

**File Ref.: LP 19/00/4C**

**LEGISLATIVE COUNCIL BRIEF**

Arbitration Ordinance (Cap.609)

**Arbitration (Appointment of Arbitrators and Mediators and  
Decision on Number of Arbitrators) Rules**

**INTRODUCTION**

The Hong Kong International Arbitration Centre (the HKIAC), in exercise of the power under section 13(3) of the new Arbitration Ordinance (Cap.609) (“the New Ordinance”) effective from 1<sup>st</sup> June 2011, with the approval of the Chief Justice, made the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (“the Arbitration Rules”) at **Annex**. These Arbitration Rules are an adaptation of the existing Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 341, sub. leg. B) previously made under the Arbitration Ordinance (Cap. 341) and modified by the New Ordinance (see paragraph 3 below) (“Existing Rules”). The Arbitration Rules are intended to facilitate the HKIAC’s performance of the following functions:

- (a) the default appointment by the HKIAC of an arbitrator under section 24 of the New Ordinance;
- (b) the decision by the HKIAC on the number of arbitrators under section 23(3) of the New Ordinance; and
- (c) the default appointment by the HKIAC of a mediator under section 32(1) of the New Ordinance.

## **JUSTIFICATION**

2. Under sections 12 and 34C of the Arbitration Ordinance (Cap. 341), the HKIAC had the default statutory authority to appoint arbitrators and to decide the number of arbitrators. Since 1996, the HKIAC has effectively implemented the Existing Rules which facilitate the HKIAC's performance of these functions. The forms which accompany the Existing Rules are user-friendly and parties who seek the HKIAC's decision as to the number of arbitrators or the appointment of arbitrators have done so by completing these forms and submitting them to the HKIAC. Over the years, parties have grown familiar with these forms and such operations have proven to be effective.

3. Upon the commencement of the New Ordinance on 1<sup>st</sup> June 2011, the Arbitration Ordinance (Cap. 341) was repealed (see section 109 of the New Ordinance). Subject to those consequential and related amendments made to the Existing Rules which have already been set out in sections 36 to 41 of Schedule 4 to the New Ordinance, there are no inconsistencies between the Existing Rules and the New Ordinance. By virtue of section 110 of the New Ordinance, the Existing Rules continue in force and have the like effect for all purposes as if made under the New Ordinance.

4. Section 37 of Schedule 4 to the New Ordinance amended rule 3(2) of the Existing Rules by adding the President of the Hong Kong Construction Association to be one of the persons who can nominate a member to the Appointment Advisory Board. Rule 5 of the Existing Rules provides that the HKIAC shall consult at least 3 available members of the Appointment Advisory Board before a decision is made on the appointment of an arbitrator or on the number of arbitrators.

5. Since 1997, the fees for an appointment of an arbitrator and for a decision on the number of arbitrators have remained unchanged, at HK\$4,000. However, costs for exercising our statutory appointing powers have increased significantly since then. Rule 13 of the Arbitration Rules increased the fees to be charged by the HKIAC for performing its functions under the Arbitration Ordinance to HK\$8,000 based on the estimated costs of sample cases handled by the HKIAC at the time of January to May of 2012.

6. Rule 14 of the Arbitration Rules provides that the Existing Rules are repealed.

7. The forms for appointment of arbitrators (Form 1) and decision on number of arbitrators (Form 2) of the Existing Rules have not been changed in substance but they have been updated to be more user-friendly.

8. The Arbitration Rules now include rules to govern the new power granted to the HKIAC pursuant to section 32(1) of the New Ordinance. Under this provision, the HKIAC is empowered to appoint a mediator upon a party's application in the event that any arbitration agreement provides for appointment of a mediator by a person who is not one of the parties and appointment of mediator by such a person is failed. As no such power existed under the Arbitration Ordinance (Cap. 341), the Arbitration Rules incorporate rules for the appointment of mediators in Part 5 and the accompanying form to be used by parties applying for the appointment of a mediator by the HKIAC under section 32(1) of the New Ordinance can also now be found in Form 3 of the Schedule to the Arbitration Rules.

