

**Shanghai International Economic and Trade  
Arbitration Commission  
( Shanghai International Arbitration Center )**

**Model Arbitration Clause I**

“Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Economic and Trade Arbitration Commission for arbitration.”

**Model Arbitration Clause II**

“Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Arbitration Center for arbitration.”

**Shanghai International Economic and Trade  
Arbitration Commission  
(Shanghai International Arbitration Center)**

Address: 7/F, Jinling Mansion, 28 Jin Ling Road(w),  
Shanghai 200021, P.R. China

Tel: 86 21 63875588

Fax: 86 21 63877070

E-mail: [info@shiac.org](mailto:info@shiac.org)

Website: <http://www.shiac.org>

**Shanghai International Economic and Trade  
Arbitration Commission  
(Shanghai International Arbitration Center)**

**Arbitration Rules**

Effective as from May 1, 2013



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# **Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center) Arbitration Rules**

[Revised and adopted at the Third Meeting of the Second Session of the Shanghai International Economic and Trade Arbitration Commission(Shanghai International Arbitration Center), effective as from May 1, 2013]

## **Chapter I General Provisions**

### **Article 1 The Rules**

These Rules are formulated in accordance with the *Arbitration Law of the People's Republic of China* and the provisions of other relevant laws.

### **Article 2 Name and Organization**

1. The Shanghai International Economic and Trade Arbitration Commission ( hereinafter referred to as "this Commission", formerly known as the China International Economic and Trade Arbitration Commission Shanghai Commission or Shanghai Sub -Commission) is an arbitration institution which resolves contractual disputes and other disputes over rights and interests in property between natural persons, legal persons and other economic organizations with equal status. The name of "Shanghai International Arbitration Center" is also used by this Commission.

2. Where an arbitration agreement provides for

arbitration by the Shanghai International Economic and Trade Arbitration Commission, Shanghai International Arbitration Center, or by the China International Economic and Trade Arbitration Commission Shanghai Commission/Shanghai Sub-Commission, the parties shall be deemed to have agreed that arbitration shall be administered by this Commission. Where an arbitration agreement provides for arbitration by the Arbitration Commission or the Court of Arbitration of the China Council for the Promotion of International Trade Shanghai Sub-Council/Chamber of International Commerce Shanghai, or by the Shanghai Foreign Economic and Trade Arbitration Commission, or specifies a body whereby from its description it can be reasonably inferred to this Commission, the parties shall be deemed to have agreed that the arbitration shall be administered by this Commission.

3. The Chairman of this Commission shall perform the functions and duties vested in him/her by these Rules while a Vice-Chairman may perform the Chairman's functions and duties with the Chairman's authorization.

4. This Commission has a Secretariat, which handles its day-to-day work under the direction of its Secretary-General, and performs the functions and duties vested by these Rules.

5. This Commission is domiciled in Shanghai, China.

6. This Commission shall establish a Panel of Arbitrators.

### **Article 3 Jurisdiction**

This Commission accepts cases involving:

1. international or foreign-related disputes;
2. disputes related to the Hong Kong Special Administrative Region, the Macao Special Administrative Region or the Taiwan region; and
3. domestic disputes.

### **Article 4 Application of the Rules**

1. These rules shall apply to the arbitration whenever the parties have agreed to refer their disputes to this Commission for arbitration.
2. Where the parties have agreed to refer their disputes to this Commission for arbitration under other arbitration rules, or agreed on any modification of these Rules, the parties' agreement shall prevail except where such an agreement is inoperative or in conflict with a mandatory provision of the law of the place of arbitration. Where the parties have agreed on the application of other arbitration rules, this Commission shall perform the functions which are provided to be performed by an arbitration institute under such arbitration rules.
3. Where the parties agree to refer their disputes to arbitration under these Rules without providing an arbitration institution, they shall be deemed to have agreed to refer the dispute to this Commission for arbitration.

## **Article 5 Arbitration Agreement**

1. This Commission shall, upon the written application of a party, accept a case in accordance with the arbitration agreement concluded between the parties, either before or after the occurrence of the dispute, in which it is provided that disputes are to be referred to this Commission for arbitration.

2. An arbitration agreement means an arbitration clause in a contract concluded between the parties or any other form of written agreement providing for the settlement of disputes by arbitration.

3. The arbitration agreement shall be in writing. An arbitration agreement is in writing if it is contained in a tangible form of a document such as a contract, letter, telegram, telex, facsimile, EDI, or Email. An arbitration agreement shall be deemed to exist where its existence is asserted by one party and not denied by the other during the exchange of the Request for Arbitration and the Statement of Defense.

4. Where there are different provisions as to the form and validity of the arbitration agreement in the laws applicable to an arbitration agreement, such provisions shall prevail.

5. An arbitration clause contained in a contract shall be treated as a clause independent and separate from all other clauses of the contract, and an arbitration agreement attached to a contract shall also be treated as independent and separate from all other clauses of the contract. The validity of an arbitration clause or an arbitration agreement shall not be affected by any modification, rescission, termination, transfer,

expiry, invalidity, ineffectiveness, revocation or non-existence of the contract.

## **Article 6 Objection to an Arbitration Agreement and/or Jurisdiction**

1. This Commission shall have the power to determine the existence and validity of an arbitration agreement and its jurisdiction over an arbitration case. This Commission may, if necessary, delegate such power to the arbitral tribunal, and the arbitral tribunal, according to such delegation, may either make a separate decision on jurisdiction during the arbitral proceedings, or incorporate the decision in the final arbitral award.

2. Where this Commission is satisfied by *prima facie* evidence that an arbitration agreement providing for arbitration by this Commission and binding on the parties exists, it may make a decision based on such evidence that it has jurisdiction over the arbitration case, and the arbitration shall proceed. Where, after this Commission makes such a decision, the arbitral tribunal finds the facts and/or evidence inconsistent with the *prima facie* evidence during the arbitral proceedings, this Commission may make or delegate the arbitral tribunal to make a new decision on jurisdiction.

3. An objection to an arbitration agreement and/or jurisdiction over an arbitration case shall be raised in writing before the first oral hearing is held by the arbitral tribunal. Where a case is to be decided on the basis of documents only, such an objection shall be raised before the submission of the first substantive defense.

