

# **China Maritime Arbitration Commission (CMAC)**

## **Model Arbitration Clause**

Any dispute arising from or in connection with this contract shall be submitted to China Maritime Arbitration Commission (CMAC) for arbitration in accordance with CMAC Arbitration Rules currently in force at the time of applying for arbitration. The arbitral award is final and binding on all the parties.

*Recommended additions:*

The arbitral tribunal shall be composed of [...] arbitrator(s).

The seat of arbitration shall be [...].

The language of the arbitration shall be [...].

This contract shall be governed by the law of [...].



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# **Rules of Arbitration of the China Maritime Arbitration Commission (CMAC)**

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# **Rules of Arbitration of the China Maritime Arbitration Commission (CMAC)**

## **Chapter I General Provisions**

### **Article 1 The Arbitration Commission**

1. The China Maritime Arbitration Commission (“CMAC”), originally named as the Maritime Arbitration Commission of the China Council for the Promotion of International Trade.
2. Where parties’ arbitration agreement provides for arbitration by the Maritime Arbitration Commission of China Council for the Promotion of International Trade/ China Chamber of International Commerce, or refers to CMAC’s original name, it shall be deemed that the parties have agreed to arbitration by CMAC.

### **Article 2 Structure and Duties**

1. The Chairman of CMAC shall perform the functions and duties vested in him/her by CMAC Arbitration Rules (“these Rules”) while a Vice Chairman may perform the Chairman’s functions and duties with the Chairman’s authorization.
2. CMAC has an Arbitration Court (the “Arbitration Court”), which performs its functions in accordance with these Rules under the direction of the authorized Vice Chairman and the President of the Arbitration Court.
3. CMAC is based in Beijing. CMAC has its Shanghai Headquarters in Shanghai and has established in eligible cities and industries sub-commissions and arbitration

centers. The Shanghai Headquarters/sub-commissions/arbitration centers (see Appendix I) are CMAC's branches, which accept arbitration applications and administer arbitration cases with CMAC's authorization.

4. The Shanghai Headquarters/sub-commission/arbitration center shall perform the functions of the Arbitration Court in accordance with these Rules.

5. Where parties have agreed to submit their disputes to CMAC for arbitration, according to the choice of the Claimant, the Arbitration Court or Shanghai Headquarters/sub-commission/arbitration center shall accept the application and administer the case. Where both parties have filed arbitration applications, the first application shall prevail. Where both parties have agreed to submit their dispute to CMAC for arbitration in Beijing, Shanghai or a location of any of the sub-commissions/arbitration centers, or have agreed to submit their dispute to the Shanghai Headquarters/a sub-commission/arbitration center for arbitration, the Arbitration Court/Shanghai Headquarters/sub-commission/arbitration center shall accordingly accept the application and administer the case. Where the sub-commission/arbitration center agreed upon by the parties does not exist or where the agreement is ambiguous, the Arbitration Court shall accept the application and administer the case. In the event of any dispute, a decision shall be made by CMAC.

### **Article 3 Range of Cases**

1. Based on the parties' agreement, CMAC accepts cases as follow:

- (a) disputes arising from admiralty, maritime;
- (b) disputes arising from aviation, railway, highway, etc.

transportation and carriage;

(c) disputes arising from trade, investment, finance, insurance, construction;

(d) other disputes which parties have agreed to refer to CMAC for arbitration.

2. The above cases include:

(a) international or foreign-related disputes;

(b) disputes related to the Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan region;

(c) domestic disputes.

#### **Article 4 Application of these Rules**

1. These Rules uniformly apply to CMAC and its Shanghai Headquarters/sub-commissions/arbitration centers.

2. Where the parties agree to refer their dispute to CMAC for arbitration, they shall be deemed to have agreed to arbitration in accordance with these Rules.

3. Where the parties agree to refer their dispute to CMAC for arbitration but have agreed on any modification of these Rules or have agreed on the application of other arbitration rules, the parties' agreement shall prevail unless such agreement is inoperative or in conflict with any mandatory provisions of the laws of the seat of arbitration. Where the parties have agreed on applying other arbitration rules, CMAC shall perform the relevant administrative duties.

4. Where the parties agree to refer their dispute to arbitration under these Rules without providing the name of the arbitration institution, they shall be deemed to have

agreed to refer the dispute to arbitration by CMAC.

5. Where the parties agree to refer their dispute to arbitration under CMAC's specialist arbitration rules, the parties' agreement shall prevail. However, if the dispute falls outside the scope of the industry-specific rules, these Rules shall apply.

## **Article 5 Arbitration Agreement**

1. An arbitration agreement means an arbitration clause in a contract or any other form of a written agreement providing for submission to arbitration.

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

3. Where the law applicable to an arbitration agreement has different provisions for the form and validity of the arbitration agreement, the provisions of the law shall prevail.

4. An arbitration clause contained in a contract shall be deemed as a clause independent and separate from all the other clauses of the contract; an arbitration agreement attached to a contract shall also be deemed as independent and separate from all the other clauses of the contract. The validity of an arbitration clause or an arbitration agreement shall not be affected by any modification, cancellation, termination, transfer, expiry, invalidity, ineffectiveness, rescission or whether or not the contract exists.

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

1. CMAC has the power to determine the existence and validity of an arbitration agreement and its jurisdiction over an arbitration case. CMAC may, where necessary, delegate such power to the arbitral tribunal.

2. Where CMAC is satisfied based on *prima facie* evidence that a valid arbitration agreement exists, it may make a decision based on such evidence that it has jurisdiction over the arbitration case, and arbitration proceedings shall continue. Such a decision shall not prevent CMAC from re-determining on jurisdiction, based on facts and/or evidence found by the arbitral tribunal during the proceedings, that is inconsistent with the *prima facie* evidence.

3. When the arbitral tribunal, in accordance with the delegation by CMAC, determines on jurisdiction, the tribunal may either make a separate decision on jurisdiction during the arbitral proceedings, or make the decision in the final arbitral award.

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

5. Objections to an arbitration agreement and/or jurisdiction shall not affect continuation of the arbitral proceedings.

6. The aforesaid objections to jurisdiction and/or such decisions include objections to a party's standing to

participate in the arbitration and/or such decisions.

7. CMAC or its authorized arbitral tribunal, having decided that it has no jurisdiction over an arbitration case, shall dismiss the case. Where a case is to be dismissed before the constitution of the arbitral tribunal, the decision shall be made by the Arbitration Court. Where the case is to be dismissed after the constitution of the tribunal, the decision shall be made by the tribunal.

### **Article 7 Seat of Arbitration**

1. Where the parties have agreed on the seat of arbitration, the parties' agreement shall prevail.
2. Where the parties have not agreed on the seat of arbitration or their agreement is ambiguous, the seat of arbitration shall be the domicile of CMAC or its Shanghai Headquarters/sub-commission/arbitration center which administers the case. The Arbitration Court or the tribunal may also determine on another location, having regard to the specific circumstances of the case.
3. The arbitral award shall be deemed as having been made at the seat of arbitration.

### **Article 8 Service of Documents and Time Period**

1. If the parties have agreed on service of documents, such agreement shall prevail.
2. Unless otherwise agreed by the parties, all documents, notices and materials in relation to the arbitration may be served in person, by registered post, express mail service, fax, e-mail, such instant telecommunication as recordable by data system, or sent to the Captain of the concerned vessel, or by any other means considered as proper by the Arbitration Court or the arbitral tribunal.

3. The arbitration documents referred to in Paragraph 2 above shall be sent to the address provided by the party itself or by its representative(s) or an address as agreed by the parties. Where a party or its representative(s) has not provided an address or the parties have not agreed on an address, the arbitration documents shall be sent to such party's address provided by the other party or its representative(s).

4. Any arbitration documents sent to a party or its representative(s) shall be deemed to have been properly served on the party if the documents are delivered to the addressee's place of business, place of registration, domicile, habitual residence or postal address, or, where after reasonable inquiry by the other party none of the aforesaid addresses can be found, the addressee's last known place of business, place of registration, domicile, habitual residence or postal address to which the Arbitration Court sent by registered post, express mail service or any other means which provide a record of delivery including delivery by public notary, entrustment delivery or retention.

5. Time of service shall be the earliest time of the means of delivery to the party being served.

6. The periods of time specified in these Rules shall commence on the following day of when the party receives or should have received the arbitration correspondence, notice or materials sent by the Arbitration Court.

### **Article 9 Good Faith**

All arbitration participants should act in accordance with the principle of good faith and proceed the arbitration in a *bona fide* manner.

**Article 10 Waiver**

A party shall be deemed to have waived its right to object where it knows or should have known that any provision or requirement of these Rules has not been complied with but remains participating in or proceeds with the arbitral proceedings without prompt explicit written objection to such non-compliance.

## **Chapter II Arbitral Proceedings**

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

#### **Article 11 Commencement of Arbitration**

The arbitral proceedings shall commence on the day on which the Arbitration Court receives a Request for Arbitration.

#### **Article 12 Application for Arbitration**

A party applying for arbitration under these Rules should:

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

(a) names and addresses of the Claimant and Respondent, including the zip code, telephone, fax, email, or other means of electronic telecommunication;

(b) the arbitration agreement referred to;

(c) a statement of the facts of the case and main issues in dispute;

(d) the applicant's claim; and

(e) the facts and grounds on which the claim is based.

2. Attach to the Request for Arbitration evidential materials relied on, the proof of the Claimant's identification, and other supporting documents.

3. Make a payment to CMAC of the arbitration fee in advance pursuant to the Arbitration Fee Schedule of CMAC.

## **Article 13 Acceptance of Arbitration**

1. Upon the written application of a party, CMAC shall accept the case in accordance with the parties' arbitration agreement entered into either before or after the occurrence of the dispute and providing for submitting the dispute to arbitration by CMAC.

2. Upon receipt of a Request for Arbitration and attached documents and after having examined and found the required formalities complete, the Arbitration Court shall send the Claimant Notice of Arbitration together with a copy of these Rules and CMAC's Panel of Arbitrators, and send the Respondent Notice of Arbitration together with a copy of the Claimant's Request for Arbitration and attached documents and these Rules and CMAC's Panel of Arbitrators

3. If after examination it finds the formalities required for the application for arbitration to be incomplete, the Arbitration Court may require the Claimant to satisfy the formalities within a specified time period.

4. After CMAC accepts a case, the Arbitration Court shall designate a case manager to provide the administration service.

## **Article 14 Arbitration Concerning Multiple Contracts**

The Claimant may request for a single arbitration to consolidate disputes arising out of or in connection with multiple contracts, provided that:

(a) such contracts consist of the principal contract and ancillary contract(s), or such contracts involve the same parties and same nature of the legal relationships;

(b) the disputes arise out of the same transaction or the same series of transactions; and

(c) the provisions of the arbitration agreements in such contracts are identical or compatible.

### **Article 15 Defense**

1. The Respondent shall submit a Statement of Defense in writing within thirty (30) days after it receives the Notice of Arbitration. If the Respondent for any reasons requests for an extension of time, the arbitral tribunal shall decide whether to grant an extension. Where the arbitral tribunal has not yet been constituted, the Arbitration Court shall decide.

