden based on reasonableness and the specific circumstances of the case. Here is an analysis of Article 34.3:

1. **Cost Allocation Authority:** Article 34.3 provides the arbitral tribunal with the discretion to allocate or apportion all or part of the costs of the arbitration, as outlined in Article 34.1, between the parties. This allocation pertains to the expenses related to the arbitration process, including fees, travel expenses, expert advice, legal representation, and administrative fees.
2. **Reasonableness Standard:** The provision specifies that the tribunal's apportionment must be reasonable. This implies that the tribunal should consider various factors, including the merits of the case, the conduct of the parties during the arbitration, and any other relevant circumstances that could impact the allocation of costs.
3. **Contextual Consideration:** The article emphasises the importance of taking into account the specific circumstances of the case when making decisions about cost apportionment. This recognition of context ensures that the tribunal's decisions are tailored to the unique features of each dispute, preventing a one-size-fits-all approach.
4. **Flexibility and Fairness:** Article 34.3 promotes flexibility and fairness in cost allocation. By allowing the tribunal to assess the circumstances and merits of the case, it enables a more equitable distribution of the financial burden, taking into account factors such as the parties' relative success, their behaviour during the arbitration, and their financial positions.
5. **Disincentive for Unreasonable Behaviour:** The provision could serve as a deterrent against parties engaging in dilatory tactics or frivolous claims, as the threat of an adverse cost apportionment could discourage behaviour that could unnecessarily prolong the proceedings or escalate costs.
6. **Collaborative Decision-Making:** Article 34.3 underscores the collaborative nature of arbitration proceedings. The tribunal, along with the parties, works together to determine the fairest way to allocate the costs of the arbitration. This collaborative approach encourages the parties to consider their conduct and the potential consequences when deciding how to pursue or defend their claims.

In summary, Article 34.3 of the HKIAC Arbitration Rules 2018 establishes a framework for the arbitral tribunal to allocate and apportion the costs of the arbitration between the parties. The provision promotes reasonableness, fairness, and flexibility in cost allocation decisions, ensuring that the financial burden is distributed in a manner that considers the specifics of each case and encourages a collaborative approach to resolving disputes.

#### **34.4 The arbitral tribunal may take into account any third party funding arrangement in determining all or part of the costs of the arbitration referred to in Article 34.1.**

Article 34.4 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal's authority to consider third-party funding arrangements when making determinations regarding the allocation of costs in an arbitration proceeding. This provision reflects the growing relevance of third-party funding in arbitration and its potential impact on the cost dynamics of such proceedings. Here is an analysis of Article 34.4:

1. **Third-Party Funding Consideration:** The article allows the arbitral tribunal to take into account any third-party funding arrangement when making decisions about the allocation of costs outlined in Article 34.1. Third-party funding refers to the practice of an external party (a third party) providing financial support to one of the parties involved in the arbitration in exchange for a share of the proceeds if the case is successful.
2. **Cost Allocation Impact:** This provision acknowledges that third-party funding arrangements can have a significant impact on the financial dynamics of an arbitration proceeding. The tribunal can consider how such arrangements might influence the costs and distribution of costs among the parties.
3. **Equitable Distribution:** By permitting the tribunal to consider third-party funding, the article contributes to a more equitable distribution of costs. Depending on the nature of the funding agreement, it might affect the financial resources available to each party, and thus, influence how costs should be allocated.
4. **Transparency and Fairness:** Considering third-party funding arrangements enhances transparency and fairness in the arbitration process. Allowing the tribunal to take these arrangements into account ensures that all parties are aware of the financial support one party might have and helps prevent any potential imbalances.
5. **Disincentive for Overreach:** The possibility of the tribunal considering third-party funding arrangements could serve as a disincentive for parties to overreach in their claims or defence, as their financial backers would likely consider the potential costs of the arbitration in their funding decisions.
6. **Case-by-Case Basis:** The provision allows the tribunal to decide on a case-by-case basis whether and to what extent third-party funding should be taken into account. This discretion acknowledges that each arbitration has unique circumstances that might warrant different considerations.

In summary, Article 34.4 of the HKIAC Arbitration Rules 2018 addresses the role of third-party funding in the allocation of costs in arbitration. By permitting the arbitral tribunal to consider such funding arrangements, the provision contributes to a fair and transparent cost allocation process that takes into account the financial resources available to each party. This recognition of third-party funding's impact on arbitration costs aligns with the evolving landscape of modern dispute resolution.

**34.5 Where arbitrations are consolidated pursuant to Article 28, the arbitral tribunal in the consolidated arbitration shall determine the costs of the arbitration in accordance with Articles 34.2 to 34.4. Such costs include, but are not limited to, the fees of any arbitrator designated, confirmed or appointed and any other costs incurred in an arbitration that was subsequently consolidated into another arbitration.**

Article 34.5 of the HKIAC Arbitration Rules 2018 addresses the determination of costs in consolidated arbitrations. This provision outlines how costs are to be determined when multiple arbitrations are consolidated into a single proceeding, underlining the need for consistent and comprehensive cost considerations in such cases. Here is an analysis of Article 34.5:

1. **Consolidated Arbitrations:** The provision specifically pertains to situations where multiple arbitrations are consolidated under Article 28 of the HKIAC Arbitration Rules. Consolidation involves combining two or more separate arbitration proceedings into a single proceeding, often to streamline the resolution of related disputes.
2. **Cost Determination Continuity:** Article 34.5 ensures continuity in the determination of costs even when arbitrations are consolidated. It underscores that the principles established in Articles 34.2 to 34.4, which cover matters such as limitations on recoverable costs and consideration of third-party funding, apply to consolidated arbitrations as well.
3. **Comprehensive Cost Coverage:** The article emphasises that the costs to be determined in consolidated arbitrations include not only the fees of arbitrators but also any other costs incurred in both the consolidated and the subsequently consolidated arbitration. This comprehensive approach ensures that all financial aspects of the combined proceedings are considered for cost allocation.
4. **Consistency and Fairness:** By applying the same rules and considerations for cost determination in consolidated arbitrations, the article promotes consistency and fairness. Parties involved in consolidated proceedings can expect a uniform approach to cost allocation, regardless of whether the arbitrations were originally separate.
5. **Efficiency in Cost Allocation:** Consolidated arbitrations often aim to enhance efficiency by resolving related disputes in a coordinated manner. Article 34.5 ensures that the cost allocation process aligns with this efficiency goal by providing a clear and standardised method for determining costs in consolidated proceedings.
6. **Applicability to Different Elements:** The provision makes it clear that the cost determination principles in Articles 34.2 to 34.4 are to be applied not only to the fees of arbitrators but also to any other costs incurred in both the original arbitration and any subsequent arbitrations that are consolidated into the proceedings.

In summary, Article 34.5 of the HKIAC Arbitration Rules 2018 addresses the cost determination in consolidated arbitrations. By extending the principles of cost allocation, limitations, and consideration of third-party funding to consolidated proceedings, the provision ensures fairness, consistency, and efficiency in the financial aspects of resolving related disputes within a single arbitration proceeding.

**34.6 When the arbitral tribunal issues an order for the termination of the arbitration or makes an award on agreed terms, it shall determine the costs of the arbitration referred to in Article 34.1 (to the extent not already determined) and may apportion all or part of such costs, in the text of that order or award.**

Article 34.6 of the HKIAC Arbitration Rules 2018 addresses the determination and allocation of costs when an arbitral tribunal issues an order for the termination of the arbitration or makes an award based on agreed terms. This provision clarifies the tribunal's authority to finalise and allocate costs when the arbitration proceedings conclude through termination or agreement. Here is an analysis of Article 34.6:

1. **Conclusion of Arbitration Proceedings:** The provision pertains to situations where the arbitration proceedings come to an end through either an order for the termination of

the arbitration or an award on agreed terms. In these cases, the tribunal’s decision marks the conclusion of the dispute resolution process.

2. **Cost Determination and Allocation:** Article 34.6 emphasises that when such an order for termination or an award on agreed terms is issued, the arbitral tribunal must determine the costs of the arbitration referred to in Article 34.1. This refers to the expenses associated with the arbitration proceedings, as outlined in the broader context of Article 34.1.
3. **Apportionment of Costs:** Additionally, the tribunal is given the discretion to apportion all or part of these costs. The provision grants the tribunal the authority to decide how the financial burden should be distributed among the parties involved in the arbitration.
4. **Inclusion in the Order or Award:** The article specifies that the determination and apportionment of costs can be included in the text of the order for the termination of the arbitration or in the award on agreed terms. This requirement ensures that the allocation of costs is clearly documented and communicated to the parties in the formal decision.
5. **Finality and Closure:** Article 34.6 contributes to the finality and closure of the arbitration process. By addressing the costs associated with the termination or agreed settlement of the proceedings, the provision ensures that all financial aspects are resolved along with the substantive issues in the dispute.
6. **Contextual and Proportional:** The provision allows the tribunal to take into account the context and proportionality of the case when determining and apportioning costs. This approach ensures that the financial aspects of the dispute are resolved in a manner that aligns with the overall merits and circumstances of the case.

In summary, Article 34.6 of the HKIAC Arbitration Rules 2018 addresses the cost determination and allocation when arbitration proceedings are concluded through an order for termination or an award on agreed terms. By requiring the tribunal to determine costs and granting it discretion for apportionment, the provision ensures that the financial aspects of the arbitration are resolved in a clear, documented, and proportional manner, contributing to the finality and closure of the process.

## Article 35 – Form and Effect of the Award

**35.1 The arbitral tribunal may make a single award or separate awards regarding different issues at different times and in respect of all parties involved in the arbitration in the form of interim, interlocutory, partial or final awards. If appropriate, the arbitral tribunal may also issue interim awards on costs and any awards pursuant to Article 41.5.**

Article 35.1 of the HKIAC Arbitration Rules 2018 addresses the arbitral tribunal’s authority to issue different types of awards and to make decisions at various stages of the arbitration. Let us analyse the key aspects of this provision:

1. **Types of Awards:** This provision highlights that the arbitral tribunal has the discretion to issue different types of awards. These types include:



- a. **Single Award:** The tribunal can issue a single award that addresses all the issues in the arbitration, thereby providing a comprehensive resolution to the dispute.
  - b. **Separate Awards:** The tribunal can issue separate awards for different issues at different times. These separate awards may relate to interim matters, interlocutory decisions, partial resolutions, or final outcomes. This flexibility allows for a step-by-step approach to resolving the dispute.
2. **Comprehensive Coverage:** The provision emphasises that the tribunal can make awards in respect of all parties involved in the arbitration. This ensures that the decisions are comprehensive and apply to all relevant parties.
  3. **Types of Awards:** The provision specifically mentions the possibility of issuing interim, interlocutory, partial, or final awards. This reflects the range of decisions that the tribunal can make, each serving different purposes and stages of the arbitration process.
  4. **Interim Awards on Costs:** If appropriate, the tribunal is also granted the authority to issue interim awards on costs. This means that the tribunal can make determinations on the allocation of costs before the final resolution of the case.
  5. **Flexibility in Decision-Making:** The provision allows the tribunal to adapt its approach based on the needs of the case. This flexibility is crucial to ensuring that the arbitration process is tailored to the specific circumstances.
  6. **Efficiency and Timeliness:** By allowing the tribunal to issue awards at different stages, the provision aligns with the goals of efficiency and timely resolution in arbitration.
  7. **Support for Parties:** The provision caters to the diverse needs of parties involved in the arbitration. It enables the tribunal to address specific issues as they arise, potentially avoiding delays caused by waiting for a comprehensive final award.
  8. **Effective Case Management:** The provision reflects the tribunal's authority to manage the proceedings effectively by issuing awards that align with the current state of the dispute.

In summary, Article 35.1 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal broad discretion to issue various types of awards at different stages of the arbitration process. This flexibility supports efficient and effective resolution, allowing the tribunal to make decisions that are most appropriate for the circumstances of the case.

**35.2 Awards shall be made in writing and shall be final and binding on the parties and any person claiming through or under any of the parties. The parties and any such person waive their rights to any form of recourse or defence in respect of the setting-aside, enforcement and execution of any award, in so far as such waiver can validly be made.**

Article 35.2 of the HKIAC Arbitration Rules 2018 outlines the characteristics and implications of awards issued by the arbitral tribunal. Let us analyse the key elements of this provision:

1. **Written Awards:** This provision mandates that all awards issued by the arbitral tribunal must be in writing. This ensures clarity and transparency in the communication of the tribunal's decisions to the parties.
2. **Final and Binding:** The provision states that the awards made by the tribunal are final and binding. This means that once an award is issued, the parties are obligated to adhere to its terms and provisions. The award represents the resolution of the issues decided by the tribunal.
3. **Binding Effect on Parties and Related Entities:** The provision extends the binding effect of the awards not only to the parties directly involved in the arbitration but also to "any person claiming through or under any of the parties". This encompasses individuals or entities who may have a legal relationship with the parties to the arbitration, ensuring that the award's impact is comprehensive.
4. **Waiver of Recourse and Defence:** The provision includes a waiver clause wherein the parties and the mentioned individuals or entities waive their rights to any form of recourse or defence concerning the setting aside, enforcement, and execution of the award. In essence, this means that once the award is issued, parties are relinquishing certain legal challenges or defences they might otherwise have utilised during enforcement or setting aside proceedings.
5. **Enforcement and Execution:** The provision addresses the entire lifecycle of the award, including its setting aside, enforcement, and execution. It establishes that parties are not permitted to challenge the award's validity or enforceability based on certain grounds.
6. **Certainty and Finality:** By stipulating the finality and binding nature of the awards, the provision contributes to the certainty and stability of the arbitration process. It ensures that parties can have confidence in the outcomes of the arbitration.
7. **Consistency with International Standards:** This type of provision aligns with international arbitration standards that uphold the finality and enforceability of arbitration awards. The principle of limited recourse and defence is in line with the pro-enforcement bias of international arbitration.
8. **Party Autonomy:** While parties are agreeing to limit certain forms of recourse and defence, this provision reflects the principle of party autonomy that is central to arbitration. Parties willingly enter into the arbitration process and agree to the rules and consequences associated with it.

In summary, Article 35.2 of the HKIAC Arbitration Rules 2018 establishes that awards must be in writing and are final and binding on the parties and related entities. The provision introduces a waiver of certain forms of recourse and defence regarding the award's setting aside, enforcement, and execution. This emphasises the certainty and enforceability of arbitration awards while respecting the parties' autonomy within the arbitration process.

**35.3 The parties undertake to comply without delay with any order or award made by the arbitral tribunal or any emergency arbitrator, including any order or award made in any proceedings under Articles 27, 28, 29, 30 or 43.**

Article 35.3 of the HKIAC Arbitration Rules 2018 outlines the parties’ commitment to promptly adhere to orders and awards issued by the arbitral tribunal or an emergency arbitrator. Let us analyse the key components of this provision:

1. **Compliance Obligation:** This provision establishes an unequivocal obligation on the parties to comply without delay with any orders or awards issued by either the arbitral tribunal or an emergency arbitrator.
2. **Scope of Orders and Awards:** The provision covers a broad range of orders and awards, including those issued in various proceedings under Articles 27, 28, 29, 30, or 43 of the HKIAC Arbitration Rules 2018. These articles address different aspects of the arbitration process, such as joinder of additional parties, consolidation of proceedings, appointment of arbitrators, and early determination, among others.
3. **Prompt Adherence:** The emphasis on “without delay” underscores the need for parties to promptly and efficiently implement the decisions and directions of the arbitral tribunal or emergency arbitrator.
4. **Enforcement of Authority:** The provision reflects the authority of both the arbitral tribunal and the emergency arbitrator within the context of the arbitration proceedings. It ensures that their decisions are not only binding but are also expected to be adhered to in a timely manner.
5. **Efficiency and Respect for Process:** By committing to comply promptly, the parties contribute to the efficiency and effectiveness of the arbitration process. This helps avoid unnecessary delays and contributes to the overall fairness of the proceedings.
6. **Avoidance of Further Disputes:** The provision aims to prevent potential disputes arising from non-compliance with orders and awards. Prompt and consistent adherence minimises the chances of secondary disputes regarding implementation.
7. **Support for Arbitration System:** The provision reinforces the principle that arbitration relies on the parties’ commitment to uphold the decisions of the tribunal and maintain the integrity of the process.
8. **Legal Consequences of Non-Compliance:** While the provision does not explicitly outline legal consequences for non-compliance, failure to adhere to an order or award may result in breach of contract, contempt of court, or other legal remedies available under the applicable law.

In summary, Article 35.3 of the HKIAC Arbitration Rules 2018 stipulates that the parties are obligated to promptly comply with any orders or awards issued by the arbitral tribunal or an emergency arbitrator. The provision emphasises the importance of timely and efficient adherence to decisions to maintain the integrity and effectiveness of the arbitration process.

**35.4 An award shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.**

Article 35.4 of the HKIAC Arbitration Rules 2018 addresses the requirement for an award to provide reasons for its conclusions. Let us analyse the key elements of this provision:

1. **Reasoned Awards:** This provision stipulates that an award issued by the arbitral tribunal should include the reasons upon which it is based. In other words, the tribunal is expected to explain the rationale behind its decisions, demonstrating a clear thought process and analysis.
2. **Transparency and Understanding:** The requirement for reasons promotes transparency and ensures that the parties can understand how the tribunal arrived at its conclusions. This transparency is essential for the legitimacy of the arbitration process.
3. **Justification for Decisions:** Providing reasons in the award allows the parties to see the legal and factual basis for the tribunal's determinations. It offers insight into how the tribunal interpreted evidence, law, and arguments presented by the parties.
4. **Facilitating Appeals and Challenges:** Reasoned awards are essential if a party intends to challenge an award through a court process or under the applicable arbitration law. Without reasons, it is difficult to assess the validity of the tribunal's decision.
5. **Respect for Due Process:** Requiring reasons aligns with the principles of due process and natural justice. Parties have the right to know why a particular decision was made and how their arguments and evidence were considered.
6. **Quality and Accountability:** The need to provide reasons encourages arbitrators to carefully consider their decisions and to provide a coherent explanation for their conclusions. It enhances the quality of awards and ensures that arbitrators are accountable for their decisions.
7. **Exceptions for Agreement:** The provision acknowledges that parties have the option to agree that no reasons need to be given for the award. This respects party autonomy and allows parties to tailor the arbitration process to their preferences.
8. **Legitimacy and Enforceability:** Providing reasons enhances the legitimacy of the award and its enforceability. A reasoned award is more likely to be respected by courts and authorities tasked with enforcing arbitration decisions.

In summary, Article 35.4 of the HKIAC Arbitration Rules 2018 requires awards to state the reasons upon which they are based, unless the parties agree otherwise. This provision underlines the importance of transparency, justification, and accountability in the arbitration process, ultimately contributing to the effectiveness and credibility of arbitration awards.

**35.5 An award shall be signed by the arbitral tribunal. It shall state the date on which it was made and the seat of arbitration as determined under Article 14 and shall be deemed to have been**

**made at the seat of the arbitration. Where there are three arbitrators and any of them fails to sign, the award shall state the reason for the absence of the signature(s).**

Article 35.5 of the HKIAC Arbitration Rules 2018 outlines the formalities and requirements for the content and execution of awards in the arbitration process. Let us analyse the key components of this provision:

1. **Signature Requirement:** The provision mandates that an award issued by the arbitral tribunal must be signed by all members of the tribunal. This requirement emphasises the collective decision-making process of the tribunal and ensures that the award is representative of the tribunal's consensus.
2. **Date of Award:** The award should indicate the date on which it was made. This date is significant for purposes of determining when the award becomes effective and enforceable.
3. **Seat of Arbitration:** The award must state the seat of arbitration as determined under Article 14 of the HKIAC Arbitration Rules 2018. The seat of arbitration is an important legal concept that impacts the legal framework governing the arbitration process, including matters such as the court's supervisory jurisdiction and the applicable procedural law.
4. **Deemed Location of Award:** The provision establishes that an award shall be deemed to have been made at the seat of arbitration. This determination is relevant for legal purposes, such as enforcement and setting aside proceedings.
5. **Signature Absence and Explanation:** If there are three arbitrators on the tribunal and any of them fails to sign the award, the award must state the reason for the absence of the signature(s). This requirement ensures transparency and accountability, as parties and relevant authorities will be informed of the circumstances leading to the signature omission.
6. **Formalities and Legal Certainty:** The provision emphasises the importance of formalities in arbitration awards. Properly executed and signed awards enhance legal certainty and contribute to the enforceability of awards.
7. **Respect for Due Process:** Requiring the signatures of all members of the tribunal acknowledges the collaborative nature of the tribunal's decision-making process. It ensures that all tribunal members have collectively reviewed and endorsed the award.
8. **Procedural Completeness:** The provision aligns with the principle of completing procedural requirements in arbitration. By including necessary details like the date and seat of arbitration, the award becomes a comprehensive and enforceable document.

In summary, Article 35.5 of the HKIAC Arbitration Rules 2018 sets out the formalities for arbitration awards. It mandates the signature of all tribunal members, specifies the date of the award, indicates the seat of arbitration, and addresses scenarios where a tribunal member's signature is missing. These provisions contribute to the legal validity, transparency, and enforceability of arbitration awards.

**35.6 The arbitral tribunal shall communicate to HKIAC originals of the award signed by the arbitral tribunal. HKIAC shall affix its seal to the award and, subject to any lien, communicate it to the parties.**

Article 35.6 of the HKIAC Arbitration Rules 2018 pertains to the communication and formalisation of the arbitration award by the arbitral tribunal and the HKIAC. Let us analyse the key elements of this provision:

1. **Award Communication to HKIAC:** This provision requires the arbitral tribunal to send the original award, which has been signed by all members of the tribunal, to the HKIAC. This step ensures the formal transfer of the award to the institution responsible for its authentication and further processing.
2. **Seal Affixing by HKIAC:** Upon receiving the original award, the HKIAC is mandated to affix its official seal to the award. This seal serves as a mark of authentication and legitimacy for the award.
3. **Communication to Parties:** After affixing the seal, the HKIAC is responsible for communicating the award to the parties involved in the arbitration. This communication ensures that the parties are informed of the tribunal's decision and provides them with the official document for reference and compliance.
4. **Transparency and Formality:** The process outlined in this provision promotes transparency and formalism in the arbitration process. By involving a reputable institution like the HKIAC in the authentication and communication of the award, the process gains credibility and legal weight.
5. **Institutional Role:** The provision underscores the role of the HKIAC as an institution that assists in the administration of the arbitration process. The HKIAC's involvement enhances the efficiency and integrity of the arbitration procedure.
6. **Award Security:** The mention of any lien emphasises the importance of ensuring the security of the award. This could relate to any financial obligations or agreements between the parties and the institution.
7. **Finality and Authenticity:** The provision's requirements contribute to the finality and authenticity of the award. The affixing of the institution's seal and the communication of the award to the parties signal the conclusion of the arbitration process and the official recognition of the award.
8. **Enforceability:** The institutional involvement and formal processes outlined in this provision contribute to the enforceability of the award. It provides parties with an authoritative and recognised document to be used in the enforcement or recognition of the award in various jurisdictions.

In summary, Article 35.6 of the HKIAC Arbitration Rules 2018 highlights the communication and formalisation process of arbitration awards. It involves the transfer of the signed award to the HKIAC, the affixing of the institution's seal, and the subsequent communication of the award to the parties. This process enhances the award's authenticity, finality, and enforceability while maintaining institutional involvement and transparency.

## Article 36 – Applicable Law, Amiable Compositeur

**36.1 The arbitral tribunal shall decide the substance of the dispute in accordance with the rules of law agreed upon by the parties. Any designation of the law or legal system of a given jurisdiction shall be construed, unless otherwise expressed, as directly referring to the substantive law of that jurisdiction and not to its conflict of laws rules. Failing such designation by the parties, the arbitral tribunal shall apply the rules of law which it determines to be appropriate.**

This article deals with the determination of the applicable law in an arbitration governed by the HKIAC Arbitration Rules 2018. It outlines the principles that guide the arbitral tribunal in deciding the substance of the dispute, particularly when it comes to the choice of law. Here is a breakdown of the key points in this article:

1. **Agreed Rules of Law:** The article establishes that the arbitral tribunal’s decision on the substance of the dispute should be based on the rules of law agreed upon by the parties. This means that the parties have the freedom to choose the legal principles, rules, or laws that will govern the resolution of their dispute. This could include choosing a specific country’s laws or international principles.
2. **Designation of Law:** If the parties have designated the law or legal system of a specific jurisdiction to apply to their dispute, the article clarifies that this designation should be understood as referring directly to the substantive law of that jurisdiction. In other words, the laws of that jurisdiction will apply to determine the rights and obligations of the parties. Importantly, the article specifies that the designation does not refer to the conflict of laws rules of that jurisdiction.
3. **Appropriate Choice of Law:** If the parties have not explicitly designated a particular set of laws to apply, the arbitral tribunal is empowered to determine the appropriate rules of law. The tribunal’s discretion to make this determination is guided by what it deems “appropriate” in the context of the dispute. This could include selecting a jurisdiction’s laws that have a significant connection to the dispute, such as the place of performance or the parties’ intentions.
4. **Implications:**
  - a. Article 36.1 of the HKIAC Arbitration Rules 2018 grants parties substantial flexibility in choosing the laws that will govern their dispute. This aligns with the principle of party autonomy in arbitration, allowing parties to tailor the dispute resolution process to their needs. The article also recognises the importance of distinguishing between substantive law and conflict of laws rules, ensuring that the chosen law directly governs the rights and obligations of the parties.
  - b. If no specific choice of law is made by the parties, the arbitral tribunal is entrusted with determining the most appropriate set of rules to apply to the dispute. This underscores the tribunal’s responsibility to ensure fairness and justice in rendering its award.

Overall, Article 36.1 aims to strike a balance between party autonomy and the tribunal's role in ensuring a fair and just resolution of the dispute, while providing clarity on the interpretation of designated laws.

### **36.2 The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly agreed that the arbitral tribunal should do so.**

This article pertains to the approach that an arbitral tribunal can take in rendering its decision in an arbitration governed by the HKIAC Arbitration Rules 2018. The article focuses on two distinct principles, “amiable compositeur” and “ex aequo et bono”, and establishes the conditions under which the tribunal can apply these principles:

1. **Amiable Compositeur:** The term “amiable compositeur” refers to the concept where the arbitral tribunal acts as an “amiable composer” or impartial judge, rather than strictly applying the law. This allows the tribunal to consider what it believes is equitable and just, based on its own assessment of the facts and circumstances. In essence, it gives the tribunal the authority to act as a sort of neutral “friend of the parties”.
2. **Ex Aequo et Bono:** “Ex aequo et bono” translates to “according to what is just and good” in Latin. It signifies a departure from applying strict legal principles and allows the tribunal to decide based on principles of fairness and justice.
3. **Key Provision:** The critical provision in Article 36.2 is that the arbitral tribunal can decide as amiable compositeur or ex aequo et bono only if the parties have expressly agreed that the tribunal should adopt this approach.
4. **Implications: Party Autonomy:** This article respects the principle of party autonomy in arbitration. It gives parties the power to determine the method by which their dispute will be resolved. If the parties do not explicitly agree to allow the tribunal to use the amiable compositeur or ex aequo et bono approach, the tribunal is generally bound to decide the case based on the applicable rules of law as agreed upon by the parties.
5. **Balancing Flexibility and Predictability:** By requiring parties to expressly agree to these more flexible and equitable approaches, the article seeks to balance the flexibility of arbitration with the predictability and stability of traditional legal principles. This ensures that the tribunal only departs from strict legal interpretations when the parties explicitly desire it.
6. **Clarity and Consent:** The provision brings clarity and certainty to the arbitration process. It prevents tribunals from applying these alternative approaches without the parties' clear consent, safeguarding against unpredictable outcomes that might arise from a departure from established legal norms.
7. **Respecting Party Intent:** The article respects the parties' intent. If they have chosen arbitration as their method of dispute resolution but wish to maintain the application of legal principles, this article reinforces their choice.



In essence, Article 36.2 reinforces the principle of party consent and maintains a balance between the flexibility of arbitration and the predictability of legal principles, ensuring that the tribunal's approach aligns with the parties' chosen path of dispute resolution.

**36.3 In all cases, the arbitral tribunal shall decide the case in accordance with the terms of the relevant contract(s) and may take into account the usages of the trade applicable to the transaction(s).**

This article outlines the guiding principles that arbitral tribunals must adhere to when rendering a decision in arbitration cases under the HKIAC Arbitration Rules 2018. It emphasises the importance of contractual terms and trade usages in shaping the tribunal's decision-making process:

1. **Contractual Terms:** The article establishes that the arbitral tribunal must decide the case in accordance with the terms of the relevant contract(s). This principle underscores the significance of parties' agreements as the foundation of the arbitration process. It reaffirms the parties' intentions as expressed in their contractual arrangements.
2. **Trade Usages:** The article also allows the tribunal to consider the usages of the trade applicable to the transaction(s). "Usages of the trade" refer to established practices and customs within a specific industry or sector. These usages help provide context and interpretation to contractual terms, especially when those terms are unclear or ambiguous.
3. **Key Implications:**
  - a. **Respect for Party Autonomy:** While arbitration provides flexibility, this article underscores the importance of respecting the terms of the parties' contract. The tribunal is directed to base its decisions on the contractual framework established by the parties themselves.
  - b. **Interpretation of Contractual Terms:** This article acknowledges that the terms of a contract are the primary source for determining the parties' rights and obligations. The tribunal's role is to interpret and apply these terms as closely as possible.
  - c. **Usages of the Trade:** Recognising trade usages is crucial for contextualising contractual terms. These usages help the tribunal understand industry-specific practices and standards, which can aid in interpreting the parties' intentions.
  - d. **Balancing Flexibility and Consistency:** By incorporating trade usages, the article strikes a balance between the specific terms of the contract and broader industry norms. This approach maintains a level of flexibility while striving for consistent and fair outcomes.
  - e. **Clarity and Predictability:** This provision contributes to predictability in arbitration outcomes. Parties can reasonably anticipate that the tribunal will consider both their contractual terms and industry practices when reaching a decision.

Overall, Article 36.3 emphasises the importance of contractual autonomy and the role of industry practices in arbitration decisions. By incorporating both of these elements, the article promotes a

balanced approach that respects parties' agreements while considering broader contextual factors within a specific trade or industry.

### Article 37 – Settlement or Other Grounds for Termination

**37.1 If, before the arbitral tribunal is constituted, a party wishes to terminate the arbitration, it shall communicate this to all other parties and HKIAC. HKIAC shall set a time limit for all other parties to indicate whether they agree to terminate the arbitration. If no other party objects within the time limit, HKIAC may terminate the arbitration. If any party objects to the termination of the arbitration, the arbitration shall proceed in accordance with the Rules.**

This article addresses the situation where a party seeks to terminate an arbitration before the arbitral tribunal has been formally constituted. It outlines the process that should be followed in such cases and the possible outcomes based on the responses of the parties involved:

1. **Termination Request:** If a party wishes to terminate the arbitration at an early stage, specifically before the arbitral tribunal has been formed, that party must communicate its intention to terminate to all other parties involved in the dispute and to the HKIAC.
2. **Time Limit for Agreement:** Upon receiving the termination request, the HKIAC is tasked with setting a time limit for the other parties to express their agreement or disagreement with the termination of the arbitration. This provision ensures that all parties have an opportunity to provide input on the termination decision.
3. **Consent to Termination:** If all other parties involved in the dispute agree to terminate the arbitration within the specified time limit, and no objections are raised, the HKIAC has the authority to terminate the arbitration. This could be a cost-effective and expedient way to end the arbitration process when all parties are in agreement.
4. **Objection to Termination:** If any party objects to the termination of the arbitration, the arbitration process will not be terminated. Instead, the arbitration will proceed in accordance with the HKIAC Arbitration Rules. This ensures that the interests of all parties are considered and that a party cannot unilaterally terminate the arbitration if other parties are committed to continuing the process.
5. **Key Implications:**
  - a. **Party Consent and Due Process:** This article places a significant emphasis on party consent and due process. It ensures that a party seeking to terminate the arbitration cannot do so without involving other parties and obtaining their agreement or overcoming their objections.
  - b. **Efficiency and Flexibility:** The article provides a mechanism for efficient termination of the arbitration process if all parties are in agreement. This can save time and resources, especially when parties are able to reach a mutual resolution.
  - c. **Balancing Interests:** By allowing for termination if all parties agree, and requiring continuation if any party objects, the article balances the interests of parties

seeking to end the process quickly with the interests of parties wishing to pursue the dispute resolution.

- d. Ensuring Fairness: The provision prevents a single party from unilaterally terminating the arbitration, thus ensuring fairness and preventing potential misuse of the termination option.

In summary, Article 37.1 of the HKIAC Arbitration Rules 2018 provides a framework for terminating an arbitration before the arbitral tribunal is constituted, emphasising party agreement and due process while considering the interests of all parties involved.

**37.2 If, after the arbitral tribunal is constituted and before the final award is made:**

- (a) the parties settle the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitration or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.**
- (b) continuing the arbitration becomes unnecessary or impossible for any reason not mentioned in Article 37.2(a), the arbitral tribunal shall issue an order for the termination of the arbitration. The arbitral tribunal shall issue such an order unless a party raises a justifiable objection, having been given a reasonable opportunity to comment upon the proposed course of action.**

This article addresses the scenario in which certain developments occur after the arbitral tribunal has been constituted but before the final award has been issued. It outlines the procedures and options that the arbitral tribunal should follow in such situations:

1. Subsection (a) — Settlement: Settlement: If the parties settle the dispute after the arbitral tribunal has been formed but before the final award is made, the article outlines two options for the arbitral tribunal:
  - a. Termination Order: The arbitral tribunal can issue an order for the termination of the arbitration, recognising that the dispute has been settled.
  - b. Arbitral Award on Agreed Terms: If the parties request and the arbitral tribunal accepts, the tribunal can record the settlement in the form of an arbitral award based on the agreed terms. This serves as a formal acknowledgment of the settlement and provides a sense of finality to the process.
  - c. Reasoning for Award: Importantly, the arbitral tribunal is not obliged to provide reasons for issuing an arbitral award on agreed terms in this context. This recognises the efficient nature of settlements and the fact that reasons for awards are typically provided in cases where disputes are adjudicated.
2. Subsection (b) — Unnecessary or Impossible Continuation:
  - a. Continuation Becomes Unnecessary or Impossible: If continuing with the arbitration becomes unnecessary or impossible for reasons other than a settlement

(as mentioned in Article 37.2(a)), the arbitral tribunal should issue an order for the termination of the arbitration.

- b. **Exceptional Continuation:** However, if a party objects to the termination and raises a justifiable objection, the arbitral tribunal must consider the objection. The tribunal should allow the objecting party a reasonable opportunity to comment on the proposed course of action before making a final decision.

3. **Key Implications:**

- a. **Flexibility in Settlements:** The article recognises the possibility of settlements occurring at various stages of arbitration. It provides mechanisms for recording settlements and acknowledging their legal effect.
- b. **Efficiency and Finality:** The provision emphasises the importance of efficiency in cases of settlement and unnecessary continuation, ensuring that the arbitration process does not drag on when disputes are resolved through other means.
- c. **Objecting to Termination:** The article maintains fairness by allowing a party to object to the termination of the arbitration in cases where the continuation might still be justifiable despite a settlement not being reached.
- d. **Variability in Reasons for Termination:** The article covers a range of situations where the arbitration might need to be terminated, including settlements and other unforeseen reasons.
- e. **Balancing Speed and Due Process:** The article strikes a balance between swiftly recognising settlements or terminating proceedings when continuation is not necessary while still allowing parties to voice concerns.