4. The arbitration shall proceed notwithstanding an objection to the arbitration agreement and/or jurisdiction over the arbitration case.

5. The aforesaid objections to and/or decisions on jurisdiction by this Commission shall include objections to and/or decisions on a party's standing to participate in the arbitration.

### **Article 7 Place of Arbitration**

1. Where the parties have agreed on the place of arbitration in writing, the parties' agreement shall prevail.

2. Where the parties have not agreed on the place of arbitration, the place of arbitration shall be the domicile of this Commission.

3. The arbitral award shall be deemed as being rendered at the place of arbitration.

### **Article 8 *Bona Fide* Cooperation**

The parties shall proceed with the arbitration in *bona fide* cooperation.

### **Article 9 Waiver of Right to Object**

A party shall be deemed to have waived its right to object where it knows or should have known that any provision of, or requirement under, these Rules has not been complied with and yet participates in or proceeds with the arbitral proceedings without promptly and explicitly submitting its objection in writing to such non-compliance.

## **Chapter II Arbitral Proceedings**

### **Section 1 Request for Arbitration, Defense and Counterclaim**

#### **Article 10 Commencement of Arbitration**

The arbitral proceedings shall commence on the date on which this Commission receives a Request for Arbitration.

#### **Article 11 Application for Arbitration**

A party applying for arbitration under these Rules shall:

1. Submit a Request for Arbitration in writing signed by and/or sealed by the Claimant and/or its authorized representative(s), which shall, *inter alia*, include:

- (a) the names and addresses of the Claimant and the Respondent, including the zip code, telephone, telex, fax and telegraph numbers, Email addresses or any other means of electronic telecommunications;
- (b) a reference to the arbitration agreement that is invoked;
- (c) the claim of the Claimant; and
- (d) the facts and grounds on which the claim is based.

2. Attach to the Request for Arbitration the evidence which supports the Claimant's claim, documents certifying the parties' identity and other relevant evidence documents.

3. Pay the arbitration fee in advance to this Commission according to its Arbitration Fee Schedule.

### **Article 12 Acceptance of a Case**

1. Upon receipt of the Request for Arbitration and its attachments, if after examination this Commission finds the formalities required for arbitration application to be incomplete, it may request the Claimant to complete them. Where the party fails to complete the formalities as required, the party is deemed to have not submitted the Request for Arbitration.

2. Where the formalities of application for arbitration are found to be complete, the Secretariat of this Commission shall send a Notice of Acceptance to the Claimant accompanied with the Arbitration Rules, the Panel of Arbitrators and the Arbitration Fee Schedule within five(5) days, and send to the Respondent, within five (5) days after the Notice of Acceptance is sent, the Notice of Arbitration accompanied with the Request for Arbitration and its attachments, the Arbitration Rules, the Panel of Arbitrators and the Arbitration Fee Schedule.

3. This Commission shall, after accepting a case, appoint one or two staff-members of its secretariat to assist the arbitral tribunal in the procedural administration of the case.

### **Article 13 Defense**

1. Within forty-five (45) days from the date of receipt of the Notice of Arbitration, the Respondent shall

submit a Statement of Defense in writing to the Secretariat of this Commission. For cases involving disputes provided in Paragraph 3 of Article 3 of these Rules, the corresponding period shall be twenty (20) days.

2. If the Respondent has indeed justified reasons to require for an extension of the time limit for submitting the Statement of Defense, the arbitral tribunal shall, at its discretion, decide whether to extend it or not. If the arbitral tribunal is yet to be constituted, such decision shall be made by the Secretariat of this Commission.

3. The Statement of Defense shall be signed by and/or sealed by the Respondent and/or its authorized representative(s), and shall, *inter alia*, include:

- (a) the names and addresses of the Respondent, including the zip code, telephone, telex, fax and telegraph numbers, Email addresses or any other means of electronic telecommunications;
- (b) the defense to the Request for Arbitration setting forth the facts and grounds on which the defense is based.

4. When submitting the Statement of Defense, the evidence on which the Respondent's response is based, documents certifying the parties' identity and other relevant evidence shall be attached thereto.

5. The arbitral tribunal has the power to decide whether to accept a Statement of Defense submitted after expiration of the above time limit.

6. Failure of the Respondent to submit a Statement

of Defense shall not affect the conduct of the arbitral proceedings.

#### **Article 14 Counterclaim**

1. Within forty-five (45) days from the date of receipt of the Notice of Arbitration, the Respondent shall file with the Secretariat of this Commission its counterclaim in writing, if any. For cases involving disputes provided in Paragraph 3 of Article 3 of these Rules, the corresponding period shall be twenty (20) days.
2. If the Respondent has indeed justified reasons to require for an extension of the time limit for submitting the counterclaim, the arbitral tribunal shall, at its discretion, decide whether to extend it or not. If the arbitral tribunal is yet to be constituted, such decision shall be made by the Secretariat of this Commission.
3. The arbitral tribunal has the power to decide whether to accept a counterclaim submitted after expiration of the above time limit.
4. When submitting a counterclaim, the Respondent shall specify its counterclaim in its written Statement of Counterclaim and state the facts and grounds upon which its counterclaim is based with relevant evidence attached thereto.
5. When submitting a counterclaim, the Respondent shall pay the arbitration fee in advance according to the Arbitration Fee Schedule as formulated by this Commission within a specified time period, failing which the Respondent shall be deemed not to have submitted any counterclaim.

6. Where the formalities required for filing a counterclaim are found to be complete, this Commission shall send the Statement of Counterclaim and its attachments to the Claimant. The Claimant shall, within thirty (30) days from the date of receipt of the Statement of Counterclaim and the attachment, submit in writing its Statement of Defense to the Respondent's counterclaim. For cases involving disputes provided in Paragraph 3 of Article 3 of these Rules, the corresponding period shall be twenty (20) days. If the Claimant has indeed justified reasons to require for an extension of the time limit for filing the Statement of Defense, the arbitral tribunal shall, at its discretion, decide whether to extend it or not. If the arbitral tribunal is yet to be constituted, such decision shall be made by the Secretariat of this Commission.