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

(a) name and address of the Respondent, including the zip code, telephone, fax, email or any other means of electronic telecommunication;

(b) defense to the Request for Arbitration, setting out the facts and grounds on which the defense is based;

(c) any evidence on which the defense relies, proof of the Respondent's identity and other supporting documents.

3. The arbitral tribunal has the power to decide whether to accept a Statement of Defense submitted after expiry of the time period.

4. The Respondent's failure to submit a Statement of Defense shall not affect the progress of the arbitral proceedings.

### **Article 16 Counterclaim**

1. The Respondent shall submit a counterclaim in writing, if any, within thirty (30) days after it receives the Notice of Arbitration. If the Respondent for any reasons requests for an extension of time, the arbitral tribunal shall decide whether to grant an extension. Where the arbitral tribunal has not yet been constituted, the Arbitration Court shall decide.

2. When filing a counterclaim, the Respondent shall specify the particulars of the counterclaim in the Statement of Counterclaim, set out the facts and grounds on which the counterclaim is based, and provide relevant evidence and other supporting documents.

3. When filing a counterclaim, the Respondent shall within the required time make an advance payment of an arbitration fee pursuant to the Arbitration Fee Schedule of CMAC. Failure to pay the required arbitration fee on time shall be deemed as having not filed the counterclaim.

4. Once the required formalities for filing a counterclaim are deemed complete, the Arbitration Court shall send both parties Notice of Acceptance of the Counterclaim. The Claimant shall submit its Statement of Defense in writing within thirty (30) days after it receives the Notice of Acceptance of the Counterclaim. If the Claimant for any reasons requests for an extension of time, the arbitral tribunal shall decide whether to grant such an extension. Where the arbitral tribunal has not yet been constituted, the Arbitration Court shall decide.

5. The arbitral tribunal has the power to decide whether to accept a counterclaim or Statement of Defense to Counterclaim submitted after expiry of the time period.

6. The Claimant's failure to submit a Statement of Defense

to Counterclaim shall not affect the progress of the arbitral proceedings.

### **Article 17 Amendment to Claim or Counterclaim**

The Claimant may apply to amend its claim; the Respondent may apply to amend its counterclaim. The arbitral tribunal may reject an application to amend if it considers that the Claimant's or Respondent's application for amendment is so late that it will delay the normal progress of the arbitral proceedings.

### **Article 18 Joinder of Additional Parties**

1. During the arbitral proceedings, a party wishing to join an additional party to the arbitration may apply to CMAC for Joinder based on the invoked arbitration agreement *prima facie* binding the additional party. Where a Request for Joinder is filed after the constitution of the arbitral tribunal, if the arbitral tribunal considers the Joinder necessary, CMAC shall decide after consultation with all the parties including such joinder.

The date of receipt of the Request for Joinder by the Arbitration Court shall be deemed the date of commencement of arbitration against such joinder.

2. The Request for Joinder shall contain the case number of the existing arbitration; name, address and other means of communication of all the parties including such joinder; the arbitration agreement invoked for the Joinder and the facts and grounds relied upon; and the claim.

At the time of filing the Request for Joinder, the party shall provide evidence relied on and other documents in support.

3. Where a party objects to the arbitration agreement and/

or jurisdiction relating to the Joinder proceedings, CMAC has the power to decide on jurisdiction based on the arbitration agreement and relevant evidence.

4. After commencement of the Joinder proceedings, before the constitution of the arbitral tribunal, the Arbitration Court shall decide on the progress of the arbitral proceedings; after the constitution of the arbitral tribunal, the tribunal shall decide.

5. Where Joinder takes place prior to the constitution of the arbitral tribunal, relevant provisions for the party's nominating arbitrators or entrusting the Chairman of CMAC to appoint arbitrators under these Rules shall apply to such joinder. The arbitral tribunal shall be constituted pursuant to Article 33 of these Rules.

Where the joinder takes place after the constitution of the arbitral tribunal, the arbitral tribunal shall consult with such joinder about the arbitral proceedings conducted including the constitution of the arbitral tribunal. If such joinder requests to nominate an arbitrator or entrust the Chairman of CMAC to appoint an arbitrator, both parties shall re-nominate or re-entrust the Chairman of CMAC to re-appoint arbitrators. The arbitral tribunal shall be constituted pursuant to Article 33 of these Rules.

6. The relevant provisions for submitting the Statement of Defense and Statement of Counterclaim in these Rules shall apply to such joinder. Time period for such joinder to submit a Statement of Defense and Statement of Counterclaim shall commence after its receipt of the Notice of Joinder.

7. Where the invoked arbitration agreement *prima facie* does not bind such joinder, or there are circumstances

that allowing to add the Joinder would be inappropriate, CMAC shall have the power to decide not to allow the addition.

## **Article 19 Consolidation of Arbitrations**

1. Except where the arbitration agreement expressly precludes consolidation of arbitrations, CMAC may, at a party request, consolidate two or more pending arbitrations subject to these Rules into one single arbitration if one of the following conditions is satisfied:

(a) all the respective claims in the arbitrations are made and based on the same arbitration agreement;

(b) the respective claims in the arbitrations are made and based on multiple arbitration agreements that are identical or compatible and all the arbitrations involve the same parties and same nature of the legal relationships;

(c) all the claims in the arbitrations are made and based on multiple arbitration agreements that are identical or compatible, and the multiple contracts involved consist of principal and ancillary contracts;

(d) all the disputes involved relate to the same transaction or series of transactions;

(e) none of these conditions is satisfied but all the parties to the arbitrations have agreed to consolidation.

2. In deciding whether to consolidate the arbitrations pursuant to this Paragraph 1, CMAC shall consider the views of all the parties, arbitral tribunals and relevant factors of interconnection of all the arbitrations concerned, including the nomination and appointment of arbitrators in the separate arbitrations.

3. Unless otherwise agreed by all the parties, the

arbitrations shall be consolidated into the arbitration that was initially instigated.

4. Where there is no arbitral tribunal constituted before the consolidation of all the arbitrations, the arbitral tribunal shall be constituted pursuant to Chapter II Section 3 of these Rules; where the same arbitral tribunal has been constituted for all arbitrations before the consolidation, the arbitral tribunal shall not be re-constituted after the consolidation; where some of the arbitrations have constituted arbitral tribunals and others have not constituted arbitral tribunals or constituted different arbitral tribunals, all the parties shall, after the consolidation, consult with each other about the tribunal's constitution. Where the parties fail to reach an agreement on the constitution of the arbitral tribunal within fifteen (15) days after receipt of the Notice of Consolidation, the arbitral tribunal shall be re-constituted pursuant to Chapter II Section 3 of these Rules.

5. After consolidation of the arbitrations, before the constitution of the arbitral tribunal, the Arbitration Court shall decide on the progress of the arbitral proceedings; after the constitution of the arbitral tribunals, the arbitral tribunal shall decide on the progress of the arbitration proceedings.

6. CMAC may adjust the arbitration fees after the consolidation.

## **Article 20 Submission and Exchange of Arbitration Documents**

1. The parties shall submit all the documents of the arbitration to the Arbitration Court.

2. All the documents of the arbitration that require service

or forward in the arbitral proceedings shall be served or forwarded by the Arbitration Court to the arbitral tribunal and the parties, unless otherwise agreed by the parties and approved by the arbitral tribunal or otherwise decided by the arbitral tribunal.

### **Article 21 Copies of Arbitration Documents**

A party should provide the Request for Arbitration, Statement of Defense, Statement of Counterclaim and any evidential and other documents in five (5) copies; where there are multiple parties, additional copies should be provided accordingly; where a party applies for preservation of property or preservation of evidence, it should also provide additional copies accordingly; where the arbitral tribunal has a sole arbitrator, the number of copies of the documents submitted may be reduced accordingly by two.

### **Article 22 Representatives**

1. A party may authorize Chinese and/or foreign arbitration representative(s) to handle matters relating to the arbitration. The party or arbitration representative should submit the Power of Attorney to the Arbitration Court.
2. Each party shall promptly notify the Arbitration Court of any change in its representative. The arbitral tribunal may, after consulting with the parties, take necessary measures to avoid conflict of interest due to the change in a party's representative, including excluding a newly authorized representative of a party from participating in the arbitral proceedings in whole or in part.

## **Section 2 Preservation and Interim Measures**

## **Article 23 Preservation of Properties**

Where a party applies for preservation of maritime claims or preservation of other properties, CMAC shall forward the party's application to the competent maritime court or other competent court at the place where the responding party domiciles or where his property is located; where a party applies for preservation of maritime claims or preservation of other properties before the commencement of arbitral proceedings, it shall, pursuant to the provisions of the Maritime Procedure Law of the People's Republic of China or Civil Procedure Law of the People's Republic of China, submit the application directly to the competent maritime court or other competent court at the place where the property to be preserved is located.

## **Article 24 Preservation of Evidence**

Where a party applies for preservation of evidence, CMAC shall forward the party's application to the competent maritime court or other competent court at the place where the evidence to be preserved is located; where a party applies for preservation of evidence before the commencement of arbitral proceedings, it shall, pursuant to the Maritime Procedure Law of the People's Republic of China or Civil Procedure Law of the People's Republic of China, submit the application directly to the competent maritime court or other competent court at the place where the evidence to be preserved is located.

## **Article 25 Maritime Injunction**

Where a party applies for a maritime injunction, CMAC shall forward the party's application to the competent maritime court at a place where the maritime dispute arises; where a party applies for a maritime injunction

before the commencement of the arbitral proceedings, it shall, pursuant to the Maritime Procedure Law of the People's Republic of China, submit the application directly to the competent maritime court at a place where the maritime dispute arises.

### **Article 26 Limitation Fund for Maritime Claim**

Where a party applies for establishment of a limitation fund for maritime claims, CMAC shall forward the party's application to the competent maritime court at the place of the accident, place of performance of the contract or place of ship arrest; where a party applies for establishment of a limitation fund for maritime claims before the commencement of the arbitral proceedings, it shall, pursuant to the Maritime Procedure Law of the People's Republic of China, submit the application directly to the competent maritime court at the place of the accident, place of performance of the contract or place of ship arrest.

### **Article 27 Interim Measures**

1. In accordance with the applicable law or the parties' agreement, a party may apply to the Arbitration Court for emergency relief pursuant to CMAC Emergency Arbitrator Procedures (Appendix III). The emergency arbitrator may decide to take emergency interim measures he/she deems necessary or appropriate. The decision of the emergency arbitrator shall be binding upon both parties.

2. At the request of a party, the arbitral tribunal may decide to take interim measures it deems necessary or appropriate and has power to decide that the party applying for the interim measure should provide appropriate security.

## **Section 3 Arbitrators and the Arbitral Tribunal**

## **Article 28 Duties of Arbitrators**

An arbitrator shall remain independent and impartial, shall not act for any party, and shall treat all the parties independently and equally.

## **Article 29 Constitution of the Arbitral Tribunal and Number of Arbitrators**

1. Where the parties have agreed on the constitution of the arbitral tribunal, such agreement shall prevail, save that it conflicts with the law of the seat of arbitration, cannot be implemented or may result in the award being invalid.
2. The arbitral tribunal shall be composed of a sole arbitrator or three arbitrators. Where the arbitral tribunal is composed of one arbitrator, this arbitrator shall be the Sole Arbitrator. Where the arbitral tribunal is composed of three arbitrators, one of them shall be the Presiding Arbitrator.
3. Unless otherwise agreed by the parties or provided by these Rules, the arbitral tribunal shall be composed of three arbitrators.