9. On 16 November 2012, the HKIAC forwarded the draft Rules to the Panel on Administration of Justice and Legal Services of the Legislative Council (the Panel) for review by the members of the Panel. On 8 March 2013, the Clerk to Panel sent a fax to HKIAC advising that at the meeting of the Panel held on 27 November 2012, members agreed that there was no need to invite the HKIAC to attend a meeting of the Panel to brief members on the draft Rules. We understand that up to the date of the fax, no member of the Panel had conveyed any comments to the Clerk to Panel.

## **LEGISLATIVE TIMETABLE**

10. The legislative timetable is as follows –

Publication in the Gazette	28 June 2013
Tabling at LegCo	3 July 2013
Commencement	2 December 2013

## **THE RULES**

11. Part 3 of the Arbitration Rules sets out the procedures for the appointment of arbitrators by the HKIAC. Part 4 of the Arbitration Rules includes the rules on the decision by the HKIAC on the number of arbitrators and Part 5 of the Arbitration Rules includes the rules on the appointment of mediators by the HKIAC. The accompanying forms for parties to apply for the above can be found in Forms 1 to 3 of the Schedule to the Arbitration Rules.

## **IMPLICATIONS**

12. The Arbitration Rules are intended to facilitate the performance of relevant functions of the HKIAC under the New Ordinance and are therefore in line with the policy of promoting the HKSAR as an international arbitration centre in the Asia-Pacific.

## **ENQUIRIES**

13. Enquiries on the Arbitration Rules may be directed to Ms Chiann Bao, the Secretary-General of the HKIAC, at [adr@hkiac.org](mailto:adr@hkiac.org).

**Hong Kong International Arbitration Centre**  
**21 June 2013**

#363970v5

## Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules

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## Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules

(Made by the Hong Kong International Arbitration Centre under section 13(3) of the Arbitration Ordinance (Cap. 609) with the approval of the Chief Justice)

### Part 1

#### Preliminary

##### 1. Commencement

These Rules come into operation on 2 December 2013.

##### 2. Interpretation

In these Rules—

*Appointment Advisory Board* (委任諮詢委員會) means the board established under rule 3.

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### Part 2

#### Appointment Advisory Board

##### 3. Constitution of Appointment Advisory Board

- (1) The HKIAC must establish a board known as the Appointment Advisory Board.
- (2) The Appointment Advisory Board is to consist of 11 members.
- (3) Each of the following persons or organizations is to nominate 1 person to be a member of the Appointment Advisory Board—
  - (a) the Chief Justice;
  - (b) the Chairman of the Hong Kong Bar Association;
  - (c) the President of The Law Society of Hong Kong;
  - (d) The Hong Kong General Chamber of Commerce;
  - (e) The Chinese General Chamber of Commerce;
  - (f) the President of The Hong Kong Institution of Engineers;
  - (g) the President of The Hong Kong Institute of Surveyors;
  - (h) the President of The Hong Kong Institute of Architects;
  - (i) the Hong Kong Shipowners Association Ltd.;
  - (j) the Hong Kong Federation of Insurers;
  - (k) the President of the Hong Kong Construction Association.

**4. Appointments to Appointment Advisory Board**

- (1) The HKIAC must appoint the persons nominated under rule 3(3) to be members of the Appointment Advisory Board, for a term not exceeding 3 years.
- (2) The HKIAC may re-appoint a person to be a member of the Appointment Advisory Board but not until 2 years have expired since that person was last a member of it.
- (3) If there is a vacancy for any reason in the office of any member of the Appointment Advisory Board, the person or organization specified in rule 3(3) who nominated that member is to make a further nomination.
- (4) The Appointment Advisory Board may continue to function while there is a vacancy as long as there are at least 6 members on it.
- (5) No member of the Appointment Advisory Board may be appointed as arbitrator by the HKIAC during his or her term of office.