In essence, Article 37.2 of the HKIAC Arbitration Rules 2018 provides clear guidelines for addressing developments such as settlements or situations where continuation becomes unnecessary or impossible after the arbitral tribunal has been constituted but before the issuance of the final award. It underscores the tribunal's responsibility to efficiently manage the arbitration process while maintaining fairness and accommodating parties' interests.

**37.3 The arbitral tribunal shall communicate copies of the order to terminate the arbitration or of the arbitral award on agreed terms, signed by the arbitral tribunal, to HKIAC. Subject to any lien, HKIAC shall communicate the order for termination of the arbitration or the arbitral award on agreed terms to the parties. Where an arbitral award on agreed terms is made, the provisions of Articles 35.2, 35.3, 35.5 and 35.6 shall apply.**

This article addresses the procedural steps that follow the termination of an arbitration or the issuance of an arbitral award on agreed terms. It outlines the communication and dissemination of these orders and awards to the relevant parties and highlights the application of certain provisions from Article 35 in the case of an arbitral award on agreed terms:

1. **Communication of Orders and Awards:**

- a. After an arbitration is terminated by an order of the tribunal or an arbitral award is made on agreed terms, the arbitral tribunal is responsible for communicating signed copies of the order or award to the HKIAC. This ensures that the arbitral institution is aware of the conclusion of the arbitration or the settlement agreement reached.
  - b. HKIAC is then tasked with communicating the order for termination of the arbitration or the arbitral award on agreed terms to the parties involved in the dispute. This ensures that all parties are informed of the outcome.
2. Application of Provisions from Article 35:
- a. In cases where an arbitral award on agreed terms is made, the article references specific provisions from Article 35 of the HKIAC Arbitration Rules 2018 that shall apply. These provisions are: 35.2, 35.3, 35.5, and 35.6.
  - b. Article 35 pertains to the form and contents of the award, including requirements related to the award's signature, date, and communication to the parties.
3. Key Implications:
- a. **Transparency and Communication:** The article ensures transparency by requiring that the orders and awards be communicated through HKIAC to the relevant parties. This fosters accountability and awareness among all stakeholders.
  - b. **Formalising Agreements:** The provision highlights the process of formalising settlements reached through arbitral awards on agreed terms, ensuring that the settlement is appropriately documented and communicated.
  - c. **Application of Award Formalities:** By referencing specific provisions from Article 35, the article ensures that arbitral awards on agreed terms meet the required formalities for validity and effectiveness.
  - d. **Consistency in Procedure:** The article ensures that the procedural steps following the termination of an arbitration or the issuance of an arbitral award on agreed terms are consistent with the rules, enhancing the predictability of the process.

In summary, Article 37.3 of the HKIAC Arbitration Rules 2018 outlines the communication and dissemination of orders and awards after the termination of an arbitration or the issuance of an arbitral award on agreed terms. It emphasises transparency, consistency, and compliance with procedural requirements for the validity of awards.

#### **Article 38 – Correction of the Award**

**38.1 Within 30 days after receipt of the award, either party, with notice to all other parties, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or**

**typographical errors, or any errors of similar nature. The arbitral tribunal may set a time limit, normally not exceeding 15 days, for all other parties to comment on such request.**

This article outlines a procedure for parties to request corrections to the arbitral award if certain types of errors are present. It provides a timeframe for making such requests and clarifies the process for seeking corrections:

1. **Error Correction Request: Time Limit:** Within 30 days of receiving the arbitral award, either party has the option to request the arbitral tribunal to correct specific types of errors in the award.
2. **Eligible Errors:** The article specifies the types of errors that are eligible for correction:
  - a. **Errors in computation:** These could be mathematical errors in calculating monetary sums or other quantifiable elements of the award.
  - b. **Clerical or typographical errors:** These are mistakes in the text itself, such as misspelled words, incorrect numbers, or similar issues.
  - c. **Errors of similar nature:** This term is broad and could encompass other types of minor mistakes that do not involve substantive issues in the award.
3. **Notice to Parties: Notice Requirement:** The party making the request for correction must provide notice to all other parties involved in the arbitration. This ensures transparency and the opportunity for all parties to be aware of the correction request.
4. **Comments from Other Parties:**
  - a. **Arbitral Tribunal's Discretion:** The arbitral tribunal has the authority to set a time limit for all other parties to comment on the correction request. This period is typically not expected to exceed 15 days.
  - b. **Balancing Interests:** Allowing other parties to comment ensures fairness and gives parties a voice in the correction process.
5. **Key Implications:**
  - a. **Ensuring Accuracy:** The article emphasises the importance of ensuring the accuracy of arbitral awards, especially in cases of straightforward errors that do not involve the merits of the dispute.
  - b. **Balancing Efficiency and Accuracy:** By setting a time limit for requesting corrections, the article balances the need for efficient resolution with the need to maintain accuracy in the final award.
  - c. **Transparency:** The requirement to notify all parties of the correction request promotes transparency and ensures that all stakeholders are aware of the potential corrections.

- d. Fairness in Commenting: Allowing other parties to comment on correction requests fosters fairness and prevents unilateral changes to the award without input from all affected parties.

In summary, Article 38.1 of the HKIAC Arbitration Rules 2018 provides a mechanism for parties to request corrections to the award in cases of specific types of errors. It establishes a time frame, notice requirement, and opportunity for other parties to comment, maintaining a balance between efficiency and accuracy in the arbitration process.

**38.2 The arbitral tribunal shall make any corrections it considers appropriate within 30 days after receipt of the request but may extend such time limit if necessary.**

This article continues the discussion on the correction of errors in arbitral awards, focusing on the arbitral tribunal’s responsibilities and timeframes for addressing correction requests:

1. Correction of Errors:
  - a. After receiving a request for corrections from a party pursuant to Article 38.1, the arbitral tribunal is obliged to review the request and determine whether the corrections are appropriate.
  - b. The article does not specify the scope of the arbitral tribunal’s discretion in determining appropriateness, but it is generally understood that corrections should be limited to the types of errors mentioned in Article 38.1, such as computational, clerical, typographical, or similar errors.
2. Timeframe for Corrections:
  - a. The arbitral tribunal is required to make the corrections it deems appropriate within 30 days after receiving the correction request from the party.
  - b. This 30-day timeframe ensures that corrections are addressed promptly, maintaining the accuracy and integrity of the award.
3. Extension of Time Limit:
  - a. The article acknowledges that the arbitral tribunal has the discretion to extend the 30-day time limit for making corrections if it deems such an extension necessary.
  - b. The exact circumstances that could warrant an extension are not specified, but it allows the tribunal flexibility in cases where additional time is required to review and make the appropriate corrections.
4. Key Implications:
  - a. Timely Corrections: The article emphasises the importance of promptly addressing correction requests to ensure the accuracy of the arbitral award.

- b. **Arbitral Tribunal's Discretion:** The article grants the arbitral tribunal the authority to determine which corrections are appropriate based on the types of errors specified in Article 38.1.
- c. **Flexibility in Timeframe:** While the standard timeframe for making corrections is set at 30 days, the arbitral tribunal can extend this timeframe if necessary. This recognises that certain circumstances might require more time for thorough review and correction.
- d. **Balancing Accuracy and Efficiency:** The provision maintains a balance between the need to correct errors to maintain the award's accuracy and the need for efficiency in the arbitration process.

In summary, Article 38.2 of the HKIAC Arbitration Rules 2018 outlines the timeframe within which the arbitral tribunal must address correction requests and acknowledges the tribunal's discretion to extend this timeframe when necessary. This provision ensures that errors in arbitral awards are corrected in a timely manner while allowing flexibility in exceptional cases.

### **38.3 The arbitral tribunal may within 30 days after the date of the award make such corrections on its own initiative.**

This article addresses the authority of the arbitral tribunal to initiate corrections to the award on its own accord, without needing a specific request from the parties. Here is an analysis of its key points:

1. **Correction on Tribunal's Initiative:** Within 30 days after the date of the award, the arbitral tribunal has the authority to identify and address errors in the award on its own initiative. This means that if the tribunal itself identifies errors that fall within the scope of correctable errors (as defined in Article 38.1), it can undertake the correction process without waiting for a formal request from the parties.
2. **Limited Timeframe:** The tribunal's authority to initiate corrections on its own is time-bound, allowing it to do so only within 30 days from the date the award is issued. This limitation ensures that any corrections made by the tribunal occur in a timely manner.
3. **Key Implications:**
  - a. **Ensuring Accuracy:** This provision underscores the arbitral tribunal's responsibility to ensure the accuracy and integrity of its awards. By allowing the tribunal to initiate corrections on its own initiative, the article promotes the goal of delivering accurate and error-free decisions.
  - b. **Proactive Approach:** Allowing the tribunal to identify and correct errors independently demonstrates a proactive approach to maintaining the quality of arbitral awards.
  - c. **Efficiency and Fairness:** By permitting the tribunal to identify and correct errors without requiring a party request, the article contributes to the efficiency of the arbitration process. It also helps to ensure fairness by addressing errors that might not have been identified by the parties.



- d. Limited Timeframe: The 30-day limit emphasises the importance of addressing corrections promptly after the issuance of the award, while also providing the tribunal with a reasonable timeframe to identify any errors that might have inadvertently occurred.

In summary, Article 38.3 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to initiate corrections to the award within 30 days of its issuance. This proactive provision enhances accuracy, efficiency, and the overall integrity of arbitral awards by allowing the tribunal to rectify errors on its own initiative.

**38.4 The arbitral tribunal has the power to make any further correction to the award which is necessitated by or consequential on (a) the interpretation of any point or part of the award under Article 39; or (b) the issue of any additional award under Article 40.**

This article addresses the authority of the arbitral tribunal to make additional corrections to the award beyond the initial correction process. It outlines the circumstances under which the tribunal can exercise this power:

1. Interpretation of the Award (Article 39):
  - a. Correction Necessitated by Interpretation: If the interpretation of any point or part of the award is required under Article 39 of the HKIAC Arbitration Rules 2018, the arbitral tribunal has the power to make further corrections to the award to ensure the interpretation is accurately reflected.
  - b. Article 39: Article 39 of the HKIAC Arbitration Rules deals with the interpretation and correction of the award at the request of a party, specifically addressing situations where there might be uncertainty or ambiguity in the award’s language.
2. Additional Award (Article 40):
  - a. Correction Consequential on Additional Award: If an additional award is issued under Article 40 of the HKIAC Arbitration Rules 2018, the arbitral tribunal has the authority to make further corrections to the original award that are necessitated by or consequential on the issuance of the additional award.
  - b. Article 40: Article 40 of the HKIAC Arbitration Rules pertains to the issuance of additional awards, which might be necessary for certain aspects of the dispute that were not fully addressed in the initial award.
3. Key Implications:
  - a. Maintaining Consistency and Accuracy: The article ensures that corrections and interpretations of the award remain consistent and accurate, especially when new developments arise.
  - b. Dynamic Nature of Corrections: This provision acknowledges that the arbitration process can involve ongoing interpretation and additional awards, requiring the original award to be modified accordingly.

- c. Tribunal’s Continual Involvement: The article highlights the ongoing role of the arbitral tribunal in the post-award phase, ensuring that the award accurately reflects the tribunal’s intent even as new issues arise.
- d. Flexibility and Fairness: Allowing the tribunal to make further corrections ensures flexibility and fairness by adapting the award to new circumstances without the need for a separate procedure.

In summary, Article 38.4 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the power to make further corrections to the award based on the interpretation of the award under Article 39 or the issuance of additional awards under Article 40. This provision maintains consistency and accuracy in the award in light of ongoing developments in the arbitration process.

**38.5 Such corrections shall be in writing, and the provisions of Articles 35.2 to 35.6 shall apply.**

This article establishes the procedural requirements and references certain provisions of the HKIAC Arbitration Rules that apply when making corrections to an award under the circumstances outlined in the preceding sections:

1. Written Corrections: The corrections to the award, whether initiated by the arbitral tribunal or upon request from the parties, must be made in writing. This ensures clarity, transparency, and a formal record of any modifications to the award.
2. Application of Articles 35.2 to 35.6: The article refers to specific provisions within Articles 35.2 to 35.6 of the HKIAC Arbitration Rules 2018. These provisions primarily address the form and contents of the arbitral award itself.
3. Article 35.2: This provision deals with the signature of the award.
4. Article 35.3: This provision deals with the date of the award.
5. Article 35.5: This provision deals with the communication of the award to the parties.
6. Article 35.6: This provision pertains to the provision of reasons in support of the award, if requested.
7. Key Implications:
  - a. Formal and Transparent Process: The requirement for written corrections ensures that any modifications to the award are properly documented and communicated to the parties, maintaining transparency and formal record-keeping.
  - b. Consistency in Form: By applying specific provisions from Articles 35.2 to 35.6, the article maintains consistency in the form and procedural requirements for corrections, aligning them with the standards set for the original award.
  - c. Emphasis on Award Integrity: The application of these provisions underscores the importance of maintaining the integrity and formalities of the arbitral award, even when corrections are necessary.

- d. Fairness to Parties: The reference to providing reasons under Article 35.6 highlights the possibility of providing reasons for the corrections if requested by the parties, ensuring that the parties are aware of the basis for the modifications.

In summary, Article 38.5 of the HKIAC Arbitration Rules 2018 emphasises the formal and consistent nature of corrections to arbitral awards. It requires that such corrections be made in writing and that certain provisions from Articles 35.2 to 35.6 apply to the correction process, maintaining transparency and integrity in the award correction process.

## Article 39 – Interpretation of the Award

**39.1 Within 30 days after receipt of the award, either party, with notice to all other parties, may request that the arbitral tribunal give an interpretation of the award. The arbitral tribunal may set a time limit, normally not exceeding 15 days, for all other parties to comment on such request.**

This article addresses the process for seeking an interpretation of an arbitral award when a party believes that there is ambiguity or uncertainty in the award’s meaning or intent. Here is an analysis of its key points:

1. Interpretation Request:
  - a. Time Limit: Within 30 days of receiving the arbitral award, either party has the option to request that the arbitral tribunal provide an interpretation of the award.
  - b. Purpose: The purpose of seeking an interpretation is to clarify any ambiguity or uncertainty that might exist in the language or meaning of the award. This can help parties better understand the implications of the award and its intended effect.
2. Notice Requirement: The party requesting the interpretation must provide notice to all other parties involved in the arbitration. This ensures that all stakeholders are informed of the request and can participate in the interpretation process if they choose to do so.
3. Comment Period for Other Parties:
  - a. Arbitral Tribunal’s Discretion: The arbitral tribunal has the authority to set a time limit for all other parties to comment on the interpretation request. This period is normally not expected to exceed 15 days.
  - b. Balancing Interests: Allowing other parties to comment ensures that the interpretation process is fair and provides an opportunity for all parties to contribute their perspectives.
4. Key Implications:
  - a. Clarity and Understanding: The article recognises that arbitral awards might contain elements that are open to interpretation, and it provides a mechanism for parties to seek clarification to ensure proper understanding.

- b. Party Autonomy: The provision respects party autonomy by allowing them to seek interpretation when needed, rather than relying solely on external mechanisms.
- c. Efficiency and Timeliness: By setting a specific time frame for making the interpretation request and for the comments from other parties, the article ensures a timely resolution of any ambiguity or uncertainty.
- d. Transparency: The requirement for notice to all parties promotes transparency, ensuring that all parties are aware of the interpretation request and have an opportunity to participate in the process.

In summary, Article 39.1 of the HKIAC Arbitration Rules 2018 establishes a process for parties to seek an interpretation of an arbitral award when there is ambiguity or uncertainty. It emphasises the importance of clarity and understanding in the arbitration process while maintaining fairness and timeliness through the involvement of other parties and the arbitral tribunal.

**39.2 Any interpretation considered appropriate by the arbitral tribunal shall be given in writing within 30 days after receipt of the request but the arbitral tribunal may extend such time limit if necessary.**

This article addresses the arbitral tribunal’s authority and responsibility to provide interpretations of arbitral awards upon request. Here is an analysis of its key points:

1. Arbitral Tribunal’s Authority:
  - a. The article grants the arbitral tribunal the authority to provide interpretations of the award when such interpretations are deemed appropriate.
  - b. The arbitral tribunal is uniquely positioned to provide clarity and insight into the intended meaning of the award since it was responsible for rendering the decision.
2. Written Interpretations: The interpretation provided by the arbitral tribunal must be given in writing. This ensures that the interpretation is clear, formal, and can be referred to by the parties.
3. Timeframe for Interpretation:
  - a. The arbitral tribunal is required to provide the interpretation within 30 days after receiving the request from the party seeking the interpretation.
  - b. This 30-day timeframe ensures that interpretations are addressed in a reasonably prompt manner, enabling parties to proceed with the arbitration process with a clearer understanding of the award.
4. Extension of Time Limit:
  - a. The article acknowledges that the arbitral tribunal has the discretion to extend the 30-day time limit for providing interpretations if necessary.

- b. The extension provides flexibility for the tribunal to thoroughly consider the request and provide a well-reasoned interpretation when complex issues are involved.
5. Key Implications:
- a. Clarity and Understanding: The provision ensures that parties can obtain clarification and better understand the intent of the arbitral award when ambiguities arise.
  - b. Efficiency and Timeliness: By setting a specific timeframe for providing interpretations, the article ensures that parties receive the clarifications they seek in a timely manner.
  - c. Arbitral Tribunal's Expertise: As the authors of the original award, the arbitral tribunal is well-suited to provide insights into the intended meaning of the award, contributing to a more informed interpretation.
  - d. Flexibility and Fairness: Allowing for extensions of the time limit acknowledges that some requests might require more time for careful consideration, while maintaining fairness to the parties involved.

In summary, Article 39.2 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to provide written interpretations of arbitral awards upon request. The provision ensures that parties can obtain clarity and understanding about the award's meaning and intent, while maintaining efficiency and flexibility in the interpretation process.

**39.3 The arbitral tribunal has the power to give any further interpretation of the award which is necessitated by or consequential on (a) the correction of any error in the award under Article 38; or (b) the issue of any additional award under Article 40.**

This article outlines the authority of the arbitral tribunal to provide additional interpretations of the award when specific circumstances arise. Here is an analysis of its key points:

1. Correction of Award (Article 38):
  - a. If an error in the award is corrected under Article 38 of the HKIAC Arbitration Rules 2018, the arbitral tribunal has the power to provide any further interpretation that is necessitated by or consequential to that correction.
  - b. This recognises that corrections to the award may require corresponding clarifications to maintain the intended meaning.
2. Additional Award (Article 40):
  - a. If an additional award is issued under Article 40 of the HKIAC Arbitration Rules 2018, the arbitral tribunal is empowered to provide further interpretations of the original award that are necessitated by or consequential to the issuance of the additional award.

- b. This acknowledges that the issuance of additional awards may impact the original award and necessitate explanations or clarifications.
3. Key Implications:
- a. Dynamic Nature of Interpretations: The provision acknowledges that interpretations of awards can be affected by subsequent developments, such as the correction of errors or the issuance of additional awards.
  - b. Integration of Process: The article ensures that the interpretation process is integrated with other aspects of the arbitration process, such as corrections and additional awards, to maintain consistency and accuracy.
  - c. Efficiency and Comprehensive Understanding: By allowing the arbitral tribunal to provide further interpretations, the article ensures that parties have a comprehensive understanding of the award and its implications.
  - d. Maintaining Integrity: The provision helps maintain the integrity of the arbitral process by providing opportunities for parties to seek and receive clarifications as necessary.

In summary, Article 39.3 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to provide further interpretations of the award when such interpretations are necessitated by corrections of errors or the issuance of additional awards. This provision ensures a dynamic and integrated approach to maintaining clarity and understanding in the arbitration process.

**39.4 Any interpretation given under Article 39 shall form part of the award and the provisions of Articles 35.2 to 35.6 shall apply.**

This article addresses the status, formalities, and integration of interpretations provided under Article 39 of the HKIAC Arbitration Rules 2018. Here is an analysis of its key points:

1. Inclusion in the Award: The interpretations provided under Article 39 are considered an integral part of the original arbitral award. This means that they are legally incorporated into the award itself, forming a unified and comprehensive document.
2. Formalities of Interpretations: The interpretations provided under Article 39 are subject to the same formalities as the original award. This includes requirements related to signature, date, and communication to the parties.
3. Application of Articles 35.2 to 35.6:
  - a. The article references specific provisions from Articles 35.2 to 35.6 of the HKIAC Arbitration Rules 2018.
  - b. Article 35.2: This provision deals with the signature of the award.
  - c. Article 35.3: This provision deals with the date of the award.

- d. Article 35.5: This provision deals with the communication of the award to the parties.
  - e. Article 35.6: This provision pertains to the provision of reasons in support of the award, if requested.
4. Key Implications:
- a. Integration and Clarity: The provision ensures that any interpretations provided under Article 39 become an integral part of the award, enhancing the clarity and completeness of the award document.
  - b. Formal Consistency: By subjecting interpretations to the same formalities as the original award, the article maintains a consistent and standardised approach to the award document.
  - c. Transparent Process: The application of Articles 35.2 to 35.6 to the interpretation process ensures transparency and fairness to the parties involved.
  - d. Respect for Party Rights: The reference to providing reasons under Article 35.6 highlights the possibility of providing reasons for the interpretation if requested by the parties, ensuring that parties are informed and have a clear understanding.

In summary, Article 39.4 of the HKIAC Arbitration Rules 2018 underscores the integration of interpretations into the award and emphasises the formalities associated with these interpretations. By applying specific provisions from Articles 35.2 to 35.6, the provision maintains transparency, consistency, and fairness in the interpretation process.

#### Article 40 – Additional Award

**40.1 Within 30 days after receipt of the award, either party, with notice to all other parties, may request the arbitral tribunal to make an additional award as to claims presented in the arbitration but omitted from the award. The arbitral tribunal may set a time limit, normally not exceeding 30 days, for all other parties to comment on such request.**

This article addresses the procedure for requesting an additional award in cases where claims were presented during the arbitration but were omitted from the final award. Here is an analysis of its key points:

- 1. Additional Award Request:
  - a. Time Limit: Within 30 days of receiving the arbitral award, either party has the option to request that the arbitral tribunal make an additional award regarding claims that were presented during the arbitration but were not included in the final award.
  - b. Purpose: The provision acknowledges that in some cases, certain claims may not have been addressed in the original award due to oversight or other reasons. Parties have the right to seek a separate award on these claims.

2. **Notice Requirement: Notice to All Parties:** The party requesting the additional award must provide notice to all other parties involved in the arbitration. This ensures that all stakeholders are informed and can participate in the process if they choose to do so.
3. **Comment Period for Other Parties:**
  - a. **Arbitral Tribunal's Discretion:** The arbitral tribunal has the authority to set a time limit, typically not exceeding 30 days, for all other parties to comment on the request for an additional award.
  - b. **Balancing Interests:** Allowing other parties to comment ensures fairness and provides an opportunity for all parties to express their views on the request.
4. **Key Implications:**
  - a. **Ensuring Completeness:** The provision acknowledges that the arbitration process might inadvertently omit certain claims, and it provides a mechanism to address this oversight.
  - b. **Party Autonomy:** The article respects party autonomy by allowing them to seek an additional award for claims they believe were omitted.
  - c. **Efficiency and Timeliness:** By setting specific timeframes for making the request and for comments from other parties, the article ensures that the process of seeking an additional award is timely and efficient.
  - d. **Transparency:** The requirement for notice to all parties promotes transparency, ensuring that all parties are aware of the request for an additional award and have an opportunity to participate in the process.

In summary, Article 40.1 of the HKIAC Arbitration Rules 2018 provides a mechanism for parties to request additional awards for claims that were presented during the arbitration but were omitted from the final award. It emphasises the importance of completeness in the arbitration process while maintaining fairness, transparency, and timeliness in the request and comment process.

**40.2 If the arbitral tribunal considers the request for an additional award to be justified, it shall make the additional award within 60 days after receipt of the request but may extend such time limit if necessary.**

This article addresses the arbitral tribunal's response and responsibilities when considering a request for an additional award, as outlined in Article 40.1 of the HKIAC Arbitration Rules 2018. Here is an analysis of its key points:

1. **Consideration of Justification:** The arbitral tribunal is tasked with assessing whether the request for an additional award is justified. This evaluation involves determining whether the claims in question were indeed presented during the arbitration but omitted from the original award.
2. **Timeframe for Making Additional Award:**



- a. 60-Day Limit: If the arbitral tribunal finds the request for an additional award to be justified, it is obligated to make the additional award within 60 days of receiving the request.
  - b. Promptness and Efficiency: This timeframe ensures that the additional award is issued in a reasonably timely manner, allowing the parties to receive resolution on the omitted claims without undue delay.
3. Extension of Time Limit:
- a. The article acknowledges that the arbitral tribunal has the discretion to extend the 60-day time limit if necessary.
  - b. Flexibility: The provision provides flexibility for cases where complex issues or unforeseen circumstances might require more time for careful consideration and decision-making.
4. Key Implications:
- a. Responsive and Just Process: The article ensures that the arbitral tribunal responds to the parties' request for an additional award and evaluates the justification for such a request.
  - b. Efficiency and Timeliness: The 60-day timeframe for making the additional award underscores the importance of resolving the omitted claims promptly, maintaining the efficiency of the arbitration process.
  - c. Quality Decision-Making: The allowance for extending the time limit, if necessary, reflects the tribunal's commitment to making well-considered decisions even in complex cases.
  - d. Fairness and Transparency: The provision maintains fairness by addressing omitted claims and ensuring that parties receive resolution on all the claims they presented during the arbitration.

In summary, Article 40.2 of the HKIAC Arbitration Rules 2018 outlines the process by which the arbitral tribunal considers and responds to requests for additional awards for claims omitted from the original award. The provision emphasises the importance of timely and well-considered decisions, while also allowing for flexibility in cases that require more time for thorough analysis.

**40.3 The arbitral tribunal has the power to make an additional award which is necessitated by or consequential on (a) the correction of any error in the award under Article 38; or (b) the interpretation of any point or part of the award under Article 39.**

This article addresses the arbitral tribunal's authority to issue additional awards that are necessitated by or consequential to specific actions taken in the arbitration process. Here is an analysis of its key points:

1. Correction of Award (Article 38):

- a. Necessitated by Correction: If the correction of any error in the award is made under Article 38 of the HKIAC Arbitration Rules 2018, the arbitral tribunal has the power to issue an additional award that is required as a result of that correction.
  - b. Maintaining Consistency: The provision acknowledges that corrections to the award may have implications that require corresponding adjustments or awards.
2. Interpretation of Award (Article 39):
- a. Consequential on Interpretation: If any point or part of the award is interpreted under Article 39, the arbitral tribunal is empowered to issue an additional award that is consequential to that interpretation.
  - b. Clarifying Implications: The article recognises that interpretations provided under Article 39 may lead to the need for further resolution or clarification, which can be addressed through additional awards.
3. Key Implications:
- a. Integrating with Corrective and Interpretive Processes: The article ensures that the issuance of additional awards is integrated with the processes of correcting errors and providing interpretations, allowing for consistent and comprehensive resolutions.
  - b. Holistic Approach to Resolutions: The provision acknowledges that the arbitration process is dynamic and that various actions, such as corrections and interpretations, can impact the outcome and completeness of the awards.
  - c. Efficiency and Resolution: By allowing the arbitral tribunal to issue additional awards in response to corrections and interpretations, the article ensures that parties receive comprehensive and coherent resolutions to their claims.

In summary, Article 40.3 of the HKIAC Arbitration Rules 2018 empowers the arbitral tribunal to issue additional awards that are necessitated by or consequential to corrections of errors under Article 38 and interpretations under Article 39. This provision promotes a comprehensive and holistic approach to resolving issues that may arise during or after the arbitration process.

#### 40.4 When an additional award is made, the provisions of Articles 35.2 to 35.6 shall apply.

This article addresses the procedural aspects and formalities associated with making additional awards under the HKIAC Arbitration Rules 2018. Here is an analysis of its key points:

1. Application of Articles 35.2 to 35.6:
  - a. ~~The article specifies that the provisions of Articles 35.2 to 35.6 of the HKIAC Arbitration Rules 2018 apply when an additional award is made.<sup>2</sup>~~

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<sup>2</sup> Incorrect guess by ChatGPT.

- b. ~~Article 35.2: This provision deals with the signature of the award.<sup>3</sup>~~
- c. ~~Article 35.3: This provision deals with the date of the award.<sup>4</sup>~~
- d. ~~Article 35.5: This provision deals with the communication of the award to the parties.<sup>5</sup>~~
- e. ~~Article 35.6: This provision pertains to the provision of reasons in support of the award, if requested.<sup>6</sup>~~

2. Key Implications:

- a. **Formal Consistency:** The provision ensures that the formalities associated with making an additional award are consistent with those applied to the original award, promoting a standardised approach.
- b. **Integrity of the Award:** By applying the same provisions related to signature, date, communication, and reasons, the article maintains the integrity and formalities of the award-making process.
- c. **Clarity and Transparency:** The application of these provisions ensures transparency and clarity in the process of making additional awards, allowing parties to have a clear record of the proceedings.
- d. **Fairness to Parties:** The reference to providing reasons under Article 35.6 highlights the possibility of providing reasons for the additional award, if requested by the parties. This enhances transparency and understanding.

In summary, Article 40.4 of the HKIAC Arbitration Rules 2018 ensures that the formalities associated with making additional awards align with the standards set for the original award. By applying specific provisions from Articles 35.2 to 35.6, the provision maintains consistency, transparency, and fairness in the process of issuing additional awards.

## Article 41 – Deposits for Costs

**41.1 As soon as practicable after receipt of the Notice of Arbitration by the Respondent, HKIAC shall, in principle, request the Claimant and the Respondent each to deposit with HKIAC an**

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<sup>3</sup> Incorrect guess by ChatGPT.

<sup>4</sup> Incorrect guess by ChatGPT.

<sup>5</sup> Incorrect guess by ChatGPT.

<sup>6</sup> Incorrect guess by ChatGPT.

**equal amount as an advance for the costs referred to in Article 34.1(a), (b), (c) and (e). HKIAC shall provide a copy of such request to the arbitral tribunal.**

Article 41.1 of the HKIAC Arbitration Rules 2018 pertains to the procedure for requesting the Claimant and Respondent to deposit an advance for the costs associated with the arbitration process. Let us break down and analyse the provisions of this article:

1. **Notice of Arbitration and Response:** The article begins by stating that this provision becomes relevant upon the receipt of the “Notice of Arbitration” by the Respondent. The “Notice of Arbitration” is a formal document that initiates the arbitration process and is typically filed by the Claimant, outlining the dispute and the relief sought. The Respondent then responds to this notice. Therefore, this provision applies at the early stages of the arbitration process.
2. **Request for Advance Payment:** The central aspect of this provision is the requirement for both the Claimant and the Respondent to deposit an equal amount with the HKIAC as an advance payment. This payment is intended to cover costs associated with the arbitration proceedings. These costs can include administrative fees, fees for the arbitrators, venue costs, and other related expenses.
3. **Advance Payment for Specified Costs:** The advance payment is specifically intended to cover costs referred to in Article 34.1(a), (b), (c), and (e) of the HKIAC Arbitration Rules 2018. It is important to refer to Article 34.1 of the same rules to understand the nature of these costs. Generally, these include the administrative fees of the HKIAC, fees and expenses of the arbitral tribunal, costs of expert witnesses, and costs associated with the hearing venue.
4. **Equal Deposit Requirement:** The provision emphasises that the Claimant and Respondent are each required to deposit an equal amount as an advance payment. This principle of equality aims to distribute the financial burden fairly between the parties. This approach prevents any party from having undue influence or control over the arbitration process due to a significant financial contribution.
5. **Communication with the Arbitral Tribunal:** The article also mentions that the HKIAC shall provide a copy of the request for advance payment to the arbitral tribunal. This establishes transparency in the financial matters of the arbitration process. The tribunal is aware of the parties’ financial commitments, ensuring that any financial considerations do not unduly impact the tribunal’s decision-making process.
6. **Timing:** The provision suggests that the request for advance payment should be made “as soon as practicable” after the Respondent’s receipt of the Notice of Arbitration. This underscores the importance of establishing the financial framework early in the process to ensure the smooth progression of the arbitration proceedings.

In summary, Article 41.1 of the HKIAC Arbitration Rules 2018 outlines a key procedural step in the arbitration process, which involves requesting the Claimant and Respondent to deposit equal amounts as an advance payment to cover specific costs associated with the arbitration. This provision contributes to the financial transparency and fairness of the arbitration proceedings.

**41.2 Where the Respondent submits a counterclaim or cross-claim, or it otherwise appears appropriate in the circumstances, HKIAC may request separate deposits.**

This provision introduces some flexibility into the requirement for equal deposits in situations where the Respondent introduces a counterclaim or cross-claim, or when the circumstances call for it. Let us break down the key points of Article 41.2:

1. **Counterclaims and Cross-Claims:** In arbitration, a counterclaim is a claim made by the Respondent against the original Claimant within the same arbitration proceedings. A cross-claim, on the other hand, is a claim made by a Respondent against another Respondent in a multi-party arbitration. Article 41.2 recognises that when a Respondent submits such counterclaims or cross-claims, the financial dynamics of the arbitration can change. These additional claims might necessitate separate financial arrangements.
2. **Flexibility:** This provision introduces a level of flexibility into the deposit requirement. Instead of strictly adhering to the equal deposit rule, HKIAC may request separate deposits in situations where the introduction of counterclaims or cross-claims significantly affects the costs associated with the arbitration. This flexibility is important to ensure that the financial burden is distributed fairly in light of the evolving nature of the dispute.
3. **Appropriate Circumstances:** Aside from counterclaims and cross-claims, the provision also considers “appropriate circumstances” as a basis for requesting separate deposits. This indicates that the HKIAC has discretionary authority to determine when it is reasonable to deviate from the equal deposit requirement. These “appropriate circumstances” might involve complex or multi-faceted disputes where separate financial arrangements better reflect the practical needs of the arbitration.
4. **Balancing Costs:** The purpose of this provision is to strike a balance between the interests of the parties and the necessity to cover the costs of arbitration. While equality in deposit requirements remains a general principle, the provision acknowledges that certain situations might warrant a departure from this principle for the sake of procedural efficiency and fairness.

In summary, Article 41.2 of the HKIAC Arbitration Rules 2018 provides HKIAC with the authority to request separate deposits when a Respondent introduces counterclaims or cross-claims or when other circumstances deem it appropriate. This provision demonstrates the rules’ adaptability to the changing dynamics of arbitration proceedings and ensures that financial arrangements remain fair and equitable to all parties involved.

**41.3 During the course of the arbitration, HKIAC may request the parties to make supplementary deposits with HKIAC. HKIAC shall provide a copy of such request to the arbitral tribunal.**

Article 41.3 of the HKIAC Arbitration Rules 2018 addresses the situation in which the HKIAC may request the parties involved in an arbitration to make supplementary deposits. Here is an analysis of this provision:

1. **Supplementary Deposits:** The provision acknowledges that the initial deposits made by the parties may not fully cover the evolving costs of the arbitration process. As the

arbitration proceedings unfold, unexpected expenses might arise, or the complexity of the case might result in higher costs than initially anticipated. In such cases, the HKIAC has the authority to request additional funds from the parties to ensure that the arbitration process can continue without interruption due to financial constraints.

2. **Financial Flexibility:** Article 41.3 introduces a mechanism to provide financial flexibility during the course of the arbitration. It acknowledges that the costs associated with arbitration are not always predictable from the outset and allows for adjustments as necessary. This is crucial to prevent disruptions in the proceedings and ensure that the arbitration process can proceed smoothly.
3. **Transparency:** Similar to the previous provisions, this article emphasises transparency by requiring that a copy of the request for supplementary deposits be provided to the arbitral tribunal. This ensures that the tribunal is aware of any financial adjustments being made and can take them into consideration as part of their decision-making process. Financial matters should not unduly influence the tribunal's independence and impartiality.
4. **HKIAC's Role:** The provision places the HKIAC in a proactive role by allowing it to assess the financial needs of the arbitration and determine when supplementary deposits are necessary. This reflects the HKIAC's responsibility to oversee the administrative aspects of the arbitration process, including financial management.
5. **Parties' Cooperation:** While the provision grants the HKIAC the authority to request supplementary deposits, it is important to note that the cooperation of the parties is essential. Parties are expected to comply with such requests to ensure the continuation of the arbitration process. Failure to provide supplementary deposits when requested could potentially lead to delays or other procedural consequences.