## **Article 30 Nomination or Appointment of Arbitrators**

1. CMAC maintains a Panel of Arbitrators which uniformly applies to CMAC and Shanghai Headquarters/sub-commissions/arbitration centers. Parties may nominate arbitrators from the Panel of Arbitrators provided by CMAC, or from outside CMAC's Panel of Arbitrators. Unless otherwise decided by CMAC, the Sole Arbitrator or Presiding Arbitrator shall be nominated or appointed from CMAC's Panel of Arbitrators.
2. Nomination of arbitrators from outside CMAC's Panel of Arbitrators should comply with the law of the seat of

arbitration.

### **Article 31 A Three-Arbitrator Tribunal**

1. Within fifteen (15) days after receipt of the Notice of Arbitration, the Claimant and Respondent shall each nominate, or entrust the Chairman of CMAC to appoint, an arbitrator. Where the parties fail within the above time to nominate or entrust the Chairman of CMAC to appoint, the Chairman of CMAC shall make the appointment.

2. Within fifteen (15) days after receipt by the last party of the Notice of Arbitration, the third arbitrator shall be jointly nominated by both parties, or appointed by the CMAC's Chairman who is jointly entrusted by both parties. The third arbitrator shall be the Presiding Arbitrator.

3. The parties may each recommend one or up to five arbitrators as candidates for the Presiding Arbitrator by submitting within the required time a list of recommended candidates in accordance with Paragraph 2 above. Where there is one candidate commonly recommended on the lists, this candidate shall be the Presiding Arbitrator as jointly nominated by both parties; where there are more than one candidate commonly enlisted on the lists, the Chairman of CMAC shall, according to the specific circumstances of the case, determine among these on one candidate to be the Presiding Arbitrator, this Presiding Arbitrator shall remain jointly nominated as such by both parties.

4. Where the parties have failed to jointly nominate or entrust the Chairman of CMAC to appoint the Presiding Arbitrator, or failed to recommend, or have recommended but there is not one candidate commonly enlisted on the

lists, the two arbitrators who have been nominated by the parties or appointed by the Chairman of CMAC shall jointly nominate the Presiding Arbitrator.

5. Where the two nominated/appointed arbitrators have failed to jointly nominate the Presiding Arbitrator within fifteen (15) days, the Chairman of CMAC shall appoint the Presiding Arbitrator.

### **Article 32 A Sole-Arbitrator Tribunal**

1. Where the arbitral tribunal is composed of one arbitrator, within fifteen (15) days after receipt by the last party of the Notice of Arbitration, the Claimant and the Respondent shall jointly nominate, or entrust the Chairman of CMAC to appoint, the Sole Arbitrator.

2. The parties may each recommend one or up to five arbitrators as candidates to be the Sole Arbitrator by submitting within the required time a list of recommended candidates in accordance with Paragraph 1 above. Where there is one candidate commonly enlisted on the lists, this candidate shall be the Sole Arbitrator as jointly nominated by both parties; where there is more than one candidate commonly enlisted on the lists, the Chairman of CMAC shall, according to the specific circumstances of the case, appoint the Sole Arbitrator among these candidates, and this Sole Arbitrator shall remain jointly nominated as such by both parties.

3. Where the parties have failed to jointly nominate or jointly entrust the Chairman of CMAC to appoint the Sole Arbitrator or failed to recommend any candidate, or having recommended but there is not one candidate commonly enlisted on the lists of the parties, the Sole Arbitrator shall be appointed by the Chairman of CMAC.

### **Article 33 Tribunal for Multiple Parties**

1. Where there are two or more Claimants and/or Respondents in an arbitration, the Claimant(s) and/or the Respondent(s), shall consult among themselves respectively and jointly nominate, or jointly entrust the Chairman of CMAC to appoint, one arbitrator.

2. Where either the Claimant(s) or the Respondent(s) fail to jointly nominate or jointly entrust the Chairman of CMAC to appoint one arbitrator within fifteen (15) days after receipt of the Notice of Arbitration, the arbitrator shall be appointed by the Chairman of CMAC.

3. The Presiding Arbitrator shall be nominated/appointed in accordance with Paragraphs 2, 3, 4 and 5 of Article 31 of these Rules. The Sole Arbitrator shall be nominated or appointed in accordance with Paragraphs 1, 2 and 3 of Article 32 of these Rules.

### **Article 34 Elements of Constituting Arbitral Tribunal**

When constituting an arbitral tribunal pursuant to these Rules, CMAC shall take into consideration the law applicable to the dispute, seat of arbitration, language of arbitration, nationalities of the parties, any specific agreement between the parties on the constitution of the arbitral tribunal and any other factors CMAC considers relevant.

### **Article 35 Disclosure**

1. An arbitrator nominated by the parties or appointed by the Chairman of CMAC shall sign a Declaration and disclose any facts or circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence.

2. If during the arbitral proceedings matters arise that should be disclosed, the arbitrator shall immediately disclose such in writing.

3. The Declaration and/or the disclosure of the arbitrator shall be submitted to the Arbitration Court to be forwarded to the parties.

### **Article 36 Request an Arbitrator to Withdraw**

1. Upon receipt of an arbitrator's Declaration and/or written disclosure, a party shall, within ten (10) days after the date of receipt, submit its written request that the arbitrator should withdraw on the grounds of the disclosed facts or circumstances. Where a party fails to raise a request for the arbitrator's withdrawal within the above time, it may not subsequently request the arbitrator to withdraw on the basis of the matters disclosed by the arbitrator.

2. A party having justifiable doubts as to the impartiality or independence of an arbitrator may request in writing that the arbitrator should withdraw, and shall state the facts and reasons on which the request is based with supporting evidence.

3. A party's request that an arbitrator should withdraw shall be made in writing within fifteen (15) days after the date of receipt of the Notice of Constitution of the Arbitral Tribunal; where a party becomes aware of any grounds for withdrawal after such period, the party may raise the withdrawal in writing within fifteen (15) days after it becomes aware of such matters, but no later than the conclusion of the last oral hearing.

4. The withdrawal request raised by one party shall be immediately forwarded to the other party, the arbitrator

who is being challenged and the other members of the arbitral tribunal.

5. Where one party requests an arbitrator to withdraw and the other party agrees to such request, or the arbitrator being challenged voluntarily withdraws from this arbitration, then this arbitrator shall no longer be a member of the arbitral tribunal arbitrating the dispute. In such situations it shall not be implied that the reasons for withdrawal have been established.

6. In situations other than those specified in Paragraph 5 above, the Chairman of CMAC shall make the final decision on whether or not the arbitrator should withdraw and provide reasons.

7. An arbitrator who has been requested to withdraw shall continue to serve on the arbitral tribunal until a final decision on whether or not the arbitrator should withdraw is made by the Chairman of CMAC.

### **Article 37 Replacement of Arbitrator**

1. In the event that an arbitrator is prohibited by law or in fact from performing the duties, or fails to perform any duties as required by these Rules or within the time required by these Rules, the Chairman of CMAC shall have the power to replace the arbitrator. Such an arbitrator may also voluntarily withdraw from office.

2. The Chairman of CMAC shall render a final decision on whether or not an arbitrator should be replaced and provide the reasons.

3. In the event that an arbitrator is unable to perform the duties due to the withdrawal or replacement, a substitute arbitrator shall be nominated or appointed within the time period as specified by the Arbitration Court according

to the same procedure applicable to the nomination or appointment of this arbitrator. If a party fails to nominate or appoint a substitute arbitrator, the substitute arbitrator shall be appointed by the Chairman of CMAC.

4. After the nomination or appointment of the replacement arbitrator, the arbitral tribunal shall decide whether or not it should re-arbitrate and the extent of such.

### **Article 38 Continuation of Arbitration by the Majority Arbitrators**

After the conclusion of the last oral hearing, if an arbitrator of a three-member tribunal due to death or removal or any other reason is unable to participate in the deliberations and/or rendering the award, the other two arbitrators may request the Chairman of CMAC to replace this arbitrator pursuant to Article 37 of these Rules; after consulting with the parties and upon the approval of CMAC, the other two arbitrators may also continue the arbitral proceedings and make decisions, rulings or render the award. The Arbitration Court shall notify the parties of the above situations.

## **Section 4 Hearing**

### **Article 39 Mode of Hearing**

1. After the constitution of the arbitral tribunal, the Arbitration Court shall immediately hand over the case to the arbitral tribunal. The arbitral tribunal shall subject to the circumstances of the case promptly hold a case management conference and consult with the parties on procedural measures that may be adopted pursuant to Paragraph 6 of this Article.

2. Unless otherwise agreed by the parties, the arbitral

tribunal shall examine the case in any means it deems appropriate. In all circumstances, the arbitral tribunal shall advance the procedure and adjudicate the case in an impartial, fair and efficient manner, give both parties reasonable opportunities to present their case and ensure due process.

3. The arbitral tribunal shall hold oral hearings, but the arbitral tribunal may examine the case based on documents only and without holding oral hearings if the parties so agree and the arbitral tribunal approves or the arbitral tribunal deems that oral hearings are unnecessary and the parties so agree.

4. Unless otherwise agreed by the parties, the arbitral tribunal may, after consulting with the parties, decide to hold hearings by virtual audio-video conferences or other communication means which it deems appropriate.

If in the proceedings it arises that virtual audio-video conferences and such other means would not be appropriate for holding the hearing, the arbitral tribunal has the power to decide to hold hearings in person.

5. The arbitral tribunal may hold deliberations at any place or in any mode that it deems appropriate.

6. Unless otherwise agreed by the parties, the arbitral tribunal may, after consulting with the parties, adopt appropriate procedural measures, including but not limited to setting out terms of reference, issuing procedural orders, sending lists of questions, holding pre-hearing meetings, and having discussions with the parties over cyber security, privacy and data protection, in order to provide the arbitral proceedings with proper safeguard for security, compliance and such like.

With the authorization of the other members of the arbitral tribunal, the Presiding Arbitrator may solely decide on procedural arrangements for the arbitral proceedings.

7. On the application of a party, or on the arbitral tribunal's initiative after consulting with the parties, the arbitral tribunal may require the parties to disclose whether any non-party (such as a third-party funder or insurer) has undertaken to fund the arbitration proceedings or whether any non-party (such as a third-party funder, insurer, parent company, or ultimate beneficial owner) has an economic interest in the outcome of the arbitration.

#### **Article 40 Tribunal Secretary**

1. The arbitral tribunal may, after consulting with the Arbitration Court, appoint a tribunal secretary to assist. The arbitral tribunal may appoint a staff member from the Arbitration Court as tribunal secretary, save that he/she is not the case manager in the same arbitration.

2. The arbitral tribunal shall determine the tasks of the tribunal secretary. The tribunal secretary shall not participate in the making of any decision on the arbitration or the drafting of the substantive portion of the arbitral award.

3. The tribunal secretary shall remain independent and impartial, and shall, before accepting the appointment, sign a Declaration and disclose any facts or circumstances that are likely to give rise to justifiable doubts as to his/her impartiality or independence.