**5. Appointment Advisory Board to be consulted**

Before making—

- (a) the appointment of an arbitrator under section 24 of the Ordinance;
- (b) the appointment of a mediator under section 32(1) of the Ordinance; or
- (c) a decision under section 23(3) of the Ordinance on the number of arbitrators that is appropriate for any particular dispute,

the HKIAC must consult with at least 3 members of the Appointment Advisory Board with whom the HKIAC is able to communicate, and must consider their advice but is not bound by it.

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### Part 3

#### Appointment of Arbitrator

##### 6. Procedure for requesting for appointment of arbitrator

- (1) Any party to an arbitration agreement requesting for the appointment of an arbitrator by the HKIAC under section 24 of the Ordinance (*requesting party*) must make the request to the HKIAC in the manner described in subrule (2).
- (2) The request must be—
  - (a) in Form 1 in the Schedule;
  - (b) accompanied by the relevant fee charged under rule 13; and
  - (c) signed by the requesting party, or by a person authorized to sign on behalf of the requesting party, certifying that the details contained in the request are true and accurate.
- (3) The requesting party must—
  - (a) serve a copy of the request on the other party or parties to the arbitration agreement at the last known address or addresses of that other party or those other parties; and
  - (b) lodge with the HKIAC documentary verification of service.
- (4) For the purposes of subrule (3), double registered post constitutes good service.

##### 7. Appointment of suitable person as arbitrator by HKIAC

- (1) Subject to subrules (2) and (3) and rule 5, on receipt of a request made under rule 6(1), the HKIAC must appoint a suitable person to be an arbitrator, having regard to—

- (a) the nature of the dispute;
  - (b) whether the arbitrators who possess the required qualifications would be available to accept the appointment;
  - (c) the identity and nationality of the parties to the arbitration agreement;
  - (d) any considerations in respect of the independence and impartiality of the person to be appointed as an arbitrator;
  - (e) any stipulations in the relevant agreement; and
  - (f) any suggestions made by the parties themselves.
- (2) Before making an appointment of an arbitrator, the HKIAC must allow the other party or parties to the arbitration agreement to give the HKIAC any written information that other party or those other parties consider relevant to the request, including reasons why no arbitrator should be appointed.
  - (3) If—
    - (a) reasons why no arbitrator should be appointed are given to the HKIAC by the other party or parties to the arbitration agreement; and
    - (b) the HKIAC is satisfied that no arbitrator should be appointed,the HKIAC may decline to appoint an arbitrator.
  - (4) If no information mentioned in subrule (2) is given to the HKIAC within 14 days after the date on which a copy of the request is served on the other party or parties to the arbitration agreement under rule 6(3), the HKIAC must proceed to make an appointment of an arbitrator.



- (5) When the HKIAC has made any decision under this rule, it must notify both the requesting party and the other party or parties to the arbitration agreement.
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## Part 4

### Number of Arbitrators

- 8. Procedure for seeking decision on number of arbitrators**
- (1) Any party to an arbitration agreement seeking a decision by the HKIAC on the number of arbitrators under section 23(3) of the Ordinance (*seeking party*) must make an application to the HKIAC in the manner described in subrule (2).
  - (2) The application must be—
    - (a) in Form 2 in the Schedule;
    - (b) accompanied by the relevant fee charged under rule 13; and
    - (c) signed by the seeking party, or by a person authorized to sign on behalf of the seeking party, certifying that the details contained in the application are true and accurate.
  - (3) The seeking party must—
    - (a) serve a copy of the application on the other party or parties to the arbitration agreement at the last known address or addresses of that other party or those other parties; and
    - (b) lodge with the HKIAC documentary verification of service.
  - (4) For the purposes of subrule (3), double registered post constitutes good service.
- 9. Decision by HKIAC on number of arbitrators**
- (1) Subject to subrules (2) and (4) and rule 5, when deciding under section 23(3) of the Ordinance on whether the number