In summary, Article 41.3 of the HKIAC Arbitration Rules 2018 allows the HKIAC to request supplementary deposits from the parties during the course of the arbitration to cover additional costs that may arise. This provision reflects the need for financial flexibility and transparency within the arbitration process and ensures that financial considerations do not impede the progress of the proceedings.

**41.4 If the required deposits are not paid in full to HKIAC within 30 days after receipt of the request, HKIAC shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claim or counterclaim as the arbitral tribunal considers fit.**

Article 41.4 of the HKIAC Arbitration Rules 2018 outlines the consequences and procedures related to the payment of required deposits by the parties involved in an arbitration. Here is an analysis of this provision:

1. **Deposit Payment Deadline:** The provision establishes a specific timeframe within which the required deposits must be paid. If the parties are requested to make deposits for costs associated with the arbitration process, they are required to do so within 30 days after

receiving the request from HKIAC. These deposits are crucial to ensuring the financial viability of the arbitration proceedings and covering the expenses that will be incurred.

2. **Notification of Non-Payment:** If the required deposits are not paid in full within the stipulated 30-day period, Article 41.4 mandates that the HKIAC must inform the parties about the non-payment. This notification serves as a formal communication to the parties about the outstanding payment, potentially alerting them to the need for immediate action.
3. **Opportunity for Payment:** The provision offers the parties an opportunity to rectify the situation. Upon receiving notification of non-payment, one or both of the parties may make the necessary payment to fulfil the deposit requirement. This emphasises the importance of the financial commitment to the arbitration process.
4. **Consequences of Non-Payment:** If the required payment is not made even after notification and the expiration of the 30-day period, the arbitral tribunal is granted the authority to take certain actions. The provision outlines three possible courses of action:
5. **Suspension or Termination:** The arbitral tribunal may order the suspension or termination of the arbitration. This means that the proceedings will be put on hold or discontinued due to the lack of necessary funding. This is a serious consequence and highlights the importance of adhering to the financial obligations.
6. **Continuation with Adjustments:** Alternatively, the tribunal may choose to continue with the arbitration proceedings but with adjustments. This could mean proceeding only with respect to claims or counterclaims for which the required deposits have been paid, or on a limited basis as determined by the tribunal.
7. **Tribunal's Discretion:** The decision on whether to suspend, terminate, or continue with adjustments is left to the discretion of the arbitral tribunal. The tribunal will consider the circumstances of the case, the nature of the claims, and the overall fairness of the proceedings.

In summary, Article 41.4 of the HKIAC Arbitration Rules 2018 emphasises the importance of timely payment of required deposits to cover the costs of the arbitration process. Failure to make these payments can lead to significant consequences, including suspension, termination, or continuation with adjustments of the arbitration proceedings, all of which are at the discretion of the arbitral tribunal. This provision underscores the necessity of financial commitment for a smooth and effective arbitration process.

**41.5 If a party pays the required deposits on behalf of another party, the arbitral tribunal may, at the request of the paying party, make an award for reimbursement of the payment.**

Article 41.5 of the HKIAC Arbitration Rules 2018 addresses the situation where one party pays the required deposits on behalf of another party in the arbitration proceedings. Here is an analysis of this provision:

1. **Deposit Payment on Behalf of Another Party:** In certain situations, one party might choose to pay the required deposits for another party involved in the arbitration. This might be

due to various reasons, such as ensuring the continuity of the proceedings, facilitating the process, or demonstrating good faith.

2. **Reimbursement Award:** Article 41.5 provides that if a party makes a payment on behalf of another party, that paying party has the right to request the arbitral tribunal to make an award for the reimbursement of the payment. This means that the party who paid the deposit can seek compensation from the party on whose behalf the payment was made.
3. **Tribunal's Discretion:** The provision grants the arbitral tribunal the authority to decide whether to grant the reimbursement award. The tribunal will evaluate the circumstances, the reason for the payment, and the overall fairness of reimbursing the paying party.
4. **Request for Reimbursement:** The right to seek reimbursement is initiated by the paying party. If they choose to do so, they would need to formally request the arbitral tribunal to consider making an award for the reimbursement of the payment they made on behalf of the other party.
5. **Preserving the Arbitration Process:** The provision indirectly encourages parties to collaborate and maintain the arbitration process. By allowing reimbursement awards, the rules acknowledge that the financial aspects of the arbitration should not obstruct the resolution of the underlying dispute.
6. **Alignment with Arbitration Principles:** This provision aligns with the principles of fairness and efficiency in arbitration. It ensures that parties are not unfairly burdened by deposit payments and that a party stepping in to make a payment is not left in a disadvantaged financial position.

In summary, Article 41.5 of the HKIAC Arbitration Rules 2018 deals with the scenario in which one party pays the required deposits for another party in the arbitration. It establishes a mechanism through which the paying party can request the arbitral tribunal to make an award for the reimbursement of the payment. This provision promotes collaboration among parties while safeguarding the financial interests of those who contribute to the arbitration process.

**41.6 When releasing the final award, HKIAC shall render an account to the parties of the deposits received by HKIAC. Any unexpended balance shall be returned to the parties in the shares in which it was paid by the parties to HKIAC, or as otherwise instructed by the arbitral tribunal.**

Article 41.6 of the HKIAC Arbitration Rules 2018 pertains to the management of deposits paid by the parties for the arbitration process and the handling of any unexpended balance. Here is an analysis of this provision:

1. **Accounting for Deposits:** This provision establishes a process to account for the deposits received by the HKIAC throughout the arbitration proceedings. The HKIAC is responsible for maintaining transparency and providing an accurate account of the financial transactions related to the deposits.
2. **Final Award Release:** The requirement for rendering an account to the parties is linked to the release of the final award. This indicates that the financial reconciliation and accounting process will occur alongside the conclusion of the arbitration process.



3. **Return of Unexpended Balance:** If there is an unexpended balance from the deposits after covering the costs associated with the arbitration, this balance is to be returned to the parties. This ensures that the parties are not overburdened with unnecessary financial obligations beyond what was required to support the arbitration process.
4. **Proportional Distribution:** The provision outlines that any unexpended balance is to be returned to the parties in the shares in which they originally paid the deposits to the HKIAC. This ensures a proportional distribution of the returned funds based on the financial contributions of each party.
5. **Tribunal's Instructions:** The provision also provides for an alternative scenario where the arbitral tribunal can provide specific instructions regarding the distribution of the unexpended balance. This recognises the tribunal's authority in matters related to the financial aspects of the arbitration.
6. **Financial Fairness:** Article 41.6 underscores the importance of financial fairness and transparency throughout the arbitration process. The requirement to account for the deposits and return any unexpended balance ensures that the financial matters are handled fairly and in accordance with the contributions of the parties.
7. **Completion of Process:** The return of unexpended balances marks the conclusion of the financial obligations associated with the arbitration process. This aligns with the broader goal of bringing closure to the proceedings.

In summary, Article 41.6 of the HKIAC Arbitration Rules 2018 addresses the handling of deposits paid by the parties and the return of any unexpended balances. The provision emphasises transparency, financial fairness, and the proportional distribution of returned funds, contributing to the overall integrity of the arbitration process.

**41.7 HKIAC shall place the deposits made by the parties in an account at a reputable licensed deposit-taking institution. In selecting the account, HKIAC shall have due regard to the possible need to make the deposited funds available immediately.**

Article 41.7 of the HKIAC Arbitration Rules 2018 outlines the procedures for handling the deposits made by the parties in an arbitration. Here is an analysis of this provision:

1. **Deposits Handling:** This provision establishes the guidelines for HKIAC's management of the deposits received from the parties involved in the arbitration proceedings. These deposits are made to cover the costs associated with the arbitration, as specified in the previous sections.
2. **Reputable Licensed Deposit-Taking Institution:** The provision requires that the HKIAC places the deposited funds in an account at a reputable licensed deposit-taking institution. This requirement ensures that the deposited funds are held in a secure and regulated financial environment. The use of reputable institutions helps mitigate the risk of mismanagement or unauthorised access to the funds.
3. **Immediate Availability:** The selection of the account is not solely based on reputation but also considers the practicality of making the deposited funds available immediately. This

suggests that the HKIAC needs to strike a balance between security and accessibility. It is important for the funds to be readily accessible when required for covering the costs of the arbitration process.

4. **Consideration of Need:** The provision highlights that HKIAC must consider the potential necessity of accessing the funds promptly. This acknowledges that there might be instances where quick access to the deposited funds is crucial to ensuring the smooth progression of the arbitration proceedings.
5. **Financial Safeguards:** By requiring deposits to be placed in a licensed deposit-taking institution, this provision helps ensure that the funds are subject to appropriate financial safeguards and regulations. It is in line with the responsible management of funds entrusted to the HKIAC.
6. **Balancing Interests:** The provision balances the need for secure handling of funds with the practicality of accessing these funds when required. This demonstrates a pragmatic approach to financial management within the arbitration process.

In summary, Article 41.7 of the HKIAC Arbitration Rules 2018 outlines the requirement for HKIAC to place the deposited funds in an account at a reputable licensed deposit-taking institution. The provision emphasises the importance of balancing security with the need for immediate availability of funds, ensuring that the financial aspects of the arbitration process are managed responsibly and effectively.

## SECTION VI. OTHER PROVISIONS

### Article 42 – Expedited Procedure

**42.1 Prior to the constitution of the arbitral tribunal, a party may apply to HKIAC for the arbitration to be conducted in accordance with Article 42.2 where:**

- (a) the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence or cross-claim) does not exceed the amount set by HKIAC, as stated on HKIAC’s website on the date the Notice of Arbitration is submitted; or**
- (b) the parties so agree; or**
- (c) in cases of exceptional urgency.**

Article 42.1 of the HKIAC Arbitration Rules 2018 outlines the circumstances under which a party may apply to have an arbitration conducted in accordance with Article 42.2 of the same rules. This provision relates to the procedure for expedited arbitration. Here is an analysis of this provision:

1. **Expedited Arbitration Procedure:** The provision introduces the concept of an expedited arbitration procedure that can be applied prior to the constitution of the arbitral tribunal. Expedited arbitration is a streamlined and faster arbitration process designed to handle cases with lower complexity and financial value more efficiently.
2. **Grounds for Application:** Article 42.1 specifies three distinct scenarios under which a party can apply for the arbitration to be conducted according to the expedited arbitration procedure outlined in Article 42.2:
  - a. **Amount in Dispute:** If the aggregate of the claim and any counterclaim (or set-off defence or cross-claim) does not exceed the amount specified by HKIAC. The specified amount can be found on HKIAC’s website on the date when the Notice of Arbitration is submitted. This ensures that smaller disputes can benefit from the expedited procedure.
  - b. **Parties’ Agreement:** If the parties mutually agree to opt for the expedited arbitration procedure, they can apply to have the case conducted in this manner. This demonstrates the parties’ autonomy in choosing the procedural framework that suits their circumstances.
  - c. **Exceptional Urgency:** In cases of exceptional urgency, a party can apply for expedited arbitration. This might involve situations where immediate resolution is essential due to time-sensitive issues or potential harm if the dispute is not resolved quickly.
3. **Efficiency and Timeliness:** The provision aligns with the broader principles of arbitration efficiency and timeliness. It recognises that certain cases, particularly those of lower value or urgency, can benefit from a faster resolution process that avoids unnecessary delays.
4. **Party Autonomy:** The provision emphasises party autonomy by allowing them to choose the expedited arbitration procedure either by agreement or by meeting specific criteria.

5. HKIAC's Role: The HKIAC sets the threshold amount for applying the expedited procedure, maintains transparency about this threshold on its website, and administers the application process.

In summary, Article 42.1 of the HKIAC Arbitration Rules 2018 provides grounds for a party to apply for the expedited arbitration procedure outlined in Article 42.2. This provision recognises the importance of addressing smaller disputes efficiently, accommodating party preferences, and responding to cases of exceptional urgency.

**42.2 When HKIAC, after considering the views of the parties, grants an application made pursuant to Article 42.1, the arbitral proceedings shall be conducted in accordance with an Expedited Procedure based upon the foregoing provisions of these Rules, subject to the following changes:**

- (a) the case shall be referred to a sole arbitrator, unless the arbitration agreement provides for three arbitrators;
- (b) if the arbitration agreement provides for three arbitrators, HKIAC shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree, the case shall be referred to three arbitrators;
- (c) HKIAC may shorten the time limits provided for in the Rules, as well as any time limits that it has set;
- (d) after the submission of the Answer to the Notice of Arbitration, the parties shall in principle be entitled to submit one Statement of Claim and one Statement of Defence (and Counterclaim) and, where applicable, one Statement of Defence in reply to the Counterclaim;
- (e) the arbitral tribunal shall decide the dispute on the basis of documentary evidence only, unless it decides that it is appropriate to hold one or more hearings;
- (f) subject to any lien, the award shall be communicated to the parties within six months from the date when HKIAC transmitted the case file to the arbitral tribunal. In exceptional circumstances, HKIAC may extend this time limit;
- (g) the arbitral tribunal may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

Article 42.2 of the HKIAC Arbitration Rules 2018 outlines the procedures for the Expedited Procedure in cases where an application has been granted under Article 42.1. This provision establishes the streamlined process for conducting arbitrations under expedited rules. Let us analyse the details of this provision:

1. Expedited Procedure: Article 42.2 introduces the concept of an Expedited Procedure, which is designed to expedite the arbitration process for cases that meet the criteria specified in Article 42.1. This procedure aims to achieve faster and more efficient dispute resolution, while still maintaining fairness.

2. Appointment of Arbitrator(s):
  - a. If the arbitration agreement provides for a single arbitrator, the case shall be referred to a sole arbitrator. This reflects the efficiency objective by having a single decision-maker.
  - b. If the arbitration agreement specifies three arbitrators, HKIAC will invite the parties to agree to refer the case to a sole arbitrator. If the parties agree, the case proceeds with a sole arbitrator. If they do not agree, the case will proceed with three arbitrators.
3. Shortened Time Limits: HKIAC has the authority to reduce the time limits specified in the standard rules or any additional time limits set by the institution. This power enables the process to be expedited further to meet the goals of the procedure.
4. Limited Submissions: After the Answer to the Notice of Arbitration, parties are typically entitled to submit one Statement of Claim and one Statement of Defence (and Counterclaim), along with a possible Statement of Defence in reply to the Counterclaim. This limitation on submissions streamlines the presentation of the case.
5. Limited Use of Hearings: The expedited procedure generally relies on documentary evidence for decision-making. The arbitral tribunal may decide to hold one or more hearings only if it considers them appropriate. This aims to reduce time and costs associated with extensive oral proceedings.
6. Timely Award: The provision establishes a timeline for communicating the award to the parties. The award should be communicated within six months from the date when HKIAC transmitted the case file to the arbitral tribunal. This ensures that the arbitration process is concluded promptly.
7. Reasons for Award: The arbitral tribunal may provide reasons for the award in summary form, unless the parties have mutually agreed that no reasons need to be given. This is in line with the streamlined approach of the Expedited Procedure.

In summary, Article 42.2 of the HKIAC Arbitration Rules 2018 outlines the specifics of the Expedited Procedure for cases meeting the criteria of Article 42.1. The provision focuses on streamlining the arbitration process by limiting submissions, potentially reducing the number of arbitrators, using documentary evidence, and ensuring timely communication of the award. These provisions collectively aim to provide efficient and effective resolution for cases that meet the specified criteria.

**42.3 Upon the request of any party and after consulting with the parties and any confirmed or appointed arbitrators, HKIAC may, having regard to any new circumstances that have arisen, decide that the Expedited Procedure under Article 42 shall no longer apply to the case. Unless HKIAC considers that it is appropriate to revoke the confirmation or appointment of any arbitrator, the arbitral tribunal shall remain in place.**

Article 42.3 of the HKIAC Arbitration Rules 2018 addresses the scenario where a party requests the removal of the Expedited Procedure and the potential effects on the arbitral tribunal. Here is an analysis of this provision:

1. **Discontinuing the Expedited Procedure:** This provision allows for a party to request the cessation of the Expedited Procedure, returning to the regular arbitration procedure under the rules. The Expedited Procedure might have been initially applicable based on the circumstances specified in Article 42.1.
2. **Request and Consultation:** To initiate the process, a party must submit a request to HKIAC. Following the request, HKIAC will consult with the parties and any confirmed or appointed arbitrators. This ensures that all relevant parties and decision-makers are involved in the consideration of discontinuing the expedited process.
3. **Consideration of New Circumstances:** The decision to discontinue the Expedited Procedure is contingent upon “any new circumstances that have arisen”. This indicates that developments occurring after the application of the Expedited Procedure might prompt a party to seek a re-evaluation of the procedure’s appropriateness.
4. **Continuation of Arbitral Tribunal:** Unless HKIAC deems it necessary to revoke the confirmation or appointment of any arbitrator, the arbitral tribunal will remain in place. This means that the arbitrators already selected will continue to handle the case, even if the expedited procedure is no longer applicable.
5. **Flexibility and Fairness:** The provision offers flexibility to parties to adapt the procedure to the evolving needs of the case. It also emphasises fairness by ensuring that arbitrators who have been confirmed or appointed continue their roles unless there is a compelling reason for their removal.
6. **Preservation of Efficiency:** The article recognises that circumstances might change during the course of the arbitration process, and it offers a mechanism to transition back to a regular arbitration procedure if warranted.

In summary, Article 42.3 of the HKIAC Arbitration Rules 2018 outlines the process by which a party can request the discontinuation of the Expedited Procedure and return to a regular arbitration process. The provision emphasises the importance of consultation, consideration of new circumstances, and maintaining the continuity of the arbitral tribunal unless specific reasons warrant changes.

## Article 43 – Early Determination Procedure

**43.1 The arbitral tribunal shall have the power, at the request of any party and after consulting with all other parties, to decide one or more points of law or fact by way of early determination procedure, on the basis that:**

- (a) such points of law or fact are manifestly without merit; or**
- (b) such points of law or fact are manifestly outside the arbitral tribunal’s jurisdiction; or**
- (c) even if such points of law or fact are submitted by another party and are assumed to be correct, no award could be rendered in favour of that party.**

Article 43.1 of the HKIAC Arbitration Rules 2018 outlines the provision for an early determination procedure that the arbitral tribunal can utilise based on specific conditions. Let us break down and analyse the key components of this provision:

1. **Early Determination Procedure:** Article 43.1 introduces the concept of an early determination procedure, which allows the arbitral tribunal to decide certain points of law or fact before the full arbitration proceedings progress. This mechanism aims to expedite the resolution of the dispute by addressing key issues upfront.
2. **Conditions for Early Determination:**
  - a. **Manifestly Without Merit (Subsection a):** This condition allows the tribunal to decide a point of law or fact if it is evident that the argument being presented lacks substance or validity. In other words, if the point of contention is clearly weak and unlikely to succeed, the tribunal can make an early determination.
  - b. **Manifestly Outside Jurisdiction (Subsection b):** If it is apparent that a point of law or fact falls outside the tribunal’s jurisdiction or is beyond the scope of the arbitration agreement, the tribunal can decide on its jurisdiction early in the process.
  - c. **No Potential for Award (Subsection c):** If a point of law or fact submitted by a party, even when assumed to be correct, would not lead to an award in favour of that party, the tribunal can make an early determination. This recognises that certain arguments might be irrelevant to the ultimate outcome of the case.
3. **Consultation Requirement:** The provision highlights the importance of consultation by requiring the arbitral tribunal to consult with all parties before deciding on early determination. This ensures that all parties have an opportunity to provide input and respond to the request for early determination.
4. **Efficiency and Procedural Streamlining:** Article 43.1 reflects a commitment to making the arbitration process efficient and streamlined. By allowing the tribunal to address certain points of contention early, the process can avoid unnecessary delays caused by weak arguments or issues clearly falling outside the tribunal’s jurisdiction.

5. **Balancing Fairness:** While the provision enables early determination, it also considers fairness by requiring consultation with all parties. This ensures that no party is unfairly deprived of the opportunity to present their case on crucial points of law or fact.
6. **Preserving Autonomy:** Despite the provision for early determination, the main arbitration proceedings and the parties' autonomy in presenting their case are not compromised. This procedure focuses on specific points, rather than undermining the broader dispute resolution process.

In summary, Article 43.1 of the HKIAC Arbitration Rules 2018 introduces the concept of an early determination procedure that allows the arbitral tribunal to decide specific points of law or fact before the full arbitration proceedings. The provision focuses on issues that are clearly without merit, outside jurisdiction, or unlikely to lead to an award. It emphasises consultation and procedural fairness while contributing to the efficiency of the arbitration process.

#### **43.2 Any party making a request for early determination procedure shall communicate the request to the arbitral tribunal, HKIAC and all other parties.**

Article 43.2 of the HKIAC Arbitration Rules 2018 outlines the procedural requirement for communicating a request for the early determination procedure to the relevant parties and institutions. Let us analyse the key aspects of this provision:

1. **Request Communication:** This provision stipulates that any party intending to invoke the early determination procedure must communicate their request to three key entities:
  - a. **Arbitral Tribunal:** The party making the request should directly communicate the request to the arbitral tribunal. This ensures that the tribunal is aware of the party's intention to seek an early determination on specific points of law or fact.
  - b. **HKIAC:** The request must also be communicated to the HKIAC. HKIAC is the institution that administers the arbitration process and plays a central role in ensuring procedural adherence.
  - c. **All Other Parties:** The provision mandates that the party making the request must communicate it to all other parties involved in the arbitration. This step ensures transparency and gives all parties the opportunity to be aware of the request and to respond appropriately.
2. **Transparency and Fairness:** Requiring the party to communicate the early determination request to all parties promotes transparency within the arbitration proceedings. Allowing all parties to be informed of such requests ensures that everyone has equal access to information and an opportunity to participate in discussions.
3. **Procedural Order:** By mandating the communication of the request to the arbitral tribunal, HKIAC, and all other parties, the provision establishes a clear procedural order for invoking the early determination procedure. This ensures that all relevant parties are informed and can collectively proceed in accordance with the rules.



4. Collaborative Process: The communication requirement encourages collaboration and effective communication among the parties and relevant institutions. It also supports the principle that the arbitration process involves active participation and input from all involved parties.
5. Efficient Process: Having a standardised method for communicating such requests helps maintain the efficiency of the arbitration process. It prevents misunderstandings and ensures that the relevant parties are promptly informed of any intention to invoke the early determination procedure.

In summary, Article 43.2 of the HKIAC Arbitration Rules 2018 establishes the necessity of communicating a request for the early determination procedure to the arbitral tribunal, HKIAC, and all other parties. This requirement promotes transparency, fairness, and a collaborative approach to the arbitration process, ensuring that all relevant parties are informed and involved in the procedural steps.

**43.3 Any request for early determination procedure shall be made as promptly as possible after the relevant points of law or fact are submitted, unless the arbitral tribunal directs otherwise.**

Article 43.3 of the HKIAC Arbitration Rules 2018 outlines the timing aspect of making requests for the early determination procedure. Let us analyse the key elements of this provision:

1. Prompt Request Requirement: This provision establishes the principle that any party seeking to utilise the early determination procedure must do so promptly after the relevant points of law or fact are submitted in the arbitration proceedings.
2. Timely Resolution: The requirement for a prompt request underscores the intent to achieve timely resolution of disputes. Parties are encouraged to identify and address key issues early on, contributing to the overall efficiency of the arbitration process.
3. Relevance to the Stage: The provision focuses on making the request in relation to the timing of when the relevant points of law or fact are submitted. This ensures that parties do not delay in raising important issues, as doing so promptly benefits both the parties and the efficiency of the proceedings.
4. Tribunal's Discretion: The provision acknowledges that there might be situations where the arbitral tribunal could direct otherwise regarding the timing of the request. This recognises the tribunal's authority to manage the process and adapt the timing requirements as needed, while still promoting efficiency.
5. Efficiency and Streamlining: By emphasising the importance of a prompt request, the provision aligns with the broader goals of efficiency and procedural streamlining that arbitration often aims to achieve.
6. Avoiding Delay: Requiring a prompt request helps prevent unnecessary delays that might arise from postponing discussions on crucial issues. It encourages parties to address these issues when they are most relevant to the case.

In summary, Article 43.3 of the HKIAC Arbitration Rules 2018 emphasises the need for parties to promptly request the early determination procedure after submitting relevant points of law or fact. This requirement aligns with the goal of timely resolution and efficient case management within the arbitration process.

**43.4 The request for early determination procedure shall include the following:**

- (a) a request for early determination of one or more points of law or fact and a description of such points;**
- (b) a statement of the facts and legal arguments supporting the request;**
- (c) a proposal of the form of early determination procedure to be adopted by the arbitral tribunal;**
- (d) comments on how the proposed form referred to in Article 43.4(c) would achieve the objectives stated in Articles 13.1 and 13.5; and**
- (e) confirmation that copies of the request and any supporting materials included with it have been or are being communicated simultaneously to all other parties by one or more means of service to be identified in such confirmation.**

Article 43.4 of the HKIAC Arbitration Rules 2018 outlines the requirements for the content of a request for the early determination procedure. Let us analyse the key components of this provision:

1. **Comprehensive Request Content:** This provision sets out the specific information and details that must be included in a party's request to initiate the early determination procedure.
2. **Description of Points:** The requesting party is required to specify the point or points of law or fact that they seek to have determined early. This ensures clarity and transparency about the issues at hand.
3. **Factual and Legal Basis:** The request must contain a statement of the relevant facts and the legal arguments that support the early determination request. This information provides the arbitral tribunal and other parties with the necessary context to evaluate the request.
4. **Proposed Procedure Form:** The requesting party should propose a form for the early determination procedure that they believe is suitable for the case. This suggests that parties are actively involved in shaping the procedure that will be followed.
5. **Objective Alignment:** The provision requires comments on how the proposed procedure aligns with the objectives stated in Articles 13.1 and 13.5 of the rules. This ensures that the suggested procedure aligns with the general principles and goals of the arbitration process.
6. **Communication to Other Parties:** The request must confirm that copies of the request and any supporting materials have been or are being simultaneously communicated to all

other parties involved in the arbitration. This emphasises transparency and ensures that all parties are informed of the request and supporting information.

7. Collaborative Process: The content requirements outlined in this provision promote a collaborative process by encouraging the requesting party to provide clear information and propose a procedure that aligns with the arbitration's objectives.
8. Efficiency and Streamlining: The request's detailed content ensures that the early determination process is well-defined from the start, contributing to the overall efficiency of the arbitration proceedings.

In summary, Article 43.4 of the HKIAC Arbitration Rules 2018 specifies the elements that must be included in a party's request for the early determination procedure. These requirements ensure that the request is comprehensive, transparent, and aligned with the arbitration's goals. It also facilitates effective communication with all parties involved in the proceedings.

**43.5 After providing all other parties with an opportunity to submit comments on the request, the arbitral tribunal shall issue a decision either dismissing the request or allowing the request to proceed by fixing the early determination procedure in the form it considers appropriate. The arbitral tribunal shall make such decision within 30 days from the date of filing the request. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.**

Article 43.5 of the HKIAC Arbitration Rules 2018 addresses the process after a party has submitted a request for the early determination procedure. This provision outlines the procedure that the arbitral tribunal follows in considering and responding to the request. Let us analyse the key elements of this provision:

1. Comment Period: After the requesting party submits a request for the early determination procedure, all other parties are given an opportunity to submit their comments on the request. This comment period ensures that all parties have a chance to express their views on whether the request should be granted and the proposed procedure.
2. Arbitral Tribunal Decision: The arbitral tribunal is responsible for making a decision on whether to allow the early determination request to proceed. The tribunal has two options:
  - a. Dismissal: The tribunal can dismiss the request if it finds that the request lacks merit or if it determines that the early determination procedure is not suitable for the case.
  - b. Approval: If the tribunal deems the request appropriate, it will allow the request to proceed. In doing so, the tribunal will establish the specific procedure for early determination.
3. Procedure Formulation: If the tribunal approves the request, it will determine the form of the early determination procedure. This means the tribunal decides how the procedure will be carried out, taking into account the specifics of the case.

4. **Time Limit for Decision:** The provision establishes a time limit of 30 days from the date of filing the request within which the arbitral tribunal must issue its decision. This ensures a relatively prompt resolution and prevents unnecessary delays.
5. **Extension of Time:** The time limit for the tribunal's decision may be extended under two circumstances:
  - a. **Party Agreement:** The parties involved can agree to extend the time limit if they deem it necessary.
  - b. **HKIAC Discretion:** The HKIAC may extend the time limit in appropriate circumstances. This might be done to account for complex cases or other justifiable reasons.
6. **Efficiency and Timeliness:** The provision reflects the overarching goals of arbitration, including efficiency and timeliness. It ensures that parties receive a decision on the early determination request within a reasonable time frame.
7. **Transparency and Participation:** Allowing parties to submit comments ensures transparency and participation in the process. The provision respects the principle of giving all parties a voice in shaping the arbitration's procedural aspects.

In summary, Article 43.5 of the HKIAC Arbitration Rules 2018 outlines the steps the arbitral tribunal takes after receiving a request for the early determination procedure. The provision highlights the importance of considering comments, making a timely decision, and ensuring that the procedure aligns with the goals of the arbitration process.

**43.6 If the request is allowed to proceed, the arbitral tribunal shall make its order or award, which may be in summary form, on the relevant points of law or fact. The arbitral tribunal shall make such order or award within 60 days from the date of its decision to proceed. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.**

Article 43.6 of the HKIAC Arbitration Rules 2018 pertains to the process following the approval of a request for early determination. Let us analyse the key aspects of this provision:

1. **Early Determination Order or Award:** Once the arbitral tribunal decides to allow the early determination request to proceed, it is empowered to issue an order or award on the specific points of law or fact that were subject to the request.
2. **Order or Award in Summary Form:** The provision acknowledges that the order or award resulting from the early determination procedure may be presented in a summary form. This is consistent with the expedited nature of early determination, allowing for a streamlined presentation of the tribunal's findings.
3. **Time Limit for Decision:** The article sets a time limit of 60 days from the date of the tribunal's decision to proceed with the early determination within which the tribunal must issue its order or award. This timeframe underscores the importance of timely resolution, which is a key aspect of arbitration procedures.

4. Extension of Time: The provision allows for the extension of the 60-day time limit under two circumstances:
  - a. Party Agreement: If the parties agree, they can extend the time limit beyond the initial 60 days.
  - b. HKIAC Discretion: The HKIAC may also extend the time limit in appropriate circumstances. This discretionary extension is designed to ensure flexibility while maintaining the overall efficiency of the arbitration process.
5. Efficiency and Timeliness: The provision reinforces the efficiency and timeliness aspects of the arbitration process, ensuring that decisions resulting from the early determination procedure are rendered promptly.
6. Continuation of Streamlining: By allowing for summary-form orders or awards, and setting time limits for their issuance, the provision maintains the streamlined approach characteristic of the early determination procedure.
7. Party Autonomy and Procedural Flexibility: The provision respects party autonomy by permitting parties to agree to extend the time limit. At the same time, HKIAC's discretion to extend the time limit allows for responsiveness to specific case circumstances.

In summary, Article 43.6 of the HKIAC Arbitration Rules 2018 outlines the process following the approval of a request for early determination. It emphasises the issuance of an order or award on the relevant points of law or fact, often in summary form, within a specific time frame. The provision underscores efficiency, timeliness, and procedural flexibility as key aspects of this process.

#### **43.7 Pending the determination of the request, the arbitral tribunal may decide whether and to what extent the arbitration shall proceed.**

Article 43.7 of the HKIAC Arbitration Rules 2018 addresses the authority of the arbitral tribunal to make decisions regarding the continuation of the arbitration while a request for early determination is pending. Let us analyse the key elements of this provision:

1. Decision on Arbitration Continuation: This provision empowers the arbitral tribunal to make decisions regarding the course of the arbitration proceedings while a request for early determination is still under consideration.
2. Timing and Context: The provision operates in the interim period between the filing of the request for early determination and the tribunal's decision on whether to allow the request to proceed. It acknowledges that certain issues might arise during this time that require the tribunal's attention.
3. Proceedings Management: The arbitral tribunal has the discretion to decide whether and to what extent the arbitration shall proceed during this interim period. This decision can include matters such as holding hearings, receiving submissions, or addressing any other procedural steps.

4. **Flexibility and Adaptability:** By allowing the tribunal to determine the appropriate course of action, the provision demonstrates a flexible approach to case management. The tribunal can tailor its decisions to suit the unique circumstances of each case.
5. **Efficiency and Streamlining:** The provision aligns with the overall goal of maintaining efficiency and streamlining the arbitration process. It ensures that the proceedings continue in a manner that best serves the resolution of the dispute.
6. **Balancing Interests:** The provision considers the balance between the need to address the ongoing dispute and the potential for early determination on specific points. It enables the tribunal to manage the proceedings effectively while considering the potential impact of the pending early determination request.
7. **Preservation of Party Rights:** While the tribunal has the authority to manage the proceedings, it is important to note that this provision does not impede parties' rights to have their case fully heard and addressed.

In summary, Article 43.7 of the HKIAC Arbitration Rules 2018 grants the arbitral tribunal the authority to decide how the arbitration shall proceed while a request for early determination is pending. This provision ensures that the proceedings are managed effectively, while still respecting the parties' rights and the overarching goals of efficiency and fairness in the arbitration process.

#### **Article 44 – Disclosure of Third Party Funding of Arbitration**

**44.1 If a funding agreement is made, the funded party shall communicate a written notice to all other parties, the arbitral tribunal, any emergency arbitrator and HKIAC of:**

- (a) **the fact that a funding agreement has been made; and**
- (b) **the identity of the third party funder.**

Article 44.1 of the HKIAC Arbitration Rules 2018 addresses the disclosure requirements related to third-party funding agreements in the context of arbitration proceedings. This provision emphasises the importance of transparency and communication when such funding arrangements are in place.

1. Here is an analysis of Article 44.1: Funding Agreement Disclosure: The provision pertains to situations where a party involved in arbitration has entered into a funding agreement with a third-party funder. A funding agreement involves a third party providing financial support to one of the parties in the arbitration.
2. **Notice Requirement:** Article 44.1 outlines specific communication obligations for the funded party:
  - a. **Communication to All Parties:** The funded party is required to provide a written notice to all other parties involved in the arbitration. This ensures that all parties are informed about the presence of third-party funding, promoting transparency and equal footing among the parties.

- b. Communication to Arbitral Tribunal: The notice must also be sent to the arbitral tribunal itself. This keeps the tribunal informed about the financial dynamics of the case, which can influence cost considerations and potential conflicts of interest.
  - c. Communication to Emergency Arbitrator: If an emergency arbitrator is involved in the proceedings, the notice must also be provided to them. This includes those appointed to handle urgent matters before the full arbitral tribunal is constituted.
  - d. Communication to HKIAC: Finally, the notice must be communicated to the HKIAC. This ensures that the arbitration institution overseeing the proceedings is aware of the third-party funding arrangement.
3. Content of Notice:
- a. Funding Agreement Fact: The notice should indicate the fact that a funding agreement has been established. This acknowledges the presence of a third-party funder and provides a clear notification to all relevant parties and entities.
  - b. Third-Party Funder Identity: The notice must also disclose the identity of the third-party funder. This transparency ensures that parties and the arbitration institution are aware of the entities financially supporting one of the parties.
4. Transparency and Fairness: Article 44.1 aims to promote transparency, fairness, and openness in arbitration proceedings. It ensures that parties have accurate and complete information about the financial arrangements of their counterparts, allowing them to assess potential implications for the proceedings.
5. Prevention of Bias or Conflict: Disclosure of third-party funding helps prevent potential bias or conflicts of interest. The disclosure requirement allows all parties and the tribunal to evaluate whether the funding arrangement could influence the decisions or conduct of the funded party.
6. Modern Approach: The requirement to disclose third-party funding reflects the evolving landscape of arbitration and acknowledges the increasing prevalence of such funding arrangements in complex disputes.