4. A party may request a tribunal secretary to withdraw in accordance with Article 36 of these Rules. Where CMAC grants such a request, the arbitral tribunal may appoint another tribunal secretary in accordance with this Article.

Unless otherwise decided by the arbitral tribunal, the arbitration shall proceed notwithstanding a request for withdrawal of the tribunal secretary.

#### **Article 41 Place of Oral Hearing**

1. Where the parties have agreed on the place of an oral hearing, the case shall be heard at that agreed place except in the circumstances stipulated in Paragraph 3 of Article 83 of these Rules.

2. Unless otherwise agreed by the parties, place of oral hearings shall be in Beijing for cases administered by the Arbitration Court, or at the location of the Shanghai Headquarters/sub-commission/arbitration center where cases are administered, or at another location if the arbitral tribunal considers it necessary and with the approval of the Arbitration Court.

#### **Article 42 Notice of Oral Hearing**

1. Where oral hearings are to be held, the arbitral tribunal shall notify the parties no later than twenty (20) days prior to the date of the first oral hearing. A party with justifiable reasons may request postponement of the oral hearing and shall raise such request in writing to the arbitral tribunal within five (5) days after receipt of the notice of the oral hearing. The arbitral tribunal shall decide on whether or not to postpone the oral hearing.

2. Where a party has justifiable reasons for its failure to submit the request for postponement of the oral hearing as required by Paragraph 1 above, the arbitral tribunal shall decide whether or not to accept the request for postponement.

3. Notice of a subsequent oral hearings, notice of postponed oral hearing, and request for postponement of such oral

hearings, shall not be subject to the time requirement as specified in the Paragraph 1 above.

4. Before fixing the date of an oral hearing, the arbitral tribunal shall take into account whether documents have been exchanged before the hearing and whether requirements for oral hearing have been satisfied.

### **Article 43 Confidentiality**

1. Hearings shall be held in private. Where both parties request an open hearing, the arbitral tribunal shall make a decision on whether or not to hold open hearing.

2. For cases heard in private, parties and their representatives, arbitrators, case managers, tribunal secretaries, witnesses, interpreters, experts consulted by the arbitral tribunal, appraisers appointed by the arbitral tribunal and other related persons shall not disclose to any outsider any substantive or procedural matters in relation to the case.

### **Article 44 Absence of a Party**

1. If the Claimant fails to appear at an oral hearing without any justifiable reasons, or withdraws from an ongoing oral hearing without the permission of the arbitral tribunal, the Claimant may be deemed to have withdrawn its application for arbitration; where the Respondent has filed a counterclaim, the arbitral tribunal where possible shall proceed with hearing the counterclaim and make an award.

2. If the Respondent fails to appear at an oral hearing without any justifiable reasons, or withdraws from an ongoing oral hearing without the permission of the arbitral tribunal, the arbitral tribunal may proceed with the arbitration in the absence of the Respondent and make an

award; where the Respondent has filed a counterclaim, the Respondent may be deemed to have withdrawn its counterclaim.

### **Article 45 Record of Oral Hearing**

1. The arbitral tribunal may arrange for a written and/or an audio-visual record of an oral hearing. The arbitral tribunal may, if it considers necessary, take minutes of the oral hearing and request the parties and/or their representatives, witnesses and/or other persons involved to sign in and/or affix their seals to the written record or minutes.

Where a hearing is conducted by virtual audio-video conferences or other communication means, the relevant parties may confirm the record or minutes with electronic signatures.

2. The arbitral tribunal may entrust the Arbitration Court to engage a stenographer to record the hearing.

### **Article 46 Evidence**

1. Each party shall bear the burden of proving the facts on which it relies to support its claim, defense or counterclaim and provide the basis for its opinions, arguments and counter-arguments.

2. The parties shall not bear the burden of proving the following facts which, unless otherwise overturned by any evidence to the contrary, may be admitted by the arbitral tribunal at its discretion:

- (a) facts undisputed between the parties;
- (b) laws of nature and laws of science;
- (c) well-known facts or common sense;

(d) facts inferred from laws, known facts or life experience.

3. A party shall disclose and produce all supporting evidence to the arbitral tribunal and all the other parties (including all the parties as the Claimant(s) and/or Respondent(s) in multi-party arbitration).

4. The arbitral tribunal may specify a time period for the parties to produce evidence and the parties shall produce evidence within the specified time period. The arbitral tribunal may refuse to admit any evidence produced after this time period has lapsed. If a party experiences difficulties in producing evidence within the specified time period, it may apply for an extension before the expiry. The arbitral tribunal shall decide whether or not to extend the time period.

5. If a party bearing the burden of proof fails to produce evidence within the specified time period, or if the produced evidence is not sufficient to support its claim or counterclaim, it shall bear the consequences thereof. In general, the production and exchange of evidence shall be finalized before the arbitral tribunal holds a hearing to examine the substantive disputes.

#### **Article 47 Witness of Facts and Expert's Opinions**

1. Where a party wishes to call a witness, it shall inform the arbitral tribunal of the identity of the witness and what matters the witness testifies to. The witness shall submit a written testimony before the hearing.

2. A party may submit an expert's opinions on specific issues to support its claims or defenses.

#### **Article 48 Investigations and Collection of Evidence by the Arbitral Tribunal**

1. The arbitral tribunal may undertake investigations and collect evidence as it considers necessary.
2. When investigating and collecting evidence, the arbitral tribunal shall notify the parties to be present. In the event that one or both parties fail to be present after having being notified, the investigation and collection of evidence shall proceed without being affected.
3. Evidence collected by the arbitral tribunal through its investigations shall be forwarded to the parties who shall have an opportunity to comment thereon.

### **Article 49 Inspector's Report and Appraiser's Report**

1. The arbitral tribunal may, at the request of a party or at the tribunal's own initiative, appoint inspector(s) to inspect the scene, goods, documents or other relevant evidence, or appoint appraiser(s) for clarification of specific professional or technical issues. The parties shall be notified in advance and have the right to be present at the inspection or appraisal.
2. The arbitral tribunal has the power to request the parties, and the parties are also obliged, to deliver to or supply the inspector or appraiser any relevant materials, documents, property, or physical objects for inspection or appraisal by the inspector or appraiser.
3. Copies of the inspector's or appraiser's report shall be forwarded to the parties who shall have an opportunity to comment thereon.

### **Article 50 Examination of Evidence**

1. The arbitral tribunal shall ensure any party an opportunity to make comments on all the evidence

produced by other parties. Examination of evidence may be conducted orally or in writing.

2. Where a case is examined by way of an oral hearing, the evidence shall be produced at the oral hearing and may be examined by the parties.

3. Where a case is to be decided on the basis of documents only, or where evidence is submitted after the hearing and both parties have agreed to written examination, the parties may examine the evidence in writing. In such circumstances, the parties shall submit their views in writing on the evidence within the time period specified by the arbitral tribunal.

4. Any evidence confirmed or undisputed by all the parties shall be deemed as having been examined.

#### **Article 51 Examination of Witness**

1. In principle, a witness shall attend a hearing in person or by virtual audio-video conferences, and take the examinations raised by the engaging party and cross-examinations by the other parties.

2. Inspectors or appraisers appointed by the arbitral tribunal shall attend hearings in person or by virtual audio-video conferences. The arbitral tribunal shall ensure that all the parties have opportunities to raise questions to the inspector or appraiser.

#### **Article 52 Review of and Determination on Evidence**

1. The arbitral tribunal shall decide on the admissibility, relevance, materiality and weight of any evidence.

2. Any party committing perjury shall bear the consequences thereof. The arbitral tribunal has the

authority to dismiss the claims or counterclaims upon finding of perjury.

### **Article 53 Consolidation of Hearings**

To progress fair, economic and efficient arbitration, if two or more cases on arbitration involve the same issues of facts or of law, after consulting with all the parties, the arbitral tribunal shall have consultation with the Arbitration Court and may decide to consolidate two or more cases in the oral hearing, and may also decide:

- (a) that documents submitted by the parties in one case may be forwarded to the parties in another case;
- (b) that evidence produced in one case may be accepted and admitted in another case, provided that all parties have been offered opportunities to comment on such evidence.

### **Article 54 Adjournment of Arbitral Proceedings**

1. Arbitral proceedings may be adjourned where the parties jointly or separately so request, or where any situations as required by law or by other circumstances justify adjournment.
2. The arbitral proceedings shall resume to progress as soon as the reasons for the adjournment desist or the adjournment period ceases.
3. The arbitral tribunal shall decide whether to adjourn or resume the arbitral proceedings; where the arbitral tribunal has not yet been constituted, the decision shall be made by the Arbitration Court.

### **Article 55 Case Withdrawal and Dismissal**

1. A party may withdraw its claim or counterclaim in its respective entirety. In the event that the Claimant

withdraws its claim in its entirety, the arbitral tribunal may proceed with determination on the counterclaim and render an arbitral award thereon. In the event that the Respondent withdraws its counterclaim in its entirety, the arbitral tribunal may proceed with the determination on the claim and render an arbitral award thereon.

2. A party may be deemed to withdraw its claim or counterclaim if the party cannot proceed with the arbitral proceedings for reasons attributable to the party itself.

3. A case may be dismissed if the claim and counterclaim have been fully withdrawn. Where a case is to be dismissed prior to the constitution of the arbitral tribunal, the Arbitration Court shall make a decision on the dismissal. Where a case is to be dismissed after the constitution of the arbitral tribunal, the arbitral tribunal shall make the decision.

4. Decision of Dismissal as referred to in Paragraph 3 above and in Paragraph 7 of Article 6 of these Rules shall bear the seal of CMAC.

## **Article 56 Combination of Arbitration and Conciliation**

1. Where both parties wish to conciliate, or where one party wishes to conciliate and the other party's consent has been obtained by the arbitral tribunal, the arbitral tribunal may conciliate the dispute during the arbitral proceedings. The parties may also settle their dispute by themselves.

2. With consent of both parties, the arbitral tribunal may conciliate the case in a manner it considers appropriate.

3. During the process of conciliation, the arbitral tribunal shall terminate the conciliation proceedings if either party so requests or if the arbitral tribunal considers that further

conciliation process will remain futile.

4. The parties shall enter into a settlement agreement where they have reached settlement through conciliation conducted by the arbitral tribunal or by themselves.

5. Where the parties have reached a settlement agreement through conciliation by the arbitral tribunal or by themselves, they may withdraw their claim or counterclaim, or request the arbitral tribunal to render an arbitral award or conciliation statement in accordance with the terms of the settlement agreement.

6. Where the parties request production of a conciliation statement, the conciliation statement shall set out clearly the claims in the arbitration and the terms of the parties' settlement agreement. The statement shall be signed by the arbitrators, sealed by CMAC and served on both parties.

7. Where conciliation is not successful, the arbitral tribunal shall resume the arbitral proceedings and render an arbitral award.

8. Where the parties wish to conciliate their dispute but do not wish to have conciliation conducted by the arbitral tribunal, CMAC may, with both parties' consent, assist the parties to conciliate the dispute in manners and procedures it considers appropriate.