- of arbitrators in any particular case is to be 1 or 3, the HKIAC must take into account the following factors—
- (a) the amount in dispute;
  - (b) the complexity of the claim;
  - (c) the nationality of the parties to the arbitration agreement;
  - (d) any relevant customs of the trade, business or profession involved in the dispute;
  - (e) whether there are any appropriate arbitrators; and
  - (f) the urgency of the case.
- (2) Before deciding on whether the number of arbitrators to be appointed is to be 1 or 3, the HKIAC must allow the other party or parties to the arbitration agreement to give the HKIAC brief written reasons in support of the contention of that other party or those other parties as to whether the number of arbitrators in the particular case should be 1 or 3.
  - (3) If no reasons mentioned in subrule (2) are given to the HKIAC within 14 days after the date on which a copy of the application is served on the other party or parties to the arbitration agreement under rule 8(3), the HKIAC may proceed with the decision.
  - (4) The HKIAC may request further information from the seeking party or the other party or parties to the arbitration agreement before it makes a decision.
  - (5) The party from whom further information is requested must supply the information within 14 days after the date on which the request is made.
  - (6) If a party fails or refuses to supply the information within the time specified in subrule (5), the HKIAC must make a decision on the basis of the information it has.

- (7) When the HKIAC has made any decision under this rule, it must notify both the seeking party and the other party or parties to the arbitration agreement.
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## Part 5

### Appointment of Mediator

#### 10. Procedure for applying for appointment of mediator

- (1) Any party to an arbitration agreement applying for the appointment of a mediator by the HKIAC under section 32(1) of the Ordinance (*applying party*) must make the application to the HKIAC in the manner described in subrule (2).
- (2) The application must be—
  - (a) in Form 3 in the Schedule;
  - (b) accompanied by the relevant fee charged under rule 13; and
  - (c) signed by the applying party, or by a person authorized to sign on behalf of the applying party, certifying that the details contained in the application are true and accurate.
- (3) The applying party must—
  - (a) serve a copy of the application on the other party or parties to the arbitration agreement at the last known address or addresses of that other party or those other parties; and
  - (b) lodge with the HKIAC documentary verification of service.
- (4) For the purposes of subrule (3), double registered post constitutes good service.

#### 11. Appointment of suitable person as mediator by HKIAC

- (1) Subject to subrules (2) and (3) and rule 5, on receipt of an application made under rule 10(1), the HKIAC may appoint a suitable person to be a mediator, having regard to—
  - (a) the nature of the dispute;
  - (b) whether the mediators who possess the required qualifications would be available to accept the appointment;
  - (c) the identity and nationality of the parties to the arbitration agreement;
  - (d) any considerations in respect of the independence and impartiality of the person to be appointed as a mediator;
  - (e) any stipulations in the relevant agreement; and
  - (f) any suggestions made by the parties themselves.
- (2) Before making an appointment of a mediator, the HKIAC must allow the other party or parties to the arbitration agreement to give the HKIAC any information that other party or those other parties consider relevant to the application, including reasons why no mediator should be appointed.
- (3) If—
  - (a) reasons why no mediator should be appointed are given to the HKIAC by the other party or parties to the arbitration agreement; and
  - (b) the HKIAC is satisfied that no mediator should be appointed,  
the HKIAC may decline to appoint a mediator.
- (4) If no information mentioned in subrule (2) is given to the HKIAC within 14 days after the date on which a copy of the application is served on the other party or parties to the

arbitration agreement under rule 10(3), the HKIAC may proceed to make an appointment of a mediator.

- (5) When the HKIAC has made any decision under this rule, it must notify both the applying party and the other party or parties to the arbitration agreement.
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## Part 6

### General

#### 12. Additional forms

The HKIAC may specify additional forms for use for the purposes of these Rules.