In summary, Article 44.1 of the HKIAC Arbitration Rules 2018 establishes a clear and comprehensive mechanism for the disclosure of third-party funding agreements in arbitration proceedings. By mandating written notices to all parties, the arbitral tribunal, emergency arbitrator, and HKIAC, the provision ensures transparency, fairness, and prevention of potential conflicts of interest arising from funding arrangements.

#### **44.2 The notice referred to in Article 44.1 must be communicated:**

- (a) in respect of a funding agreement made on or before the commencement of the arbitration, in the application for the appointment of an emergency arbitrator, the**

**Notice of Arbitration, the Answer to the Notice of Arbitration, the Request for Joinder or the Answer to the Request for Joinder (as applicable); or**

- (b) in respect of a funding agreement made after the commencement of the arbitration, as soon as**

**practicable after the funding agreement is made. 44.3 Any funded party shall disclose any changes to the information referred to in Article 44.1 that occur after the initial disclosure.**

Article 44.2 of the HKIAC Arbitration Rules 2018 elaborates on the procedural aspects of disclosing third-party funding agreements in arbitration proceedings. This provision outlines when and how the disclosure should take place, as well as the obligation to update the disclosed information if changes occur. Here is an analysis of Article 44.2:

1. **Timing of Disclosure for Funding Agreements Made Before Arbitration:** If a funding agreement was made on or before the commencement of the arbitration, the disclosure must be communicated in specific documents:
  - a. Emergency Arbitrator Application
  - b. Notice of Arbitration
  - c. Answer to the Notice of Arbitration
  - d. Request for Joinder
  - e. Answer to the Request for Joinder (as applicable)
  - f. This requirement ensures that all parties, including the emergency arbitrator (if applicable), receive the relevant information about third-party funding arrangements early in the arbitration process.
2. **Timing of Disclosure for Funding Agreements Made After Arbitration:**
  - a. If a funding agreement is made after the commencement of the arbitration, the provision stipulates that the disclosure should be made as soon as practicable after the funding agreement is established.
  - b. This timely disclosure ensures that parties and the arbitral tribunal are promptly informed about any changes in the financial dynamics of the arbitration proceedings.
3. **Balancing Transparency and Efficiency:** Article 44.2 strikes a balance between ensuring transparency and efficiency. By specifying when and how the disclosure should be made, the provision facilitates the dissemination of information without causing undue delays in the arbitration process.
4. **Monitoring Changes and Updates:**
  - a. Article 44.3 further emphasises that any changes to the information disclosed in Article 44.1 must be communicated by the funded party.



- b. This requirement ensures that parties and the tribunal remain informed about developments related to the third-party funding arrangement, thereby preventing any surprises or disruptions due to evolving financial arrangements.
- 5. **Compliance and Procedural Clarity:** The provision provides a clear framework for compliance with the disclosure requirement. It guides parties on when and how to communicate information related to third-party funding, promoting adherence to the rules and transparency in the process.
- 6. **Alignment with Modern Practices:** The requirement to disclose funding arrangements aligns with the growing recognition of the impact of third-party funding on arbitration. It reflects contemporary practices and promotes fairness and transparency in a changing landscape.

In summary, Article 44.2 of the HKIAC Arbitration Rules 2018 outlines the procedural details of disclosing third-party funding agreements in arbitration proceedings. By specifying the timing and means of disclosure, the provision promotes transparency and accountability while maintaining procedural efficiency. The subsequent requirement to disclose changes in the disclosed information ensures that parties and the tribunal remain up-to-date on developments related to third-party funding.

#### **Article 45 – Confidentiality**

**45.1 Unless otherwise agreed by the parties, no party or party representative may publish, disclose or communicate any information relating to:**

- (a) the arbitration under the arbitration agreement; or**
- (b) an award or Emergency Decision made in the arbitration.**

Article 45.1 of the HKIAC Arbitration Rules 2018 addresses the issue of confidentiality and the restriction on parties and their representatives from publishing, disclosing, or communicating certain information related to the arbitration proceedings and its outcomes. Here is an analysis of Article 45.1:

- 1. **Scope of Restriction:** The provision applies to information related to two main aspects:
  - a. **Arbitration under the Arbitration Agreement:** This refers to the entire arbitration process established by the arbitration agreement between the parties.
  - b. **Award or Emergency Decision:** This pertains to the final decision (award) of the arbitral tribunal or an emergency arbitrator’s decision (Emergency Decision) during the proceedings.
- 2. **Confidentiality Presumption:** Article 45.1 establishes a default position of confidentiality for arbitration proceedings and their outcomes. Parties and their representatives are generally prohibited from publicly discussing or disclosing information about these matters.

3. **Party Autonomy to Agree Otherwise:** The provision acknowledges the parties' autonomy to agree to a different approach regarding confidentiality. If the parties explicitly agree to disclose certain information, this agreement would override the default confidentiality requirement.
4. **Purpose of Confidentiality:** Confidentiality is a fundamental feature of arbitration that protects the privacy of parties, their business interests, and the proceedings themselves. It allows parties to engage in open discussions without the fear of information being misused or shared publicly.
5. **Protection of Commercial Sensitivity:** Confidentiality is particularly important in commercial arbitration, where sensitive business information is often discussed. This provision helps protect parties' proprietary information and trade secrets.
6. **Preserving Integrity:** Confidentiality contributes to the integrity of the arbitration process. Publicising arbitration-related information could potentially influence public perception, create bias, or undermine the perceived fairness of the process.
7. **Mitigating Prejudice:** By preventing parties from selectively disclosing information, Article 45.1 prevents a party from attempting to sway public opinion by presenting a one-sided view of the arbitration process or outcome.
8. **Respecting Award Finality:** Confidentiality also helps to maintain the finality of awards. If arbitration-related information were freely disseminated, it might lead to challenges or attempts to revisit awards through public pressure.

In summary, Article 45.1 of the HKIAC Arbitration Rules 2018 establishes a presumption of confidentiality regarding arbitration proceedings and their outcomes. It restricts parties and their representatives from publicly publishing, disclosing, or communicating information related to the arbitration process or any awards or Emergency Decisions. While parties can agree otherwise, the provision primarily serves to protect the privacy, integrity, and commercial interests of the arbitration process.

**45.2 Article 45.1 also applies to the arbitral tribunal, any emergency arbitrator, expert, witness, tribunal secretary and HKIAC.**

Article 45.2 of the HKIAC Arbitration Rules 2018 extends the application of the confidentiality provisions outlined in Article 45.1 to various participants involved in the arbitration process. This article emphasises the broader scope of confidentiality and ensures consistent treatment across all individuals and entities connected to the proceedings. Here is an analysis of Article 45.2:

1. **Application to Multiple Participants:** Article 45.1 establishes that parties and their representatives are bound by confidentiality regarding arbitration proceedings and outcomes. Article 45.2 takes this a step further by extending the same confidentiality obligations to a range of participants beyond the parties themselves.
2. **Arbitral Tribunal and Emergency Arbitrator:** The provision explicitly includes the arbitral tribunal (comprising the arbitrators responsible for resolving the dispute) and any emergency arbitrator (if applicable) in the scope of confidentiality. This ensures that the

individuals directly responsible for the decision-making process are equally subject to the confidentiality requirements.

3. Expert, Witness, and Tribunal Secretary: The extension of confidentiality to experts, witnesses, and tribunal secretaries acknowledges that these individuals play integral roles in the arbitration process. This prevents them from sharing sensitive information about the proceedings and maintaining the overall integrity of the process.
4. HKIAC: The inclusion of HKIAC itself (the arbitration institution overseeing the proceedings) in the scope of confidentiality demonstrates the institution's commitment to safeguarding the privacy and confidentiality of arbitration proceedings and their outcomes.
5. Consistency and Fairness: By uniformly applying confidentiality obligations to all relevant participants, Article 45.2 ensures consistency and fairness. It prevents selective disclosure of information and reinforces the confidentiality of the process from all angles.
6. Mitigating Risk: Ensuring that all involved individuals are bound by confidentiality minimises the risk of inadvertent or intentional breaches. It creates a shared understanding of the importance of maintaining confidentiality throughout the arbitration process.
7. Preservation of Arbitration Integrity: The provision supports the principle that arbitration is conducted in a private and confidential manner. This is crucial for parties to feel comfortable presenting their arguments and evidence openly, without concerns about the public dissemination of sensitive information.
8. Avoiding Bias and Prejudice: Applying confidentiality to all participants, including experts, witnesses, and tribunal members, helps prevent one-sided or biased public disclosure that could influence public opinion or create an unfair advantage for one party.

In summary, Article 45.2 of the HKIAC Arbitration Rules 2018 extends the confidentiality obligations outlined in Article 45.1 to various individuals and entities involved in the arbitration process. By doing so, the provision promotes consistency, fairness, and the preservation of the private and confidential nature of arbitration proceedings and outcomes.

**45.3 Article 45.1 does not prevent the publication, disclosure or communication of information referred to in Article 45.1 by a party or party representative:**

- (a) (i) to protect or pursue a legal right or interest of the party; or**  
**(ii) to enforce or challenge the award or Emergency Decision referred to in Article 45.1; in legal proceedings before a court or other authority; or**
- (b) to any government body, regulatory body, court or tribunal where the party is obliged by law to make the publication, disclosure or communication; or**
- (c) to a professional or any other adviser of any of the parties, including any actual or potential witness or expert; or**
- (d) to any party or additional party and any confirmed or appointed arbitrator for the purposes of Articles 27, 28, 29 or 30; or**
- (e) to a person for the purposes of having, or seeking, third party funding of arbitration.**

Article 45.3 of the HKIAC Arbitration Rules 2018 provides exceptions to the general confidentiality requirements outlined in Article 45.1. This article outlines specific circumstances where a party or their representative can disclose information related to the arbitration proceedings, award, or Emergency Decision despite the general confidentiality obligation. Here is an analysis of Article 45.3:

1. **Exceptions to Confidentiality:** Article 45.1 establishes a general rule of confidentiality, while Article 45.3 carves out specific exceptions where parties or their representatives are allowed to disclose otherwise confidential information.
2. **Legal Proceedings:**
  - a. Subsection (a) provides exceptions when information can be disclosed to protect or pursue a legal right or interest, or to enforce or challenge the award or Emergency Decision in legal proceedings before a court or other authority.
  - b. This recognises that parties may need to disclose information in judicial proceedings related to the arbitration, such as enforcement actions or challenges to the award.
3. **Legal Obligations:**
  - a. Subsection (b) permits disclosure when a party is legally obliged to make such publication, disclosure, or communication to a government body, regulatory body, court, or tribunal.
  - b. This aligns with the principle that legal obligations supersede confidentiality obligations.
4. **Professional Advisers:**
  - a. Subsection (c) allows disclosure to professional or other advisers, including witnesses and experts.

- b. This recognises the need for parties to consult experts and advisers to present their case effectively and to secure professional guidance.
5. Arbitration Proceedings: Subsection (d) allows disclosure to relevant parties, arbitrators, and additional parties in various procedural contexts, such as consolidation, joinder, or the appointment of arbitrators.
6. Third Party Funding:
  - a. Subsection (e) permits disclosure to individuals or entities involved in third-party funding arrangements for the arbitration.
  - b. This acknowledges the growing practice of obtaining funding from third parties and the need for transparency in such arrangements.
7. Balancing Confidentiality and Practicality: Article 45.3 aims to strike a balance between the imperative of confidentiality and practicalities of legal proceedings, enforcement, professional advice, and other legitimate considerations.
8. Preventing Abuse: While exceptions are provided, the article is crafted with specific conditions to prevent the abuse of confidentiality exceptions for purposes unrelated to the core proceedings.

In summary, Article 45.3 of the HKIAC Arbitration Rules 2018 outlines exceptions to the general confidentiality obligations set forth in Article 45.1. These exceptions recognise the need for disclosure in certain contexts, such as legal proceedings, legal obligations, professional advice, arbitration proceedings, and third-party funding arrangements. The article balances the need for confidentiality with practical considerations that may arise during and after arbitration proceedings.

#### **45.4 The deliberations of the arbitral tribunal are confidential.**

Article 45.4 of the HKIAC Arbitration Rules 2018 asserts the principle of confidentiality concerning the deliberations of the arbitral tribunal. This provision underscores the importance of maintaining the confidentiality of the tribunal's internal discussions and decision-making process. Here is an analysis of Article 45.4:

1. Deliberations Confidentiality: The provision clearly states that the deliberations of the arbitral tribunal are confidential. "Deliberations" refer to the private discussions and considerations that arbitrators engage in while reaching their decisions.
2. Internal Decision-Making Process: The confidentiality of deliberations is crucial to protect the integrity of the tribunal's internal decision-making process. It allows arbitrators to freely express their opinions, debate issues, and collectively arrive at well-reasoned conclusions without fear of external scrutiny or influence.
3. Preservation of Neutrality and Impartiality: Confidential deliberations prevent external parties from attempting to influence arbitrators by targeting their individual opinions or the discussions within the tribunal.

4. **Protecting Candid Discussion:** By ensuring that tribunal members can candidly express their views and engage in rigorous discussions without concern for public exposure, Article 45.4 supports robust and comprehensive decision-making.
5. **Privacy of Individual Opinions:** The provision safeguards arbitrators' individual opinions and arguments during the deliberation process, allowing them to express dissenting views without the risk of public misunderstanding or misrepresentation.
6. **Avoiding Bias and External Pressure:** Confidential deliberations prevent parties or other external stakeholders from attempting to sway the tribunal's decision by exploiting sensitive internal discussions.
7. **Finality of Awards:** By protecting the confidentiality of deliberations, the article helps maintain the finality and integrity of arbitral awards. It prevents the possibility of parties challenging awards based on perceptions of bias or unfair influence during the deliberative process.
8. **Standard Practice:** Confidentiality of deliberations is a common principle in arbitration and legal proceedings. It aligns with the broader practice of respecting the internal discussions of decision-makers.

In summary, Article 45.4 of the HKIAC Arbitration Rules 2018 reinforces the confidentiality of the deliberations of the arbitral tribunal. This principle protects the tribunal's internal decision-making process, preserves impartiality and neutrality, and upholds the finality and integrity of arbitral awards. It ensures that arbitrators can engage in candid, uninhibited discussions while arriving at well-reasoned decisions without external interference or pressure.

**45.5 HKIAC may publish any award, whether in its entirety or in the form of excerpts or a summary, only under the following conditions:**

- (a) **all references to the parties' names and other identifying information are deleted; and**
- (b) **no party objects to such publication within the time limit fixed for that purpose by HKIAC. In the case of an objection, the award shall not be published.**

Article 45.5 of the HKIAC Arbitration Rules 2018 outlines the conditions under which HKIAC may publish arbitral awards, taking into consideration the confidentiality of the parties and the arbitration proceedings. The article specifies the steps that need to be taken to ensure that the publication respects the parties' privacy. Here is an analysis of Article 45.5:

1. **Publication of Awards:** The provision addresses the possibility of publishing arbitral awards, recognising that there might be instances where the public interest or legal scholarship could be served by sharing the outcomes of arbitration proceedings.
2. **Confidentiality Concerns:** Article 45.5 acknowledges that while publication can offer benefits, it must be balanced against the need to protect the confidentiality and privacy of the parties involved in the arbitration.
3. **Conditions for Publication:**

- a. **Deletion of Identifying Information:** Before publication, HKIAC is required to remove all references to the parties' names and other identifying information from the award. This deletion is essential to prevent the disclosure of sensitive and confidential information that could reveal the identity of the parties.
  - b. **No Objections from Parties:** The publication can proceed only if none of the parties objects to it within a time limit set by HKIAC. This ensures that parties have an opportunity to raise concerns if they believe that publication might compromise their interests.
4. **Protection of Privacy:** The provision demonstrates HKIAC's commitment to protecting the privacy of the parties involved in arbitration. The requirement to delete identifying information prevents any inadvertent disclosure of party names, ensuring that confidential details remain undisclosed.
  5. **Balancing Transparency and Confidentiality:** Article 45.5 strikes a balance between the interests of transparency and the need to safeguard the confidentiality and privacy of the parties. It enables the sharing of important legal decisions without compromising sensitive information.
  6. **Party Consent:** The requirement for party consent aligns with the principles of party autonomy and the voluntary nature of arbitration. Parties have the right to determine whether the outcome of their arbitration should be made public.
  7. **Finality of the Award:** The provision promotes the finality of the award by allowing parties to voice objections to publication. If any party objects, the award will not be published, thus preventing disputes arising from the publication itself.
  8. **Promotion of Legal Scholarship:** By permitting publication of awards (subject to conditions), Article 45.5 supports legal scholarship and the broader understanding of arbitration law and practice.

In summary, Article 45.5 of the HKIAC Arbitration Rules 2018 outlines the conditions for the publication of arbitral awards by HKIAC. It emphasises the need to balance transparency with the protection of parties' confidentiality and privacy. By removing identifying information and requiring party consent, the provision ensures that the interests of all parties are considered and respected in the decision to publish an award.

## Article 46 – Exclusion of Liability

**46.1 None of the Council members of HKIAC nor any body or person specifically designated by it to perform the functions in these Rules, nor the Secretary-General of HKIAC or other staff members of the Secretariat of HKIAC, the arbitral tribunal, any emergency arbitrator, tribunal-appointed expert or tribunal secretary shall be liable for any act or omission in connection with an arbitration conducted under these Rules, save where such act was done or omitted to be done dishonestly.**

Article 46.1 of the HKIAC Arbitration Rules 2018 addresses the issue of liability for individuals and entities involved in the arbitration process conducted under these rules. This article is designed to

provide protection to various individuals and bodies participating in the arbitration, except in cases of dishonest conduct. Here is an analysis of Article 46.1:

1. **Limited Liability Scope:** The provision establishes a general principle that certain individuals and entities involved in the arbitration process are not liable for any act or omission that occurs in connection with an arbitration conducted under the HKIAC Arbitration Rules, except in cases where the act was done or omitted dishonestly.
2. **Scope of Covered Parties:**
  - a. **Council Members of HKIAC:** Refers to the governing body of the HKIAC, which oversees its operations and policies.
  - b. **Bodies or Persons Designated by HKIAC:** This includes individuals or entities specifically appointed by the HKIAC to perform functions outlined in the rules.
  - c. **Secretary-General of HKIAC and Staff Members:** Refers to the leadership and staff of the HKIAC Secretariat, which manages the administrative aspects of the arbitration process.
  - d. **Arbitral Tribunal:** Comprises the arbitrators who are responsible for resolving the dispute between the parties.
  - e. **Emergency Arbitrator:** Refers to an arbitrator appointed to handle urgent matters before the arbitral tribunal is constituted.
  - f. **Tribunal-Appointed Expert:** An expert appointed by the arbitral tribunal to provide specialised insights on technical or specialised matters.
  - g. **Tribunal Secretary:** A person appointed by the arbitral tribunal to assist with administrative and organisational tasks.
3. **Exception: Dishonest Conduct:** The article specifies that liability protection does not extend to acts or omissions done dishonestly. This exception is crucial to ensure accountability in cases of deliberate wrongdoing.
4. **Protection of Participants:** The primary purpose of Article 46.1 is to provide legal protection to various individuals and entities participating in the arbitration process. By shielding them from liability for their actions unless dishonesty is proven, the provision encourages individuals to fulfil their roles without fear of unwarranted legal consequences.
5. **Balancing Accountability and Participation:** While the provision protects participants from liability, it also places a reasonable limit by excluding acts of dishonesty. This ensures that parties and participants are held accountable if they engage in deceitful or fraudulent conduct.
6. **Confidence in the Process:** By offering protection to various individuals involved in the arbitration, Article 46.1 helps maintain the integrity and trustworthiness of the arbitration process. Parties can engage in proceedings with confidence that those involved will act in good faith and with a level of immunity from unintended legal consequences.



In summary, Article 46.1 of the HKIAC Arbitration Rules 2018 provides legal protection to certain individuals and entities involved in arbitration proceedings, shielding them from liability for acts and omissions connected to the arbitration process, unless such actions were performed dishonestly. This protection encourages the effective participation of these individuals and entities in the arbitration process, contributing to the overall integrity and efficiency of the proceedings.

**46.2 After the award has been made and the possibilities of correction, interpretation and additional awards referred to in Articles 38 to 40 have lapsed or been exhausted, neither HKIAC nor the arbitral tribunal, any emergency arbitrator, tribunal-appointed expert or tribunal secretary shall be under an obligation to make statements to any person about any matter concerning the arbitration, nor shall a party seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.**

Article 46.2 of the HKIAC Arbitration Rules 2018 addresses the obligations and restrictions placed on certain individuals and entities involved in the arbitration process after an award has been made. This article focuses on the confidentiality and non-witness status of individuals connected to the arbitration proceedings. Here is an analysis of Article 46.2:

1. **Post-Award Restrictions:** The provision comes into play after the arbitration process has concluded, including the possibilities of making corrections, interpretations, and additional awards (as specified in Articles 38 to 40). Once these options have lapsed or been exhausted, the restrictions outlined in Article 46.2 apply.
2. **Non-Obligation to Make Statements:** Article 46.2 establishes that neither the HKIAC nor the individuals associated with the arbitration process—such as the arbitral tribunal, emergency arbitrator, tribunal-appointed expert, or tribunal secretary—are under any obligation to provide statements about the arbitration to any person. This promotes confidentiality and preserves the finality of the arbitration process.
3. **Non-Witness Status:** The provision also specifies that parties are prohibited from attempting to make any of these individuals a witness in any legal or other proceedings arising from the arbitration. This is designed to prevent parties from using those involved in the arbitration process as witnesses in subsequent legal actions, which could undermine the confidentiality and impartiality of the arbitration.
4. **Preservation of Confidentiality:** Article 46.2 emphasises the confidentiality of the arbitration process, even after its conclusion. This confidentiality is essential to encourage parties to freely present their arguments and evidence during the proceedings, knowing that the information shared will remain private.
5. **Maintaining Neutrality:** The provision's non-witness requirement safeguards the neutrality and impartiality of individuals who were part of the arbitration process. By preventing parties from involving them as witnesses, the article ensures that these individuals do not become embroiled in post-arbitration disputes.
6. **Post-Arbitration Disputes:** Parties sometimes resort to litigation or other proceedings after the arbitration process is complete. Article 46.2 aims to prevent the misuse of those who participated in the arbitration as witnesses in these subsequent legal actions, helping to preserve the finality of the arbitral award.

In summary, Article 46.2 of the HKIAC Arbitration Rules 2018 establishes post-arbitration obligations and restrictions on individuals and entities connected to the arbitration process. It maintains confidentiality by not obligating them to make statements about the arbitration and prevents their involvement as witnesses in subsequent legal proceedings arising from the arbitration. These provisions aim to uphold the integrity, confidentiality, and finality of the arbitration process and its outcomes.

**SCHEDULE 1 REGISTRATION AND ADMINISTRATIVE FEES****1. Registration Fee****1.1 When submitting a Notice of Arbitration, the Claimant shall pay a Registration Fee in the amount set by HKIAC, as stated on HKIAC’s website on the date the Notice of Arbitration is submitted.**

This provision outlines the requirement for the claimant (the party initiating the arbitration) to pay a Registration Fee when submitting a Notice of Arbitration under the HKIAC Arbitration Rules 2018. Here is a breakdown of the key components and implications of this article:

1. **Notice of Arbitration:** The provision pertains to the process of submitting a “Notice of Arbitration”. This notice is a formal document that initiates the arbitration process and sets out the details of the claim, the parties involved, and the relief sought.
2. **Claimant’s Obligation:** The provision places an obligation on the claimant to pay a “Registration Fee”. The claimant is the party bringing the dispute to arbitration, and the registration fee is a cost they need to cover as part of initiating the arbitration process.
3. **Amount of Registration Fee:** The exact amount of the Registration Fee is determined by the HKIAC (Hong Kong International Arbitration Centre). The article specifies that this amount will be based on the information available on the HKIAC’s website on the specific date the Notice of Arbitration is submitted. This ensures that the claimant is aware of the precise fee they are required to pay and prevents any confusion.
4. **HKIAC’s Website:** The provision references the HKIAC’s website as the official source of information for determining the Registration Fee. This is to ensure transparency and accessibility of fee-related information to the parties involved in the arbitration.
5. **Timing:** The Registration Fee is due at the time of submitting the Notice of Arbitration. This ensures that the claimant fulfils their financial obligations concurrent with the initiation of the arbitration process.

In summary, Article 1.1 of Schedule 1 in the HKIAC Arbitration Rules 2018 establishes the requirement for the claimant to pay a Registration Fee, the specific amount of which is determined by the HKIAC and is based on the information available on their website at the time of submitting the Notice of Arbitration. This provision helps ensure the smooth initiation of the arbitration process by clarifying the financial obligations of the claimant and providing a transparent mechanism for determining the fee amount.

**1.2 If the Claimant fails to pay the Registration Fee, HKIAC shall not proceed with the arbitration subject to Article 4.6 of the Rules.**

This provision addresses the consequences of the claimant’s failure to pay the Registration Fee, which is required upon submitting the Notice of Arbitration. Let us break down the key elements and implications of this article:

1. Claimant's Payment Obligation: As per Article 1.1, the claimant is obligated to pay the Registration Fee when submitting the Notice of Arbitration. This fee is a prerequisite for initiating the arbitration process.
2. Failure to Pay: Article 1.2 comes into play if the claimant fails to fulfil their payment obligation and does not pay the required Registration Fee.
3. Consequence: The consequence of the claimant's failure to pay the Registration Fee is that "HKIAC shall not proceed with the arbitration". In other words, the arbitration process will not move forward or be initiated by the HKIAC until the Registration Fee is paid.
4. Article 4.6 Reference: The provision also refers to "Article 4.6 of the Rules". Without the full text of Article 4.6, it is not possible to provide precise details, but the reference indicates that there might be a specific procedure or provision in Article 4.6 that deals with situations where the claimant fails to pay the Registration Fee.
5. Impact on Arbitration: The overall impact of this provision is that it emphasises the importance of the Registration Fee as a prerequisite for the arbitration process to begin. The claimant's failure to pay this fee can result in a halt to the arbitration proceedings until the fee is paid.

In summary, Article 1.2 of Schedule 1 in the HKIAC Arbitration Rules 2018 specifies that if the claimant fails to pay the required Registration Fee upon submitting the Notice of Arbitration, the HKIAC will not proceed with the arbitration until the fee is paid, subject to any relevant provisions in Article 4.6 of the Rules. This provision underscores the significance of the fee payment and its role in the initiation of the arbitration process.

### **1.3 The Registration Fee is not refundable save in exceptional circumstances as determined by HKIAC in its sole discretion.**

This provision pertains to the refundability of the Registration Fee paid by the claimant upon submitting the Notice of Arbitration. Here is a breakdown of the key elements and implications of this article:

1. Nature of the Registration Fee: As established in Article 1.1 (which we discussed earlier), the claimant is required to pay a Registration Fee when initiating the arbitration process by submitting the Notice of Arbitration.
2. Refundability: Article 1.3 states that the Registration Fee is generally non-refundable. This means that, under ordinary circumstances, once the claimant has paid the fee, it will not be returned to them.
3. Exceptional Circumstances: The provision allows for an exception to the non-refundable nature of the fee. The Registration Fee may be refundable, but only in "exceptional circumstances".
4. Sole Discretion of HKIAC: The determination of whether exceptional circumstances exist that warrant a refund is solely within the discretion of the HKIAC (Hong Kong International

Arbitration Centre). In other words, the HKIAC has the authority to decide whether the circumstances presented by the claimant are truly exceptional enough to justify a refund.

5. **Transparency and Consistency:** While the provision grants the HKIAC discretion, it is implied that the HKIAC would likely apply this discretion in a transparent and consistent manner. This is to ensure fairness and predictability for all parties involved.

In summary, Article 1.3 of Schedule 1 in the HKIAC Arbitration Rules 2018 establishes that the Registration Fee paid by the claimant is generally non-refundable. However, the HKIAC has the authority to consider and grant refunds in exceptional circumstances, as determined by the HKIAC's sole discretion. This provision balances the need for financial commitments to initiate the arbitration process with the recognition that certain unforeseen situations might warrant exceptions to the non-refundable rule.

## 2. HKIAC's Administrative Fees

### 2.1 HKIAC's Administrative Fees shall be determined in accordance with the following table:

SUM IN DISPUTE		ADMINISTRATIVE FEES
(in HKD)		(in HKD)
Up to	400,000	19,800
From	400,001	19,800 + 1.300% of amt.
to	800,000	over 400,000
From	800,001	25,000 + 1.000% of amt.
to	4,000,000	over 800,000
From	4,000,001	57,000 + 0.545% of amt.
to	8,000,000	over 4,000,000
From	8,000,001	78,800 + 0.265% of amt.
to	16,000,000	over 8,000,000
From	16,000,001	100,000 + 0.200% of amt.
to	40,000,000	over 16,000,000
From	40,000,001	148,000 + 0.110% of amt.
to	80,000,000	over 40,000,000
From	80,000,001	192,000 + 0.071% of amt.
to	240,000,000	over 80,000,000
From	240,000,001	305,600 + 0.059% of amt.
to	400,000,000	over 240,000,000
Over	400,000,000	400,000

This provision outlines the structure for determining the administrative fees that are charged by the HKIAC (Hong Kong International Arbitration Centre) based on the amount in dispute in an arbitration case. Let us break down the key components and implications of this article:

1. **Administrative Fees:** These are fees charged by the HKIAC for administrative and operational costs related to managing and facilitating the arbitration process. These fees are distinct from the Registration Fee mentioned earlier, which is paid upon initiating the arbitration process.
2. **Table Structure:** The article presents a table that outlines the relationship between the sum in dispute (in Hong Kong Dollars, HKD) and the corresponding administrative fee to be paid. The fees are structured in a tiered manner based on ranges of the sum in dispute.
3. **Calculation Method:** For each range of the sum in dispute, the administrative fee is calculated as a fixed amount plus a percentage of the amount over a certain threshold. This method ensures that as the sum in dispute increases, the administrative fee also increases proportionally.
4. **Gradual Increment:** The administrative fees start with a fixed fee for the lowest sum in dispute and then gradually increase as the sum in dispute increases.
5. **Flat Fees and Percentages:** The administrative fees consist of both flat fees and percentages. The flat fees cover a portion of the administrative costs, while the percentages represent a fraction of the sum in dispute over a certain threshold.
6. **Clarity and Transparency:** The structured table provides clarity and transparency regarding how the administrative fees are determined. Parties involved in arbitration can easily calculate the expected fees based on the amount in dispute.
7. **Cap for High Amounts:** For cases with very high sums in dispute, the administrative fee reaches a cap. This cap ensures that the fee does not disproportionately increase for extremely large disputes.

In summary, Article 2.1 of Schedule 1 in the HKIAC Arbitration Rules 2018 establishes a structured approach for determining administrative fees based on the sum in dispute. The fees are calculated using a combination of fixed amounts and percentages, providing a clear and predictable framework for parties engaging in arbitration. This structure is designed to fairly reflect the complexity and resource requirements of each case.

**2.2 Claims and counterclaims are added for the determination of the amount in dispute. The same rule applies to any set-off defence or cross-claim, unless the arbitral tribunal, after consulting with the parties, concludes that such set-off defence or cross-claim will not require significant additional work.**

This provision addresses how the amount in dispute is determined, especially in cases involving claims, counterclaims, set-off defences, and cross-claims in arbitration proceedings. Here is an analysis of the key elements and implications of this article:

1. **Aggregation of Claims and Counterclaims:** This provision establishes the principle that both the claims and counterclaims made by parties involved in the arbitration are added together to determine the “amount in dispute”. The “amount in dispute” is a significant factor in calculating administrative fees, as discussed in the previous provision (Article 2.1).
2. **Inclusion of Set-off Defences and Cross-Claims:** The provision extends the same rule to set-off defences and cross-claims. A set-off defence occurs when a respondent claims a right to offset the amount being claimed by the claimant against a separate claim the respondent has against the claimant. Cross-claims are separate claims brought by a party against another party involved in the same arbitration.
3. **Arbitral Tribunal’s Discretion:** The provision introduces the concept that the arbitral tribunal has discretion in applying the rule. Specifically, the rule about adding set-off defences or cross-claims to the “amount in dispute” may be set aside if the arbitral tribunal, in consultation with the parties, determines that doing so would not require significant additional work.
4. **Balancing Administrative Efficiency:** The primary rationale for allowing the arbitral tribunal to consider whether to include set-off defences or cross-claims in the “amount in dispute” is to balance administrative efficiency. If including these additional claims would significantly complicate the arbitration process and require substantial additional work, the tribunal may decide not to include them for the purpose of calculating fees.
5. **Consultation with Parties:** The provision emphasises that the arbitral tribunal should consult with the parties before making a determination about including set-off defences or cross-claims. This ensures transparency and gives parties an opportunity to express their views on the matter.

In summary, Article 2.2 of Schedule 1 in the HKIAC Arbitration Rules 2018 outlines the principle that claims, counterclaims, set-off defences, and cross-claims are typically added together to determine the “amount in dispute” for calculating administrative fees. However, the arbitral tribunal has the discretion to exclude set-off defences or cross-claims from this calculation if they determine that doing so would not entail significant additional work. This provision balances the need for fairness in fee calculation with the consideration of administrative efficiency.

### **2.3 An interest claim shall not be taken into account for the calculation of the amount in dispute, except where HKIAC determines that doing so would be appropriate.**

This provision addresses the treatment of interest claims when calculating the “amount in dispute” for the purpose of determining administrative fees in arbitration proceedings. Here is a breakdown of the key components and implications of this article:

1. **Interest Claims and Amount in Dispute:** An “interest claim” refers to a claim for the payment of interest on a principal amount. The “amount in dispute” is the sum of money that forms the basis for calculating administrative fees, as discussed in Article 2.1.
2. **Exclusion of Interest Claims:** Article 2.3 establishes a general rule that interest claims are not included when calculating the “amount in dispute” for the purpose of determining

administrative fees. In other words, when determining the appropriate administrative fee to be paid, interest amounts claimed are typically not considered.

3. **Exceptional Circumstances:** The provision also introduces an exception to this general rule. It allows for the inclusion of interest claims in the calculation of the “amount in dispute” if the HKIAC determines that such inclusion would be appropriate. This suggests that there might be specific situations where interest claims could be considered for fee calculation.
4. **HKIAC’s Discretion:** The decision to include interest claims for the purpose of calculating administrative fees is at the discretion of the HKIAC (Hong Kong International Arbitration Centre). This discretion ensures flexibility and the ability to tailor the fee calculation to the specifics of the case.
5. **Balancing Complexity and Fairness:** The provision reflects a balance between administrative simplicity and fairness. While interest claims can increase the overall value of the dispute, including them might also complicate the calculation process. Therefore, the discretion given to the HKIAC allows for consideration of the practical implications.

In summary, Article 2.3 of Schedule 1 in the HKIAC Arbitration Rules 2018 outlines that interest claims are generally not taken into account when calculating the “amount in dispute” for administrative fee purposes. However, the HKIAC has the authority to decide to include interest claims in fee calculations if it deems it appropriate to do so. This provision aims to balance the practical considerations of fee calculation with the potential impact of interest claims on the dispute’s value.