9. Where conciliation is not successful, neither of the parties may invoke any view, proposition, statement, acceptance or opposition as proposal or proposition expressed by either party or by the arbitral tribunal in the conciliatory process to use as grounds for any claim, defense or counterclaim in the subsequent arbitral proceedings, judicial proceedings, or any other proceedings.

10. Where the parties have reached a settlement agreement

by themselves through negotiation or conciliation before the commencement of an arbitration, either party may, based on an arbitration agreement concluded between them that provides for arbitration by CMAC and the settlement agreement, request CMAC to constitute an arbitral tribunal to render an arbitral award in accordance with the terms of the settlement agreement. Unless otherwise agreed by the parties, the Chairman of CMAC shall appoint a Sole Arbitrator to constitute such an arbitral tribunal, which shall examine the case through procedures it considers appropriate and render an award. The specific procedures and time period for rendering the award shall not be subject to the provisions of other articles of these Rules.

## **Section 5 Arbitral Award**

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

1. The arbitral tribunal shall render the arbitral award within six (6) months from the date on which the arbitral tribunal is constituted.
2. Upon the request of the arbitral tribunal, the Arbitration Court may extend the time period if it considers absolutely necessary with reasonable grounds and the reasons for the extension truly justified.
3. Any adjournment period shall be excluded when calculating the time period in Paragraph 1 above.

### **Article 58 Making of Award**

1. The arbitral tribunal shall independently, impartially, fairly and reasonably render the arbitral award on the basis of the facts and the contractual provisions, pursuant to the laws and with reference to international practice and

trading customs.

2. Where the parties have agreed on the law applicable to the substantive issues of their dispute, the parties' agreement shall prevail. In the absence of such an agreement or where such agreement conflicts with a mandatory provision of the laws, the arbitral tribunal shall determine on the law applicable to the substantive issues.

3. The arbitral tribunal shall state in the award the claims, facts of the dispute, reasons on which the award is based, outcome of the award, allocation of the arbitration costs, and the date on which and place at which the award is made. 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 so agreed, or if the award is made in accordance with the terms of a settlement agreement between the parties. The arbitral tribunal has the power to fix in the award a specific time period for the parties to perform the award and any liabilities for failure to do so.

4. The seal of CMAC shall be affixed to the arbitral award.

5. Where a case is examined by an arbitral tribunal composed of three arbitrators, the award shall be rendered by all three arbitrators or the majority of the arbitrators. A written dissenting opinion shall be kept on file and may be appended to the award, which shall not form any part of the award.

6. Where the arbitral tribunal cannot reach a majority opinion, the arbitral award shall be rendered in accordance with the Presiding Arbitrator's opinion. Other arbitrators' written opinion shall be kept on file and may be appended to the award, which shall not form any part of the award.

7. Unless the arbitral award is made in accordance with the

opinion of the Presiding Arbitrator or the Sole Arbitrator and signed by the same, the arbitral award shall be signed by all the arbitrators or the majority of the arbitrators. An arbitrator who has dissenting opinion may or may not sign his/her name on the award.

8. The date on which the award is made shall be the date on which the award comes into legal effect.

9. The arbitral award is final and binding on both parties. Neither party may bring a lawsuit before any court or request any other organization for revision to the award.

10. The Arbitration Court may, with the consent of all the parties, publish the award which has been encrypted to disguise the names of the parties and any other identifying details.

### **Article 59 Partial Award**

1. Where the arbitral tribunal considers it necessary, or where a party so requests and the arbitral tribunal agrees, the arbitral tribunal may first render a partial award on any part of the claim before rendering the final award. A partial award is final and binding on both parties.

2. Failure of either party to perform a partial award shall neither affect the arbitral proceedings nor prevent the arbitral tribunal from making the final award.

### **Article 60 Scrutiny of Draft Award**

The arbitral tribunal shall submit the draft award to CMAC for scrutiny before signing the award. CMAC may bring to the attention of the arbitral tribunal issues addressed in the award on the condition that the arbitral tribunal's independence in rendering the award is not affected.

### **Article 61 Advisory Council**

The arbitral tribunal or CMAC may submit any significant or complex procedural and substantive matters in an arbitration to the Advisory Council for consultation and advice. The arbitral tribunal has the discretion to decide on whether or not to follow the consultation and advice as issued by the Advisory Council.

### **Article 62 Allocation of Fees**

1. The arbitral tribunal has the power to determine in the arbitral award the arbitration fees and costs to be paid by the parties to CMAC.

2. The arbitral tribunal has the power to decide in the arbitral award, having regard to the circumstances of the case, that the losing party shall compensate the winning party for its costs reasonably incurred in pursuing its case. In deciding on whether or not the winning party's costs incurred in pursuing its case are reasonable, the arbitral tribunal shall consider various factors such as the outcome of the arbitration, complexity of the case, actual workload of the winning party and/or its representative(s) and the quantum, etc.

### **Article 63 Correction of Award**

1. Within a reasonable time after the award is made, the arbitral tribunal may, on its own initiative, make corrections in writing of any clerical, typographical or calculation errors or any errors of similar nature contained in the award.

2. Within thirty (30) days from its receipt of the arbitral award, either party may request the arbitral tribunal in writing for correction of any clerical, typographical or calculation errors or any errors of similar nature contained

in the award. Where such an error indeed exists in the award, the arbitral tribunal shall make the correction in writing within thirty (30) days of receipt of the written request.

3. The above referred written correction shall form part of the arbitral award and shall be subject to the provisions in Paragraphs 4 to 9 of Article 58 of these Rules.

### **Article 64 Additional Award**

1. Where any claim which should have been decided on by the arbitral tribunal was omitted from the arbitral award, the arbitral tribunal may, on its own initiative, make an additional award within a reasonable time after the award is made.

2. Either party may, within thirty (30) days from its receipt of the arbitral award, request the arbitral tribunal in writing for an additional award on any claim or counterclaim which has been advanced in the arbitral proceedings but omitted in the award. If such an omission indeed exists, the arbitral tribunal shall make an additional award within thirty (30) days of receipt of the written request.

3. Such additional award shall form a part of the arbitral award and shall be subject to the provisions in Paragraphs 4 to 9 of Article 58 of these Rules.

### **Article 65 Performance of Award**

1. The parties shall perform the arbitral award within the time period specified in the award. If no time period is specified in the award, the parties shall perform the award immediately.

2. Where one party fails to perform the award, the other party may apply to a competent court for enforcement of the award in accordance with the law.

## **Chapter III Expedited Procedure**

### **Article 66 Application**

1. Unless otherwise agreed by the parties, the Expedited Procedure shall apply to any case where the amount in dispute does not exceed RMB 5,000,000; or shall apply where the amount in dispute exceeds RMB 5,000,000 and one party applies for arbitration under the Expedited Procedure and the other party consents in writing; or shall apply where both parties have agreed to adopt the Expedited Procedure.

2. Where there is no monetary quantum or the quantum in dispute is unclear, CMAC shall determine whether or not to apply the Expedited Procedure after full consideration of relevant factors including but not limited to the complexity of the case and interests involved.

### **Article 67 Notice of Arbitration**

Where after examination the Claimant's application for arbitration is accepted under the Expedited Procedure, the Arbitration Court shall send a Notice of Arbitration to both parties.

### **Article 68 Constitution of the Arbitral Tribunal**

Unless otherwise agreed by the parties, a sole-arbitrator tribunal shall be constituted in accordance with Article 32 of these Rules to examine cases under the Expedited Procedure.

### **Article 69 Defense and Counterclaim**

1. The Respondent shall submit its Statement of Defense, evidence and other supporting documents within twenty

(20) days after receipt of the Notice of Arbitration. Counterclaim, if any, shall also be filed with the evidence and supporting documents within such time period.

2. The Claimant shall file its Statement of Defense to the Respondent's Counterclaim within twenty (20) days after receipt of the Counterclaim and its attachments.

3. If a party has justifiable reasons and requests an extension of time, the arbitral tribunal shall decide whether to grant such extension. Where the arbitral tribunal has not yet been constituted, such decision shall be made by the Arbitration Court.

### **Article 70 Conduct of Hearings**

The arbitral tribunal may examine the case in the manner it considers appropriate. The arbitral tribunal may, after consulting with the parties, decide whether to examine the case solely on the basis of written materials and evidence submitted by the parties or to hold an oral hearing.

### **Article 71 Notice of Oral Hearing**

1. For cases to be examined by way of oral hearings, after the arbitral tribunal has fixed a date for the first oral hearing, the parties shall be notified of the date not later than fifteen (15) days in advance of the oral hearing. Any party may request for postponement of the oral hearing with justifiable reasons, the party shall submit its request in writing to the arbitral tribunal within three (3) days after receipt of the notice of the oral hearing. The arbitral tribunal shall decide whether or not to postpone.

2. If a party fails to submit a request for postponement of the oral hearing in accordance with the preceding Paragraph 1 with justifiable reasons, the arbitral tribunal shall decide whether to accept such a request.

3. Notice of subsequent oral hearings, notice of postponed oral hearings, and request for postponement of such oral hearings, shall not be subject to the time period as specified in Paragraph 1 above.

### **Article 72 Time Period 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 Arbitration Court may extend the time period if it considers absolutely necessary and the reasons for extension truly justified.

3. Any adjournment period shall be excluded when calculating the time period in Paragraph 1 above.

### **Article 73 Change of Procedure**

The Expedited Procedure shall not be affected by any amendment to the claim or by the filing of a counterclaim. Where the quantum of the dispute in the amended claim or counterclaim exceeds RMB 5,000,000, the Expedited Procedure shall continue to apply unless the parties agree or the arbitral tribunal decides that a change to the ordinary procedure is necessary.

### **Article 74 Context Reference**

The relevant provisions in other Chapters of these Rules shall apply to matters which are not covered in this Chapter.

## **Chapter IV Special Provisions for Arbitration in Hong Kong**

### **Article 75 Application**

1. CMAC has established CMAC Hong Kong Arbitration Center in the Hong Kong Special Administrative Region. The provisions of this Chapter shall apply to arbitrations administered by CMAC Hong Kong Arbitration Center.

2. Where the parties have agreed to submit their disputes to CMAC Hong Kong Arbitration Center for arbitration or to CMAC for arbitration in Hong Kong, CMAC Hong Kong Arbitration Center shall accept the application and administer the case.

### **Article 76 Seat of Arbitration and Law Applicable to Proceedings**

Unless otherwise agreed by the parties, for an arbitration administered by CMAC Hong Kong Arbitration Center, the seat of arbitration shall be Hong Kong, the law applicable to the arbitral proceedings shall be the arbitration law of Hong Kong, and the arbitral award shall be an award made in Hong Kong.

### **Article 77 Decision on Jurisdiction**

Any objection to an arbitration agreement and/or jurisdiction over an arbitration case shall be raised in writing no later than the submission of the first substantive defense.

The arbitral tribunal shall have the power to determine the existence and validity of the arbitration agreement and jurisdiction over the arbitration case.

### **Article 78 Seal on Award**

The seal of CMAC Hong Kong Arbitration Center shall be affixed to the arbitral award.

### **Article 79 Arbitration Fees**

Unless otherwise agreed by the parties, the CMAC Arbitration Fee Schedule III (Appendix II) shall apply to the arbitrations administered in accordance with this Chapter.