#### 13. Fees

- (1) Subject to subrule (2), the HKIAC may charge \$8,000 for making—
- (a) the appointment of an arbitrator under section 24 of the Ordinance;
  - (b) the appointment of a mediator under section 32(1) of the Ordinance; or
  - (c) a decision under section 23(3) of the Ordinance on the number of arbitrators that is appropriate for any particular case.
- (2) The HKIAC may charge, for the exercise of any of the functions referred to in subrule (1), a fee (*determined fee*) of an amount that—
- (a) exceeds \$8,000 but does not exceed \$15,000; and
  - (b) is determined by the HKIAC to be a reasonable fee for the recovery of expenditure incurred or likely to be incurred by it in the exercise of the functions provided that such variation does not undermine the object mentioned in section 3(1) of the Ordinance.
- (3) The HKIAC—

- (a) must display notices setting out the determined fee at an appropriate and prominent location or locations in the premises of the HKIAC as may be determined by it; and
- (b) must publicize the determined fee through the Internet.

**14. Arbitration (Appointment of Arbitrators and Umpires) Rules repealed**

The Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 609 sub. leg. B) are repealed.

**15. Transitional**

Despite anything in Part 2, a member of the Appointment Advisory Board established under rule 3 of the Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 609 sub. leg. B) repealed by these Rules (*previous Board*), whose appointment has continued to have effect by virtue of section 4 of Schedule 3 to the Ordinance, is to be a member of the Appointment Advisory Board established under rule 3 of these Rules on the commencement of that rule until the expiry of the term of that appointment as if the Appointment Advisory Board established under that rule were the previous Board.

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**Schedule** [rr. 6, 8 & 10]

**Forms**

**Form 1**

**Hong Kong International Arbitration Centre**

**REQUEST FOR APPOINTMENT OF ARBITRATOR**

(This form must be used, in accordance with rule 6 of the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules, to request the Hong Kong International Arbitration Centre (*HKIAC*) for the appointment of an arbitrator under the Arbitration Ordinance (Cap. 609).)

1. THE UNDERSIGNED REQUESTS THE HKIAC FOR THE APPOINTMENT OF AN ARBITRATOR UNDER SECTION 24 OF THE ARBITRATION ORDINANCE (Cap. 609):

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2. PARTICULARS OF PARTIES:

(If there are more than 2 parties, set out the details of the other party

or parties on separate sheet.)

CLAIMANT:

RESPONDENT:

Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Tel. No. \_\_\_\_\_

Tel. No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Fax No. \_\_\_\_\_

E-mail Address \_\_\_\_\_

E-mail Address \_\_\_\_\_

Nationality \_\_\_\_\_

Nationality \_\_\_\_\_

Solicitor/Adviser (If any):

Solicitor/Adviser (If any):

Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Tel. No. \_\_\_\_\_

Tel. No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Fax No. \_\_\_\_\_

E-mail Address \_\_\_\_\_ E-mail Address \_\_\_\_\_

3. CONTRACT/AGREEMENT IN RESPECT OF WHICH THE DISPUTE HAS ARISEN: (Enclose a copy or summarize briefly.)

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4. ARBITRATION CLAUSE OR AGREEMENT UNDER WHICH THE APPOINTMENT OF AN ARBITRATOR IS TO BE MADE: (A copy is attached to this request.)

5. DISPUTE: (Give brief details of the nature of the dispute, the circumstances and place in which the dispute arises, and the amount at issue.)

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6. OTHER RELEVANT DETAILS:

(If applicable, give date on which the other party was requested to agree to the appointment of arbitrator under the contract/agreement, names of arbitrators proposed, whether the other party has responded or not (if yes, the content of the response and any stipulations in the relevant agreement on the choice of arbitrator) and any other factors to be taken into account by the HKIAC under rule 7 of the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules.)

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7. FEE: A cheque payable to "Hong Kong International Arbitration Centre" for HK\$ \_\_\_\_\_ for payment of the HKIAC's fee is enclosed.

(The HKIAC to set out the fee payable.)

8. CERTIFICATION STATEMENT:

I certify that the details contained in this request are true and accurate.