#### **2.4 Where there are alternative claims, only the principal claim shall be taken into account for the calculation of the amount in dispute, except where HKIAC considers it appropriate to take into account the amount of any alternative claim.**

This provision addresses how alternative claims are treated when calculating the “amount in dispute” for the purpose of determining administrative fees in arbitration proceedings. Let us break down the key components and implications of this article:

1. **Alternative Claims:** “Alternative claims” refer to different claims put forth by a party that could potentially result in different remedies or outcomes. In some cases, a party might present multiple alternative claims based on different legal theories or scenarios.
2. **Principal Claim and Amount in Dispute:** The “principal claim” is the primary claim that the party is seeking to enforce. The “amount in dispute” is the monetary value forming the basis for calculating administrative fees, as discussed in Article 2.1.
3. **Treatment of Alternative Claims:** Article 2.4 establishes a general rule that only the principal claim is taken into account when calculating the “amount in dispute” for administrative fee purposes. This means that, by default, alternative claims are not considered when calculating the fee.
4. **Exception for Alternative Claims:** However, the provision introduces an exception to this rule. The HKIAC (Hong Kong International Arbitration Centre) has the discretion to



consider the amount of any alternative claim when calculating administrative fees if it deems it appropriate to do so.

5. **HKIAC's Discretion:** The decision to consider the amount of alternative claims for fee calculation is solely at the discretion of the HKIAC. This discretion ensures flexibility in fee calculation based on the specific circumstances of the case.
6. **Balancing Complexity and Fairness:** Like previous provisions, Article 2.4 reflects a balance between administrative simplicity and fairness. While alternative claims can complicate the calculation process, the provision allows for such claims to be considered if their inclusion is deemed appropriate.

In summary, Article 2.4 of Schedule 1 in the HKIAC Arbitration Rules 2018 states that, in general, only the principal claim is considered when calculating the "amount in dispute" for administrative fee purposes. However, the HKIAC has the authority to decide to include the amount of any alternative claim in fee calculations if it considers it appropriate to do so. This provision aims to balance the practical considerations of fee calculation with the potential complexities introduced by alternative claims.

**2.5 Pursuant to Articles 18.2, 27.15, 28.10 or 30.2 or where in the opinion of HKIAC there are exceptional circumstances, HKIAC may depart from the table in paragraph 2.1 when calculating its Administrative Fees.**

This provision addresses the circumstances under which the HKIAC (Hong Kong International Arbitration Centre) has the authority to deviate from the table provided in Article 2.1 for calculating administrative fees. Let us break down the key components and implications of this article:

1. **Reference to Specific Articles:** The provision cites specific articles within the HKIAC Arbitration Rules 2018 as the basis for the HKIAC's authority to depart from the fee calculation table in Article 2.1. These articles are Articles 18.2, 27.15, 28.10, and 30.2.
2. **Exceptional Circumstances:** The provision also introduces the concept of "exceptional circumstances" as a basis for the HKIAC to deviate from the fee calculation table. Exceptional circumstances refer to unique or unusual situations that warrant special treatment due to their unusual nature.
3. **Administrative Fee Calculation:** The table in Article 2.1 provides a structured approach to calculating administrative fees based on the sum in dispute. However, Article 2.5 allows the HKIAC to depart from this structured approach in specific situations.
4. **Circumstances for Departure:** The specific articles cited in the provision (Articles 18.2, 27.15, 28.10, and 30.2) likely outline circumstances in which arbitration proceedings might deviate from the norm. These circumstances could involve expedited procedures, consolidation of cases, or other procedural considerations.
5. **HKIAC's Discretion:** The discretion to depart from the fee calculation table lies with the HKIAC. The provision gives the HKIAC the authority to assess the situation and determine whether a departure from the standard fee calculation is warranted.

6. **Balancing Flexibility and Fairness:** Article 2.5 balances the need for a structured fee calculation with the recognition that certain situations might call for a departure from the norm. This allows the HKIAC to adjust fees to suit the specific circumstances of the arbitration proceedings.

In summary, Article 2.5 of Schedule 1 in the HKIAC Arbitration Rules 2018 empowers the HKIAC to depart from the fee calculation table provided in Article 2.1 in specific situations. These situations might be outlined in other articles of the rules or deemed exceptional by the HKIAC. This provision reflects the HKIAC's flexibility to adapt fee calculations to unique circumstances while maintaining fairness and transparency.

## **2.6 If the amount in dispute is not quantified, HKIAC's Administrative Fees shall be fixed by HKIAC, taking into account the circumstances of the case.**

This provision addresses the scenario where the amount in dispute in an arbitration case is not specified or quantified. In such cases, the HKIAC (Hong Kong International Arbitration Centre) is responsible for determining the appropriate administrative fees. Here is an analysis of the key components and implications of this article:

1. **Unquantified Amount in Dispute:** The "amount in dispute" refers to the monetary value forming the basis for calculating administrative fees (as discussed in Article 2.1). In some cases, the exact amount in dispute might not be quantified or specified by the parties.
2. **Responsibility of HKIAC:** Article 2.6 establishes that in cases where the amount in dispute is not quantified, the HKIAC takes on the responsibility of determining the appropriate administrative fees. This determination is made by the HKIAC itself, ensuring consistency and objectivity.
3. **Circumstances of the Case:** The provision emphasises that the HKIAC's determination of administrative fees will take into account the "circumstances of the case". This includes various factors such as the complexity of the dispute, the potential claims and counterclaims involved, the nature of the parties, and other relevant considerations.
4. **Flexibility in Fee Determination:** The provision reflects the flexibility of the HKIAC to set administrative fees in cases where the amount in dispute is not quantified. This approach acknowledges that the absence of a specified amount should not hinder the arbitration process, and fees can still be determined fairly based on the particulars of the case.
5. **Fairness and Transparency:** Even though the provision gives the HKIAC discretion, it is implied that the HKIAC would exercise this discretion transparently and fairly, considering the interests of all parties involved.

In summary, Article 2.6 of Schedule 1 in the HKIAC Arbitration Rules 2018 outlines that if the amount in dispute is not quantified, the HKIAC will determine the administrative fees, taking into account the circumstances of the case. This provision ensures that arbitration proceedings can move forward even when the exact monetary value of the dispute is unspecified, by allowing the HKIAC to fairly assess the appropriate fees based on the situation.

**2.7 Amounts in currencies other than Hong Kong Dollars shall be converted into Hong Kong Dollars at the rate of exchange published by HSBC Bank on the date the Notice of Arbitration is submitted or at the time any new claim, set-off defence, cross-claim or amendment to a claim or defence is filed.**

This provision addresses the conversion of amounts stated in currencies other than Hong Kong Dollars into Hong Kong Dollars for the purpose of calculating administrative fees in arbitration proceedings. Here is an analysis of the key components and implications of this article:

1. Currencies other than Hong Kong Dollars: In international arbitration, parties involved might be using various currencies for their claims, counterclaims, or other financial aspects of the case. However, for the purpose of calculating administrative fees, the HKIAC needs a standardised currency.
2. Conversion to Hong Kong Dollars: Article 2.7 establishes the method for converting these amounts into Hong Kong Dollars, which is the currency commonly used by the HKIAC. The HKIAC needs to work with a single currency to maintain consistency in fee calculations.
3. HSBC Bank Exchange Rate: The provision specifies that the conversion will be done at the rate of exchange published by HSBC Bank. HSBC is a major international bank headquartered in Hong Kong, and its exchange rates are widely recognised and used in financial transactions.
4. Timing of Exchange Rate: The exchange rate to be used for conversion is determined based on two specific instances: when the “Notice of Arbitration” is submitted and when any new claim, set-off defence, cross-claim, or amendment to a claim or defence is filed. These points in time mark significant events in the arbitration process.
5. Transparency and Consistency: The use of a recognised and publicly available exchange rate from a reputable bank like HSBC ensures transparency and consistency in the conversion process.
6. Impact on Administrative Fees: Converting amounts into a single currency helps to provide a uniform basis for calculating administrative fees, ensuring that the fee calculation is not influenced by fluctuations in currency exchange rates.

In summary, Article 2.7 of Schedule 1 in the HKIAC Arbitration Rules 2018 stipulates that amounts in currencies other than Hong Kong Dollars will be converted into Hong Kong Dollars at the rate of exchange published by HSBC Bank. The conversion is done on specific dates in the arbitration process to provide consistency and transparency in fee calculations. This provision ensures that administrative fees are calculated in a standardised currency and are not affected by currency fluctuations.

**2.8 The parties are jointly and severally liable for HKIAC’s Administrative Fees.**

This provision addresses the responsibility and liability of the parties involved in arbitration proceedings to pay the HKIAC’s administrative fees. Here is an analysis of the key components and implications of this article:

1. **Joint and Several Liability:** “Joint and several liability” means that all parties involved in the arbitration are collectively responsible for the payment of the HKIAC’s administrative fees. Each party is liable for the full amount of the fees, and in the event that one party fails to pay its share, the other party or parties may be required to cover the outstanding amount.
2. **Shared Financial Responsibility:** The provision emphasises that all parties participating in the arbitration share the financial responsibility for the administrative fees. This approach ensures that the HKIAC can confidently expect the full fee amount, regardless of individual parties’ ability or willingness to pay.
3. **Simplification of Collection:** By making all parties jointly and severally liable, the HKIAC streamlines the process of fee collection. It eliminates the need to determine proportional contributions from each party and allows the HKIAC to collect the total fee amount from any of the parties, if needed.
4. **Enforcement of Payment:** If one party fails to pay its portion of the administrative fees, the HKIAC can seek payment from the other parties without needing to go through a complex process to allocate responsibility.
5. **Fairness and Efficiency:** Joint and several liability is a common approach in arbitration and other legal contexts. It ensures that the HKIAC can efficiently collect the fees owed while treating all parties fairly and equally in terms of their financial commitment.

In summary, Article 2.8 of Schedule 1 in the HKIAC Arbitration Rules 2018 establishes that all parties involved in arbitration are jointly and severally liable for the payment of the HKIAC’s administrative fees. This approach simplifies fee collection, ensures fairness among the parties, and enables the HKIAC to efficiently manage its financial aspects.

**SCHEDULE 2 ARBITRAL TRIBUNAL'S FEES, EXPENSES, TERMS AND CONDITIONS**

**Based on Hourly Rates**

**1. Scope of Application and Interpretation**

**1.1 Subject to any variations agreed by all parties or changes HKIAC considers appropriate, this Schedule shall apply to arbitrations in which the arbitral tribunal's fees and expenses are to be determined in accordance with Article 10.1(a) of the Rules and to the appointment of an emergency arbitrator under Schedule 4.**

This provision defines the scope and applicability of Schedule 2 within the context of arbitrations conducted under the HKIAC Arbitration Rules 2018. Here is an analysis of the key components and implications of this article:

1. **Scope of Application:** Schedule 2 outlines certain procedures and considerations related to the determination of the arbitral tribunal's fees and expenses. This article clarifies the specific situations in which Schedule 2 applies.
2. **Arbitral Tribunal's Fees and Expenses:** The focus of Schedule 2 is on the fees and expenses of the arbitral tribunal. This includes the remuneration and costs associated with the arbitrators appointed to adjudicate the dispute.
3. **Applicability to Determining Fees:** Schedule 2 applies to arbitrations where the arbitral tribunal's fees and expenses are to be determined according to Article 10.1(a) of the HKIAC Arbitration Rules 2018. Article 10.1(a) likely outlines the mechanism for determining the fees and expenses of the arbitral tribunal in various types of arbitrations.
4. **Emergency Arbitrator Appointment:** This provision also extends the applicability of Schedule 2 to the appointment of an emergency arbitrator under Schedule 4. Schedule 4 likely provides the framework for the appointment and procedure of emergency arbitrators in urgent cases.
5. **Variations and Changes:** The article acknowledges the potential for parties to agree on variations to the application of Schedule 2. Additionally, the HKIAC holds the authority to make changes to the schedule if it deems such changes appropriate.
6. **Flexibility and Customisation:** By allowing for variations and changes, the HKIAC acknowledges the need for flexibility and customisation in certain arbitration cases.
7. **Transparency and Predictability:** By clearly defining the scope of Schedule 2, this provision ensures that parties involved in arbitration and emergency arbitrator appointments understand the situations where the provisions of Schedule 2 will come into play.

In summary, Article 1.1 of Schedule 2 in the HKIAC Arbitration Rules 2018 outlines the scope and applicability of the schedule. It clarifies that Schedule 2 applies to arbitrations where the arbitral tribunal's fees and expenses are determined according to Article 10.1(a) and to the appointment of an emergency arbitrator under Schedule 4. The provision also allows for variations agreed upon by parties or changes deemed appropriate by the HKIAC.

**1.2 HKIAC may interpret the terms of this Schedule as well as the scope of application of the Schedule as it considers appropriate.**

This provision addresses the authority of the HKIAC (Hong Kong International Arbitration Centre) to interpret the terms of Schedule 2 and determine the scope of its application. Here is an analysis of the key components and implications of this article:

1. **Interpretation Authority:** This provision grants the HKIAC the authority to interpret the terms outlined in Schedule 2. Interpretation here refers to understanding the meaning and intent behind the provisions within the schedule.
2. **Scope of Application Determination:** Additionally, the provision empowers the HKIAC to determine the scope of application of Schedule 2. This means that the HKIAC can decide in which specific cases or situations the provisions of Schedule 2 should apply.
3. **Flexibility and Adaptability:** By giving the HKIAC the authority to interpret and apply the terms and scope, the schedule is designed to be adaptable to different types of arbitration cases and evolving circumstances.
4. **Expertise and Consistency:** The HKIAC's authority to interpret the schedule's terms and application scope ensures consistency and alignment with the organisation's expertise in managing arbitration proceedings.
5. **Balancing Party Interests:** While the HKIAC has the authority, it is expected to use its discretion responsibly, balancing the interests of all parties involved in the arbitration process.
6. **Transparency and Fairness:** Although the provision grants the HKIAC interpretative authority, it is expected to exercise this authority transparently and fairly, ensuring that parties understand how the schedule's terms will be applied.

In summary, Article 1.2 of Schedule 2 in the HKIAC Arbitration Rules 2018 stipulates that the HKIAC has the authority to interpret the terms of the schedule and decide on the scope of its application. This provision empowers the HKIAC to adapt the schedule to different situations, maintain consistency, and ensure fairness in the arbitration process.

**1.3 This Schedule is supplemented by the Practice Note on Costs of Arbitration Based on Schedule 2 and Hourly Rates in force on the date the Notice of Arbitration is submitted.**

This provision explains how Schedule 2, which deals with the arbitral tribunal's fees and expenses, is supplemented by a Practice Note related to the costs of arbitration and hourly rates. Here is an analysis of the key components and implications of this article:

1. **Supplementation by Practice Note:** Schedule 2 sets out certain procedures and considerations for the determination of the arbitral tribunal's fees and expenses. This article clarifies that there is a complementary "Practice Note on Costs of Arbitration Based on Schedule 2 and Hourly Rates".

2. **Practice Note Content:** The Practice Note is designed to provide further guidance and details related to the costs of arbitration based on the provisions of Schedule 2. It likely outlines additional procedural and calculation aspects of fees and expenses.
3. **Application of Practice Note:** The Practice Note supplements and complements the content of Schedule 2. It adds a layer of practical guidance that assists parties, arbitrators, and the HKIAC in effectively implementing the provisions of Schedule 2.
4. **Focus on Costs and Hourly Rates:** The reference to “Hourly Rates” suggests that the Practice Note could involve guidance on how hourly rates are determined for arbitrators’ remuneration. This could provide clarity on how fees are calculated on an hourly basis.
5. **Date of Submission:** The Practice Note in question is the one that is “in force on the date the Notice of Arbitration is submitted”. This ensures that parties have access to the most up-to-date guidance when initiating the arbitration process.
6. **Clarity and Consistency:** The provision ensures that parties and arbitrators are aware of the supplementary guidance provided by the Practice Note. This promotes clarity and consistency in fee calculation and arbitration proceedings.
7. **Alignment with Schedule 2:** The Practice Note is specifically tailored to align with Schedule 2, which focuses on the arbitral tribunal’s fees and expenses. This ensures that parties can rely on consistent and coherent information across both documents.

In summary, Article 1.3 of Schedule 2 in the HKIAC Arbitration Rules 2018 highlights that Schedule 2 is supplemented by a Practice Note on Costs of Arbitration and Hourly Rates. This Practice Note provides additional practical guidance related to fee calculation and aligns with the provisions of Schedule 2. It aims to enhance clarity and consistency in arbitration proceedings regarding the costs involved.

## 2. Payments to Arbitral Tribunal

### 2.1 Payments to the arbitral tribunal shall generally be made by HKIAC from funds deposited by the parties in accordance with Article 41 of the Rules. HKIAC may direct the parties, in such proportions as it considers appropriate, to make one or more interim or final payments to the arbitral tribunal.

This provision addresses the process and responsibility for making payments to the arbitral tribunal in relation to their fees and expenses. Here is an analysis of the key components and implications of this article:

1. **Payment Mechanism:** The article outlines how payments to the arbitral tribunal for their fees and expenses are generally managed. These payments are typically made from the funds deposited by the parties, as required by the arbitration rules.
2. **Source of Funds:** The funds used for paying the arbitral tribunal come from the deposits made by the parties. This aligns with the usual practice in arbitration, where parties provide funds upfront to cover anticipated costs.

3. Article 41 of the Rules: The reference to “Article 41 of the Rules” likely pertains to the specific article within the HKIAC Arbitration Rules 2018 that addresses deposits by the parties to cover fees and expenses, as well as the mechanism for handling such deposits.
4. Interim and Final Payments: The provision empowers the HKIAC to direct the parties to make one or more interim or final payments to the arbitral tribunal. This means that, in addition to the initial deposit, the parties might need to make further payments during the course of the arbitration.
5. HKIAC’s Discretion: The HKIAC has the authority to determine the appropriate proportions in which the parties should make interim or final payments to the arbitral tribunal. This discretion allows the HKIAC to ensure that the arbitral tribunal’s fees and expenses are covered adequately.
6. Flexibility for Unforeseen Circumstances: The provision’s allowance for interim payments gives the HKIAC the flexibility to respond to unforeseen circumstances during the arbitration process that might require additional funds to be allocated to the arbitral tribunal.
7. Transparent Management: This approach ensures that the arbitration process remains transparent and efficient, as parties are aware of their financial responsibilities throughout the proceedings.

In summary, Article 2.1 of Schedule 2 in the HKIAC Arbitration Rules 2018 outlines the process for making payments to the arbitral tribunal. Payments are generally made from funds deposited by the parties, as regulated by Article 41 of the Rules. The HKIAC has the discretion to direct the parties to make interim or final payments, allowing for flexible financial management throughout the arbitration process.

## **2.2 If insufficient funds are held at the time a payment is required, the invoice for the payment may be submitted to the parties for settlement by them direct.**

This provision addresses a scenario where the funds held for the arbitral tribunal’s fees and expenses are insufficient to cover a required payment. Here is an analysis of the key components and implications of this article:

1. Insufficient Funds: The provision anticipates a situation where the funds that were deposited by the parties to cover the arbitral tribunal’s fees and expenses are not sufficient to cover a specific payment that is due at that time.
2. Payment Requirement: In an arbitration process, there can be various points where payments are required, such as for the tribunal’s fees, administrative costs, or other expenses. This provision relates specifically to the payment required at such a point.
3. Direct Settlement by Parties: If there are insufficient funds held by the HKIAC to cover the required payment, the invoice for that payment may be sent directly to the parties. The parties are then responsible for settling the invoice themselves.



4. **Administrative Efficiency:** The provision ensures that the arbitration process can continue smoothly even if the funds held by the HKIAC are inadequate for a particular payment. It allows the parties to address the payment issue directly to avoid any potential delays.
5. **Responsibility of Parties:** By requiring the parties to settle the invoice directly if there are insufficient funds, the provision reinforces the parties' financial responsibility for the arbitration process.
6. **Timely Resolution:** This approach helps prevent the arbitration process from being hindered by financial limitations. If the parties are able to address the payment issue directly, the proceedings can continue without unnecessary delays.

In summary, Article 2.2 of Schedule 2 in the HKIAC Arbitration Rules 2018 deals with situations where there are insufficient funds to cover a required payment for the arbitral tribunal's fees and expenses. It allows the invoice for the payment to be sent directly to the parties for settlement by them, ensuring that the arbitration process can continue efficiently and without unnecessary delays.

### **2.3 Payments to the arbitral tribunal shall be made in Hong Kong Dollars unless the tribunal directs otherwise.**

This provision addresses the currency in which payments to the arbitral tribunal's fees and expenses should be made. Here is an analysis of the key components and implications of this article:

1. **Currency of Payment:** The provision specifies that payments made to cover the arbitral tribunal's fees and expenses should be made in Hong Kong Dollars (HKD), which is the official currency of Hong Kong.
2. **Default Currency:** By stating that payments should be made in Hong Kong Dollars, the provision establishes HKD as the default currency for fee payments, ensuring clarity and consistency in financial transactions related to the arbitration process.
3. **Tribunal's Discretion:** The provision adds an exception, allowing the arbitral tribunal to direct otherwise in terms of the currency for payment. This means that the tribunal has the authority to specify an alternative currency for payments if they deem it appropriate or necessary.
4. **Flexibility for International Cases:** The provision acknowledges the international nature of arbitration cases and the potential for parties from different countries to be involved. The tribunal's ability to direct an alternative currency caters to situations where parties might find it more convenient to make payments in a currency other than HKD.
5. **Consideration of Exchange Rates:** The tribunal's ability to specify an alternative currency might take into account exchange rate fluctuations and the parties' preferences for payment currencies.
6. **Clarity and Communication:** If the tribunal directs a currency other than HKD, clear communication and coordination will be crucial to ensure that all parties understand the payment requirements.

In summary, Article 2.3 of Schedule 2 in the HKIAC Arbitration Rules 2018 stipulates that payments to cover the arbitral tribunal's fees and expenses are generally made in Hong Kong Dollars. However, the provision grants the tribunal the discretion to specify an alternative currency for payments if deemed appropriate. This provision accommodates the needs of international arbitration cases while ensuring a default currency for consistency and transparency.

#### **2.4 The parties are jointly and severally liable for the fees and expenses of an arbitrator, irrespective of which party appointed the arbitrator.**

This provision addresses the responsibility and liability of the parties involved in an arbitration proceeding to cover the fees and expenses of the appointed arbitrator. Here is an analysis of the key components and implications of this article:

1. **Joint and Several Liability:** Similar to the concept discussed in Schedule 1, Article 2.8, this provision establishes that all parties participating in the arbitration process share collective responsibility for the fees and expenses of the arbitrator.
2. **Arbitrator's Fees and Expenses:** The fees and expenses of an arbitrator include compensation for their time and expertise spent on the arbitration proceedings, as well as any other related costs.
3. **Irrespective of Appointing Party:** The provision emphasises that the responsibility for the arbitrator's fees and expenses is independent of which party appointed the arbitrator. Regardless of whether the arbitrator was chosen by one of the parties or was a mutually agreed appointment, all parties are equally liable.
4. **Financial Balance:** This approach ensures that the arbitrator's fees and expenses are covered regardless of the source of appointment. It prevents situations where one party might be tempted to delay or obstruct payment due to not having directly appointed the arbitrator.
5. **Fairness and Neutrality:** By making all parties jointly and severally liable, the provision upholds the principle of fairness and neutrality in the arbitration process. It prevents disputes or biases related to fee responsibilities.
6. **Practical Enforcement:** Joint and several liability simplifies the process of collecting fees and expenses from the parties, as the arbitration institution (in this case, HKIAC) can seek payment from any party or parties.

In summary, Article 2.4 of Schedule 2 in the HKIAC Arbitration Rules 2018 establishes that all parties involved in arbitration are jointly and severally liable for the fees and expenses of the appointed arbitrator, regardless of which party appointed that arbitrator. This approach ensures balanced financial responsibility, fairness, and efficient fee collection throughout the arbitration process.

### 3. Arbitral Tribunal's Expenses

#### 3.1 The arbitral tribunal shall be reimbursed for its reasonable expenses in accordance with the Practice Note referred to at paragraph 1.3.

This provision addresses the reimbursement of reasonable expenses incurred by the arbitral tribunal during the arbitration proceedings. Here is an analysis of the key components and implications of this article:

1. **Expense Reimbursement:** The article emphasises that the arbitral tribunal, which consists of the appointed arbitrators, is entitled to be reimbursed for reasonable expenses incurred in the course of performing their duties related to the arbitration.
2. **Reasonable Expenses:** The expenses that can be reimbursed are those that are deemed "reasonable". This suggests that expenses should be justifiable, necessary, and directly related to the arbitration process.
3. **Reference to Practice Note:** The provision refers to the Practice Note mentioned in paragraph 1.3 of Schedule 2. This indicates that the specific guidelines for determining and reimbursing the tribunal's expenses are outlined in this Practice Note.
4. **Transparent Guidelines:** The incorporation of the Practice Note provides a level of transparency and consistency in handling the reimbursement of tribunal expenses. Parties and arbitrators can refer to the guidelines to understand what expenses are eligible for reimbursement.
5. **Practice Note Link:** The provision creates a link between Schedule 2 (which deals with arbitral tribunal fees and expenses) and the related Practice Note. This ensures that parties have access to detailed instructions on the process of reimbursing the tribunal's expenses.
6. **Alignment with Article 1.3:** Article 1.3 introduced the concept of the Practice Note supplementing Schedule 2. This article now specifically connects the reimbursement of tribunal expenses with that Practice Note, creating a holistic framework for handling all financial aspects of arbitration.

In summary, Article 3.1 of Schedule 2 in the HKIAC Arbitration Rules 2018 stipulates that the arbitral tribunal is entitled to be reimbursed for reasonable expenses incurred during the arbitration proceedings. The specifics of determining and reimbursing these expenses are outlined in the Practice Note mentioned in paragraph 1.3. This approach ensures transparency, fairness, and consistency in handling the financial aspects of the tribunal's involvement in the arbitration process.

#### 3.2 The expenses of the arbitral tribunal shall not be included in the arbitral tribunal's fees charged by reference to hourly rates under paragraph 9 of this Schedule.

This provision addresses the distinction between the expenses of the arbitral tribunal and the fees charged by the tribunal based on hourly rates. Here is an analysis of the key components and implications of this article:

1. **Expense and Fee Separation:** The provision clarifies that the expenses incurred by the arbitral tribunal should not be included in the fees charged by the tribunal based on hourly rates.
2. **Expense Definition:** Expenses refer to costs incurred by the tribunal in connection with the arbitration process that are separate from the remuneration for the arbitrator's time and expertise.
3. **Hourly Rates and Fees:** Paragraph 9 of the Schedule likely outlines the framework for determining fees based on hourly rates for the arbitrator's work. This provision highlights that these fees are distinct from the expenses.
4. **Transparency in Billing:** By separating expenses and hourly rate-based fees, the provision ensures transparency in how costs are allocated. Parties can clearly understand the breakdown between the time-based compensation and the actual expenses incurred.
5. **Common Practice:** This separation between expenses and fees is a common approach in arbitration proceedings to distinguish between the compensation for the arbitrator's time and other costs related to the process.
6. **Cost Management:** Keeping expenses separate from fees can help parties manage their arbitration costs more effectively. They can see both the fee structure and the expenses incurred, helping them anticipate and budget for the total cost of arbitration.

In summary, Article 3.2 of Schedule 2 in the HKIAC Arbitration Rules 2018 establishes that the expenses incurred by the arbitral tribunal should not be included in the fees charged based on hourly rates as outlined in paragraph 9 of the same Schedule. This provision ensures clarity and transparency in financial arrangements, helping parties understand the distinct components of costs related to arbitration.

#### 4. Administrative Expenses

**The parties shall be responsible for expenses reasonably incurred and relating to administrative and support services engaged for the purposes of the arbitration, including, but not limited to, the cost of hearing rooms, interpreters and transcription services. Such expenses may be paid directly from the deposits referred to in Article 41 of the Rules as and when they are incurred.**

This provision addresses the responsibility of the parties for covering expenses related to administrative and support services in the arbitration process. Here is an analysis of the key components and implications of this article:

1. **Responsibility for Expenses:** The article establishes that the parties involved in the arbitration process are responsible for covering expenses that are reasonably incurred for administrative and support services necessary for the arbitration to proceed smoothly.
2. **Scope of Expenses:** The expenses mentioned include those related to administrative and support services, which are essential for organising and facilitating the arbitration proceedings. Examples given are hearing rooms, interpreters, and transcription services.

3. Reasonable Incurrence: The expenses must be reasonably incurred, implying that they should be justifiable and directly related to the needs of the arbitration process.
4. Direct Payment from Deposits: The provision suggests that these expenses can be paid directly from the deposits made by the parties in accordance with Article 41 of the Rules. Article 41 likely addresses the mechanism for funding arbitration expenses.
5. Timely Payment: Expenses may be paid from the deposited funds as and when they are incurred, which ensures that administrative and support services can continue to function without disruption.
6. Clarity on Expenses: This provision helps clarify the financial responsibilities of the parties in terms of covering the costs associated with the arbitration process beyond the arbitrators' fees and expenses.
7. Support Services: The mention of "interpreters and transcription services" highlights the importance of services that contribute to the effective communication and documentation of the arbitration proceedings.
8. Efficient Process: By making parties responsible for these costs and allowing for direct payment from deposited funds, the provision contributes to a well-organised and efficient arbitration process.

In summary, Article 4 of Schedule 2 in the HKIAC Arbitration Rules 2018 outlines that the parties are responsible for expenses related to administrative and support services required for the arbitration process. These expenses, such as hearing rooms, interpreters, and transcription services, may be paid directly from the funds deposited by the parties, ensuring the smooth operation of the arbitration proceedings.

## 5. Fees and Expenses Payable to Replaced Arbitrators

**Where an arbitrator is replaced pursuant to Articles 12, 27, 28 or 42.3 of the Rules, HKIAC shall decide the amount of fees and expenses to be paid for the replaced arbitrator's services (if any), having taken into account the circumstances of the case, including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the complexity of the subject-matter.**

This provision addresses the determination of fees and expenses for an arbitrator who has been replaced during the arbitration process. Here is an analysis of the key components and implications of this article:

1. Replacement of Arbitrator: The article refers to situations where an arbitrator is replaced according to specific articles of the HKIAC Arbitration Rules 2018, namely Articles 12, 27, 28, or 42.3. These articles likely outline the circumstances under which an arbitrator might be replaced, such as due to resignation, challenge, or other reasons.
2. HKIAC's Decision: In cases where an arbitrator is replaced, the provision states that the HKIAC holds the authority to decide the amount of fees and expenses to be paid for the replaced arbitrator's services, if any such fees are applicable.

3. **Consideration of Circumstances:** The decision on the fees and expenses is based on a thorough consideration of the circumstances of the case. This indicates a tailored approach that accounts for the specifics of each arbitration.
4. **Relevant Factors:** The provision lists several factors that the HKIAC will consider when determining the fees and expenses for the replaced arbitrator's services. These factors include:
  - a. The applicable method for determining the arbitrator's fees.
  - b. The work done by the arbitrator in connection with the arbitration.
  - c. The complexity of the subject-matter of the arbitration.
5. **Tailored Determination:** The combination of factors outlined in the provision allows the HKIAC to make a well-informed and fair determination of the fees and expenses. This ensures that the decision reflects the actual contributions and complexities of the case.
6. **Transparency and Fairness:** The provision emphasises transparency in the process by explicitly stating that the factors listed are not exhaustive ("not limited to"). This indicates the commitment to a comprehensive and just determination.

In summary, Article 5 of Schedule 2 in the HKIAC Arbitration Rules 2018 outlines the process for determining fees and expenses for an arbitrator who is replaced during the arbitration process. The HKIAC has the authority to decide these amounts, considering various factors related to the arbitration, such as the method for determining fees, the work done by the arbitrator, and the complexity of the subject-matter. This approach ensures a balanced and individualised determination of compensation for the replaced arbitrator's services.

## 6. Fees and Expenses of Tribunal Secretary

**Where the arbitral tribunal appoints a secretary in accordance with Article 13.4 of the Rules, such secretary shall be remunerated at a rate which shall not exceed the rate set by HKIAC, as stated on HKIAC's website on the date the Notice of Arbitration is submitted. The secretary's fees and expenses shall be charged separately. The arbitral tribunal shall determine the total fees and expenses of a secretary under Article 34.1(c) of the Rules.**

This provision addresses the remuneration and role of a secretary appointed by the arbitral tribunal. Here is an analysis of the key components and implications of this article:

1. **Secretary Appointment:** The article refers to situations where the arbitral tribunal appoints a secretary in accordance with Article 13.4 of the HKIAC Arbitration Rules 2018. Article 13 likely addresses the role and appointment of secretaries.
2. **Remuneration Rate:** The secretary's remuneration is capped at a rate set by the HKIAC. This rate is determined and published on the HKIAC's website on the date the Notice of Arbitration is submitted. This approach ensures transparency and consistency in secretary remuneration.

3. **Separate Fees and Expenses:** The secretary’s fees and expenses are charged separately. This means that the costs related to the secretary’s involvement are distinct from the fees and expenses of the arbitral tribunal or other participants in the arbitration process.
4. **Secretary Role and Compensation:** The secretary’s role typically involves administrative and logistical support to the tribunal. This provision clarifies the method of calculating and reimbursing the secretary’s costs.
5. **Total Fees and Expenses Determination:** The arbitral tribunal is responsible for determining the total fees and expenses of the secretary, as stated in Article 34.1(c) of the Rules. Article 34 likely pertains to the powers and duties of the arbitral tribunal.
6. **Efficient and Transparent Process:** The provision contributes to the transparency and efficiency of the arbitration process by defining the parameters of secretary remuneration and ensuring that secretary-related costs are managed separately.
7. **HKIAC’s Role:** The HKIAC plays a role in setting the maximum remuneration rate for the secretary and ensuring that this rate is publicly accessible on their website.

In summary, Article 6 of Schedule 2 in the HKIAC Arbitration Rules 2018 outlines the remuneration and role of secretaries appointed by the arbitral tribunal. The secretary’s remuneration is capped at a rate set by the HKIAC, and the secretary’s fees and expenses are charged separately. The arbitral tribunal determines the total fees and expenses of the secretary based on the powers and duties outlined in Article 34.1(c) of the Rules. This approach ensures clear guidelines and efficient management of secretary-related costs in the arbitration process.

## 7. Lien on Award

**HKIAC and the arbitral tribunal shall have a lien over any awards issued by the arbitral tribunal to secure the payment of their outstanding fees and expenses, and may accordingly refuse to communicate any such awards to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties.**

This provision addresses the concept of a lien held by both the HKIAC and the arbitral tribunal over the awards issued by the tribunal. Here is an analysis of the key components and implications of this article:

1. **Lien on Awards:** The article establishes that both the HKIAC and the arbitral tribunal have a lien over any awards issued by the tribunal. A lien is a legal claim or right to retain possession of something until a debt or obligation is satisfied.
2. **Securing Outstanding Fees and Expenses:** The lien’s purpose is to secure the payment of any outstanding fees and expenses owed to the HKIAC and the arbitral tribunal. This includes the administrative fees, arbitrator fees, expenses, and other related costs.
3. **Award Communication Withheld:** As a result of this lien, both the HKIAC and the arbitral tribunal have the authority to withhold the communication of awards to the parties until all fees and expenses have been paid in full.

4. **Joint or Individual Payment:** The provision emphasises that the payment of outstanding fees and expenses can be made either jointly by the parties or by a single party, as applicable.
5. **Enforcement Mechanism:** The lien mechanism provides a strong incentive for timely payment of fees and expenses. Parties are effectively prevented from receiving the awards until their financial obligations are met.
6. **Lien as a Security Measure:** The lien adds a layer of security for the HKIAC and the arbitral tribunal, ensuring that their rightful compensation is received before the parties benefit from the award.
7. **Financial Integrity:** This provision contributes to maintaining the financial integrity of the arbitration process by ensuring that the parties fulfil their financial responsibilities as part of the arbitration proceedings.