7. The arbitral tribunal has the power to decide whether to accept a Statement of Defense to the Respondent's counterclaim submitted after expiration of the above time limit.

8. Failure of the Claimant to submit a Statement of Defense to the Respondent's counterclaim shall not affect the conduct of arbitral proceedings.

### **Article 15 Amendments to the Claim or Counterclaim**

The Claimant may amend its claim and the Respondent may amend its counterclaim. However, the arbitral tribunal can refuse any such amendment if it considers that the amendment is too late and may delay the arbitral proceedings.

### **Article 16 Copies of Submissions**

When submitting the Request for Arbitration, the

Statement of Defense, the Statement of Counterclaim, evidence and other documents, the parties shall make the submissions in quintuplicate. Where there are more than two parties, additional copies shall be provided accordingly. Where the arbitral tribunal is composed of a sole arbitrator, the number of copies submitted may be reduced by two. Where the preservation of property and/or protection of evidence is applied for, the party shall forward additional copies accordingly.

### **Article 17 Representation**

A party may be represented by one to five (1-5) authorized Chinese and/or foreign representative(s) in handling matters relating to the arbitration. In such a case, a Power of Attorney shall be submitted by the party or its authorized representative(s). If any party intends to be represented by more than five (5) authorized representatives, a written application with reasons is required. The arbitral tribunal has the power to decide whether to grant such application or not in accordance with the actual situation in the arbitration.

### **Article 18 Preservation Measures**

1. When any party applies for the preservation of property, this Commission shall forward the party's application for a ruling to the competent court at the place where the domicile of the party against whom the preservation of property is sought is located or where the property of the said party is located.
2. When any party applies for the protection of evidence, this Commission shall forward the party's

application for a ruling to the competent court at the place where the evidence is located.

## **Section 2 The Arbitral Tribunal**

### **Article 19 Duties of Arbitrator**

An arbitrator shall not represent either party, and shall remain independent of the parties and treat them equally.

### **Article 20 Number of Arbitrators**

1. The arbitral tribunal shall be composed of one or three arbitrators.
2. Unless otherwise agreed by the parties or provided by these Rules, the arbitral tribunal shall be composed of three arbitrators.

### **Article 21 Panel of Arbitrators**

1. The parties shall appoint arbitrators from the Panel of Arbitrators provided by this Commission.
2. Where the parties have agreed to appoint arbitrators from outside of this Commission's Panel of Arbitrators, the arbitrator(s) so appointed by the parties or nominated according to the agreement of the parties may act as co-arbitrator, presiding arbitrator or sole arbitrator after the appointment has been confirmed by the Chairman of this Commission in accordance with the law.

### **Article 22 Three-arbitrator Tribunal**

1. Within fifteen (15) days from the date of receipt of

the Notice of Acceptance/Notice of Arbitration, the Claimant and the Respondent shall each appoint one arbitrator or entrust the Chairman of this Commission to make such appointment. If a party requests an extension of the time limit of appointment of an arbitrator, it should submit a written application to this Commission within the time limit prescribed in this clause. The Secretariat shall decide whether to accept such a request or not. Where a party fails to appoint or to entrust the Chairman of this Commission to appoint an arbitrator within the specified time period, the arbitrator shall be appointed by the Chairman of this Commission.

2. Within fifteen (15) days from the date of the Respondent's receipt of the Notice of Arbitration, the third arbitrator shall be jointly appointed by the parties or appointed by the Chairman of this Commission upon the parties' joint authorization. The third arbitrator shall be the presiding arbitrator of the arbitral tribunal.

3. The parties may each recommend one to three arbitrators as candidates for the presiding arbitrator and shall submit the list of recommended candidates to the Secretariat of this Commission within the time period specified in Paragraph 2. Where there is only one common candidate in the lists, such candidate shall be the presiding arbitrator jointly appointed by the parties. Where there are more than one common candidate in the lists, the Chairman of this Commission shall choose a presiding arbitrator from among the common candidates based on the specific nature and circumstances of the case, who shall act as the presiding arbitrator jointly appointed by the

parties. Where there is no common candidate in the lists, the presiding arbitrator shall be appointed by the Chairman of this Commission from outside of the lists of recommended candidates.

4. Where the parties have failed to jointly appoint the presiding arbitrator according to the above provisions, the presiding arbitrator shall be appointed by the Chairman of this Commission.

5. Where an arbitrator appointed by the party/parties or nominated according to the agreement of the parties will incur travel and accommodation expenses, arbitrator's special remuneration and other necessary expenses, the party/parties shall bear such travel and accommodation expenses, arbitrator's special remuneration and other necessary expenses incurred on the arbitrator in dealing with the case. If the party/parties fail to pay in advance as a deposit within the specified time period, such arbitrator shall be deemed not to have been appointed by the party/parties, or such agreement of the parties will be deemed inoperative, and the Chairman of this Commission may appoint/reappoint an arbitrator pursuant to the provisions of these Rules.

6. Where an arbitrator refuses to accept the appointment of the party/parties or is incapable of participating in the hearing of the case due to illness or other reasons which may affect the normal performance of his/her duties as the arbitrator, the party/parties shall reappoint the arbitrator within ten (10) days from the date of the party/parties' receipt of the notice to reappoint the arbitrator.

### **Article 23 Sole-arbitrator Tribunal**

Where the arbitral tribunal is composed of one arbitrator, the sole arbitrator shall be appointed pursuant to the procedure stipulated in Paragraphs 2, 3, 4 and 5 of Article 22.

### **Article 24 Multi-party Appointment of Arbitrator**

1. Where there are two or more Claimants and/or Respondents in an arbitration case, the Claimant side and/or the Respondent side each shall, through consultation, jointly appoint or jointly entrust the Chairman of this Commission to appoint one arbitrator from this Commission's Panel of Arbitrators.

2. Where the Claimant side and/or the Respondent side fail to jointly appoint or jointly entrust the Chairman of this Commission to appoint one arbitrator within fifteen (15) days from the date of receipt of the Notice of Acceptance/Notice of Arbitration, the arbitrator shall be appointed by the Chairman of this Commission.