(SIGNED) \_\_\_\_\_ Date: \_\_\_\_\_

Name and Capacity \_\_\_\_\_

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\_\_\_\_\_

Form 2

Hong Kong International Arbitration Centre

APPLICATION FOR DECISION ON NUMBER OF ARBITRATORS

(This form must be used, in accordance with rule 8 of the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules, to make an application to the Hong Kong International Arbitration Centre (HKIAC) to seek a decision on the number of arbitrators under the Arbitration Ordinance (Cap. 609).)

1. THE UNDERSIGNED MAKES AN APPLICATION TO THE HKIAC TO SEEK A DECISION ON WHETHER THERE IS TO BE 1 OR 3 ARBITRATORS UNDER SECTION 23(3) OF THE ARBITRATION ORDINANCE (Cap. 609):

Four horizontal lines for providing details of the application.

2. PARTICULARS OF PARTIES:

(If there are more than 2 parties, set out the details of the other party or parties on separate sheet.)

CLAIMANT: Name \_\_\_\_\_ RESPONDENT: Name \_\_\_\_\_

Form with two columns for contact information: Address, Tel. No., Fax No., E-mail Address, Nationality, Solicitor/Adviser (If any): Name, Address.

3. CONTRACT/AGREEMENT IN RESPECT OF WHICH THE





enclosed.  
(The HKIAC to set out the fee payable.)

8. CERTIFICATION STATEMENT:

I certify that the details contained in this application are true and accurate.

(SIGNED) \_\_\_\_\_ Date: \_\_\_\_\_

Name and Capacity \_\_\_\_\_

\_\_\_\_\_

Form 3

Hong Kong International Arbitration Centre

APPLICATION FOR APPOINTMENT OF MEDIATOR

(This form must be used, in accordance with rule 10 of the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules, to apply to the Hong Kong International Arbitration Centre (HKIAC) for the appointment of a mediator under the Arbitration Ordinance (Cap. 609).)

1. THE UNDERSIGNED APPLIES TO THE HKIAC FOR THE APPOINTMENT OF A MEDIATOR UNDER SECTION 32(1) OF THE ARBITRATION ORDINANCE (Cap. 609):

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\_\_\_\_\_  
\_\_\_\_\_

2. PARTICULARS OF PARTIES:

(If there are more than 2 parties, set out the details of the other party or parties on separate sheet.)

CLAIMANT:

RESPONDENT:

Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Tel. No. \_\_\_\_\_

Tel. No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Fax No. \_\_\_\_\_

E-mail \_\_\_\_\_

E-mail \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Nationality _____	Nationality _____
Solicitor/Adviser (If any): Name _____	Solicitor/Adviser (If any): Name _____
Address _____	Address _____
Tel. No. _____	Tel. No. _____
Fax No. _____	Fax No. _____
E-mail Address _____	E-mail Address _____

3. CONTRACT/AGREEMENT IN RESPECT OF WHICH THE DISPUTE HAS ARISEN: (Enclose a copy or summarize briefly.)

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4. ARBITRATION CLAUSE OR AGREEMENT WHICH PROVIDES FOR THE APPOINTMENT OF A MEDIATOR: (A copy is attached to this application with the provisions for appointment of a mediator highlighted.)

5. DISPUTE: (Give brief details of the nature of the dispute, the circumstances and place in which the dispute arises, and the amount at issue.)

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6. OTHER RELEVANT DETAILS: (If applicable, give details of the steps taken to request the person



### **Explanatory Note**

The purpose of these Rules is to make provisions to facilitate the performance of the following functions by the Hong Kong International Arbitration Centre (*HKIAC*)—

- (a) the default appointment by the HKIAC of an arbitrator under section 24 of the Arbitration Ordinance (Cap. 609) (*the Ordinance*);
- (b) the decision by the HKIAC on the number of arbitrators under section 23(3) of the Ordinance; and
- (c) the default appointment by the HKIAC of a mediator under section 32(1) of the Ordinance.