### **Article 80 Context Reference**

The relevant provisions in other Chapters of these Rules shall apply to matters which are not covered in this Chapter.

## **Chapter V Supplementary Provisions**

### **Article 81 Electronic Signature**

Unless otherwise provided by the law of the seat of arbitration or agreed by the parties, or decided by the Arbitration Court or the arbitral tribunal, arbitrators may use electronic signatures on the arbitral awards, conciliation statements and decisions on dismissal, etc.

### **Article 82 Language**

1. Where the parties have agreed on the language of arbitration, their agreement shall prevail. In the absence of such an agreement, the language of arbitration to be used in the proceedings shall be Chinese. The Arbitration Court or the arbitral tribunal may also nominate another language as the language of arbitration having regard to the circumstances of the case.

2. If a party or its representative(s) or witness(es) require interpretation at an oral hearing, an interpreter may be available either provided by the Arbitration Court or arranged by the party.

3. The arbitral tribunal or the Arbitration Court may, if it considers necessary, require the parties to submit a corresponding version of their documents and evidence translated into Chinese or other languages.

### **Article 83 Arbitration Fees and Costs**

1. Apart from the arbitration fees charged in accordance with its Arbitration Fee Schedule, CMAC may charge the parties for any other additional costs reasonably and actually incurred, including but not limited to arbitrators'

special remuneration, travel and accommodation expenses incurred in dealing with the case, engagement fees of stenographers, and costs and expenses of inspectors, appraisers, auditors, assessors and/or interpreters appointed by the arbitral tribunal. The Arbitration Court shall, after having consulted with the arbitrators and parties concerned, determine the arbitrator's special remuneration with reference to the standards of arbitrators' fees and expenses as set out in the CMAC Arbitration Fee Schedule III (Appendix II).

2. Where a party has nominated an arbitrator but fails to advance a deposit for such actual costs as the nominated arbitrator's special remuneration, travel and accommodation expenses within the time period specified by CMAC, the party shall be deemed having not nominated this arbitrator.

3. Where the parties have agreed to hold a hearing at a place other than the location of CMAC or its Shanghai Headquarters/sub-commission/arbitration center, they shall advance a deposit for the actual costs such as travel and accommodation expenses incurred thereby. In the event that the parties fail to do so within the time period specified by CMAC, the oral hearing shall be held at the location of CMAC or its Shanghai Headquarters/sub-commission/arbitration center.

4. Where the parties have agreed to use two or more than two languages as the languages of arbitration, or where the parties have agreed on a three-arbitrator tribunal in a case where the Expedited Procedure shall apply in accordance with Article 66 of these Rules, CMAC may charge the parties for any additional and reasonable costs.

## **Article 84 Limitation of Liability**

Unless otherwise provided by the law of the seat of arbitration, CMAC and its employees, arbitrators, tribunal secretaries and experts appointed by the arbitral tribunal shall not be liable to any party for any act in connection with the arbitration.

### **Article 85 Basic Principle and Interpretation of These Rules**

1. Any matters for which these Rules have not expressly provided, the Arbitration Court and the arbitral tribunal shall act in the spirit of these Rules.
2. The headings of the articles in these Rules shall not be construed as interpretations of the content of the provisions contained therein. These Rules shall be interpreted by CMAC.

### **Article 86 Coming into Force**

These Rules shall take effect on October 1, 2021. For cases administered by CMAC or by its Shanghai Headquarters/sub-commissions/arbitration centers before these Rules come into force, the Arbitration Rules effective at the time of acceptance shall apply, or where both parties agree these Rules shall apply.

## Appendix I

### **Directory of China Maritime Arbitration Commission and its Shanghai Headquarters/ Sub-Commissions/Arbitration Centers**

#### **China Maritime Arbitration Commission (CMAC)**

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Add: 13/F, CCOIC Building, No.2 Huapichang Hutong,

Xicheng District, Beijing, 100035, P.R. China

Tel: 86 10 82217900, 82217767/7735/7927/7920

Fax: 86 10 82217966

E-mail: [cmac@cmac.org.cn](mailto:cmac@cmac.org.cn)

Website: <http://www.cmac.org.cn>

#### **CMAC Shanghai Headquarters**

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Add: Room 1301,1314, Tomson Commercial Building,

No.710 Dongfang Road, Pudong New Area,

Shanghai, 200122, P.R. China

Tel: 86 21 58200329, 50810729

Fax: 86 21 50810965

E-mail: [cmac-sh@cmac-sh.org](mailto:cmac-sh@cmac-sh.org)

#### **CMAC Tianjin Maritime Arbitration Center**

##### **(Tianjin Sub-Commission)**

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Add: 1803/1804,18/F, Wanhai Building, Tianjin Wanda Center,

the Intersection of Six weft Road and No.8 Dazhigu Road,

Hedong District, Tianjin, 300170, P.R. China

Tel: 86 22 66285688

Fax: 86 22 66285678

E-mail: [tianjin@cietac.org](mailto:tianjin@cietac.org)

### **CMAC Southwest Sub-Commission**

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Add: 15-5,15-6,15F, No.1 Lifan Center, No.8 Juxiyan Plaza,  
Jiangbei District, Chongqing, 400024, P.R. China

Tel: 86 23 67860011

Fax: 86 23 67860022

E-mail: cietac-sw@cietac.org

### **CMAC Hong Kong Arbitration Center**

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Add: Room 503, 5/F, West Wing, Justice Place,  
No.11 Ice House Street, Central, Hong Kong

Tel: 852 25298066

Fax: 852 25298266

Email: hk@cietac.org

### **CMAC Fujian Sub-Commission**

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Add: Unit 1602, 16/F, Yango Time Plaza, No.357 Xiangban Street,  
CBD, North Minjiang, Taijiang District, Fuzhou,  
Fujian Province, 350002, P.R. China

Tel: 86 591 87600275

Fax: 86 591 87600330

Website: <http://www.cietac-fj.org>

### **CMAC South China Sub-Commission**

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Add: 14A01, Anlian Plaza, No. 4018 Jintian Road, Futian District,  
Shenzhen, 518026, P.R. China

Tel: 86 755 82796739

Fax: 86 755 23964130

Email: infosz@cietac.org

## **CMAC (Zhejiang) Pilot Free Trade Zone Arbitration Center**

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Add I: 2/F, Block A, Ganghang International Building of Zhoushan,  
No.619 Dingshen Road, Dinghai District, Lincheng,  
Zhoushan, Zhejiang Province, 316000, P.R. China

Tel: 86 580 2880015

Fax: 86 580 2880065

Email: [cmaczj@cmac.org.cn](mailto:cmaczj@cmac.org.cn)

Add II(Ningbo Office): 34/F, Bank of China Tower,  
No.318 Heyuan Road, Yinzhou District, Ningbo,  
Zhejiang Province, 315000, P.R. China

Tel:86 574 56172260

Email: [cmaczj@cmac.org.cn](mailto:cmaczj@cmac.org.cn)

## **CMAC Hainan Arbitration Center**

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Tel: 86 10 82217900, 86 10 82217767/7921

Fax: 86 10 82217966

Email: [cmac@cmac.org.cn](mailto:cmac@cmac.org.cn)

## **CMAC Qingdao Arbitration Center**

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Add: 34/F, International Shipping Center,  
No.66 Lianyungang Road, Shibei District, Qingdao,  
Shandong Province, 266034, P.R. China

Tel: 86 010 82217900, 86 010 82217767/7922

Fax: 86 010 82217966

Email: [cmac@cmac.org.cn](mailto:cmac@cmac.org.cn)

## **CMAC Northeast Asia International Arbitration Center**

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Add: Room 620, Free Trade Zone Building, No.1 Dongting Road,  
Dalian, Liaoning Province, 116602, P.R. China

Tel: 86 010 82217900, 86 010 82217767/7735

Fax: 86 010 82217966

Email: [cmac@cmac.org.cn](mailto:cmac@cmac.org.cn)

### **CMAC Aviation Dispute Arbitration Center**

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Add: 13/F, CCOIC Building, No.2 Huapichang Hutong,

Xicheng District, Beijing, 100035, P.R. China

Tel: 86 010 82217900, 86 010 82217767/7921

Fax: 86 010 82217966

Email: [cmac@cmac.org.cn](mailto:cmac@cmac.org.cn)

### **CMAC Construction Dispute Arbitration Center**

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Add I: 13/F, CCOIC Building, No.2 Huapichang Hutong,

Xicheng District, Beijing, 100035, P.R. China

Add II: 7/F, Block A, Jiulong Business Center,

No.48 Zhongguancun South Street, Haidian District,

Beijing, 100044, P.R. China

Tel: 86 010 82217900, 86 010 82217767/7921, +8615201171487,

+8615732114302

Fax: 86 010 82217966

Email: [cmac@cmac.org.cn](mailto:cmac@cmac.org.cn)

## Appendix II

### China Maritime Arbitration Commission Arbitration Fee Schedule I

Unless otherwise agreed by the parties, this fee schedule applies to arbitrations administered by CMAC and its Shanghai Headquarters/sub-commissions/arbitration centers.

#### 1. Acceptance Fee

Amount in Dispute (RMB)	Acceptance Fee (RMB)
Up to 1,000	Minimum 100
From 1,001 to 50,000	100+5% of the amount over 1,000
From 50,001 to 100,000	2,550+4% of the amount over 50,000
From 100,001 to 200,000	4,550+3% of the amount over 100,000
From 200,001 to 500,000	7,550+2% of the amount over 200,000
From 500,001 to 1,000,000	13,550+1% of the amount over 500,000

Over 1,000,001 18,550+0.4%  
of the amount over 1,000,000

## 2. Handling Fee

Amount in Dispute (RMB)	Handling Fee (RMB)
Up to 200,000	Minimum 6,000
From 200,001 to 500,000	6,000+2% of the amount over 200,000
From 500,001 to 1,000,000	12,000+1.5% of the amount over 500,000
From 1,000,001 to 2,000,000	19,500+0.5% of the amount over 1,000,000
From 2,000,001 to 5,000,000	24,500+0.45% of the amount over 2,000,000
From 5,000,001 to 10,000,000	38,000+0.4% of the amount over 5,000,000
From 10,000,001 to 20,000,000	58,000+0.3% of the amount over 10,000,000
From 20,000,001 to 40,000,000	88,000+0.2% of the amount over 20,000,000
From 40,000,001 to 100,000,000	128,000+0.15% of the amount over 40,000,000
From 100,000,001 to 500,000,000	218,000+0.13% of the amount over 100,000,000
From 500,000,001 to 1,000,000,000	738,000+0.12% of the amount over 500,000,000
From 1,000,000,001 to 3,000,000,000	1,338,000+0.11% of the amount over 1,000,000,000
Over 3,000,000,001	3,538,000+0.1% of the amount over 3,000,000,000

The Amount in Dispute referred to in this Schedule of Arbitration Fee shall be based on the sum of

money claimed by the Claimant or the sum of money counterclaimed by the Respondent. 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 in dispute is not ascertained at the time of applying for arbitration, or where special circumstances exist, the amount of arbitration fee shall be determined by CMAC.