3. The presiding arbitrator or the sole arbitrator shall be appointed in accordance with the procedure stipulated in Paragraphs 2, 3, 4 and 5 of Article 22. When appointing the presiding arbitrator or the sole arbitrator pursuant to Paragraph 3 of Article 22, the Claimant side and/or the Respondent side each shall, through consultation, submit a list of their jointly agreed candidates to the Secretariat of this Commission.

## **Article 25 Disclosure**

1. An arbitrator appointed by the parties or by the Chairman of this Commission shall sign a Declaration and disclose to this Commission in writing any facts or circumstances which may give rise to justifiable doubts as to his/her impartiality or independence.
2. If circumstances that need to be disclosed arise during the arbitral proceedings, the arbitrator shall promptly disclose such circumstances in writing to this Commission.
3. The Declaration and/or the disclosure of the arbitrator shall be submitted to the Secretariat of this Commission, and then forwarded to the parties.

## **Article 26 Challenge of Arbitrators**

1. Upon receipt of the Declaration and/or written disclosure of an arbitrator communicated by the Secretariat of this Commission, a party who intends to challenge the arbitrator on the grounds of the facts or circumstances disclosed by the arbitrator shall forward the challenge in writing to this Commission within ten (10) days from the date of such receipt. If a party fails to submit a challenge within the above time limit, it shall not challenge an arbitrator later on the basis of matters disclosed by the arbitrator.
2. A party who has justifiable doubts as to the impartiality or independence of an appointed arbitrator may make a request in writing to this Commission for that arbitrator's withdrawal. In the request, the facts and reasons on which the request is based shall be stated with supporting evidence. The aforesaid challenge of arbitrator shall be made

in writing within fifteen (15) days from the date of receiving the Notice of Constitution of the Arbitral Tribunal. Where a party becomes aware of the reasons for a challenge after that time, the party may challenge the arbitrator in writing within fifteen (15) days after such reasons become known to the party, but no later than the conclusion of the last oral hearing.

3. The Secretariat of this Commission shall promptly communicate the challenge to the other party, the arbitrator being challenged and the other members of the arbitral tribunal, who may all make their respective comments on it.

4. Where an arbitrator is challenged by one party and the other party agrees to the challenge, or the arbitrator being challenged withdraws from his/her office, such arbitrator shall no longer be on the arbitral tribunal. Neither case implies that the challenge made by the party is sustainable.

5. In circumstances other than those specified in the foregoing Paragraph 4, the Chairman of this Commission shall make a final decision on the challenge with or without stating the reasons therefor.

6. An arbitrator who has been challenged shall continue to perform his/her functions as arbitrator until a decision on the challenge has been made by the Chairman of this Commission.

## **Article 27 Replacement of Arbitrator**

1. In the event that an arbitrator is prevented *de jure* or *de facto* from performing his/her functions, or he/she fails to perform his/her functions in accordance

with the requirements of these Rules or within the time period specified in these Rules, the Chairman of this Commission shall have the power to decide whether the arbitrator shall be replaced. The arbitrator may also withdraw from his/her office.

2. In the event that an arbitrator is unable to perform his/her functions owing to his/her demise, removal from this Commission's Panel of Arbitrators, withdrawal, resignation or any other reasons, a substitute arbitrator shall be appointed according to the provision of Paragraph 6 of Article 22 of these Rules.

3. After the replacement of the arbitrator, the arbitral tribunal shall decide whether the whole or a part of the previous proceedings of the case shall be repeated.

4. The Chairman of this Commission shall make a final decision on whether an arbitrator should be replaced or not without stating the reasons therefor.

### **Article 28 Remaining Arbitrators to Continue Arbitration**

In the event that, after the conclusion of the last oral hearing, an arbitrator in a three-arbitrator tribunal is unable to participate in the deliberation and/or render the award owing to his/her demise or removal from this Commission's Panel of Arbitrators, the remaining arbitrators may request the Chairman of this Commission to replace the arbitrator pursuant to Article 27. After consulting with the parties and upon the approval of the Chairman of this Commission, the remaining arbitrators may continue the arbitral proceedings and make decisions or the award. The

Secretariat of this Commission shall notify the parties of the above circumstances.

## **Section 3 Hearing**

### **Article 29 Conduct of Hearing**

1. The arbitral tribunal shall examine the case in any way that it deems appropriate unless otherwise agreed by the parties. Under any circumstance, the arbitral tribunal shall act impartially and fairly and shall provide reasonable opportunities for all parties for presentations and debates.

2. The arbitral tribunal shall hold oral hearings when examining the case. However, oral hearings may be omitted and the case shall be examined on the basis of documents only if the parties so request or agree and the arbitral tribunal also deems that oral hearings are unnecessary.

3. The arbitral tribunal may hold deliberation at any place or in any manner that it considers appropriate.

4. The arbitral tribunal may, if it considers it necessary, issue procedural directions and lists of questions, hold pre-hearing meetings and preliminary hearings, and produce terms of reference, etc., unless otherwise agreed by the parties.

### **Article 30 Consolidation of Arbitrations**

1. The arbitral tribunal may, on the application of any party and with the consent of all other parties concerned, order the consolidation of two or more related arbitrations or arbitrations involving a similar subject matter.

2. The provision of the foregoing Paragraph shall not apply to cases where the constitutions of the arbitral tribunals are different.

### **Article 31 Third Party**

A consenting third party may participate in the arbitration proceedings by a joint written application of the Claimant and the Respondent. The decision as to the permission of such application shall be granted by the arbitral tribunal, or the Secretariat of this Commission where the arbitral tribunal has yet been constituted.

### **Article 32 Notice of Oral Hearings**

1. The date of the first oral hearing shall be fixed by the arbitral tribunal and notified to the parties by the Secretariat of this Commission at least twenty (20) days in advance of the oral hearing date. For cases involving disputes provided in Paragraph 3 of Article 3 of these Rules, it shall be notified to the parties by the Secretariat of this Commission at least fifteen (15) days in advance of the oral hearing date.

2. A party having justified reasons may request a postponement of the oral hearing. However, such request must be communicated to the arbitral tribunal in writing at least seven (7) days in advance of the fixed oral hearing date. The arbitral tribunal shall decide whether to postpone the oral hearing or not.