In summary, Article 7 of Schedule 2 in the HKIAC Arbitration Rules 2018 establishes a lien held by both the HKIAC and the arbitral tribunal over the awards issued by the tribunal. This lien is in place to secure the payment of outstanding fees and expenses owed to both entities. As a result, the communication of awards can be withheld until these financial obligations are met, whether paid jointly by the parties or by one of them. This provision serves as a financial safeguard in the arbitration process.

## 8. Governing Law

**The terms of this Schedule and any non-contractual obligation arising out of or in connection with them shall be governed by and construed in accordance with Hong Kong law.**

Schedule 2(8) of the HKIAC Arbitration Rules 2018 pertains to the governing law and interpretation of the terms within the schedule. Let us break down the key elements of this provision:

1. **Applicable Law:** The provision states that the terms of Schedule 2 and any non-contractual obligation arising from or related to those terms will be governed by Hong Kong law. This means that the legal principles, rules, and regulations of Hong Kong will apply to determine the rights, obligations, and any disputes that may arise in connection with this schedule.
2. **Choice of Law:** The parties involved have explicitly chosen Hong Kong law to govern the terms of Schedule 2. This choice of law can have implications on how the terms are interpreted, how disputes are resolved, and what legal principles are applied. It provides predictability and consistency, as the parties are aware of the legal framework that will be used to assess any issues arising from the schedule.
3. **Construction of Terms:** The provision also mentions that the terms of Schedule 2 will be construed (interpreted) in accordance with Hong Kong law. This means that any questions or doubts about the meaning, intent, or scope of the terms will be resolved by referring to Hong Kong legal principles and rules of interpretation. This clause ensures that there is a unified approach to understanding the terms, avoiding potential conflicts that might arise due to differing interpretations.



4. **Non-Contractual Obligations:** The provision extends the application of Hong Kong law to non-contractual obligations that arise in connection with the terms of Schedule 2. Non-contractual obligations generally refer to legal obligations that are not explicitly established by a contract but arise from circumstances or actions. By stating that these obligations are also subject to Hong Kong law, the parties aim to have a comprehensive legal framework governing all aspects related to the schedule.

In summary, Schedule 2(8) of the HKIAC Arbitration Rules 2018 is a clause that establishes the governing law and interpretation principles for the terms of the schedule and any non-contractual obligations associated with it. By choosing Hong Kong law, the parties ensure consistency and clarity in the application and interpretation of the terms, as well as in addressing any legal obligations that may arise from the schedule.

## 9. Arbitral Tribunal's Fee Rates

### 9.1 An arbitrator shall be remunerated at an hourly rate for all work reasonably carried out in connection with the arbitration.

Schedule 2(9.1) of the HKIAC Arbitration Rules 2018 outlines the basis for remunerating arbitrators and the method by which they are compensated for their services. Here is an analysis of the key elements of this provision:

1. **Basis of Remuneration:** The provision states that an arbitrator's remuneration will be determined based on an hourly rate. This means that arbitrators will be compensated for the time and effort they put into conducting the arbitration proceedings and other related tasks, such as reviewing documents, conducting hearings, deliberating, and drafting awards.
2. **Reasonable Work:** The arbitrator is entitled to be remunerated for all work that is reasonably carried out in connection with the arbitration. This emphasises that compensation is provided for tasks that are directly related to the arbitration process and that fall within the scope of an arbitrator's responsibilities. "Reasonably carried out" implies that the work should be necessary and relevant to the arbitration process.
3. **Transparency and Fairness:** Remunerating arbitrators on an hourly basis promotes transparency and fairness in the compensation process. The hourly rate allows parties to see a direct correlation between the work performed by the arbitrator and the compensation received. This can help prevent any potential disputes or concerns regarding the arbitrator's fees.
4. **Flexibility:** Using an hourly rate provides flexibility in compensating arbitrators. Different arbitrations can vary significantly in terms of complexity, length, and the volume of work involved. An hourly rate allows for adjustments in compensation based on the specific demands of each case.
5. **Incentive for Efficiency:** This remuneration method may also create an incentive for arbitrators to manage the proceedings efficiently. Since they are compensated based on

the time they spend, arbitrators may be motivated to avoid unnecessary delays and streamline the process, which can benefit all parties involved.

6. Potential Concerns: While an hourly rate offers transparency, there could be concerns about potential over-billing or disputes about the reasonableness of the hours claimed. To address this, arbitration institutions often have procedures to review and approve arbitrator invoices to ensure that the work claimed aligns with the nature and complexity of the case.

In summary, Schedule 2(9.1) of the HKIAC Arbitration Rules 2018 establishes the basis for compensating arbitrators by an hourly rate for work reasonably carried out in connection with the arbitration. This approach promotes transparency, fairness, flexibility, and efficiency in the compensation process, while also raising awareness about the arbitrator's commitment to the proceedings.

**9.2 Subject to paragraphs 9.3 to 9.5 of this Schedule, the rate referred to in paragraph 9.1 is to be agreed in accordance with Article 10.2 of the Rules. An arbitrator shall agree upon fee rates in accordance with paragraph 9 of this Schedule prior to his or her confirmation or appointment by HKIAC.**

Schedule 2(9.2) of the HKIAC Arbitration Rules 2018 addresses the process of determining the hourly rate for arbitrators' remuneration and the timing at which these fee rates should be agreed upon. Let us analyse the key elements of this provision:

1. Reference to Paragraphs 9.3 to 9.5: The provision specifies that the determination of the hourly rate mentioned in paragraph 9.1 (which outlines the basis for arbitrator remuneration) is subject to the rules set out in paragraphs 9.3 to 9.5 of the same schedule. This implies that the specific procedures and considerations mentioned in those paragraphs will affect the final determination of the fee rate.
2. Agreement in Accordance with Article 10.2: The provision states that the fee rate for arbitrators should be agreed upon in accordance with Article 10.2 of the HKIAC Arbitration Rules. Article 10.2 likely outlines the procedure for determining the fees, possibly involving negotiation or consultation between the arbitrator and the parties. This implies that the process should be collaborative and based on mutual agreement.
3. Timing of Fee Rate Agreement: The provision requires that arbitrators and parties agree upon fee rates as outlined in paragraph 9 of Schedule 2 before the arbitrator's confirmation or appointment by the HKIAC. This timing ensures that the financial terms are established and agreed upon prior to the official commencement of the arbitration proceedings.
4. Transparency and Advance Agreement: Requiring fee rate agreements before the arbitrator's confirmation or appointment promotes transparency and predictability. Parties are aware of the financial terms before committing to the arbitration process. This prevents potential disputes or disagreements over fees that could arise later in the proceedings.

5. **Flexibility in Setting Fees:** The provision provides flexibility by allowing arbitrators and parties to agree on the fee rates. This recognises that the complexity and nature of each arbitration can vary, and the parties are best positioned to determine a fair remuneration for the arbitrator’s time and expertise.
6. **HKIAC’s Role:** The provision indirectly acknowledges the role of the HKIAC in the appointment and confirmation of arbitrators. The agreement on fee rates needs to be reached prior to this step, which is likely done to ensure that the financial terms are settled before the arbitration process formally begins.

In summary, Schedule 2(9.2) of the HKIAC Arbitration Rules 2018 outlines the process for determining arbitrators’ fee rates. It emphasises the need for agreement between the arbitrator and the parties in accordance with specific rules, and it establishes the timing of this agreement as before the arbitrator’s confirmation or appointment by the HKIAC. This approach enhances transparency, predictability, and fairness in the financial arrangements of the arbitration process.

**9.3 An arbitrator’s agreed hourly rate shall not exceed a rate set by HKIAC, as stated on HKIAC’s website on the date the Notice of Arbitration is submitted.**

Schedule 2(9.3) of the HKIAC Arbitration Rules 2018 addresses the limitation on the hourly rate that arbitrators can charge. Here is an analysis of the key elements of this provision:

1. **Maximum Hourly Rate:** The provision specifies that the arbitrator’s agreed hourly rate cannot exceed a certain maximum rate. This maximum rate is set by the HKIAC. This implies that the parties and arbitrators are bound by this upper limit when determining the fee rates.
2. **Reference to HKIAC’s Website:** The maximum hourly rate is determined based on the information provided on the HKIAC’s official website. Specifically, the rate is determined based on the information available on the website on the date when the Notice of Arbitration is submitted. This is likely done to ensure clarity and consistency, as the website’s information can be easily accessed and referenced.
3. **Limitation for Fairness:** The provision is likely intended to promote fairness and avoid excessive fees. By setting a maximum rate, the HKIAC aims to prevent situations where arbitrators charge unreasonably high fees, ensuring that the arbitration process remains accessible and cost-effective for the parties involved.
4. **Preventing Fee Inflation:** Imposing a maximum hourly rate prevents arbitrators from unilaterally increasing their fees beyond reasonable limits. This can help control costs and prevent any potential disputes over exorbitant fees charged by arbitrators.
5. **Timely Determination:** The provision links the determination of the maximum hourly rate to a specific moment in the arbitration process—the submission of the Notice of Arbitration. This ensures that the parties are aware of the fee limitations from the outset and can make informed decisions about their choice of arbitrator.

6. **Transparency and Consistency:** By providing a clear reference to the HKIAC’s website and the specific date of determination, the provision ensures transparency and consistency in applying the maximum hourly rate across different cases.

In summary, Schedule 2(9.3) of the HKIAC Arbitration Rules 2018 restricts arbitrators’ agreed hourly rates by establishing a maximum rate set by the HKIAC. This limitation is designed to promote fairness, prevent excessive fees, and ensure that the arbitration process remains accessible and reasonable for all parties. The provision also emphasises transparency and consistency in applying the maximum rate.

**9.4 Subject to paragraph 9.3, an arbitrator may review and increase his or her agreed hourly rate by no more than 10% on each anniversary of his or her confirmation or appointment.**

Schedule 2(9.4) of the HKIAC Arbitration Rules 2018 addresses the potential for arbitrators to review and increase their agreed hourly rate over time. Here is an analysis of the key elements of this provision:

1. **Limited Rate Increases:** The provision establishes a mechanism for potential rate increases for an arbitrator’s agreed hourly rate. However, these increases are subject to certain limitations, as outlined in paragraph 9.3 (which likely refers to the maximum rate set by the HKIAC).
2. **Anniversary Basis:** The rate review and potential increase are tied to specific time intervals. Arbitrators are allowed to consider an increase in their agreed hourly rate on each anniversary of their confirmation or appointment. This means that the rate can be revisited annually.
3. **10% Increment:** The provision specifies that any increase in the agreed hourly rate cannot exceed 10% on each anniversary. This incremental approach ensures that any adjustments to the fee rate remain moderate and gradual over time. It prevents arbitrators from making significant rate hikes that might be perceived as unreasonable by the parties.
4. **Balancing Inflation and Fairness:** The provision likely takes into consideration factors such as inflation and the rising cost of living. Allowing a limited annual increase helps arbitrators maintain the real value of their compensation over time without imposing a substantial burden on the parties.
5. **Arbitrator’s Discretion:** The decision to increase the agreed hourly rate is at the discretion of the arbitrator. They may choose not to increase their rate or may opt for a rate increase that is lower than the maximum 10% allowed.
6. **Transparency and Predictability:** While the provision allows for potential rate increases, it does not introduce uncertainty into the process. The rate increases are limited and follow a predictable schedule based on the anniversary of the arbitrator’s confirmation or appointment.
7. **Parties’ Awareness:** Since the provision outlines a controlled process for rate increases, the parties are aware of the potential for moderate adjustments to the arbitrator’s fees. This transparency ensures that there are no surprises regarding fee changes.

In summary, Schedule 2(9.4) of the HKIAC Arbitration Rules 2018 permits arbitrators to review and potentially increase their agreed hourly rates on each anniversary of their confirmation or appointment. The increases are capped at a maximum of 10% to maintain fairness and predictability. This provision balances the needs of the arbitrator and the parties while considering factors such as inflation and the value of the arbitrator’s services over time.

**9.5 Higher rates may be charged if expressly agreed by all parties to the arbitration or if HKIAC so determines in exceptional circumstances.**

Schedule 2(9.5) of the HKIAC Arbitration Rules 2018 outlines the conditions under which higher arbitrator rates than those specified in the schedule can be charged. Here is an analysis of the key elements of this provision:

1. **Express Agreement or Exceptional Circumstances:** The provision provides two scenarios under which higher arbitrator rates can be charged:
2. **Express Agreement:** Higher rates may be charged if all parties to the arbitration expressly agree to it. This means that the parties, including the arbitrator, must mutually consent to the increased rate.
3. **Exceptional Circumstances:** Higher rates may also be charged if the HKIAC determines that exceptional circumstances exist. This suggests that the standard rates outlined in the schedule can be deviated from under certain extraordinary situations.
4. **Flexibility in Fee Agreements:** The provision acknowledges the flexibility required in arbitration cases. It recognises that there may be unique circumstances in which parties or the arbitration institution see the need for higher rates due to specific considerations related to the case or the arbitrator’s expertise.
5. **Party Consent:** If parties unanimously agree to higher rates, it signifies a collaborative decision-making process. Parties might agree to higher rates to attract a particular arbitrator or due to the case’s complexity, sensitivity, or urgency.
6. **HKIAC’s Role:** The provision allows the HKIAC to make determinations on exceptional circumstances where higher rates are warranted. This implies that the HKIAC has the authority to assess and decide whether the situation justifies deviating from the standard rates set out in the schedule.
7. **Transparency and Oversight:** The provision adds a layer of transparency and oversight to the process of charging higher rates. The agreement of all parties or the determination of the HKIAC ensures that the decision is reasonable, justifiable, and avoids potential conflicts or disagreements over fees.
8. **Balancing Fairness and Need:** Allowing higher rates in specific cases strikes a balance between maintaining fairness and addressing the needs of the parties and the arbitrator. It recognises that some cases or situations might warrant higher compensation due to their unique characteristics.

In summary, Schedule 2(9.5) of the HKIAC Arbitration Rules 2018 permits higher arbitrator rates under certain conditions. This provision emphasises the importance of party consent or exceptional circumstances as grounds for charging rates higher than those outlined in the schedule. It acknowledges the need for flexibility and tailored fee arrangements while maintaining transparency and oversight in the process.

**9.6 If an arbitrator is required to travel for the purposes of fulfilling obligations as an arbitrator, the arbitrator shall be entitled to charge and to be reimbursed for:**

- (a) time spent travelling but not working at a rate of 50% of the agreed hourly rate; or**
- (b) time spent working whilst travelling at the full agreed hourly rate.**

Schedule 2(9.6) of the HKIAC Arbitration Rules 2018 addresses the compensation and reimbursement for arbitrators when they are required to travel for their duties. Here is an analysis of the key elements of this provision:

1. **Travel Compensation:** The provision specifies that when an arbitrator is obligated to travel for their arbitration-related duties, they are entitled to compensation for their time spent traveling and working during travel.
2. **Two Scenarios:** The provision outlines two scenarios with distinct compensation rates for different types of time spent while traveling:
  - a. **Time Spent Traveling but Not Working (50% Rate):** In this scenario, if the arbitrator is traveling but not actively working on arbitration-related tasks, they are entitled to charge and be reimbursed at a rate of 50% of their agreed hourly rate. This recognises that travel time, even if not actively productive, still represents a commitment of the arbitrator's time and availability.
  - b. **Time Spent Working While Traveling (Full Rate):** If the arbitrator is engaged in arbitration-related work while traveling, they are entitled to charge at their full agreed hourly rate. This acknowledges that working during travel is a direct extension of their arbitration duties and warrants full compensation.
3. **Balance of Compensation:** The provision aims to strike a balance between compensating arbitrators for their travel-related time and recognising that different levels of work may occur during travel.
4. **Incentive for Efficient Travel:** The provision might incentivise arbitrators to optimise their travel arrangements, as they can charge the full rate if they are working during travel. This aligns with the overall efficiency goals of the arbitration process.
5. **Clear Guidelines:** By outlining specific rates for different scenarios, the provision provides clear and objective guidelines for determining compensation during travel. This helps prevent misunderstandings or disputes regarding travel-related compensation.
6. **Reimbursement for Expenses:** Although not explicitly stated in this provision, it is common practice for arbitrators to be reimbursed for reasonable travel expenses

incurred, such as airfare, accommodation, and meals, in addition to compensation for their time.

In summary, Schedule 2(9.6) of the HKIAC Arbitration Rules 2018 addresses compensation for arbitrators when they are required to travel. It distinguishes between scenarios where arbitrators are working and not working during travel, and it provides clear rates for each scenario. This provision ensures fair compensation for arbitrators' time and efforts in fulfilling their duties, whether during travel or while actively working on arbitration matters.

## 10. Cancellation Fees

### 10.1 All hearings booked shall be paid for, subject to the following conditions:

- (a) if a booking is cancelled at the request of the arbitral tribunal, it will not be charged;
- (b) if a booking is cancelled at the request of any party less than 30 days before the first day booked it shall be paid at a daily rate of 75% of eight times the applicable hourly rate;
- (c) if a booking is cancelled at the request of any party less than 60 days but more than 30 days before the first day booked it shall be paid at a daily rate of 50% of eight times the applicable hourly rate;
- (d) if a booking is cancelled at the request of any party more than 60 days before the first day booked it will not be charged; and
- (e) in all cases referred to above, if an arbitrator has spent time on the case during the day(s) booked, he or she shall be paid based on (i) the hourly rate pursuant to paragraph 9; or (ii) the cancellation fee pursuant to paragraph 10.1(b) to (d), whichever is higher.

Schedule 2(10.1) of the HKIAC Arbitration Rules 2018 outlines the payment conditions for hearings that are booked for arbitration proceedings. Here is an analysis of the key elements of this provision:

1. **Payment for Booked Hearings:** The provision establishes that hearings that are booked for arbitration proceedings are subject to payment based on specific conditions.
2. **Cancellation by Arbitral Tribunal:** If a booking is cancelled at the request of the arbitral tribunal, it will not incur any charges. This recognises that the tribunal might need to reschedule or cancel a hearing for legitimate reasons and should not be penalised financially for doing so.
3. **Cancellation by Party Less than 30 Days Before:** If a booking is cancelled by any party less than 30 days before the first day booked, a cancellation fee applies. This fee is calculated at a daily rate of 75% of eight times the applicable hourly rate. This implies that if a party cancels a booking close to the scheduled date, a substantial fee is charged to compensate for the preparations made.
4. **Cancellation by Party 30-60 Days Before:** If a booking is cancelled by any party less than 60 days but more than 30 days before the first day booked, a reduced cancellation fee

applies. This fee is calculated at a daily rate of 50% of eight times the applicable hourly rate. This provides some relief for cancellations made with a bit more notice.

5. Cancellation by Party More than 60 Days Before: If a booking is cancelled by any party more than 60 days before the first day booked, no charges are incurred. This encourages parties to provide early notice for booking cancellations, allowing for better planning and resource allocation.
6. Arbitrator's Compensation: The provision ensures that if an arbitrator has already spent time on the case during the days booked for the cancelled hearing, they are compensated. The compensation is determined based on either the hourly rate (pursuant to paragraph 9) or the applicable cancellation fee, whichever is higher. This protects arbitrators' compensation when cases are cancelled after they have dedicated time.
7. Balancing Costs and Flexibility: The provision strikes a balance between the need to cover the costs associated with booking cancellations and the recognition that parties and arbitrators may face unforeseen circumstances that require schedule adjustments.

In summary, Schedule 2(10.1) of the HKIAC Arbitration Rules 2018 outlines the payment conditions for booked hearings in arbitration proceedings. The provision differentiates between cancellation scenarios based on the timing of the cancellation and ensures that arbitrators are compensated for their time if they have already worked on the case. This approach promotes fairness and flexibility while accounting for the practicalities of scheduling and potential disruptions.

## **10.2 Where hearing days are cancelled or postponed other than by agreement of all parties or request of the arbitral tribunal, this may be taken into account when considering any subsequent apportionment of costs.**

Schedule 2(10.2) of the HKIAC Arbitration Rules 2018 addresses the impact of cancelled or postponed hearing days on the apportionment of costs in arbitration proceedings. Here is an analysis of the key elements of this provision:

1. Cancellation or Postponement Impact: The provision establishes that if hearing days are cancelled or postponed, and this is not due to the agreement of all parties or the request of the arbitral tribunal, such cancellations or postponements could influence the distribution of costs in the arbitration.
2. Apportionment of Costs: "Apportionment of costs" refers to the allocation of the financial burden of the arbitration process among the parties. Costs in arbitration often include expenses like arbitrator fees, administrative charges, legal representation costs, and more.
3. Causation and Responsibility: The provision implies that if hearing days are cancelled or postponed without the agreement of all parties or without the tribunal's request, there might be a consideration of whether one party's actions or circumstances led to the disruption. If so, this could impact how costs are distributed among the parties.
4. Incentive for Cooperation: The provision may incentivise parties to cooperate and communicate effectively to avoid unnecessary cancellations or postponements that can



disrupt the arbitration process and potentially lead to unfavourable cost apportionment outcomes.

5. **Fairness and Equitability:** The provision is likely intended to ensure that parties act reasonably and responsibly in their scheduling decisions. If a party's actions cause disruptions that affect the other parties and the arbitration process, it is fair to consider this when deciding how costs should be allocated.
6. **Case-by-Case Consideration:** The provision does not prescribe a specific approach but rather provides the opportunity for the tribunal to take these circumstances into account when determining how to distribute costs. Each case's unique circumstances would be considered.
7. **Transparency and Balance:** By highlighting the potential impact on cost distribution, the provision enhances transparency and promotes fairness in the arbitration process. It encourages parties to be mindful of the consequences of their scheduling decisions on both the arbitration process and potential costs.

In summary, Schedule 2(10.2) of the HKIAC Arbitration Rules 2018 introduces the principle that cancellations or postponements of hearing days, not agreed upon by all parties or not requested by the tribunal, could influence how costs are divided among the parties. This provision emphasises responsibility, cooperation, and fairness in the arbitration process and underlines the connection between scheduling decisions and financial implications.

**SCHEDULE 3 ARBITRAL TRIBUNAL'S FEES, EXPENSES, TERMS AND CONDITIONS**

**Based on Sum in Dispute**

**1. Scope of Application and Interpretation**

**1.1 Subject to paragraph 1.2 below and any variations agreed by all parties or changes HKIAC considers appropriate, this Schedule applies to arbitrations in which the arbitral tribunal's fees and expenses are to be determined in accordance with Article 10.1(b) of the Rules.**

Schedule 3 (1.1) of the HKIAC (Hong Kong International Arbitration Centre) Arbitration Rules 2018 pertains to the determination of the arbitral tribunal's fees and expenses in accordance with Article 10.1(b) of the Rules. Let us break down and analyse this provision:

1. Subject to Paragraph 1.2 below: This phrase introduces a condition or limitation to the application of the schedule. The provisions in this schedule are subject to the content of Paragraph 1.2, meaning that the rules mentioned in Paragraph 1.2 could potentially modify or override the application of this schedule.
2. Variations agreed by all parties or changes HKIAC considers appropriate: This part indicates that the parties involved in the arbitration can agree to variations or modifications to the schedule. Additionally, the HKIAC itself has the authority to make changes to the schedule if it deems such changes appropriate. This suggests flexibility in the application of the schedule, allowing for tailored arrangements if parties unanimously agree or if the HKIAC determines the need for adjustments.
3. This Schedule applies to arbitrations: The schedule is designed to govern a specific type of arbitration, specifically those in which the determination of the arbitral tribunal's fees and expenses is in accordance with Article 10.1(b) of the HKIAC Arbitration Rules 2018.
4. Arbitral tribunal's fees and expenses: This refers to the compensation that the arbitrators (members of the arbitral tribunal) are entitled to for their services, as well as reimbursement for any expenses incurred during the arbitration proceedings.
5. Article 10.1(b) of the Rules: This is a cross-reference to a specific provision in the HKIAC Arbitration Rules 2018. Article 10.1(b) likely outlines the general principles or criteria for determining the arbitral tribunal's fees and expenses.

In summary, Schedule 3 (1.1) addresses the procedure for determining the fees and expenses of the arbitral tribunal in arbitrations falling under the scope of Article 10.1(b) of the HKIAC Arbitration Rules 2018. The schedule is subject to any modifications agreed upon by the parties or changes made by the HKIAC. This provision provides a framework for ensuring that arbitrators' compensation and expenses are determined in a consistent and predictable manner while allowing room for adjustments to suit specific circumstances. To fully understand the implications and specifics of this provision, it is essential to review the complete text of the HKIAC Arbitration Rules and any associated documents.

**1.2 This Schedule shall not apply to the appointment of an emergency arbitrator under Schedule 4.**

Schedule 3 (1.2) of the HKIAC Arbitration Rules 2018 is a provision that clarifies a specific exception to the application of Schedule 3. Let us break down and analyse this provision:

1. This Schedule shall not apply: This phrase unequivocally states that the provisions of Schedule 3 will not be applicable or relevant in a certain context.
2. Appointment of an emergency arbitrator under Schedule: This refers to a specific process detailed in the rules, likely in a different section (possibly another schedule), for the appointment of an emergency arbitrator. An emergency arbitrator is typically appointed in urgent situations to grant interim relief before the full arbitral tribunal is constituted.
3. In essence, Schedule 3 (1.2) specifies that the provisions laid out in Schedule 3 are not relevant or do not extend to the process of appointing an emergency arbitrator. This exception acknowledges that the determination of fees and expenses for an emergency arbitrator may involve a different set of considerations or procedures compared to the regular arbitral tribunal's fees and expenses under Article 10.1(b) and Schedule 3 (1.1).

This provision reflects the intricacies and nuances of arbitration proceedings, where various aspects, such as the appointment of an emergency arbitrator, may have their own separate rules and procedures due to the urgent and specialised nature of such appointments. It is important to understand this distinction to ensure that the appropriate rules and guidelines are followed in the relevant context.

**1.3 HKIAC may interpret the terms of this Schedule as well as the scope of application of the Schedule as it considers appropriate.**

Schedule 3 (1.3) of the HKIAC Arbitration Rules 2018 pertains to the authority and discretion of the HKIAC (Hong Kong International Arbitration Centre) in interpreting and applying the terms of Schedule 3. Let us analyse this provision:

1. HKIAC: Refers to the Hong Kong International Arbitration Centre, the institution responsible for administering arbitration proceedings according to the HKIAC Arbitration Rules.
2. May interpret the terms of this Schedule: This phrase gives the HKIAC the authority to provide explanations, clarifications, and interpretations of the terms and provisions outlined in Schedule 3. This means that if there are any uncertainties or ambiguities in the language or application of the schedule, the HKIAC has the power to offer its understanding and interpretation to ensure a consistent and fair application of the rules.
3. Scope of application of the Schedule as it considers appropriate: This portion grants the HKIAC the discretion to determine the situations in which the schedule applies. The HKIAC can decide whether the provisions of Schedule 3 should be invoked in particular cases based on its assessment of appropriateness and relevance.

In summary, Schedule 3 (1.3) grants the HKIAC the authority to interpret the terms of Schedule 3 and to decide the scope of application of the schedule in arbitration proceedings. This provision underscores the HKIAC's role in administering arbitration and its ability to provide guidance and adapt the application of the schedule as needed to meet the specific circumstances of each case. This flexibility allows the HKIAC to ensure a fair and effective arbitration process while maintaining consistency with the underlying principles of the arbitration rules.

#### **1.4 This Schedule is supplemented by the Practice Note on Costs of Arbitration Based on Schedule 3 and the Sum in Dispute in force on the date the Notice of Arbitration is submitted.**

Schedule 3 (1.4) of the HKIAC Arbitration Rules 2018 introduces supplementary materials that provide additional guidance and information related to the determination of costs of arbitration based on Schedule 3. Let us break down and analyse this provision:

1. This Schedule is supplemented by the Practice Note on Costs of Arbitration: This phrase indicates that the provisions and guidelines outlined in Schedule 3 are further explained and supplemented by a document referred to as the "Practice Note on Costs of Arbitration". This practice note likely contains practical explanations, examples, and instructions on how to apply the provisions of Schedule 3 in real-world arbitration cases.
2. Based on Schedule 3 and the Sum in Dispute in force on the date the Notice of Arbitration is submitted: This portion clarifies the context in which the Practice Note on Costs of Arbitration applies. It specifies that the practice note applies in cases where the calculation of costs is based on Schedule 3, and where the monetary amount in dispute (referred to as the "Sum in Dispute") is determined according to the circumstances prevailing on the date the Notice of Arbitration is submitted.

In essence, Schedule 3 (1.4) highlights the importance of the supplementary Practice Note on Costs of Arbitration in providing practical guidance for the application of the provisions in Schedule 3. Additionally, it underlines that the sum in dispute, which plays a role in determining the costs, should be determined based on the circumstances at the time the Notice of Arbitration is submitted. This provision reinforces the notion that the practical application of arbitration rules involves various documents and considerations that work in conjunction to ensure transparency, predictability, and fairness in the calculation of costs.

## **2. Payments to Arbitral Tribunal**

### **2.1 Payments to the arbitral tribunal shall generally be made by HKIAC from funds deposited by the parties in accordance with Article 41 of the Rules. HKIAC may direct the parties, in such proportions as it considers appropriate, to make one or more interim or final payments to the arbitral tribunal.**

Schedule 3 (2.1) of the HKIAC Arbitration Rules 2018 outlines the procedures and principles regarding payments to the arbitral tribunal for their services. Let us analyse this provision:

1. Payments to the arbitral tribunal shall generally be made by HKIAC: This phrase establishes that the HKIAC is the entity responsible for processing and disbursing

payments to the members of the arbitral tribunal. The tribunal members are entitled to receive compensation for their work as arbitrators, and these payments are managed through the HKIAC.

2. From funds deposited by the parties in accordance with Article 41 of the Rules: This specifies the source of the funds used to make payments to the arbitral tribunal. The parties involved in the arbitration are typically required to deposit funds with the HKIAC to cover various costs associated with the arbitration, including the fees and expenses of the arbitral tribunal. These funds are held and managed by the HKIAC to ensure the financial aspects of the arbitration are properly addressed.
3. HKIAC may direct the parties, in such proportions as it considers appropriate: This part grants the HKIAC the authority to determine the allocation of costs between the parties and to direct them to make payments to the arbitral tribunal. The HKIAC has the discretion to decide how the financial burden should be distributed among the parties, taking into account factors such as the complexity of the case, the parties' respective positions, and other relevant considerations.
4. To make one or more interim or final payments to the arbitral tribunal: This phrase indicates that payments to the arbitral tribunal can be made in stages. Interim payments refer to payments made during the course of the arbitration proceedings, whereas final payments are made once the arbitration is concluded. The amount of these payments is determined by the HKIAC based on the circumstances of the case and the work performed by the tribunal.

In summary, Schedule 3 (2.1) outlines the process of making payments to the arbitral tribunal for their services. The HKIAC manages these payments using funds deposited by the parties, and it has the authority to direct parties to make payments in proportions it deems appropriate. This provision emphasises the administrative role of the HKIAC in overseeing the financial aspects of the arbitration process and ensures that arbitrators are compensated for their work in a fair and transparent manner.

## **2.2 If insufficient funds are held at the time a payment is required, the invoice for the payment may be submitted to the parties for settlement by them direct.**

Schedule 3 (2.2) of the HKIAC Arbitration Rules 2018 addresses a situation where there are insufficient funds available to cover a required payment to the arbitral tribunal. Let us analyse this provision:

1. If insufficient funds are held at the time a payment is required: This phrase indicates a scenario where the funds deposited by the parties with the HKIAC are not sufficient to cover a payment that is due to the arbitral tribunal. This could be due to various reasons, such as unexpected expenses or an increase in the scope of the arbitration.
2. The invoice for the payment may be submitted to the parties for settlement by them direct: This part outlines the solution to the situation of insufficient funds. When there is a shortage of funds to cover a payment, the arbitral tribunal has the option to submit an invoice directly to the parties involved in the arbitration. The invoice would outline the amount due and provide details for the settlement of the payment.

In essence, Schedule 3 (2.2) provides a mechanism for addressing a funding shortfall in the context of arbitration costs. If there are not enough funds held by the HKIAC to cover a payment to the arbitral tribunal, the tribunal can directly approach the parties with an invoice for the outstanding amount. This ensures that the arbitral tribunal's compensation is addressed and that the parties are aware of their financial responsibilities within the arbitration process. It also highlights the practical approach of dealing with financial matters in a transparent and efficient manner to ensure the arbitration proceedings can continue smoothly.

### **2.3 Payments to the arbitral tribunal shall be made in Hong Kong Dollars unless the tribunal directs otherwise.**

Schedule 3 (2.3) of the HKIAC Arbitration Rules 2018 specifies the currency in which payments to the arbitral tribunal are to be made. Let us analyse this provision:

1. Payments to the arbitral tribunal shall be made in Hong Kong Dollars: This statement establishes the default currency for making payments to the members of the arbitral tribunal. It specifies that payments for arbitrators' fees and expenses should be denominated in Hong Kong Dollars, the local currency of Hong Kong.
2. unless the tribunal directs otherwise: This qualifier acknowledges that the arbitral tribunal has the authority to deviate from the default currency requirement. If the tribunal believes that there are valid reasons to receive payments in a different currency, it can provide specific directions for an alternative currency.

In summary, Schedule 3 (2.3) confirms that payments to the arbitral tribunal are generally made in Hong Kong Dollars. However, it also recognises the flexibility of allowing the tribunal to determine an alternative currency if there are compelling reasons for doing so. This provision ensures clarity and flexibility in the payment arrangements and accommodates potential currency-related considerations that might arise during the arbitration proceedings.

### **2.4 The parties are jointly and severally liable for the fees and expenses of an arbitrator, irrespective of which party appointed the arbitrator.**

Schedule 3 (2.4) of the HKIAC Arbitration Rules 2018 addresses the allocation of responsibility for paying the fees and expenses of an arbitrator among the parties involved in the arbitration. Let us analyse this provision:

1. The parties are jointly and severally liable: This phrase establishes the principle that all parties involved in the arbitration share a collective and individual liability for the payment of the arbitrator's fees and expenses. "Jointly and severally liable" means that each party is responsible for the entirety of the payment, but they are also collectively responsible. This allows the arbitrator to seek payment from any party, regardless of which party appointed the arbitrator.
2. for the fees and expenses of an arbitrator, irrespective of which party appointed the arbitrator: This part reinforces the concept that the division of liability is not contingent upon which party nominated or appointed the arbitrator. Regardless of which party

proposed the arbitrator's appointment, all parties are equally responsible for covering the arbitrator's fees and expenses.

In essence, Schedule 3 (2.4) clarifies that parties in an arbitration proceeding are collectively responsible for paying the fees and expenses of the arbitrator, and this liability is not determined by the nominating party. This provision promotes fairness and cooperation among the parties, ensuring that the financial aspects of the arbitration are managed without undue complications or disputes about responsibility.

### **3. Arbitral Tribunal's Expenses**

#### **3.1 The arbitral tribunal shall be reimbursed for its reasonable expenses in accordance with the Practice Note referred to at paragraph 1.4.**

Schedule 3 (3.1) of the HKIAC Arbitration Rules 2018 outlines the reimbursement of reasonable expenses incurred by the arbitral tribunal during the course of the arbitration. Let us analyse this provision:

1. The arbitral tribunal shall be reimbursed for its reasonable expenses: This phrase states that the members of the arbitral tribunal are entitled to be reimbursed for expenses that they reasonably incur while fulfilling their role in the arbitration process. These expenses could include costs associated with travel, accommodation, research materials, and any other costs directly related to the arbitration proceedings.
2. In accordance with the Practice Note referred to at paragraph 1.4: This part references the Practice Note on Costs of Arbitration Based on Schedule 3, which was mentioned in Schedule 3 (1.4). The Practice Note likely provides further guidance on the specifics of reimbursable expenses, the process for submitting and verifying expenses, and any limitations or criteria for reimbursement.