Where the arbitration fee is to be charged in foreign currency, the amount in the foreign currency shall be equivalent to the corresponding amount in RMB as specified in this Schedule.

Apart from charging arbitration fee according to this Schedule, CMAC and/or its Shanghai Headquarters/sub-commissions/arbitration centers may also collect other additional and reasonable and actual costs pursuant to the relevant provisions of the Arbitration Rules.

## China Maritime Arbitration Commission Arbitration Fee Schedule II

This Fee Schedule shall not apply to arbitrations accepted under these Rules except as otherwise explicitly agreed by the parties. Other provisions are the same as Arbitration Fee Schedule I.

Amount in Dispute (RMB)	Administration Fee (RMB)	Arbitrator's Fee (RMB)
Up to 200,000	6,000	7,500
From 200,001 to 500,000	6,000+1.333% of the amount over 200,000	7,500+2.500% of the amount over 200,000
From 500,001 to 1,000,000	10,000+1.000% of the amount over 500,000	15,000+1.50% of the amount over 500,000
From 1,000,001 to 2,000,000	15,000+0.400% of the amount over 1,000,000	22,500+0.550% of the amount over 1,000,000
From 2,000,001 to 4,000,000	19,000+0.330% of the amount over 2,000,000	28,000+0.520% of the amount over 2,000,000
From 4,000,001 to 10,000,000	25,600+0.306% of the amount over 4,000,000	38,400+0.459% of the amount over 4,000,000
From 10,000,001 to 20,000,000	44,000+0.280% of the amount over 10,000,000	66,000+0.420% of the amount over 10,000,000
From 20,000,001 to 40,000,000	72,000+0.240% of the amount over 20,000,000	108,000+0.360% of the amount over 20,000,000
From 40,000,001 to 100,000,000	120,000+0.220% of the amount over 40,000,000	180,000+0.330% of the amount over 40,000,000
From 100,000,001 to 500,000,000	252,000+0.212% of the amount over 100,000,000	378,000+0.318% of the amount over 100,000,000
From 500,000,001 to 1,000,000,000	1,100,000+0.208% of the amount over 500,000,000	1,650,000+0.312% of the amount over 500,000,000
From 1,000,000,001 to 3,000,000,000	2,140,000+0.204% of the amount over 1,000,000,000	3,210,000+0.306% of the amount of the over 1,000,000,000
Over 3,000,000,001	6,220,000+0.2% of the amount over 3,000,000,000	9,330,000+0.3% of the amount of the over 3,000,000,000

If the amount in dispute is more than 5 billion (inclusive), the upper limit of administration fee shall not exceed 10.22 million, and the upper limit of arbitrator's fee shall not exceed 15.33 million.

## **China Maritime Arbitration Commission Schedule of Arbitration Fee III**

Unless otherwise agreed by the parties, this fee schedule applies to arbitrations administered by CMAC Hong Kong Arbitration Center.

### **I. Registration Fee**

When submitting a Request for Arbitration to CMAC Hong Kong Arbitration Center, the Claimant shall pay in advance for the registration fee of HKD 8,000, which will be used for examining the Request for Arbitration, initiating the arbitral proceedings, computerizing management, filing documents and labor costs. The registration fee is not refundable.

## II. Administration Fee

### 1. Table of Administration Fee

Amount in Dispute (HKD)	Administration Fee (HKD)
Up to 500,000	19,000
From 500,001 to 1,000,000	19,000+0.8% of the amount over 500,000
From 1,000,001 to 5,000,000	23,000+0.7% of the amount over 1,000,000
From 5,000,001 to 10,000,000	51,000+0.4% of the amount over 5,000,000
From 10,000,001 to 20,000,000	71,000+0.3% of the amount over 10,000,000
From 20,000,001 to 40,000,000	101,000+0.2% of the amount over 20,000,000
From 40,000,001 to 80,000,000	141,000+0.1% of the amount over 40,000,000
From 80,000,001 to 200,000,000	181,000+0.06% of the amount over 80,000,000
From 200,000,001 to 400,000,000	253,000+0.04% of the amount over 200,000,000
Over 400,000,001	333,000+0.04% of the amount over 200,000,000 The total amount of administrative fees shall be no more than 400,000

2. The administration fees include remuneration of case managers and costs for hearing rooms of CMAC Hong Kong Arbitration Center.

3. Claims and counterclaims are aggregated for the determination of the amount in dispute. Where the amount in dispute is not ascertained at the time of applying for arbitration, or where special circumstances exist, the

amount of the administration fees shall be determined by CMAC taking into account the circumstances of the case.

4. Apart from charging the administration fee according to this Table, CMAC may also collect other additional reasonable and actual costs pursuant to the relevant provisions of these Rules, including but not limited to translation fees, written record fees, and costs for hiring hearing rooms other than those of CMAC Hong Kong Arbitration Center.

5. Where the registration fee and the administration fee are charged in a currency other than HKD, CMAC shall collect the amount in RMB or in other foreign currency equivalent to the amount in HKD as is specified in this Table.

### III. Arbitrator's Fees and Expenses

#### A. Arbitrator's Fees and Expenses (Based on the Amount in Dispute)

##### 1. Arbitrator's Fees Table

Amount in Dispute (HKD)	Arbitrator's Fees (HKD)	
	Minimum	Maximum
Up to 500,000	3% of the amount	10.5% of the amount
From 500,001 to 1,000,000	15,000+2.2% of the amount over 500,000	52,500+8% of the amount over 500,000
From 1,000,001 to 5,000,000	26,000+0.75% of the amount over 1,000,000	92,500+4% of the amount over 1,000,000
From 5,000,001 to 10,000,000	56,000+0.6% of the amount over 5,000,000	252,500+2.3% of the amount over 5,000,000
From 10,000,001 to 20,000,000	86,000+0.35% of the amount over 10,000,000	367,500+1% of the amount over 10,000,000
From 20,000,001 to 40,000,000	121,000+0.20% of the amount over 20,000,000	467,500+0.6% of the amount over 20,000,000
From 40,000,001 to 80,000,000	161,000+0.06% of the amount over 40,000,000	587,500+0.2% of the amount over 40,000,000
From 80,000,001 to 200,000,000	185,000+0.05% of the amount over 80,000,000	667,500+0.1% of the amount over 80,000,000
From 200,000,001 to (and including) 400,000,000	245,000+0.03% of the amount over 200,000,000	787,500+0.09% of the amount over 200,000,000
From 400,000,001 to 600,000,000	305,000+0.01% of the amount over 400,000,000	967,500+0.08% of the amount over 400,000,000
From 600,000,001 to 1,000,000,000	325,000+0.008% of the amount over 600,000,000	1,127,500+0.06% of the amount over 600,000,000
Over 1,000,000,000	357,000+0.05% of the amount over 1,000,000,000 The total amount of arbitrator's fees shall be no more than 15,000,000	1,367,500+0.05% of the amount over 1,000,000,000 The total amount of arbitrator's fees shall be no more than 15,000,000

2. Unless otherwise provided in this Schedule, the arbitrator's fees shall be determined by CMAC in accordance with the above Table having regard to the specific circumstances of the case. The arbitrator's expenses shall include all reasonable and actual expenses incurred from the arbitrator's arbitration activities.

3. The arbitrator's fees may exceed the corresponding maximum amount listed in the Table provided that the parties so agree in writing or CMAC so determines under exceptional circumstances.

4. The parties shall advance the payment of the arbitrator's fees and expenses determined by CMAC. Subject to the approval of CMAC, the parties may pay the arbitrator's fees and expenses in installments. The parties shall be jointly and severally liable for the payment of the arbitrator's fees and expenses.

5. Claims and counterclaims are aggregated for the determination of the amount in dispute. Where the amount in dispute is not ascertainable, or where special circumstances exist, the amount of the arbitrator's fees shall be determined by CMAC taking into account the circumstances of the case.

#### B. Arbitrator's Fees and Expenses (Based on an Hourly Rate)

1. Where the parties have agreed in writing that the arbitrator's fees and expenses are to be calculated on a basis of hourly rate, their agreement shall prevail. The arbitrator is entitled to fees on a basis of hourly rate for all the reasonable efforts devoted in the arbitration. The arbitrator's expenses shall include all reasonable and actual expenses incurred from the arbitrator's arbitration activities.

2. Where a party applies for the Emergency Arbitrator Procedures, the emergency arbitrator's fees shall be

calculated on a basis of hourly rate.

3. The hourly rate for a co-arbitrator shall be agreed upon by such co-arbitrator and the nominating party. The hourly rate for a sole or a presiding arbitrator shall be agreed upon by that arbitrator and both parties. Where the hourly rate cannot be agreed upon, or the arbitrator is appointed by the Chairman of CMAC, the hourly rate of the arbitrator shall be determined by CMAC. The hourly rate for the emergency arbitrator shall be determined by CMAC.

4. An agreed or determined hourly rate shall not exceed the maximum rate fixed by CMAC as provided on the website of CMAC on the date of the submission of the Request for Arbitration. The arbitrator's fees may exceed the fixed maximum rate provided that the parties so agree in writing or CMAC so determines under exceptional circumstances.

5. The parties shall advance the payment of the arbitrator's fees and expenses to CMAC, which amount shall be fixed by the latter. The parties shall be jointly and severally liable for the payment of the arbitrator's fees and expenses.

#### C. Miscellaneous

1. In accordance with the decision of the arbitral tribunal, CMAC Hong Kong Arbitration Center shall have a lien over the award rendered by the arbitral tribunal so as to secure the payment of fees for the arbitrators and all the expenditures due. After all such fees and expenses have been paid in full by all parties jointly or by one of the parties, CMAC Hong Kong Arbitration Center shall release such award to the parties in accordance with the decision of the arbitral tribunal.

2. Where the arbitrator's fees and expenses are to be charged in a currency other than HKD, CMAC shall charge an amount of RMB or the foreign currency equivalent to the amount in HKD as specified in this Schedule.

## Appendix III

### **China Maritime Arbitration Commission Emergency Arbitrator Procedure**

#### **Article 1 Application for the Emergency Arbitrator Procedure**

1. A party requiring emergency relief may apply for the Emergency Arbitrator Procedure based upon the applicable law or the agreement of the parties.

2. The party applying for the Emergency Arbitrator Procedure (the “Applicant”) shall submit its Application for the Emergency Arbitrator Procedure to the Arbitration Court or the Shanghai Headquarters/the sub-commission/arbitration center of CMAC administering the case prior to the constitution of the arbitral tribunal.

3. The Application for the Emergency Arbitrator Procedure shall include the following information:

(a) the names and other basic information of the parties involved in the Application;

(b) a description of the underlying dispute giving rise to the Application and the reasons why emergency relief is required;

(c) a statement of the emergency measures sought and the reasons why the applicant is entitled to such emergency relief;

(d) other necessary information required to apply for the emergency relief; and

(e) comments on the applicable law and the language of

the Emergency Arbitrator Procedure.

When submitting its Application, the Applicant shall attach the relevant documentary and other evidence on which the Application is based, including but not limited to the arbitration agreement and any other agreements giving rise to the underlying dispute.

The Application, evidence and other documents shall be submitted in triplicate. Where there are multiple parties, additional copies shall be provided accordingly.