3. If a party having justified reasons fails to request a postponement of the oral hearing within the time limit provided for in Paragraph 2, the arbitral tribunal shall decide whether to accept such request or not.

4. A notice of oral hearing subsequent to the first oral hearing and a notice of a postponed oral hearing shall not be subject to the time limit provided for in Paragraph 1.

### **Article 33 Place of Oral Hearing**

1. Where the parties have agreed on the place of oral hearings, the case shall be heard at that agreed place except for circumstances stipulated in Paragraph 2 of Article 63 of these Rules.

2. Unless the parties agree otherwise, a case accepted by this Commission shall be heard in Shanghai, or if the arbitral tribunal considers it necessary, at other places with the approval of the Secretary-General of this Commission.

### **Article 34 Confidentiality**

1. Hearings shall be held in camera. Where both parties request an open hearing, the arbitral tribunal shall make a decision.

2. For cases heard in camera, the parties, their representatives, witnesses, interpreters, arbitrators, experts consulted by the arbitral tribunal and appraisers appointed by the arbitral tribunal and the relevant staff-members of the Secretariat of this Commission shall not disclose to any outsiders any substantive or procedural matters of the case.

### **Article 35 Default**

1. If the Claimant fails to appear at an oral hearing without showing justified reasons for such failure, or withdraws from an on-going oral hearing without the permission of the arbitral tribunal, the Claimant

may be deemed to have withdrawn its Request for Arbitration. In such a case, if the Respondent has filed a counterclaim, the arbitral tribunal shall proceed with the hearing of the counterclaim and make a default award.

2. If the Respondent fails to appear at an oral hearing without showing justified reasons for such failure, or withdraws from an on-going oral hearing without the permission of the arbitral tribunal, the arbitral tribunal may proceed with the arbitration and make a default award. In such a case, if the Respondent has filed a counterclaim, the Respondent may be deemed to have withdrawn its counterclaim.

### **Article 36 Record of Oral Hearing**

1. During the oral hearing, excluding that for conciliation, the arbitral tribunal should make written record of the oral hearing, and may arrange a stenographic and/or audio-visual record of the hearing.

2. The written record and the stenographic and/or audio-visual record of the oral hearing shall be available for the use and reference by the arbitral tribunal.

3. Any party or participant in the arbitration may apply for a rectification of any omission or error in the minutes of its own statement. If the rectification is refused by the arbitral tribunal, the application shall nevertheless be recorded into the file.

4. The written record shall be signed or sealed by the arbitrator(s), the recorder, the parties, and other participants in the arbitration, if any.

## **Article 37 Evidence**

1. Each party shall have the burden of proving the facts which its claim, defense or counterclaim is based.
2. The arbitral tribunal may specify a time period for the parties to submit evidence and the parties shall produce evidence within the specified time period. The arbitral tribunal may refuse to admit any evidence produced beyond the period. If a party has difficulties to submit evidence within the specified time period, it may apply for an extension before the expiration of the period. The arbitral tribunal shall decide whether or not to extend the time period.
3. If a party having the burden of proof fails to produce evidence within the specified time period, or the produced evidence is not sufficient to support its claim or counterclaim, it shall bear the consequences thereof.

## **Article 38 Investigation by the Arbitral Tribunal**

1. The arbitral tribunal may, on its own initiative, undertake investigations and collect evidence as it considers necessary.
2. When investigating and collecting evidence by itself, the arbitral tribunal shall promptly notify the parties to be present at such investigation if it considers it necessary. In the event that one or both parties fail to be present, the investigation and collection shall proceed without being affected.
3. The arbitral tribunal shall, through the Secretariat of this Commission, transmit the evidence collected by itself to the parties and provide them with an opportunity to comment.

## **Article 39 Expert's Report and Appraiser's Report**

1. The parties may request for consultation or appraisal on specific issues of a case, and it shall be decided by the arbitral tribunal as to whether to conduct the consultation or appraisal. The arbitral tribunal may consult or appoint experts and appraisers for clarification on specific issues of a case as it considers necessary. Such an expert or appraiser may either be a Chinese or foreign organization or natural person.

2. Such an expert or appraiser may be appointed jointly by the parties, who may make the joint appointment with reference to the provisions of Paragraph 2 and 3 of Article 22 of these Rules. If the parties fail to reach agreement as to the appointment, such appointment shall be made by the arbitral tribunal.

3. The parties shall pay in advance the consultation/appraisal fees according to the percentage agreed or specified by the arbitral tribunal. Where the parties fail to pay in advance within the specified time period, the arbitral tribunal has the power to decide not to conduct the relevant consultation or appraisal.

4. The arbitral tribunal has the power to request the parties to deliver or produce to the expert or appraiser any relevant materials, documents, or property and goods for checking, inspection and/or appraisal. The parties shall be obliged to do so.

5. Copies of the expert's report and the appraiser's report shall be communicated to the parties, who shall be given an opportunity to comment on the report. At the request of either party and with the approval of the arbitral tribunal, the expert and appraiser may

be heard at an oral hearing where, if considered necessary and appropriate by the arbitral tribunal, they may give explanations on their reports.

6. The time period during which the expert consultation and the appraisal are conducted shall not be counted within the time limit provided for in Article 44 and 57 of these Rules.

#### **Article 40 Examination of Evidence**

1. Unless the parties agree otherwise, all evidence submitted by a party shall be filed with the Secretariat of this Commission for transmission to the other party and the arbitral tribunal.

2. Unless the parties agree otherwise, where a case is examined by way of an oral hearing, the evidence shall be exhibited at the hearing and examined by the parties.

3. In the event that evidence is submitted after the hearing and the arbitral tribunal decides to admit the evidence without holding further hearings, the arbitral tribunal may require the parties to submit their opinions thereon in writing within a specified time.

#### **Article 41 Combination of Conciliation with Arbitration**

1. Where the parties have reached a settlement agreement by themselves through negotiation or conciliation without involving this Commission, the parties may, based on an arbitration agreement concluded between them that provides for arbitration by this Commission and the settlement agreement,

request this Commission to constitute an arbitral tribunal to render an arbitral award in accordance with the terms of the settlement agreement. Unless the parties agree otherwise, the Chairman of this Commission shall appoint a sole arbitrator to constitute such arbitral tribunal, which shall examine the case in the procedure it considers appropriate and render an award in due course. The specific procedure and the time limit for rendering the award shall not be subject to other provisions of these Rules.