In essence, Schedule 3 (3.1) ensures that the arbitral tribunal members are appropriately reimbursed for the reasonable expenses they incur while conducting the arbitration. The provision underscores the importance of ensuring that arbitrators are not financially burdened by the costs associated with their role and that they can carry out their duties effectively. The Practice Note referred to in this provision serves as a supplementary document that offers additional details and procedures related to the reimbursement of expenses.

#### **3.2 The expenses of the arbitral tribunal shall not be included in the determination of fees charged in accordance with paragraph 6 of this Schedule.**

Schedule 3 (3.2) of the HKIAC Arbitration Rules 2018 addresses the distinction between expenses and fees related to the arbitral tribunal. Let us analyse this provision:

1. The expenses of the arbitral tribunal shall not be included in the determination of fees: This phrase clearly separates the concept of "expenses" from "fees". Expenses refer to the reasonable costs incurred by the arbitral tribunal in the course of the arbitration process,

as discussed in Schedule 3 (3.1). Fees, on the other hand, typically pertain to the compensation earned by the arbitrators for their services.

2. charged in accordance with paragraph 6 of this Schedule: This part refers to a specific section of Schedule 3, specifically paragraph 6, where the determination of fees for the arbitral tribunal is likely discussed.

In essence, Schedule 3 (3.2) establishes that the expenses incurred by the arbitral tribunal should not be factored into the calculation of the fees paid to the tribunal members. This distinction ensures transparency and clarity in how compensation is calculated and reimbursed, and it prevents any potential double-counting of costs in the determination of fees. The provision contributes to a clear and equitable approach to handling the financial aspects of arbitration and helps maintain a fair balance between compensating the arbitrators for their services and covering the legitimate expenses they incur.

#### 4. Administrative Expenses

**The parties shall be responsible for expenses reasonably incurred and relating to administrative and support services engaged for the purposes of the arbitration, including, but not limited to, the cost of hearing rooms, interpreters and transcription services. Such expenses may be paid directly from the deposits referred to in Article 41 of the Rules as and when they are incurred.**

Schedule 3 (4) of the HKIAC Arbitration Rules 2018 outlines the responsibility of the parties for covering various administrative and support expenses associated with the arbitration process. Let us analyse this provision:

1. The parties shall be responsible for expenses reasonably incurred and relating to administrative and support services engaged for the purposes of the arbitration: This statement establishes the principle that the parties involved in the arbitration are responsible for covering the costs of certain administrative and support services required for the arbitration proceedings. These expenses are expected to be reasonable and directly associated with the smooth functioning of the arbitration process.
2. including, but not limited to, the cost of hearing rooms, interpreters and transcription services: This clause provides examples of the types of expenses that the parties are responsible for. It mentions specific items such as the cost of hearing rooms (venues for the arbitration proceedings), interpreters (if needed for translation purposes), and transcription services (for creating written records of the proceedings). This list is not exhaustive, meaning that other similar expenses related to administrative and support services may also fall under this responsibility.
3. Such expenses may be paid directly from the deposits referred to in Article 41 of the Rules as and when they are incurred: This part clarifies how these expenses can be paid. The expenses can be directly covered from the funds that the parties have deposited with the HKIAC, as stipulated in Article 41 of the HKIAC Arbitration Rules. This implies that these expenses are managed separately from the fees and expenses of the arbitral tribunal, and the funds are used as and when the expenses are incurred during the arbitration process.



In summary, Schedule 3 (4) highlights the financial responsibility of the parties to cover certain administrative and support expenses associated with the arbitration proceedings. This provision ensures that costs related to hearing rooms, interpreters, transcription services, and other similar services are allocated among the parties fairly. By allowing these expenses to be paid directly from the deposits made by the parties, the provision streamlines the management of financial aspects related to arbitration support services.

## 5. Fees and Expenses Payable to Replaced Arbitrators

**Where an arbitrator is replaced pursuant to Articles 12, 27, 28 or 42.3 of the Rules, HKIAC shall decide the amount of fees and expenses to be paid for the replaced arbitrator’s services (if any), having taken into account the circumstances of the case, including, but not limited to, the applicable method for determining the arbitrator’s fees, work done by the arbitrator in connection with the arbitration, and the complexity of the subject-matter.**

Schedule 3 (5) of the HKIAC Arbitration Rules 2018 addresses the determination of fees and expenses for a replaced arbitrator in specific circumstances. Let us analyse this provision:

1. Where an arbitrator is replaced pursuant to Articles 12, 27, 28 or 42.3 of the Rules: This phrase specifies the conditions under which the provision applies. If an arbitrator is replaced according to the designated articles (12, 27, 28, or 42.3) of the HKIAC Arbitration Rules, the following procedures regarding fees and expenses come into effect.
2. HKIAC shall decide the amount of fees and expenses to be paid for the replaced arbitrator’s services (if any): This statement assigns the HKIAC the authority to determine the compensation for the replaced arbitrator’s work, if applicable. If an arbitrator is replaced, the HKIAC takes on the role of deciding the appropriate payment for the services rendered by the replaced arbitrator up to that point.
3. having taken into account the circumstances of the case, including, but not limited to, the applicable method for determining the arbitrator’s fees, work done by the arbitrator in connection with the arbitration, and the complexity of the subject-matter: This part outlines the factors that the HKIAC considers when determining the fees and expenses for the replaced arbitrator. The circumstances of the case include elements such as the method used for calculating fees, the work that the replaced arbitrator has already completed within the arbitration process, and the complexity of the subject matter being arbitrated.

In essence, Schedule 3 (5) outlines a procedure for handling fees and expenses related to replaced arbitrators. If an arbitrator is replaced according to specific articles in the arbitration rules, the HKIAC is responsible for assessing the appropriate compensation for the work completed by the replaced arbitrator. This assessment is based on a range of factors that contribute to a fair and just determination of fees and expenses. This provision emphasises the HKIAC’s role in ensuring that arbitrators are compensated appropriately when changes to the tribunal occur during the arbitration process.

**6. Determination of Arbitral Tribunal’s Fees**

**6.1 The arbitral tribunal’s fees shall be calculated in accordance with the following table. The fees calculated in accordance with the table represent the maximum amount payable to one arbitrator.**

<b>SUM IN DISPUTE</b>		<b>ARBITRATOR’S FEES</b>
<b>(in HKD)</b>		<b>(in HKD)</b>
Up to	400,000	11.000% of amount in dispute
From	400,001	44,000 + 10.000% of amt.
to	800,000	over 400,000
From	800,001	84,000 + 5.300% of amt.
to	4,000,000	over 800,000
From	4,000,001	253,600 + 3.780% of amt.
to	8,000,000	over 4,000,000
From	8,000,001	404,800 + 1.730% of amt.
to	16,000,000	over 8,000,000
From	16,000,001	543,200 + 1.060% of amt.
to	40,000,000	over 16,000,000
From	40,000,001	797,600 + 0.440% of amt.
to	80,000,000	over 40,000,000
From	80,000,001	973,600 + 0.250% of amt.
to	240,000,000	over 80,000,000
From	240,000,001	1,373,600 + 0.228% of amt.
to	400,000,000	over 240,000,000
From	400,000,001	1,738,400 + 0.101% of amt.
to	600,000,000	over 400,000,000
From	600,000,001	1,940,000 + 0.067% of amt.
to	800,000,000	over 600,000,000
From	800,000,001	2,074,400 + 0.044% of amt.
to	4,000,000,000	over 800,000,000
Over	4,000,000,000	3,482,400 + 0.025% of amt.
		over 4,000,000,000

**Maximum of 12,574,000**

The provided table outlines a detailed fee structure for calculating the compensation of arbitral tribunal members based on the sum in dispute in Hong Kong Dollars.

The fee structure is divided into different ranges of the sum in dispute. It is designed to provide a graduated and progressive approach to calculating arbitrator fees based on the sum in dispute. As the sum in dispute increases, the percentage-based component of the fees decreases, while a fixed fee component is added to provide a balanced and predictable fee schedule. The maximum fee is capped at HKD 12,574,000 for disputes exceeding HKD 4,000,000,000.

The purpose of this fee structure is to ensure fairness, transparency, and predictability in determining the compensation for arbitrators while taking into account the financial aspects of the arbitration proceedings.

## **6.2 The arbitral tribunal's fees shall cover the activities of an arbitrator from the time of his or her confirmation or appointment until the last award.**

Schedule 3 (6.2) of the HKIAC Arbitration Rules 2018 clarifies the scope of coverage for the fees paid to the arbitral tribunal members. Let us analyse this provision:

The arbitral tribunal's fees shall cover the activities of an arbitrator from the time of his or her confirmation or appointment until the last award: This statement defines the duration for which the arbitrator's fees are applicable. The fees that the arbitral tribunal members receive are intended to compensate them for their involvement and activities in the arbitration process, starting from the moment they are confirmed or appointed as arbitrators and continuing until the issuance of the final award in the case.

In essence, Schedule 3 (6.2) ensures that the fees paid to arbitrators cover their participation throughout the entirety of the arbitration process. This provision underscores that arbitrators are compensated for their work, efforts, and time invested in the arbitration from the moment they are formally appointed until their responsibilities are fulfilled with the issuance of the final award. This approach promotes fairness and transparency in terms of remunerating arbitrators for their continuous involvement in the arbitration proceedings.

## **6.3 Claims and counterclaims are added for the determination of the amount in dispute. The same rule applies to any set-off defence or cross-claim, unless the arbitral tribunal, after consulting with the parties, concludes that such set-off defence or cross-claim will not require significant additional work.**

Schedule 3 (6.3) of the HKIAC Arbitration Rules 2018 discusses how claims, counterclaims, set-off defences, and cross-claims impact the determination of the amount in dispute for calculating arbitrator fees. Let us analyse this provision:

1. Claims and counterclaims are added for the determination of the amount in dispute: This statement indicates that when calculating the arbitrator fees based on the sum in dispute, both the original claims and any counterclaims put forward by the parties are combined to form the total amount that will be used in the fee calculation. This ensures that all

relevant claims, whether originating from the claimant or respondent, are considered in the fee calculation process.

2. The same rule applies to any set-off defence or cross-claim: This phrase extends the concept to include set-off defences and cross-claims. A set-off defence involves a respondent asserting that any amount claimed by the claimant should be reduced by a certain amount that the respondent is owed by the claimant. Similarly, a cross-claim is a separate claim asserted by a respondent against the claimant or another respondent. These additional claims or defences, like counterclaims, are also considered when determining the total amount in dispute for calculating arbitrator fees.
3. unless the arbitral tribunal, after consulting with the parties, concludes that such set-off defence or cross-claim will not require significant additional work: This part introduces an exception. If the arbitral tribunal, after discussing with the parties, determines that a particular set-off defence or cross-claim will not result in a significant increase in the work required for the arbitration, it may decide not to include that claim or defence in the calculation of the sum in dispute for fee purposes.

In summary, Schedule 3 (6.3) emphasises that both original claims and any counterclaims, set-off defences, or cross-claims are taken into account when calculating the amount in dispute for the purpose of determining arbitrator fees. However, the provision also acknowledges the tribunal's discretion to exclude a set-off defence or cross-claim from the calculation if it is determined that the additional work required is not significant. This approach ensures that arbitrator fees accurately reflect the complexity and scope of the issues presented in the arbitration proceedings.

#### **6.4 An interest claim shall not be taken into account for the calculation of the amount in dispute, except where HKIAC determines that doing so would be appropriate.**

Schedule 3 (6.4) of the HKIAC Arbitration Rules 2018 addresses the treatment of interest claims in the calculation of the amount in dispute for the purpose of determining arbitrator fees. Let us analyse this provision:

1. An interest claim shall not be taken into account for the calculation of the amount in dispute: This statement establishes a general rule that interest claims, which are claims for the payment of interest on a principal sum, are not included when calculating the amount in dispute. This means that interest amounts are typically excluded from the total sum used to determine the arbitrator fees.
2. except where HKIAC determines that doing so would be appropriate: This exception grants the HKIAC the authority to deviate from the general rule. If the HKIAC finds that including an interest claim in the calculation of the amount in dispute would be appropriate under certain circumstances, it can choose to incorporate the interest claim for the purpose of determining arbitrator fees.

In essence, Schedule 3 (6.4) establishes the principle that interest claims are not factored into the calculation of the amount in dispute for the purpose of determining arbitrator fees. However, it also recognises the HKIAC's discretion to make exceptions and consider including interest claims in the calculation if deemed appropriate based on the specifics of the case. This provision ensures flexibility

in handling interest claims while maintaining a clear and consistent approach to determining arbitrator fees.

**6.5 Where there are alternative claims, only the principal claim shall be taken into account for the calculation of the amount in dispute, except where HKIAC considers it appropriate to take into account the amount of any alternative claim.**

Schedule 3 (6.5) of the HKIAC Arbitration Rules 2018 addresses the treatment of alternative claims in the calculation of the amount in dispute for the purpose of determining arbitrator fees. Let us analyse this provision:

1. Where there are alternative claims, only the principal claim shall be taken into account for the calculation of the amount in dispute: This statement establishes a general rule that when there are alternative claims presented in the arbitration, only the main or principal claim is considered when calculating the amount in dispute for the purpose of determining arbitrator fees. Alternative claims are secondary claims that provide different bases for seeking relief.
2. except where HKIAC considers it appropriate to take into account the amount of any alternative claim: This exception allows the HKIAC to deviate from the general rule. If the HKIAC determines that considering the amount of an alternative claim would be appropriate under specific circumstances, it can choose to factor in the amount of that alternative claim when calculating the amount in dispute for arbitrator fee purposes.

In summary, Schedule 3 (6.5) establishes a default approach of considering only the principal claim when calculating the amount in dispute for arbitrator fees, even when alternative claims are present. However, it also grants the HKIAC the discretion to include the amount of an alternative claim in the calculation if it deems it appropriate based on the particulars of the case. This provision ensures a consistent approach to handling alternative claims while allowing for flexibility when necessary, contributing to fairness and transparency in determining arbitrator fees.

**6.6 Pursuant to Articles 10.3(c), 18.2, 27.15, 28.10 or 30.2 or where in the opinion of HKIAC there are exceptional circumstances, the arbitral tribunal's fees may depart from the amounts calculated in accordance with paragraph 6.1.**

Schedule 3 (6.6) of the HKIAC Arbitration Rules 2018 addresses the circumstances under which the arbitrator fees may deviate from the calculated amounts based on the fee structure outlined in paragraph 6.1. Let us analyse this provision:

1. Pursuant to Articles 10.3(c), 18.2, 27.15, 28.10 or 30.2 or where in the opinion of HKIAC there are exceptional circumstances: This phrase enumerates the situations or circumstances under which the arbitrator fees can depart from the calculated amounts as specified in paragraph 6.1. These situations are as follows:
  - a. Article 10.3(c): Refers to the power of the arbitral tribunal to decide on the allocation of costs between the parties.

- b. Article 18.2: Addresses situations where parties agree on the manner of determining the fees of the arbitral tribunal.
  - c. Article 27.15: Relates to the allocation of costs when a claimant withdraws a claim.
  - d. Article 28.10: Deals with the allocation of costs when a counterclaimant withdraws a counterclaim.
  - e. Article 30.2: Pertains to the allocation of costs when parties settle the dispute.
2. Additionally, the provision allows for fee departure if HKIAC believes there are “exceptional circumstances” not covered by the listed articles.

In summary, Schedule 3 (6.6) specifies that under certain conditions outlined in the mentioned articles or when deemed appropriate due to exceptional circumstances, the fees of the arbitral tribunal can deviate from the calculated amounts in the fee structure provided in paragraph 6.1. This provision provides flexibility to account for specific situations where the calculated fees might not be applicable or where unique circumstances warrant adjustments to the fees. This ensures that the fee determination remains fair and reasonable even in cases that fall outside the scope of the standard fee structure.

**6.7 If the amount in dispute is not quantified, the arbitral tribunal’s fees shall be fixed by HKIAC, taking into account the circumstances of the case.**

Schedule 3 (6.7) of the HKIAC Arbitration Rules 2018 addresses the situation where the amount in dispute is not quantified and outlines the procedure for determining the arbitrator fees. Let us analyse this provision:

1. If the amount in dispute is not quantified: This phrase sets the context for the provision. It refers to cases where the parties have not specified a specific monetary value for the dispute, making it difficult to calculate arbitrator fees based on the sum in dispute.
2. the arbitral tribunal’s fees shall be fixed by HKIAC, taking into account the circumstances of the case: In cases where the amount in dispute is not quantified, this part establishes the procedure for determining the arbitrator fees. The HKIAC is responsible for fixing the fees that the arbitral tribunal members will receive. This determination takes into consideration the specifics of the case, which might include factors such as the complexity of the issues, the work required, and the resources needed to resolve the dispute.

In essence, Schedule 3 (6.7) addresses scenarios where the amount in dispute is not provided or quantifiable. In such cases, the HKIAC assumes the responsibility of fixing the arbitrator fees. The HKIAC’s determination of fees is influenced by the circumstances of the case, ensuring that the arbitrators are compensated fairly and appropriately for their efforts and involvement in resolving the dispute, even when the traditional method of calculating fees based on the sum in dispute is not applicable.

## 7. Lien on Award

**HKIAC and the arbitral tribunal shall have a lien over any awards issued by the arbitral tribunal to secure the payment of their outstanding fees and expenses, and may accordingly refuse to communicate any such awards to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties.**

Schedule 3 (7) of the HKIAC Arbitration Rules 2018 discusses the lien held by both the HKIAC and the arbitral tribunal over the awards issued in an arbitration. Let us analyse this provision:

1. HKIAC and the arbitral tribunal shall have a lien over any awards issued by the arbitral tribunal to secure the payment of their outstanding fees and expenses: This statement establishes that both the HKIAC (Hong Kong International Arbitration Centre) and the members of the arbitral tribunal (including arbitrators) have a lien over any awards that are issued by the tribunal. A lien in this context refers to the legal right to retain possession of a property (in this case, the award) until a debt or obligation is satisfied—in this case, the payment of outstanding fees and expenses.
2. and may accordingly refuse to communicate any such awards to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties: This part outlines the practical implication of the lien. If there are outstanding fees and expenses owed to either the HKIAC or the members of the arbitral tribunal, both entities have the authority to withhold communication of the award to the parties involved in the arbitration. In other words, they can delay sending the award to the parties until the outstanding fees and expenses are fully paid. This applies regardless of whether the fees and expenses are owed by one or both parties jointly.

In essence, Schedule 3 (7) establishes a mechanism by which the HKIAC and the arbitral tribunal can protect their financial interests by holding a lien over the awards issued in the arbitration. This lien gives them the right to withhold the release of the award until any outstanding fees and expenses are settled. This provision serves to incentivise timely payment of the fees and expenses associated with the arbitration process, ensuring that the entities responsible for facilitating the arbitration are compensated appropriately for their services before the parties receive the final award.

## 8. Governing Law

**The terms of this Schedule and any non-contractual obligation arising out of or in connection with it shall be governed by and construed in accordance with Hong Kong law.**

Schedule 3 (8) of the HKIAC Arbitration Rules 2018 addresses the governing law and interpretation of the terms within the schedule. Let us analyse this provision:

The terms of this Schedule and any non-contractual obligation arising out of or in connection with it shall be governed by and construed in accordance with Hong Kong law: This statement specifies the legal framework that applies to the terms of Schedule 3 as well as any non-contractual obligations that arise from or are related to this schedule. It establishes that the governing law for these matters is Hong Kong law.

In essence, Schedule 3 (8) stipulates that both the terms within the schedule itself and any non-contractual obligations linked to it will be subject to and interpreted according to the laws of Hong Kong. This ensures clarity and consistency in how the schedule is understood and applied, as well as in handling any obligations that arise in relation to the content of the schedule. The provision reflects the intention to have a unified legal framework governing matters related to the fee structure, compensation, and financial aspects of arbitration proceedings under the HKIAC rules.



#### SCHEDULE 4 EMERGENCY ARBITRATOR PROCEDURES

1. **A party requiring Emergency Relief may submit an application (the “Application”) for the appointment of an emergency arbitrator to HKIAC (a) before, (b) concurrent with, or (c) following the filing of a Notice of Arbitration, but prior to the constitution of the arbitral tribunal.**

Schedule 4(1) of the HKIAC Arbitration Rules 2018 pertains to the process by which a party seeking emergency relief can apply for the appointment of an emergency arbitrator through the HKIAC. This schedule outlines the specific timing at which a party can submit an application for an emergency arbitrator, emphasising the circumstances under which such applications can be made.

1. The key points of Schedule 4(1) are as follows: Requirement for Emergency Relief: The schedule starts by noting that this provision is relevant for situations where a party requires emergency relief. Emergency relief typically involves seeking immediate and provisional measures from a tribunal or arbitrator to address urgent and critical issues that cannot wait until the regular arbitration process is fully constituted.
2. Three Possible Timings for Application:
  - a. Before Filing a Notice of Arbitration: The first scenario allows a party to apply for the appointment of an emergency arbitrator even before formally initiating arbitration by filing a Notice of Arbitration. This recognises that there may be situations where immediate relief is needed to prevent irreparable harm before the formal arbitration process begins.
  - b. Concurrent with Filing of Notice of Arbitration: The second scenario permits a party to submit the application for an emergency arbitrator at the same time as filing the Notice of Arbitration. This accommodates cases where the need for emergency relief becomes apparent during the initial stages of arbitration.
  - c. Following Filing of Notice of Arbitration, but Prior to Tribunal Constitution: The third scenario allows a party to make the application for an emergency arbitrator after the Notice of Arbitration has been filed but before the arbitral tribunal is constituted. This acknowledges that parties may realise the need for urgent relief as the arbitration process progresses but before the full tribunal is established.
3. The overarching purpose of this provision is to provide parties with a flexible mechanism to seek immediate relief in cases where time is of the essence. By allowing applications for emergency arbitrators at different stages—before, concurrent with, or after the filing of a Notice of Arbitration but prior to tribunal constitution—HKIAC aims to ensure that parties have a means to safeguard their interests in situations that demand immediate attention.

In summary, Schedule 4(1) of the HKIAC Arbitration Rules 2018 outlines the permissible timings for parties to submit applications for the appointment of an emergency arbitrator. This flexibility underscores the HKIAC’s commitment to addressing urgent matters effectively while recognising the varying circumstances in which the need for emergency relief may arise within the context of arbitration.

2. The Application shall be submitted in accordance with any of the means specified in Articles 3.1 and 3.2 of the Rules. The Application shall include the following information:
- (a) the names and (in so far as known) the addresses, facsimile numbers and/or email addresses of the parties to the Application and of their representatives;
  - (b) a description of the circumstances giving rise to the Application and of the underlying dispute referred to arbitration;
  - (c) a statement of the Emergency Relief sought;
  - (d) the reasons why the applicant needs the Emergency Relief on an urgent basis that cannot await the constitution of an arbitral tribunal;
  - (e) the reasons why the applicant is entitled to such Emergency Relief;
  - (f) any relevant agreement and, in particular, the arbitration agreement;
  - (g) comments on the language, the seat of the Emergency Relief proceedings, and the applicable law;
  - (h) confirmation of payment of the amount referred to in paragraph 5 of this Schedule (the "Application Deposit");
  - (i) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and
  - (j) confirmation that copies of the Application and any supporting materials included with it have been or are being communicated simultaneously to all other parties to the arbitration by one or more means of service to be identified in such confirmation.

Schedule 4(2) of the HKIAC Arbitration Rules 2018 outlines the procedural requirements and necessary information for submitting an application for the appointment of an emergency arbitrator. This schedule provides guidance on the contents and format of the application, ensuring that parties seeking emergency relief do so in a clear and organised manner. Let us analyse the different components of this provision:

1. Parties and Representatives Information: The application should include the names, addresses, facsimile numbers, and/or email addresses of the parties involved in the application, as well as their respective representatives. This information is crucial for proper communication and contact between the parties and the emergency arbitrator.
2. Description of Circumstances and Underlying Dispute: The application should provide a description of the circumstances that have led to the need for emergency relief and an overview of the underlying dispute that is subject to arbitration. This information helps the emergency arbitrator understand the context and urgency of the matter.
3. Statement of Emergency Relief Sought: The application must clearly state the specific emergency relief being sought. This helps define the scope of the relief requested and assists the emergency arbitrator in assessing the appropriateness of the measures being sought.

4. **Urgent Basis for Relief:** The applicant must explain why the requested emergency relief cannot wait for the constitution of a regular arbitral tribunal. This requirement emphasises the need to demonstrate the urgency of the situation and the necessity of addressing it promptly.
5. **Entitlement to Emergency Relief:** The applicant should provide reasons supporting their entitlement to the emergency relief requested. This requires the party to justify why they believe they should be granted the specific relief being sought.
6. **Relevant Agreements and Arbitration Agreement:** The application should include any relevant agreements, particularly the arbitration agreement that establishes the basis for arbitration proceedings. This allows the emergency arbitrator to understand the contractual framework within which the dispute arises.
7. **Language, Seat, and Applicable Law:** The application should address practical aspects such as the language in which the emergency relief proceedings should be conducted, the proposed seat of the proceedings, and the applicable law. These considerations help shape the procedural framework.
8. **Application Deposit:** The applicant must confirm the payment of the Application Deposit, which is a specified amount required to be paid when submitting the application for an emergency arbitrator.
9. **Funding Agreement and Third-Party Funder:** If there is a funding agreement in place or a third-party funder involved, the application should provide information about their existence and identity in accordance with Article 44.
10. **Communication to Other Parties:** The applicant must confirm that copies of the application and any supporting materials have been or are being communicated simultaneously to all other parties in the arbitration. This ensures transparency and equal access to information among all parties.

In summary, Schedule 4(2) of the HKIAC Arbitration Rules 2018 sets out the comprehensive information that an applicant must include when submitting an application for the appointment of an emergency arbitrator. These requirements are designed to facilitate a clear and structured presentation of the urgent matter at hand, enabling the emergency arbitrator to make informed and timely decisions regarding emergency relief.

**3. The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.**

Schedule 4(3) of the HKIAC Arbitration Rules 2018 addresses the flexibility that applicants have in including additional documents or information in their application for the appointment of an emergency arbitrator. This provision recognises that the complexity of certain cases may require supplementary materials beyond the required elements outlined in the previous sections of Schedule 4. Key points about Schedule 4(3) are as follows:

1. **Additional Documents and Information:** This schedule permits applicants to include any other documents or information that they believe are relevant or necessary for a

comprehensive understanding of the circumstances surrounding the application. This allowance acknowledges that some cases might involve specific details, complexities, or nuances that are not covered by the standard requirements.

2. **Efficient Examination of the Application:** The provision emphasises that the inclusion of additional documents or information should contribute to the efficient examination of the application. This implies that such supplementary materials should be directly related to the emergency relief being sought and should aid the emergency arbitrator in reaching a well-informed decision promptly.
3. **Flexibility and Case-Specific Needs:** By allowing applicants to exercise their judgment and discretion in including additional documents or information, Schedule 4(3) highlights the importance of tailoring the application to the specific circumstances of the case. Parties are encouraged to consider the unique aspects of their dispute and provide any supporting materials that would enhance the emergency arbitrator’s understanding of the situation.
4. **Balancing Complexity and Efficiency:** While the provision allows for flexibility, it also suggests that the inclusion of additional documents or information should be guided by the aim of maintaining an efficient and timely process. The emergency arbitrator needs to evaluate the materials within a reasonable timeframe, and the provision encourages applicants to strike a balance between providing comprehensive information and ensuring that the emergency relief process remains expedited.

In summary, Schedule 4(3) of the HKIAC Arbitration Rules 2018 acknowledges that certain cases may require additional documents or information beyond the standard requirements for an application for an emergency arbitrator. This provision allows applicants to exercise judgment in determining what additional materials are relevant and helpful for the emergency arbitrator’s understanding of the urgent matter at hand. The provision underscores the importance of efficiency while recognising the unique complexities of different arbitration cases.

**4. If HKIAC determines that it should accept the Application, HKIAC shall seek to appoint an emergency arbitrator within 24 hours after receipt of both the Application and the Application Deposit.**

Schedule 4(4) of the HKIAC Arbitration Rules 2018 outlines a time-sensitive procedure for the appointment of an emergency arbitrator when an application is accepted by the HKIAC. This provision highlights the expedited nature of emergency relief proceedings and underscores the efficiency and speed with which the process is intended to operate. Key points about Schedule 4(4) are as follows:

1. **Acceptance of the Application:** This provision states that if the HKIAC determines that the application for the appointment of an emergency arbitrator should be accepted, the process of appointing the emergency arbitrator is initiated. The determination is likely based on the completeness of the application and its adherence to the procedural requirements.
2. **Timely Appointment:** Once the HKIAC accepts the application, it is obligated to seek the appointment of an emergency arbitrator within 24 hours. This strict time frame reflects

the urgent nature of the relief sought and ensures that the appointment process is initiated promptly.

3. **Application and Application Deposit:** The clock for the 24-hour period starts ticking after the HKIAC receives both the application and the Application Deposit. The Application Deposit is a specified amount that the applicant must pay when submitting the application.
4. **Efficiency and Urgency:** This provision underscores the commitment of the HKIAC to handling emergency relief applications efficiently and promptly. The 24-hour time frame for appointment recognises that parties seeking emergency relief require immediate attention to prevent irreparable harm or damage.
5. **Maintaining the Integrity of the Process:** The expedited appointment process aims to maintain the integrity of the arbitration proceedings while ensuring that parties have access to swift and effective emergency relief. This process contributes to preserving the credibility of the arbitration institution and upholding the fairness of the overall arbitration process.

In summary, Schedule 4(4) of the HKIAC Arbitration Rules 2018 outlines the timeline for the appointment of an emergency arbitrator once an application is accepted by the HKIAC. This provision emphasises the urgent nature of emergency relief proceedings and underscores the HKIAC's commitment to providing timely and efficient mechanisms for parties seeking immediate remedies.

5. **The Application Deposit is the amount set by HKIAC, as stated on HKIAC's website on the date the Application is submitted. The Application Deposit consists of HKIAC's emergency administrative fees and the emergency arbitrator's fees and expenses. The emergency arbitrator's fees shall be determined by reference to his or her hourly rate subject to the terms of Schedule 2 and shall not exceed the amount set by HKIAC, as stated on HKIAC's website on the date the Application is submitted unless the parties agree or HKIAC determines otherwise in exceptional circumstances. HKIAC may, at any time during the Emergency Relief proceedings, request additional deposits to cover any increase in the emergency arbitrator's fees or HKIAC's emergency administrative fees, taking into account, inter alia, the nature of the case and the nature and amount of work performed by the emergency arbitrator and HKIAC. If the party which submitted the Application fails to pay the additional deposits within the time limit fixed by HKIAC, the Application shall be dismissed.**

Schedule 4(5) of the HKIAC Arbitration Rules 2018 provides details about the Application Deposit for emergency relief proceedings and the associated fees involved. This provision addresses the financial aspects of seeking emergency relief through the appointment of an emergency arbitrator under the rules of the HKIAC. Key points about Schedule 4(5) are as follows:

1. **Application Deposit:** The Application Deposit is an upfront payment required from the party submitting the application for the appointment of an emergency arbitrator. This deposit covers two components: HKIAC's emergency administrative fees and the emergency arbitrator's fees and expenses. The deposit is calculated based on the rates and amounts specified by the HKIAC, as provided on its website on the date of the application.

2. **Emergency Arbitrator’s Fees:** The fees payable to the emergency arbitrator are determined by referencing their hourly rate, as specified in Schedule 2 of the HKIAC Arbitration Rules. The fees are subject to the maximum limit set by the HKIAC and displayed on its website at the time of the application. This maximum amount can be exceeded only if the parties agree or if HKIAC determines it to be necessary due to exceptional circumstances.
3. **Request for Additional Deposits:** HKIAC reserves the right to request additional deposits during the course of the Emergency Relief proceedings. These additional deposits might be necessary to cover any increases in the emergency arbitrator’s fees or the HKIAC’s emergency administrative fees. Factors such as the nature of the case and the work performed by the emergency arbitrator and the HKIAC are taken into account when determining the need for additional deposits.
4. **Dismissal for Non-Payment:** If the party that submitted the application fails to pay the requested additional deposits within the time limit specified by the HKIAC, the application for emergency relief may be dismissed. This provision underscores the importance of adhering to the financial obligations associated with seeking emergency relief.
5. **Financial Transparency and Accountability:** The provision ensures that the financial aspects of emergency relief proceedings are transparent, with fees clearly defined and communicated on the HKIAC’s website. The ability to request additional deposits as needed helps maintain the financial viability of the process and enables the emergency arbitrator and HKIAC to perform their roles effectively.

In summary, Schedule 4(5) of the HKIAC Arbitration Rules 2018 outlines the structure and requirements for the Application Deposit and associated fees in emergency relief proceedings. This provision aims to ensure financial transparency, accountability, and the necessary resources to facilitate the prompt and efficient resolution of urgent matters through the appointment of an emergency arbitrator.

6. **Once the emergency arbitrator has been appointed, HKIAC shall communicate the appointment to the parties to the Application and shall communicate the case file to the emergency arbitrator. Thereafter, the parties shall communicate with the emergency arbitrator directly, with a copy to all other parties to the Application and HKIAC. Any written communications from the emergency arbitrator to the parties shall also be copied to HKIAC.**

Schedule 4(6) of the HKIAC Arbitration Rules 2018 outlines the communication protocol and the roles of the HKIAC, the emergency arbitrator, and the parties after the appointment of the emergency arbitrator. This provision ensures effective and transparent communication in the context of emergency relief proceedings. Key points about Schedule 4(6) are as follows:

1. **Communication of Appointment and Case File:** Once the emergency arbitrator has been appointed, the HKIAC is responsible for communicating this appointment to the parties involved in the application for emergency relief. Additionally, the HKIAC will provide the appointed emergency arbitrator with the relevant case file. This step ensures that all parties are informed of the emergency arbitrator’s involvement and that the arbitrator has access to the necessary information to proceed.

2. **Direct Communication with the Emergency Arbitrator:** Following the appointment, the parties are expected to communicate directly with the emergency arbitrator. This direct communication allows for efficient and prompt interaction between the parties and the emergency arbitrator, especially considering the urgent nature of the relief being sought.
3. **Copies to All Parties and HKIAC:** While direct communication with the emergency arbitrator is encouraged, Schedule 4(6) mandates that copies of all communications between parties and the arbitrator should be simultaneously provided to all other parties involved in the application as well as to the HKIAC. This requirement aims to ensure transparency and equal access to information among all parties.
4. **Emergency Arbitrator's Communications to be Copied to HKIAC:** Any written communications from the emergency arbitrator to the parties should also be copied to the HKIAC. This allows the HKIAC to monitor the progress of the emergency relief proceedings and stay informed about the interactions between the parties and the arbitrator.

In summary, Schedule 4(6) of the HKIAC Arbitration Rules 2018 establishes a clear communication framework after the appointment of an emergency arbitrator. The provision emphasises direct communication between the parties and the arbitrator while ensuring that all parties and the HKIAC remain informed about the progress of the proceedings. This arrangement contributes to the efficient and transparent handling of emergency relief cases.