4. The Applicant shall advance of the costs for the Emergency Arbitrator Procedure.

5. Where the parties have agreed on the language of arbitration, such agreed language shall be the language of the Emergency Arbitrator Procedure. In the absence of such agreement, the language of the Procedure shall be determined by the Arbitration Court.

## **Article 2 Acceptance of Application and Appointment of the Emergency Arbitrator**

1. After a preliminary review on the basis of the Application, the arbitration agreement and relevant evidence submitted by the Applicant, the Arbitration Court shall decide whether the Emergency Arbitrator Procedure shall apply. If the Arbitration Court decides to apply the Emergency Arbitrator Procedure, it shall appoint an emergency arbitrator within one (1) day from receipt of both the Application and the advance payment of the costs for the Emergency Arbitrator Procedure.

2. Once the emergency arbitrator has been appointed by the Arbitration Court, the Arbitration Court shall promptly transmit the Notice of Acceptance and the Applicant's

application file to the appointed emergency arbitrator and the party against whom the emergency measures are sought, meanwhile copying the Notice of Acceptance to each of the other parties to the arbitration.

### **Article 3 Disclosure and Challenge of the Emergency Arbitrator**

1. An emergency arbitrator shall not represent either party, and shall be and remain independent of the parties and treat them equally.
2. Upon acceptance of the appointment, an emergency arbitrator shall sign a Declaration and disclose to the Arbitration Court any facts or circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. If circumstances that need to be disclosed arise during the Emergency Arbitrator Procedure, the emergency arbitrator shall promptly disclose such circumstances in writing.
3. The Declaration and/or the disclosure of the emergency arbitrator shall be communicated to the parties by the Arbitration Court.
4. Upon receipt of the Declaration and/or the written disclosure of an emergency arbitrator, a party wishing to challenge the arbitrator on the grounds of the facts or circumstances disclosed by the emergency arbitrator shall forward the challenge in writing within two (2) days from the date of such receipt. If a party fails to file a challenge within the above time period, it may not subsequently challenge the emergency arbitrator on the basis of the matters disclosed by the emergency arbitrator.
5. A party which has justifiable doubts as to the impartiality or independence of the appointed emergency

arbitrator may challenge that emergency arbitrator in writing and shall state the facts and reasons on which the challenge is based with supporting evidence.

6. A party may challenge an emergency arbitrator in writing within two (2) days from the date of its receipt of the Notice of Acceptance. Where a party becomes aware of a reason for a challenge after such receipt, the party may challenge the emergency arbitrator in writing within two (2) days after such reason has become known, but no later than the constitution of the arbitral tribunal.

7. The Arbitration Court shall make a final decision on the challenge of the emergency arbitrator. If the challenge is accepted, the Arbitration Court shall reappoint an emergency arbitrator within one (1) day from the date of the decision confirming the challenge. The emergency arbitrator who has been challenged shall continue to perform his/her functions until a final decision on the challenge has been made.

The disclosure and challenge proceedings shall apply equally to the reappointed emergency arbitrator.

8. Unless otherwise agreed by the parties, the emergency arbitrator shall not accept nomination or appointment to act as a member of the arbitral tribunal in any arbitration relating to the underlying dispute.

#### **Article 4 Place of the Emergency Arbitrator Proceedings**

Unless otherwise agreed by the parties, the place of the emergency arbitrator proceedings shall be the place of arbitration, which is determined in accordance with Article 7 of the Arbitration Rules.

#### **Article 5 The Emergency Arbitrator Proceedings**

1. The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within a time as short as possible, best within two (2) days from his/her acceptance of the appointment. The emergency arbitrator shall conduct the proceedings in the manner the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the emergency relief, and shall ensure that each party has a reasonable opportunity to present its case.

2. The emergency arbitrator may order the provision of appropriate security by the party seeking the emergency relief as the precondition of taking emergency measures.

3. The power of the emergency arbitrator and the emergency arbitrator proceedings shall cease on the date of the constitution of the arbitral tribunal.

4. The emergency arbitrator proceedings shall not affect the right of the parties to seek interim measures from a competent court pursuant to the applicable law.

### **Article 6 Decision of the Emergency Arbitrator**

1. The emergency arbitrator has the power to make a decision to order or award necessary emergency relief, and shall make every reasonable effort to ensure that the decision is valid.

2. The decision of the emergency arbitrator shall be made within fifteen (15) days from the date of that the arbitrator's acceptance of the appointment. The Arbitration Court may extend the time period upon the request of the emergency arbitrator only if the Arbitration Court considers it reasonable.

3. The decision of the emergency arbitrator shall state the reasons for taking the emergency measures, be signed by

the emergency arbitrator and stamped with the seal of the Arbitration Court or the Shanghai Headquarters/sub-commission/ arbitration center.

4. The decision of the emergency arbitrator shall be binding upon both parties. A party may seek enforcement of the decision from a competent court pursuant to the relevant law provisions of the enforcing state or region. Upon a reasoned request of a party, the emergency arbitrator or the arbitral tribunal to be constituted may modify, suspend or terminate the decision.

5. The emergency arbitrator may decide to dismiss the application of the Applicant and terminate the emergency arbitrator proceedings, if that arbitrator considers that circumstances exist where emergency measures are unnecessary or unable to be taken for various reasons.

6. The decision of the emergency arbitrator shall cease to be binding:

(a) if the emergency arbitrator or the arbitral tribunal terminates the decision of the emergency arbitrator;

(b) if the Arbitration Court decides to accept a challenge against the emergency arbitrator;

(c) upon the rendering of a final award by the arbitral tribunal, unless the arbitral tribunal decides that the decision of the emergency arbitrator shall continue to be effective;

(d) upon the Applicant's withdrawal of all claims before the rendering of a final award;

(e) if the arbitral tribunal is not constituted within ninety (90) days from the date of the decision of the emergency arbitrator. This time period may be extended by

agreement of the parties or by the Arbitration Court under circumstances it considers appropriate; or

(f) if the arbitration proceedings have been suspended for sixty (60) consecutive days after the constitution of the arbitral tribunal.

### **Article 7 Costs of the Emergency Arbitrator Proceedings**

1. The Applicant shall advance an amount of RMB 30,000 as the costs of the emergency arbitrator proceedings, consisting of the remuneration of the emergency arbitrator and the administration fee of the Arbitration Court. The Arbitration Court may require the Applicant to advance any other additional and reasonable actual costs.

A party applying to CMAC Hong Kong Arbitration Center for emergency relief shall advance the costs of the emergency arbitrator proceedings in accordance with the CMAC Arbitration Fee Schedule III (Appendix II).

2. The emergency arbitrator shall determine in its decision in what proportion the costs of the emergency arbitrator proceedings shall be borne by the parties, subject to the power of the arbitral tribunal to finally determine the allocation of such costs at the request of a party.

3. The Arbitration Court may fix the amount of the costs of the emergency arbitrator proceedings refundable to the Applicant if such proceedings terminate before the emergency arbitrator has made a decision.

### **Article 8 Miscellaneous**

These rules for the Emergency Arbitrator Procedure shall be interpreted by the Arbitration Court.

# **Decision of the State Council of the People's Republic of China Concerning the Establishment of a Maritime Arbitration Commission Within the China Council for the Promotion of International Trade**

(Adopted on November 21, 1958 at the 82<sup>nd</sup> plenary session of the State Council)

With a goal of settling any maritime dispute by way of arbitration, it is necessary to set up a maritime arbitral body within a related social organization. The State Council hereby decides as follows:

1. A Maritime Arbitration Commission shall be established within China Council for the Promotion of International Trade to settle such disputes concerning:

a) reward arising from mutual salvage of marine ships, or salvage between marine and inland ships;

b) collision of marine ships, collision between marine and inland ships or damage of port's constructions or facilities caused by marine ships;

c) marine ship chartering business, marine ship's agency business and transport by sea business and marine insurance applied in accordance with transport contract, bill of lading or any other transport documents.

2. Maritime Arbitration Commission accepts cases of admiralty disputes based on the relevant contracts, agreements and/or other documents concluded between the parties before or after the occurrence of disputes.

Maritime Arbitration Commission may mediate the

disputes that under its jurisdiction.

3. Maritime Arbitration Commission shall be composed of 21 to 31 members to be selected and appointed by China Council for the Promotion of International Trade for a term of two years from among persons having special knowledge in navigation, transport by sea, foreign trade, insurance and other related matters as well as in law.

4. Maritime Arbitration Commission shall elect a Chairman and one to three Deputy Chairmen from among its members.

5. When a case of dispute is submitted for arbitration, the disputing parties shall each choose an arbitrator from among the members of Maritime Arbitration Commission. The arbitrators so chosen shall also select the presiding arbitrator within the time limit fixed by Maritime Arbitration Commission. If one of the parties fails to choose an arbitrator within the prescribed time limit, the Chairman of Maritime Arbitration Commission shall, upon the request of the other party, appoint the arbitrator on the former's behalf. In case the arbitrators so chosen or appointed cannot agree upon the choice of the presiding arbitrator within the prescribed time limit, the Chairman of Maritime Arbitration Commission shall select a presiding arbitrator for them.

6. Either of the parties in dispute may authorize Maritime Arbitration Commission to choose for him an arbitrator who shall, jointly with the arbitrator chosen by the other party, select a presiding arbitrator to arbitrate the disputed case through deliberations in association with the arbitrators. If, by mutual agreement, all parties jointly delegate the choice of arbitrators to Maritime Arbitration Commission, the Chairman of Maritime Arbitration

Commission may appoint a sole arbitrator to form the arbitral tribunal and conduct the proceedings singly.

7. The disputing parties may appoint attorneys to defend their interests during the proceedings of a case before Maritime Arbitration Commission.

Such attorneys may be citizens of the People's Republic of China or foreign citizens.

8. For cases under the jurisdiction of Maritime Arbitration Commission, the chairman may decide to order the preservation, as well as the amount and method.

Such decisions shall be enforced in accordance with law, upon the request of one of the parties by the People's Courts of the People's Republic of China.

9. Maritime Arbitration Commission may collect a fee not exceeding two percent of the amount of the claim.

10. The award given by Maritime Arbitration Commission is final and neither party shall bring an appeal for revision before a court of law or any other organization.

11. The award of Maritime Arbitration Commission shall be executed by the parties themselves within the time period fixed by the award. In case an award is not executed after the expiration of the fixed time period, the People's Courts of the People's Republic of China shall, upon the request of one of the parties, enforce it in accordance with law.

12. Rules concerning the procedures of arbitration shall be made by China Council for the Promotion of International Trade.

# **The State Council's Official Reply Concerning the Renaming of the Maritime Arbitration Commission as the China Maritime Arbitration Commission and the Amendment of its Arbitration Rules**

June 21, 1988

## **China Council for the Promotion of International Trade:**

The State Council approves the renaming of the Maritime Arbitration Commission of your Council as the China Maritime Arbitration Commission. The existing relationship of its subordination remains unchanged.

The Arbitration Rules of the China Maritime Arbitration Commission shall be amended by your Council in accordance with China's laws and the international treaties concluded or acceded to by China and with reference to international practice, and then promulgated for implementation after adoption by your Council. Hereafter, any amendments to the Arbitration Rules shall be made by your Council's own decision.

State Council of the People's Republic of China