2. Where both parties have the desire for conciliation or one party so desires and the other party agrees when approached by the arbitral tribunal, the arbitral tribunal may conciliate the case during the course of the arbitral proceedings.

3. The arbitral tribunal may conciliate the case in the manner it considers appropriate.

4. The arbitral tribunal shall terminate the conciliation and continue the arbitral proceedings if one of the parties requests a termination of the conciliation or if the arbitral tribunal believes that further efforts to conciliate will be futile.

5. A settlement agreement reached between the parties during the course of conciliation by the arbitral tribunal but without the involvement of the arbitral tribunal shall be deemed as one reached through the conciliation by the arbitral tribunal.

6. Where settlement is reached through conciliation by the arbitral tribunal, the parties shall sign a written settlement agreement. Unless otherwise agreed by the parties, the arbitral tribunal will close the case and render an arbitral award in accordance with the terms

of the settlement agreement.

7. Where conciliation fails, the arbitral tribunal shall proceed with the arbitration and render an arbitral award.

8. Where conciliation fails, any opinion, view or statement and any proposal or proposition expressing acceptance or opposition by either party or by the arbitral tribunal in the process of conciliation shall not be invoked as grounds for any claim, defense or counterclaim in the subsequent arbitral proceedings, judicial proceedings or any other proceedings.

#### **Article 42 Suspension of Proceedings**

1. The arbitral proceedings may be suspended when the parties so request, or if other circumstances occur during the proceeding which make such suspension necessary.

2. The decision to suspend the arbitral proceedings shall be made by the arbitral tribunal, or it shall be made by the Secretary-General of this Commission in the event that the arbitral tribunal is yet to be constituted.

#### **Article 43 Withdrawal and Dismissal**

1. A party may submit a request to withdraw its claim or counterclaim in its entirety. In the event that the Claimant withdraws its claim in its entirety, the arbitral tribunal shall proceed with its examination of the counterclaim and render an arbitral award thereon. In the event that the Respondent withdraws its counterclaim in its entirety, the arbitral tribunal shall proceed with the examination of the claim and render an arbitral award thereon.

2. Where a case is to be dismissed before the constitution of the arbitral tribunal, the decision shall be made by the Secretary-General of this Commission. Where the case is to be dismissed after the constitution of the arbitral tribunal, the decision shall be made by the arbitral tribunal.

## **Chapter III Arbitral Award**

### **Article 44 Time Limits**

1. For cases involving disputes provided in Paragraph 1 and 2 of Article 3 of these Rules, the arbitral tribunal shall render an arbitral award within six (6) months from the date on which the arbitral tribunal is constituted.

2. For cases involving disputes provided in Paragraph 3 of Article 3 of these Rules, the arbitral tribunal shall render an arbitral award within four (4) months from the date on which the arbitral tribunal is constituted.

3. Upon the request of the arbitral tribunal, the Secretary-General of this Commission may extend said time limit if he/she considers it truly necessary and the reasons for the extension truly justified.

### **Article 45 Rendering Award**

1. The arbitral tribunal shall independently and impartially render its arbitral award on the basis of the facts, in accordance with the law and the terms of the contracts, with reference to international practices and in compliance with the principle of fairness and reasonableness.

2. The arbitral tribunal shall state in the award

the claims, the facts of the dispute, the reasons on which the award is based, the result of the award, the allocation of the arbitration costs and the date on which and the place at which the award is rendered. The facts of the dispute and the reasons on which the award is based may not be stated in the award if the parties have agreed so, or if the award is rendered in accordance with the terms of a settlement agreement between the parties. The arbitral tribunal has the power to determine in the arbitral award the specific time period for the parties to execute the award and the liabilities to be borne by a party failing to execute the award within the specified time.

3. The stamp of this Commission shall be affixed to the award.

4. Where a case is examined by a three-arbitrator tribunal, the award shall be rendered by all three arbitrators or a majority of the arbitrators. A written dissenting opinion shall be docketed into the file and may be attached to the award, but it shall not form a part of the award.

5. Where the arbitral tribunal cannot reach a majority opinion, the award shall be rendered in accordance with the presiding arbitrator's opinion. The written opinion of other arbitrators shall be docketed into the file and may be attached to the award, but it shall not form a part of the award.

6. Unless the award is rendered in accordance with the opinion of the presiding arbitrator or the sole arbitrator, the arbitral award shall be signed by a majority of arbitrators. An arbitrator who has a dissenting opinion may or may not sign his/her name on the award.

7. The date on which the award is rendered shall be the date on which the award comes into legal effect.

8. The arbitral award is final and binding upon both parties. Neither party may bring a suit before a law court or make a request to any other organization for revising the award.

#### **Article 46 Partial Award**

A partial award may be rendered by the arbitral tribunal at any time during the arbitration before the final award is rendered if it considers necessary, or if the parties request and the arbitral tribunal accepts. Either party's failure to perform the partial award will not affect the continuation of the arbitral proceedings, nor will it prevent the arbitral tribunal from rendering a final award.

#### **Article 47 Scrutiny of Draft Award**

The arbitral tribunal shall submit its draft award to this Commission for scrutiny before signing the award. This Commission may remind the arbitral tribunal of issues in the award on condition that the arbitral tribunal's independence in rendering the award is not affected.

#### **Article 48 Allocation of Costs**

1. The arbitral tribunal has the power to determine in the arbitral award the arbitration fee and other expenses to be paid by the parties to this Commission.

2. The arbitral tribunal has the power to decide in the award, according to the specific circumstances of the case, that the losing party shall compensate the

winning party for the expenses reasonably incurred by it in pursuing its case. In deciding the compensation the losing party shall make to the winning party for expenses incurred in pursuing its case, the arbitral tribunal shall consider such factors as the outcome and complexity of the case, the workload of the winning party and/or its representative(s), and the amount in dispute, etc.