**7. Article 11 of the Rules shall apply to the emergency arbitrator, except that the time limits set out in Articles 11.7 and 11.9 are shortened to three days.**

Schedule 4(7) of the HKIAC Arbitration Rules 2018 refers to the application of Article 11 of the same rules to emergency arbitrator proceedings. This provision specifies that certain time limits outlined in Article 11 shall be shortened when applied to the emergency arbitrator proceedings, reflecting the expedited nature of emergency relief cases. Key points about Schedule 4(7) are as follows:

1. **Application of Article 11:** Article 11 of the HKIAC Arbitration Rules 2018 deals with the challenge of arbitrators. It sets out the procedure for parties to challenge an arbitrator's appointment on various grounds, including circumstances that may give rise to doubts about the arbitrator's impartiality or independence.
2. **Shortened Time Limits:** While Schedule 4(7) acknowledges the applicability of Article 11 to emergency arbitrator proceedings, it specifically notes that the time limits outlined in Articles 11.7 and 11.9 are shortened to three days. These time limits pertain to the procedures for notifying a challenge to the emergency arbitrator and for the emergency arbitrator's response to the challenge, respectively.
3. **Expedited Nature of Emergency Relief:** The provision underscores the urgency inherent in emergency relief cases. By shortening the time limits for the challenge procedure, the schedule reflects the need to swiftly resolve any challenges to the appointment of the emergency arbitrator, ensuring that the emergency relief process remains efficient and effective.

4. **Balance Between Speed and Due Process:** While the schedule emphasises expedited procedures, it also implies that parties must strike a balance between speed and ensuring due process. The shortened time limits are designed to address the time-sensitive nature of emergency relief, but parties' rights to challenge an arbitrator's appointment are still respected.

In summary, Schedule 4(7) of the HKIAC Arbitration Rules 2018 clarifies the application of Article 11 of the rules to emergency arbitrator proceedings. The provision highlights that while the challenge procedure is applicable, certain time limits within that procedure are shortened to three days to align with the rapid nature of emergency relief cases. This approach aims to facilitate quick and efficient resolution while maintaining a level of due process for all parties involved.

8. **Where an emergency arbitrator dies, has been successfully challenged, has been otherwise removed, or has resigned, HKIAC shall seek to appoint a substitute emergency arbitrator within 24 hours. If an emergency arbitrator withdraws or a party agrees to terminate an emergency arbitrator's appointment under paragraph 8 of this Schedule, no acceptance of the validity of any ground referred to in Article 11.6 of the Rules shall be implied. If the emergency arbitrator is replaced, the Emergency Relief proceedings shall resume at the stage where the emergency arbitrator was replaced or ceased to perform his or her functions, unless the substitute emergency arbitrator decides otherwise.**

Schedule 4(8) of the HKIAC Arbitration Rules 2018 outlines the procedure for the appointment of a substitute emergency arbitrator in situations where the originally appointed emergency arbitrator is no longer able to fulfil their duties. This provision addresses circumstances where the emergency arbitrator dies, is challenged, is removed, resigns, withdraws, or has their appointment terminated by mutual agreement. Key points about Schedule 4(8) are as follows:

1. **Appointment of a Substitute Emergency Arbitrator:** This provision states that if the emergency arbitrator is unable to continue their role due to reasons such as death, successful challenge, removal, resignation, or withdrawal, the HKIAC is obligated to seek the appointment of a substitute emergency arbitrator. The appointment of a substitute emergency arbitrator aims to ensure continuity in the emergency relief proceedings.
2. **Timely Appointment:** Similar to the appointment of the initial emergency arbitrator, the appointment of a substitute emergency arbitrator must be made within 24 hours of the original arbitrator's inability to continue.
3. **Withdrawal and Termination:** If the emergency arbitrator withdraws or if a party and the emergency arbitrator mutually agree to terminate the arbitrator's appointment, such actions are not to be interpreted as an acceptance of the validity of any challenge grounds that could be raised under Article 11.6 of the HKIAC Arbitration Rules. This reinforces the idea that a withdrawal or termination does not imply an acknowledgment of any underlying issues.
4. **Resumption of Proceedings:** If a substitute emergency arbitrator is appointed, the emergency relief proceedings will generally resume from the stage where the previous emergency arbitrator was replaced or ceased to perform their functions. However, the substitute emergency arbitrator has the authority to decide whether to alter this approach based on the specific circumstances of the case.



In summary, Schedule 4(8) of the HKIAC Arbitration Rules 2018 outlines the process for appointing a substitute emergency arbitrator in cases where the originally appointed emergency arbitrator cannot continue their role. The provision aims to ensure the seamless continuation of emergency relief proceedings in the event of unexpected changes or challenges to the emergency arbitrator's appointment, while also clarifying the implications of withdrawal or termination and providing flexibility for the substitute arbitrator to decide on the resumption of proceedings.

**9. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the Emergency Relief proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant to Article 14.1 of the Rules, the seat of the Emergency Relief proceedings shall be Hong Kong.**

Schedule 4(9) of the HKIAC Arbitration Rules 2018 addresses the issue of the seat of Emergency Relief proceedings when parties seek emergency relief through the appointment of an emergency arbitrator. The provision outlines the scenarios where the seat of the Emergency Relief proceedings will be determined based on the parties' agreement or default rules specified in the schedule. Key points about Schedule 4(9) are as follows:

1. **Seat of Arbitration and Emergency Relief Proceedings:** The "seat of arbitration" refers to the legal jurisdiction where the arbitration is deemed to be seated. It plays a critical role in determining the legal framework that governs the arbitration proceedings. In emergency arbitrator cases, the schedule specifies the seat of the Emergency Relief proceedings, which refers to the jurisdiction that has authority over the emergency relief process.
2. **Parties' Agreement on Seat:** If the parties have already agreed on the seat of arbitration in their arbitration agreement, that seat will also be the seat of the Emergency Relief proceedings. This emphasises the principle of party autonomy in arbitration, where the parties' choices are respected.
3. **No Agreement on Seat of Arbitration:** In cases where the parties have not agreed on the seat of arbitration, Schedule 4(9) provides a default rule for the seat of the Emergency Relief proceedings. The default rule states that the seat of the Emergency Relief proceedings will be Hong Kong. This means that, absent an explicit choice by the parties, the emergency arbitrator proceedings will be considered as seated in Hong Kong for procedural and legal purposes.
4. **Precedence over Tribunal's Determination:** The provision clarifies that the determination of the seat of the Emergency Relief proceedings under Schedule 4(9) takes precedence over the arbitral tribunal's later determination of the seat of the arbitration itself, as stipulated in Article 14.1 of the HKIAC Arbitration Rules. This ensures that the seat for the emergency relief process is established early and consistently.

In summary, Schedule 4(9) of the HKIAC Arbitration Rules 2018 addresses the determination of the seat of the Emergency Relief proceedings in cases involving an emergency arbitrator. It respects the parties' autonomy to choose the seat while also providing a default rule to ensure clarity in cases where no seat has been explicitly agreed upon. This provision aims to streamline the procedural

aspects of emergency relief proceedings while maintaining the flexibility to accommodate parties' choices.

- 10. Taking into account the urgency inherent in the Emergency Relief proceedings and ensuring that each party has a reasonable opportunity to be heard on the Application, the emergency arbitrator may conduct such proceedings in such a manner as the emergency arbitrator considers appropriate. The emergency arbitrator shall have the power to rule on objections that the emergency arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause or of the separate arbitration agreement, and shall resolve any disputes over the applicability of this Schedule.**

Schedule 4(10) of the HKIAC Arbitration Rules 2018 outlines the powers and authority of the emergency arbitrator regarding the conduct of Emergency Relief proceedings. This provision emphasises the urgency of these proceedings while ensuring that parties have a reasonable opportunity to be heard. Key points about Schedule 4(10) are as follows:

1. **Urgency and Fair Process:** The provision recognises the inherent urgency in Emergency Relief proceedings. These proceedings involve immediate and provisional measures to address urgent issues. Despite this urgency, the schedule also emphasises the importance of ensuring that each party has a reasonable opportunity to be heard. This balance between urgency and due process is crucial in emergency situations.
2. **Discretion in Conduct:** The emergency arbitrator is granted significant discretion in conducting the proceedings. This flexibility allows the emergency arbitrator to tailor the process to the specific circumstances of the case, considering factors such as the urgency of the matter, the nature of the relief sought, and the parties' need for expeditious resolution.
3. **Power to Rule on Jurisdiction Objections:** One of the notable powers of the emergency arbitrator, as outlined in Schedule 4(10), is the authority to rule on objections related to their jurisdiction. This includes addressing objections about the existence, validity, or scope of the arbitration clause or any separate arbitration agreement. This power ensures that jurisdictional challenges are swiftly addressed to maintain the integrity of the proceedings.
4. **Resolution of Disputes Over Applicability of Schedule:** The schedule also grants the emergency arbitrator the authority to resolve any disputes over the applicability of Schedule 4. This ensures that any issues related to the interpretation and application of the specific emergency relief procedures are promptly addressed and resolved by the emergency arbitrator.

In summary, Schedule 4(10) of the HKIAC Arbitration Rules 2018 underscores the dual importance of urgency and due process in Emergency Relief proceedings. It grants the emergency arbitrator the discretion to conduct the proceedings appropriately while ensuring parties' opportunities to be heard. The provision also highlights the emergency arbitrator's jurisdictional authority and their role in interpreting and applying the emergency relief procedures outlined in Schedule 4.

**11. Articles 23.2 to 23.8 shall apply, mutatis mutandis, to any Emergency Relief granted by the emergency arbitrator.**

Schedule 4(11) of the HKIAC Arbitration Rules 2018 references the application of certain provisions, specifically Articles 23.2 to 23.8, to Emergency Relief granted by an emergency arbitrator. This provision ensures that the procedural framework for challenging, modifying, or enforcing emergency relief measures aligns with the broader arbitration rules of the HKIAC. Key points about Schedule 4(11) are as follows:

1. **Applicability of Articles 23.2 to 23.8:** The provision specifies that Articles 23.2 to 23.8 of the HKIAC Arbitration Rules are applicable, with necessary modifications, to Emergency Relief granted by an emergency arbitrator. These articles pertain to the challenge, modification, and enforcement of interim or provisional measures ordered by an arbitral tribunal.
2. **“Mutatis Mutandis”:** The Latin term “mutatis mutandis” is used to indicate that certain modifications or adaptations are made to apply the specified articles to the context of Emergency Relief granted by an emergency arbitrator. In other words, while the substance of the provisions remains relevant, some adjustments might be necessary to fit the unique nature of emergency relief proceedings.
3. **Challenges, Modifications, and Enforcement:** Articles 23.2 to 23.8 generally cover procedures related to challenging, modifying, or enforcing interim or provisional measures ordered by the arbitral tribunal. These provisions ensure a fair process for parties affected by such measures, allowing them to seek changes or challenge their validity if necessary.
4. **Consistency and Clarity:** By incorporating these articles into the context of Emergency Relief proceedings, Schedule 4(11) ensures consistency and clarity in the overall arbitration process. It allows parties to understand how to challenge, modify, or enforce emergency relief measures, similar to how they would do so for interim measures ordered by the arbitral tribunal.

In summary, Schedule 4(11) of the HKIAC Arbitration Rules 2018 emphasises the application of certain provisions from the broader arbitration rules to Emergency Relief proceedings. This provision ensures that the framework for challenging, modifying, or enforcing emergency relief measures granted by an emergency arbitrator aligns with the procedures established for interim measures ordered by an arbitral tribunal under the HKIAC rules.

**12. Any decision, order or award of the emergency arbitrator on the Application (the “Emergency Decision”) shall be made within 14 days from the date on which HKIAC transmitted the case file to the emergency arbitrator. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.**

Schedule 4(12) of the HKIAC Arbitration Rules 2018 outlines the timeframe within which the emergency arbitrator is required to make a decision, order, or award on the Application for Emergency Relief. This provision emphasises the need for a timely resolution of the emergency matter while allowing for flexibility under certain circumstances. Key points about Schedule 4(12) are as follows:

1. **Timeframe for Emergency Decision:** The schedule sets a clear time limit for the emergency arbitrator to make a decision, order, or award on the Application for Emergency Relief. Specifically, this must be done within 14 days from the date on which the HKIAC transmitted the case file to the emergency arbitrator.
2. **Urgency and Timeliness:** The provision reflects the essential urgency inherent in Emergency Relief proceedings. The 14-day time limit ensures that parties receive a prompt resolution to their urgent matter, allowing them to swiftly address the emergency circumstances at hand.
3. **Extension of Time Limit:** The schedule acknowledges the potential need for flexibility in exceptional cases. It permits the parties to agree to extend the 14-day time limit if they deem it necessary. Additionally, in appropriate circumstances, the HKIAC also has the authority to extend the time limit. This recognises that unforeseen complexities or factors might warrant additional time.
4. **Balance of Speed and Care:** While emphasising the importance of timely decisions, the provision also acknowledges the necessity of careful consideration. The emergency arbitrator is expected to balance the need for speed with the requirement to make well-reasoned and fair decisions in line with the principles of arbitration.

In summary, Schedule 4(12) of the HKIAC Arbitration Rules 2018 establishes a 14-day time limit for the emergency arbitrator to issue a decision, order, or award on the Application for Emergency Relief. This provision reflects the urgency of the proceedings while allowing for reasonable flexibility through potential extensions when agreed upon by the parties or when deemed appropriate by the HKIAC.

**13. The Emergency Decision may be made even if in the meantime the case file has been transmitted to the arbitral tribunal.**

Schedule 4(13) of the HKIAC Arbitration Rules 2018 addresses the timing of the Emergency Decision in relation to the transmission of the case file to the arbitral tribunal. This provision highlights the ability of the emergency arbitrator to proceed with making a decision even if the case file has been transmitted to the main arbitral tribunal. Key points about Schedule 4(13) are as follows:

1. **Independence of Emergency Decision:** This provision reaffirms the independent role of the emergency arbitrator. It states that the Emergency Decision regarding the Application for Emergency Relief can still be made even if the case file has already been transmitted to the arbitral tribunal that will handle the main arbitration proceedings.
2. **Separate and Expedited Process:** Emergency Relief proceedings operate on an expedited basis to address urgent matters. This provision ensures that the emergency arbitrator's authority is not compromised by the progression of the main arbitration process. It recognises the need for a separate, swift, and effective mechanism to address emergency situations.
3. **Maintaining the Emergency Arbitrator's Jurisdiction:** By allowing the Emergency Decision to proceed independently of the case file's transmission to the main arbitral tribunal, Schedule 4(13) ensures that the emergency arbitrator retains their jurisdiction to make

determinations on the Application for Emergency Relief, regardless of the progress of the main arbitration proceedings.

4. **Avoiding Delay:** This provision helps avoid potential delays that might arise from waiting for the main arbitral tribunal to become involved in the emergency relief matter. The emergency arbitrator's ability to proceed with the Emergency Decision independently contributes to the efficiency of the emergency relief process.

In summary, Schedule 4(13) of the HKIAC Arbitration Rules 2018 emphasises the distinct and expedited nature of the Emergency Relief proceedings. It asserts the emergency arbitrator's authority to make a decision on the Application for Emergency Relief even if the case file has already been transmitted to the main arbitral tribunal. This provision reinforces the importance of addressing urgent matters promptly and independently from the broader arbitration process.

**14. Any Emergency Decision shall:**

- (a) be made in writing;**
- (b) state the date when it was made and reasons upon which the Emergency Decision is based, which may be in summary form (including a determination on whether the emergency arbitrator has jurisdiction to grant the Emergency Relief); and**
- (c) be signed by the emergency arbitrator.**

Schedule 4(14) of the HKIAC Arbitration Rules 2018 outlines the requirements for the format and content of an Emergency Decision made by an emergency arbitrator in the context of Emergency Relief proceedings. This provision ensures that the Emergency Decision is documented and includes key information necessary for transparency and accountability. Key points about Schedule 4(14) are as follows:

1. **Written Form:** The provision mandates that any Emergency Decision issued by the emergency arbitrator must be in writing. This requirement ensures that decisions are documented and can be shared with the parties involved, the main arbitral tribunal (if applicable), and any other relevant stakeholders.
2. **Date and Reasons:** The Emergency Decision must state the date on which it was made and provide the reasons upon which the decision is based. These reasons can be presented in summary form, but they should sufficiently explain the rationale behind the emergency arbitrator's decision. This promotes transparency and helps parties understand the basis for the outcome.
3. **Determination of Jurisdiction:** The Emergency Decision should include a determination on whether the emergency arbitrator has jurisdiction to grant the Emergency Relief requested by the parties. This clarification about jurisdiction ensures that the emergency arbitrator has the authority to address the specific emergency matter.
4. **Signature of Emergency Arbitrator:** The Emergency Decision must be signed by the emergency arbitrator. The signature affirms the authenticity and authorship of the decision, adding an element of accountability to the process.

In summary, Schedule 4(14) of the HKIAC Arbitration Rules 2018 sets out the necessary elements that an Emergency Decision must contain. This provision ensures that the Emergency Decision is well-documented, transparent, and includes the key information needed to understand the decision's basis, jurisdiction, and outcome. By requiring the decision to be in writing, containing reasons, and being signed by the emergency arbitrator, the provision upholds the standards of procedural fairness and accountability in the Emergency Relief proceedings.

**15. Any Emergency Decision may fix and apportion the costs of the Emergency Relief proceedings, subject always to the power of the arbitral tribunal to fix and apportion finally such costs in accordance with Article 34 of the Rules. The costs of the Emergency Relief proceedings include HKIAC's emergency administrative fees, the fees and expenses of the emergency arbitrator and any tribunal secretary, and the reasonable legal and other costs incurred by the parties for the Emergency Relief proceedings.**

Schedule 4(15) of the HKIAC Arbitration Rules 2018 addresses the issue of costs related to the Emergency Relief proceedings conducted by an emergency arbitrator. This provision outlines the emergency arbitrator's authority to determine and allocate costs associated with these proceedings, while also highlighting the ultimate power of the main arbitral tribunal to finally determine and allocate costs in accordance with the broader rules. Key points about Schedule 4(15) are as follows:

1. **Cost Allocation by Emergency Arbitrator:** The schedule specifies that an Emergency Decision made by the emergency arbitrator can include provisions to fix and allocate the costs of the Emergency Relief proceedings. This involves determining how the costs are divided between the parties involved in the emergency matter.
2. **Subject to Tribunal's Power:** The provision also emphasises that the power of the emergency arbitrator to fix and apportion costs is subject to the ultimate authority of the main arbitral tribunal. The main tribunal, established for the arbitration proceedings, has the final say in fixing and apportioning costs in accordance with Article 34 of the HKIAC Arbitration Rules.
3. **Components of Costs:** The costs associated with the Emergency Relief proceedings include various elements, such as HKIAC's emergency administrative fees, the fees and expenses of the emergency arbitrator and any tribunal secretary, and the reasonable legal and other costs incurred by the parties specifically for the Emergency Relief proceedings.
4. **Balance and Fairness in Cost Allocation:** The provision reflects the importance of ensuring that costs are fairly allocated among the parties, taking into consideration the nature of the emergency matter and the circumstances of the case.

In summary, Schedule 4(15) of the HKIAC Arbitration Rules 2018 establishes the authority of the emergency arbitrator to determine and allocate costs associated with the Emergency Relief proceedings. It highlights that this authority is subject to the final power of the main arbitral tribunal to fix and allocate costs in accordance with the broader arbitration rules. This provision ensures a balanced and fair approach to cost allocation while maintaining the structure and authority of the main arbitral tribunal.

**16. Any Emergency Decision shall have the same effect as an interim measure granted pursuant to Article 23 of the Rules and shall be binding on the parties when rendered.**

Schedule 4, Clause 16 of the HKIAC (Hong Kong International Arbitration Centre) Arbitration Rules 2018 concerns the concept of “Emergency Decisions” in the context of arbitration proceedings conducted under these rules. Let us break down the clause to understand its meaning and implications:

1. **Emergency Decision:** An Emergency Decision refers to a provisional or interim measure that is granted by an emergency arbitrator before a full arbitration tribunal is constituted. This provision allows parties to seek urgent relief that cannot wait until a formal arbitration panel is established. Emergency measures can include orders to preserve assets, maintain the status quo, or prevent irreparable harm.
2. **Effect as an Interim Measure:** Clause 16 states that any decision made by the emergency arbitrator shall have the same legal effect as an interim measure granted under Article 23 of the HKIAC Arbitration Rules. Article 23 of the rules outlines the general procedure for seeking interim measures from an arbitration tribunal during the course of the arbitration proceedings. This means that an Emergency Decision has the same legal significance and enforceability as an interim measure ordered by a full arbitration tribunal.
3. **Binding Nature:** The clause specifies that any Emergency Decision rendered by the emergency arbitrator is binding on the parties. This means that both parties involved in the arbitration are required to comply with the decision and take the necessary actions as directed by the emergency arbitrator.
4. **Timing and Urgency:** The purpose of this clause is to provide parties with a mechanism to seek urgent relief when circumstances demand immediate action. Arbitration proceedings can often take time to establish, and certain situations may require swift measures to prevent irreversible harm. The emergency arbitrator process allows parties to seek relief promptly without having to wait for the constitution of the full arbitration tribunal.
5. **Flexibility and Efficiency:** The inclusion of Emergency Decisions in the arbitration rules adds flexibility and efficiency to the arbitration process. It acknowledges that certain situations demand urgent attention and provides a mechanism for parties to address these situations in a timely manner, even before the formal arbitration proceedings begin.

In summary, Schedule 4, Clause 16 of the HKIAC Arbitration Rules 2018 establishes that any decision made by an emergency arbitrator under the emergency arbitrator provisions will be treated as having the same legal effect as an interim measure granted by a full arbitration tribunal under Article 23 of the rules. The decision is binding on the parties and offers an efficient and effective means to address urgent matters that require immediate attention before the full arbitration process unfolds.

**17. Any Emergency Decision ceases to be binding:**

- (a) if the emergency arbitrator or the arbitral tribunal so decides;**
- (b) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;**
- (c) upon the termination of the arbitration before the rendering of a final award; or**
- (d) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.**

Schedule 4, Clause 17 of the HKIAC (Hong Kong International Arbitration Centre) Arbitration Rules 2018 outlines the circumstances under which an Emergency Decision, made by an emergency arbitrator in urgent situations, ceases to be binding. This provision specifies the conditions and events that lead to the expiration or termination of the effects of an Emergency Decision. Let us analyse each subclause:

1. **Decision of Emergency Arbitrator or Arbitral Tribunal:** An Emergency Decision ceases to be binding if either the emergency arbitrator who rendered the decision or the subsequently constituted arbitral tribunal decides to revoke or modify the decision. This clause recognises that circumstances may change, and the parties or the arbitral tribunal might determine that the measures granted in the Emergency Decision are no longer appropriate or necessary.
2. **Rendering of Final Award by Arbitral Tribunal:** The binding effect of an Emergency Decision terminates when the arbitral tribunal issues a final award in the main arbitration proceedings. However, the arbitral tribunal has the discretion to extend the validity of the Emergency Decision's effects beyond the issuance of the final award if it deems it necessary. This provision acknowledges that certain interim measures might remain relevant even after the issuance of the final award.
3. **Termination of Arbitration Before Final Award:** If the arbitration proceedings are terminated before the arbitral tribunal renders a final award (e.g., due to settlement or withdrawal of claims), the Emergency Decision's binding effect comes to an end. This clause recognises that the need for interim measures may no longer apply if the arbitration itself is terminated.
4. **(d) Failure to Constitute the Arbitral Tribunal:** If the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision, the binding effect of the decision expires. This provision sets a time limit for the constitution of the arbitral tribunal, ensuring that the process moves forward in a reasonable timeframe. However, this time limit can be extended by mutual agreement of the parties or, under appropriate circumstances, by HKIAC. This flexibility acknowledges that unforeseen delays might arise in the appointment of the arbitral tribunal.

In summary, Schedule 4, Clause 17 of the HKIAC Arbitration Rules 2018 outlines the scenarios in which the binding effect of an Emergency Decision ceases. These scenarios include decisions by the emergency arbitrator or the arbitral tribunal, the rendering of a final award, termination of the arbitration proceedings, and failure to constitute the arbitral tribunal within a specified time. The



provision strikes a balance between ensuring the enforceability of interim measures and accounting for changes in circumstances or the progress of the arbitration process.

**18. Subject to paragraph 13 of this Schedule, the emergency arbitrator shall have no further power to act once the arbitral tribunal is constituted.**

Schedule 4, Clause 18 of the HKIAC (Hong Kong International Arbitration Centre) Arbitration Rules 2018 establishes a limitation on the authority of the emergency arbitrator once the formal arbitral tribunal has been constituted. Let us analyse the clause:

1. **Limitation on Power:** This clause stipulates that the authority and powers of the emergency arbitrator come to an end once the arbitral tribunal is constituted. In other words, the emergency arbitrator’s role is limited to the pre-constituted phase of the arbitration proceedings. This is a significant provision that defines the scope and duration of the emergency arbitrator’s involvement.
2. **Effect of Arbitral Tribunal Constitution:** Once the formal arbitral tribunal is established, it takes over the jurisdiction and decision-making authority from the emergency arbitrator. The full arbitral tribunal, comprised of multiple arbitrators, is responsible for conducting the arbitration proceedings, addressing all substantive matters, and rendering the final award.
3. **Exception for Paragraph 13:** The clause references “paragraph 13 of this Schedule”, which suggests that there might be specific provisions within Schedule 4 that could allow for certain exceptions to this limitation. To fully understand the implications, it is important to review the entirety of Schedule 4 and paragraph 13 in particular. It is possible that certain circumstances could warrant continued involvement or limited powers for the emergency arbitrator even after the arbitral tribunal is constituted.
4. **Clear Transition of Authority:** This provision ensures a clear and seamless transition of authority from the emergency arbitrator to the formal arbitral tribunal. It avoids potential conflicts or overlaps in decision-making, as well as any confusion about which body is responsible for addressing ongoing matters in the arbitration.

In summary, Schedule 4, Clause 18 of the HKIAC Arbitration Rules 2018 establishes that the authority of the emergency arbitrator ceases once the arbitral tribunal is constituted. This ensures that the full arbitral tribunal takes over the proceedings and maintains jurisdiction over the case, marking a clear transition of power and decision-making responsibilities.

**19. The emergency arbitrator may not act as arbitrator in any arbitration relating to the dispute that gave rise to the Application and in respect of which the emergency arbitrator has acted, unless otherwise agreed by the parties to the arbitration.**

Schedule 4(19) of the HKIAC (Hong Kong International Arbitration Centre) Arbitration Rules 2018 addresses the role and limitations of an emergency arbitrator in the context of arbitration proceedings. Let us break down and analyse this provision:

1. **Emergency Arbitrator and Their Role:** An emergency arbitrator is an arbitrator who is appointed to deal with urgent matters that require immediate attention before a full arbitral tribunal can be constituted. These matters often include injunctions, preservation of evidence, or any other relief that cannot wait until the formal arbitration tribunal is established.
2. **Restriction on Subsequent Involvement:** This provision states that the emergency arbitrator who has been involved in issuing interim measures or decisions related to an emergency application is restricted from acting as a full arbitrator in any subsequent arbitration proceedings directly connected to the same dispute that led to the emergency application.
3. **Purpose of the Restriction:** The purpose of this restriction is to maintain the impartiality and independence of the arbitrator and to prevent any potential conflicts of interest that might arise from the emergency arbitrator's prior involvement in the dispute. By not allowing the emergency arbitrator to continue as a full arbitrator in the same dispute, the HKIAC aims to ensure the fairness and integrity of the arbitration process.
4. **Exception for Party Agreement:** However, the restriction can be overridden if all parties involved in the arbitration, including the party that requested the emergency measures, agree otherwise. This provision acknowledges that in some cases, the parties might believe that the emergency arbitrator's familiarity with the dispute could actually contribute positively to the efficiency and effectiveness of the arbitration process.
5. **Balancing Efficiency and Neutrality:** The provision strikes a balance between the efficiency gained from utilising the emergency arbitrator's knowledge of the case and the importance of maintaining the perceived neutrality and impartiality of the arbitration tribunal. The parties' agreement allows for flexibility, recognising that unique circumstances might warrant a departure from the default restriction.

In summary, Schedule 4(19) of the HKIAC Arbitration Rules 2018 places a limitation on the subsequent involvement of an emergency arbitrator in full arbitration proceedings related to the same dispute in which they acted as an emergency arbitrator. The intent is to prevent conflicts of interest and ensure the integrity of the arbitration process. However, this restriction can be overridden if all parties involved in the arbitration agree to waive it, recognising that there might be situations where the emergency arbitrator's continued involvement could be beneficial.

**20. The Emergency Arbitrator Procedure is not intended to prevent any party from seeking urgent interim or conservatory measures from a competent authority at any time.**

Schedule 4(20) of the HKIAC Arbitration Rules 2018 addresses the relationship between the emergency arbitrator procedure and the ability of parties to seek urgent interim or conservatory measures from competent authorities. Let us analyse this provision:

1. **Emergency Arbitrator Procedure:** The emergency arbitrator procedure allows parties to seek urgent interim measures or relief from an emergency arbitrator before a full arbitral tribunal is constituted. This is particularly useful when immediate action is necessary to prevent irreparable harm or to maintain the status quo pending the formation of the main arbitration tribunal.

2. **No Preclusion of Competent Authority:** This provision emphasises that the availability of the emergency arbitrator procedure does not prevent any party from seeking similar urgent interim or conservatory measures from a competent authority outside the arbitration proceedings. In other words, parties are not limited to using the emergency arbitrator process; they can still approach relevant national courts or other competent bodies for similar relief.
3. **Parallel Avenues for Relief:** The provision acknowledges that there are situations where seeking relief from a competent authority outside the arbitration process might be necessary or more appropriate. This could be due to factors such as the nature of the relief requested, the legal jurisdiction, or the enforceability of orders in certain jurisdictions.
4. **Flexibility and Options:** By clarifying that the emergency arbitrator procedure does not preclude parties from seeking urgent relief from competent authorities, the HKIAC recognises the need for flexibility and the ability to choose the most effective avenue for obtaining immediate protection. This provision allows parties to make a strategic decision based on the specific circumstances of their case.
5. **Complementary Measures:** In practice, parties might use both the emergency arbitrator procedure and the competent authority route in parallel or sequentially, depending on their legal strategies and the jurisdiction-specific requirements. For instance, a party might initiate emergency arbitrator proceedings while simultaneously seeking a court injunction in a relevant jurisdiction.

In summary, Schedule 4(20) of the HKIAC Arbitration Rules 2018 ensures that parties are not limited to using the emergency arbitrator procedure when seeking urgent interim or conservatory measures. Parties retain the option to approach competent authorities for relief as well. This provision enhances the flexibility of parties to choose the most suitable and effective means to protect their rights and interests in urgent situations.

**21. The Emergency Arbitrator Procedure shall be terminated if a Notice of Arbitration has not been submitted by the applicant to HKIAC within seven days of HKIAC’s receipt of the Application, unless the emergency arbitrator extends this time limit.**

Schedule 4(21) of the HKIAC Arbitration Rules 2018 outlines a time limit for the continuation of the Emergency Arbitrator Procedure in cases where a Notice of Arbitration has not been submitted within a specified period. Let us analyse this provision:

1. **Initiation of Emergency Arbitrator Procedure:** The Emergency Arbitrator Procedure is initiated when a party (the “applicant”) submits an Application for Emergency Arbitrator Relief to the HKIAC. This typically occurs when a party seeks urgent interim measures before the formation of the main arbitral tribunal.
2. **Time Limit for Notice of Arbitration:** According to this provision, the applicant is required to submit a Notice of Arbitration to the HKIAC within seven days of the HKIAC’s receipt of the Application for Emergency Arbitrator Relief. The Notice of Arbitration formally commences the arbitration process and initiates the formation of the main arbitral tribunal that will handle the full dispute.

3. **Termination of Emergency Arbitrator Procedure:** If the applicant fails to submit the required Notice of Arbitration within the specified seven-day period, the Emergency Arbitrator Procedure will be automatically terminated. This means that the emergency arbitrator's jurisdiction to issue interim measures will come to an end if the main arbitration process is not initiated within the given timeframe.
4. **Extension of Time Limit:** The provision also grants the emergency arbitrator the authority to extend the seven-day time limit for submitting the Notice of Arbitration. This extension is discretionary and allows the emergency arbitrator to consider exceptional circumstances that might justify a delay in initiating the main arbitration.
5. **Balancing Urgency and Formality:** This provision strikes a balance between the urgent need for interim measures and the formalities required for the full arbitration process. It encourages parties to promptly initiate the main arbitration process by submitting the Notice of Arbitration within a reasonable timeframe to ensure the continuity of the dispute resolution proceedings.
6. **Flexibility and Exceptions:** The provision recognises that there might be valid reasons for not submitting the Notice of Arbitration within the prescribed seven-day period. By allowing the emergency arbitrator to extend this time limit, the provision accommodates unforeseen circumstances that might affect the parties' ability to proceed promptly.

In summary, Schedule 4(21) of the HKIAC Arbitration Rules 2018 establishes a time limit for initiating the main arbitration process after the Emergency Arbitrator Procedure has been initiated. If the required Notice of Arbitration is not submitted within seven days, the emergency arbitrator's jurisdiction lapses unless an extension is granted based on exceptional circumstances. This provision emphasises the importance of timely transitioning from the emergency relief phase to the formal arbitration process while allowing for flexibility in certain situations.

**22. Where the Emergency Arbitrator Procedure is terminated without an Emergency Decision, the emergency arbitrator may fix and apportion any costs of the Emergency Relief proceedings, subject to the power of the arbitral tribunal to fix and apportion finally such costs in accordance with Article 34 of the Rules.**

Schedule 4(22) of the HKIAC Arbitration Rules 2018 addresses the issue of costs in cases where the Emergency Arbitrator Procedure is terminated without the issuance of an Emergency Decision. Let us analyse this provision:

1. **Termination of Emergency Arbitrator Procedure Without Decision:** The Emergency Arbitrator Procedure might be initiated by a party seeking urgent interim measures, but in some cases, the emergency arbitrator might determine that the circumstances do not warrant the issuance of an Emergency Decision. This could be due to various reasons, such as lack of urgency, jurisdictional issues, or insufficient evidence.
2. **Allocation of Costs by Emergency Arbitrator:** In situations where the Emergency Arbitrator Procedure is terminated without an Emergency Decision, this provision grants the emergency arbitrator the authority to fix and apportion any costs associated with the Emergency Relief proceedings. These costs could include the emergency arbitrator's fees, administrative expenses, and other costs related to the emergency proceedings.

3. **Subject to Arbitral Tribunal's Power:** The provision also specifies that the emergency arbitrator's power to fix and apportion costs is subject to the power of the arbitral tribunal that will be constituted to handle the full dispute. Article 34 of the HKIAC Arbitration Rules 2018 governs the arbitral tribunal's authority to determine the allocation of costs in the main arbitration proceedings.
4. **Reasoning and Justification:** The allocation of costs is an important aspect of any arbitration procedure. By allowing the emergency arbitrator to allocate costs for the Emergency Relief proceedings, the provision ensures that the costs incurred in seeking urgent relief are appropriately distributed between the parties, even if the emergency proceedings did not result in a formal decision.
5. **Consistency with Full Arbitration Proceedings:** The provision harmonises the allocation of costs for the emergency proceedings with the overarching cost allocation principles established in the HKIAC Arbitration Rules. It ensures that the costs of the emergency phase are taken into account when determining the allocation of costs for the full arbitration proceedings.
6. **Encouragement of Efficient Use of Emergency Procedure:** The provision serves as a reminder to parties that initiating the Emergency Arbitrator Procedure should be done in good faith and for legitimate reasons, given that costs may be allocated even if an Emergency Decision is not rendered. This discourages frivolous or unnecessary applications for emergency relief.

In summary, Schedule 4(22) of the HKIAC Arbitration Rules 2018 addresses the allocation of costs when the Emergency Arbitrator Procedure is terminated without the issuance of an Emergency Decision. It empowers the emergency arbitrator to allocate costs for the emergency proceedings and ensures consistency with the cost allocation principles of the main arbitration proceedings while promoting the efficient and responsible use of the emergency relief process.



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