#### **Article 49 Rectification of Award**

Within thirty (30) days from its receipt of the arbitral award, either party may request in writing for a rectification of any clerical, typographical, or calculation errors or any errors of a similar nature contained in the award; if such an error does exist in the award, the arbitral tribunal shall make a rectification in writing within thirty (30) days from the date of receipt of the written request for the rectification. The arbitral tribunal may likewise rectify any such errors in writing on its own initiative within a reasonable time after the award is issued. Such rectification in writing shall form a part of the arbitral award.

#### **Article 50 Supplementary Award**

Within thirty (30) days from the date on which the arbitral award is received, either party may request the arbitral tribunal in writing for a supplementary award on any claim or counterclaim which was advanced in the arbitral proceedings but was omitted from the award. If such omission does exist, the arbitral tribunal shall make a supplementary award within thirty (30) days from the date of receipt of the

written request. The arbitral tribunal may also make a supplementary award on its own initiative within a reasonable period of time after the arbitral award is issued. Such supplementary award shall form a part of the arbitral award previously rendered.

### **Article 51 Execution of Award**

1. The parties must automatically execute the arbitral award within the time period specified in the award. If no time limit is specified in the award, the parties shall execute the arbitral award immediately.
2. Where one party fails to execute the award, the other party may apply to a competent court for enforcement of the award pursuant to the laws.

## **Chapter IV Summary Procedure**

### **Article 52 Application of Summary Procedure**

1. Unless otherwise agreed by the parties, this Summary Procedure shall apply to any case where the amount in dispute does not exceed RMB 1,000,000 yuan, or to any case where the amount in dispute exceeds RMB 1,000,000 yuan, yet one party applies for arbitration under this Summary Procedure and the other party agrees in writing.
2. Where no monetary claim is specified or the amount in dispute is not clear, this Commission shall determine whether or not to apply the Summary Procedure after a full consideration of such factors as the complexity of the case and the interests involved, etc.

### **Article 53 Constitution of Arbitral Tribunal**

A sole-arbitrator tribunal shall be constituted in accordance with Article 23 of these Rules to examine a case under the Summary Procedure.

### **Article 54 Defense and Counterclaim**

1. Within twenty (20) days from the date of receipt of the Notice of Arbitration, the Respondent shall submit its Statement of Defense and relevant evidence to the Secretariat of this Commission; counterclaims, if any, shall also be filed with supporting evidence within the said time period.

2. Within twenty (20) days from the date of receipt of the counterclaim and its attachments, the Claimant shall submit its Statement of Defense to the Respondent's counterclaim.

3. If the party does have justified reasons to request for an extension of the aforesaid time , the arbitral tribunal will decide whether to extend the time limit or not; and such decision shall be made by the Secretariat of this Commission in the event that the arbitral tribunal is yet to be constituted.

### **Article 55 Conduct of Hearing**

The arbitral tribunal may examine the case in the manner it considers appropriate. The arbitral tribunal may in its full discretion decide to hold oral hearings or examine the case only on the basis of the written materials and evidence submitted by the parties.

### **Article 56 Oral Hearing**

1. For a case examined by way of an oral hearing,

the Secretariat of this Commission shall, after the arbitral tribunal has fixed a date for the oral hearing, notify the parties of the date at least ten (10) days in advance of the oral hearing date. A party having justified reasons may request the arbitral tribunal for a postponement of the oral hearing. However, such request must be communicated to the arbitral tribunal at least five (5) days in advance of the oral hearing date. The arbitral tribunal shall decide whether to postpone the oral hearing or not.

2. If the party does have justified reasons for failure to request for a postponement of the oral hearing within the aforesaid time period provided for in the foregoing Paragraph 1, the arbitral tribunal will decide whether to accept its request for postponement or not.

3. A notice of the subsequent oral hearing and a notice of a postponed oral hearing shall not be subject to the ten (10)-day time limit provided for in the foregoing Paragraph 1.

### **Article 57 Time Limits for Rendering Award**

1. The arbitral tribunal shall render an arbitral award within three (3) months from the date on which the arbitral tribunal is constituted.

2. Upon the request of the arbitral tribunal, the Secretary-General of this Commission may extend the time limit if he/she considers it truly necessary and the reasons for the extension truly justified.

### **Article 58 Change of Procedure**

The application of the Summary Procedure shall not

be affected by any amendment to the claim or by the filing of a counterclaim. Where the amount in dispute of the amended claim or that of the counterclaim exceeds RMB 500,000 Yuan, the procedure of the case shall be changed from the Summary Procedure to the general procedure unless the parties have agreed to the continuous application of the Summary Procedure.

### **Article 59 Context Reference**

As to matters not covered in this Chapter, the relevant provisions in the other Chapters of these Rules shall apply.

## **Chapter V Supplementary Provisions**

### **Article 60 Language**

1. Where the parties have agreed on the language for arbitration, their agreement shall prevail. Absent such an agreement, the Chinese language shall be the official language of arbitration. The arbitral tribunal may, taking into consideration the working language and other factors in the arbitration, decide to use other language as the official language for the arbitration.
2. At an oral hearing, if a party or its representative(s) or witness requires language interpretation, the Secretariat of this Commission may provide an interpreter, or the party may bring its own interpreter.
3. The arbitral tribunal and/or the Secretariat of this Commission may, if it considers necessary, request the parties to submit a corresponding version of the documents and evidence by the parties in Chinese or in other languages.

## **Article 61 Service of Documents**

1. Unless otherwise agreed by the parties, all documents, notices and written materials in relation to the arbitration may be sent to the parties and/or their representatives in person, or by registered mail or express mail, facsimile, telex, cable, or by any other means considered proper by the Secretariat of this Commission.

2. Any written correspondence to a party and/or its representative(s) shall be deemed to have been properly served on the party if delivered to the addressee or delivered at his place of business, registration, domicile, habitual residence or mailing address, or where, after reasonable inquiries by the other party, none of the aforesaid addresses can be found, the written correspondence is sent by the Secretariat of this Commission to the addressee's last known place of business, registered address, domicile, habitual residence or mailing address by registered mail or by any other means that provides a record of the attempt of delivery.

## **Article 62 Calculation of Time Limits**

1. A period of time limit specified in or fixed in accordance with these Rules shall commence to run on the day following the date on which such period commences. The day from which a time limit commences shall not be counted as within such period of time limit.

2. If the day following the date on which the period of time limit falls on a public holiday or non-business day at the place of the addressee, then the period of time limit shall commence from the first following

business day. The public holiday and the non-business day occurring within such period shall be included in calculating the period of time. If the expiration date of a time limit falls on a public holiday or a non-business day, then the period of time shall expire on the first following business day.

### **Article 63 Arbitration Fees and Actual Expenses**

1. Apart from charging arbitration fees to the parties according to the Arbitration Fee Schedule of this Commission, this Commission may collect from the parties other extra, reasonable and actual expenses including arbitrators' special remuneration and their travel and accommodation expenses incurred in dealing with the case, as well as the costs and expenses of experts, appraisers and interpreters appointed by the arbitral tribunal, etc.

2. Where the parties have agreed to hold an oral hearing at a place other than this Commission's domicile, extra expenses including travel and accommodation expenses incurred thereby shall be paid in advance as a deposit by the parties. In the event that the parties fail to do so, the oral hearing shall be held at the domicile of this Commission.

### **Article 64 Interpretation of the Rules**

1. These Rules shall be interpreted by this Commission.

2. The headings of the articles in these Rules shall not serve as interpretations of the contents of the provisions contained herein.

3. Unless stated otherwise, other documents issued by this Commission shall not constitute a part of these Rules.

## **Article 65 Official Versions of the Rules**

All the versions of these Rules as published by this Commission in Chinese, English and other languages are the official versions. In the event of any discrepancies between the different versions, the Chinese version shall prevail.

## **Article 66 Coming into Force**

These Rules shall be effective as from May 1, 2013. For cases accepted by this Commission before these Rules become effective, the Arbitration Rules effective at the time of acceptance shall apply, or these Rules shall apply where both parties agree.

**Shanghai International Economic and Trade Arbitration Commission**  
**(Shanghai International Arbitration Center)**

**ARBITRATION FEE SCHEDULE**

(This fee schedule applies to the arbitration cases accepted under Paragraph 1 and 2 of Article 3 of the Arbitration Rules, and becomes effective on May 1, 2013)

<b>Amount of Claim (RMB Yuan)</b>	<b>Amount of Fee (RMB Yuan)</b>
1,000,000 or less	3.5% of the Claimed Amount, minimum 10,000
1,000,001 to 5,000,000	35,000 plus 2.5% of the amount above 1,000,000
5,000,001 to 10,000,000	135,000 plus 1.5% of the amount above 5,000,000
10,000,001 to 50,000,000	210,000 plus 1% of the amount above 10,000,000
50,000,001 or more	610,000 plus 0.5% of the amount above 50,000,000

Each case, when being accepted, shall be charged an additional amount of RMB 10,000 Yuan as a Registration Fee which includes the expenses for examining the application for arbitration, initiating the arbitral proceedings, computerizing management and filing the documents.

Where the amount of the claim is not ascertained at the time when application for arbitration is handed in, or there exists special circumstances, the amount of arbitration fee shall be determined by the Secretariat of this Commission.

If the arbitration fee is charged in foreign currency, an amount of foreign currency equivalent to the corresponding RMB value specified in this schedule shall be paid.

Apart from charging arbitration fee according to this

Arbitration Fee Schedule, this Commission may collect other extra, reasonable and actual expenses pursuant to the relevant provisions of the Arbitration Rules.

**Shanghai International Economic and Trade Arbitration Commission**  
**(Shanghai International Arbitration Center)**

**ARBITRATION FEE SCHEDULE**

(This fee schedule applies to the arbitration cases accepted under Paragraph 3 of Article 3 of the Arbitration Rules, and becomes effective on May 1, 2013.)

In accordance with the Notice of the Measures for the Charging of Arbitration Fee by the Arbitration Commissions with the reference number of Guo Ban Fa No. 44/1995 issued by the General Office of the State Council, the arbitration fee for cases accepted by this Commission under Paragraph 3 of Article 3 of the Arbitration Rules are charged in the following way:

**I. Registration Fee**

<b>Amount of Claim (RMB Yuan)</b>	<b>Amount of Fee (RMB Yuan)</b>
1,000 or less	minimum 100
1,001 to 50,000	100 plus 5% of the amount above 1,000
50,001 to 100,000	2,550 plus 4% of the amount above 50,000
100,001 to 200,000	4,550 plus 3% of the amount above 100,000
200,001 to 500,000	7,550 plus 2% of the amount above 200,000
500,001 to 1,000,000	13,550 plus 1% of the amount above 500,000
1,000,001 or more	18,550 plus 0.5% of the amount above 1,000,000

## II. Handling Fee

<b>Amount of Claim (RMB Yuan)</b>	<b>Amount of Fee (RMB Yuan)</b>
200,000 or less	5,000
200,001 to 500,000	5,000 plus 2% of the amount above 200,000
500,001 to 1,000,000	11,000 plus 1.5% of the amount above 500,000
1,000,001 to 3,000,000	18,500 plus 0.5% of the amount above 1,000,000
3,000,001 to 6,000,000	28,500 plus 0.45% of the amount above 3,000,000
6,000,001 to 10,000,000	42,000 plus 0.4% of the amount above 6,000,000
10,000,001 to 20,000,000	58,000 plus 0.3% of the amount above 10,000,000
20,000,001 to 40,000,000	88,000 plus 0.2% of the amount above 20,000,000
40,000,001 or more	128,000 plus 0.15% of the amount above 40,000,000

The Amount of Claim referred to in this schedule shall be based on the sum of money claimed by the Claimant. If the amount claimed is different from the actual amount in dispute, the actual amount in dispute shall be the basis for calculation.

Where the amount of claim is not ascertained at the time when application for arbitration is handed in, or there exists special circumstances, the amount of arbitration fee deposit shall be determined by the Secretariat of this Commission in

consideration of the specific rights and interests involved in the disputes.

Apart from charging arbitration fee according to this Arbitration Fee Schedule, this Commission may collect other extra, reasonable and actual expenses pursuant to the relevant provisions of the Arbitration Rules.