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**LA NUOVA VERSIONE (2019)
DELLE *ARBITRATION RULES* DEL
*BEIJING INTERNATIONAL
ARBITRATION CENTER***

Estratto

La nuova versione (2019) delle *Arbitration Rules* del *Beijing International Arbitration Center*

La *Beijing Arbitration Commission (BAC)*, nota anche come *Beijing International Arbitration Center (BIAC)*, ha approvato la revisione delle proprie *Arbitration Rules*. Le nuove *Rules* (la cui versione ufficiale è disponibile nelle lingue cinese ed inglese, con prevalenza della prima in caso di conflitto), approvate il 5 luglio del 2019 ed entrate in vigore il successivo 1° settembre, rappresentano certamente un passaggio importante nell'ambito dell'ormai conclamata evoluzione dell'arbitrato nella Cina continentale verso il modello dell'arbitrato internazionale. Le principali novità delle nuove *BIAC's Arbitration Rules* riguardano:

(i) il rafforzamento del ruolo della *expedited procedure* (artt. 54-59), elevata al rango di schema predefinito per gli arbitrati il cui valore non ecceda i 5.000,00 RMB e per gli arbitrati comunque demandati per volontà delle parti alla cognizione di un arbitro unico, ferma restando la possibilità per le parti stesse di disporre diversamente (*opt-out*) o di sottoporre alla *expedited procedure* anche procedimenti di valore eccedente i 5.000,00 RMB (*opt-in*);

(ii) la disciplina delle spese. È stata, infatti, superata la precedente distinzione tra le due categorie distinte di *case acceptance fees* e *case administration fees*, ora riunite sotto l'unica voce *Arbitration Fees* con la diversa denominazione di *Arbitrator's Fees* e *Administration Fees* (*Annex I* delle nuove *BIAC's Arbitration Rules*). Per comprendere la rilevanza della novità, che ha lo scopo fondamentale di valorizzare le spese per l'attività degli arbitri (ora, non a caso, espressamente designate *Arbitrator's Fees*) e di rendere più trasparente la disciplina delle spese di gestione del caso, basti considerare che una simile distinzione è presente dal 2015 nelle *Arbitration Rules* della *China International Economic and Trade Commission (CIETAC)* per gli arbitrati amministrati dal *CIETAC Hong Kong Arbitration Center (CIETAC Arbitration Fee Schedule III)*. Sempre in punto di spese, le nuove *BIAC's Arbitration Rules* non recano più neppure alcuna distinzione tra arbitrato domestico e arbitrato commerciale internazionale (eliminato il vecchio *Annex 2*), mentre è stata introdotta la possibilità di un accordo per la tariffazione oraria dell'attività degli arbitri.

[Alessio Carosi]

Si pubblica di seguito la versione ufficiale in lingua inglese delle nuove *BIAC's Arbitration Rules* estratta dal sito *internet* dell'istituzione www.bjac.org.cn.

Beijing Arbitration Commission Arbitration Rules

Revised and adopted at the Fourth Meeting of the Seventh Session of the Beijing Arbitration Commission on July 4, 2019. Effective as of September 1, 2019

Chapter I: General Provisions

Article 1: The Beijing Arbitration Commission

(1) The Beijing Arbitration Commission (the “BAC”) is an arbitral institution, registered in Beijing, China, to resolve contractual disputes and other disputes over property rights and interests between natural persons, legal persons and other organizations.

(2) The BAC is also known as the Beijing International Arbitration Center (the “BIAC”). Where the parties designate the BIAC as the arbitral institution in their arbitration agreement [Article 4(1)], the arbitration shall be administered by the BAC.

(3) The Chairperson of the BAC (the “Chairperson”) or, with the authorization of the Chairperson, one of the Vice-Chairperson or the Secretary-General of the BAC, shall perform the functions and duties vested in the Chairperson by the BAC Arbitration Rules (the “Rules”).

(4) The Secretariat of the BAC shall handle the day-to-day affairs of the BAC. For each case, the Secretariat shall designate a member of its staff as the case manager (the “Case Manager”), who shall attend to the procedural administration and the provision of services relating to the case.

Article 2: Scope of Application

(1) The Rules shall apply where the parties have agreed to submit their dispute to the BAC for arbitration. Where the parties have agreed on certain procedural matters or the application of a different set of arbitration rules, their agreement shall prevail, unless the agreement is unenforceable or in conflict with the mandatory rules of law of the seat of arbitration. Where the parties have agreed on the application of a different set of arbitration rules, the BAC shall perform the corresponding administrative functions and duties.

(2) Where the parties have agreed to apply the Rules, but have not designated an arbitral institution, they shall be deemed to have agreed to submit their disputes to the BAC for arbitration.

(3) In respect of any matters not expressly provided for in the Rules, the BAC may administer and the Arbitral Tribunal may conduct the arbitration in

such manner as it considers appropriate, to ensure the efficient and fair resolution of disputes between the parties.

(4) When applying the Rules, the BAC, the Arbitral Tribunal, the parties and their representatives shall act in accordance with the principles of good faith, collaboration, and appropriate resolution of the dispute.

Article 3: Waiver of Right to Object

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

Chapter II: Arbitration Agreement

Article 4: Definition and Form of Arbitration Agreements

(1) An arbitration agreement is an agreement by the parties to submit any dispute which has arisen or which may arise from or in connection with an arbitrable legal relationship between the parties to arbitration [Article 2 (1)]. An arbitration agreement may take the form of an arbitration clause included in a contract or any other written arbitration agreement.

(2) An arbitration agreement shall be in written form. “Written form” includes, but is not limited to, contractual instruments, letters and electronic data messages (including telexes, facsimiles, electronic data interchange, and e-mails), and any other form where the contents are retrievable.

(3) Where, during exchange of the Application for Arbitration [Article 7(1)(b)] and the Statement of Defense [Article 11(1)(a)], one party asserts the existence of an arbitration agreement but the other party does not deny this, a written arbitration agreement between the parties shall be deemed to exist.

Article 5: Separability of Arbitration Agreements

An arbitration agreement shall be independent of the contract in which it is contained. The validity of the arbitration agreement shall be determined separately, and shall not be affected by the fact that the contract has been concluded, modified, terminated, rescinded or avoided, or is null and void, no longer effective or not yet in force.

Article 6: Objection to Jurisdiction

(1) If a party objects to the existence or validity of an arbitration

agreement [Articles 4 and 5] or to jurisdiction, it may raise an objection to jurisdiction with the BAC. Any objection shall be raised in writing before the first hearing. Where the parties have agreed to a documents-only arbitration [Article 25(2)], any written objection shall be raised within the time limit for the submission of defense [Article 11(1)].

(2) If a party fails to raise any objection to jurisdiction pursuant to Article 6(1), it shall be deemed to have accepted that the BAC has jurisdiction.

(3) The raising of any objection to jurisdiction by any party with the BAC shall not affect the progress of arbitral proceedings.

(4) The BAC, or the Arbitral Tribunal as authorized by the BAC, may determine an objection as to jurisdiction. The Arbitral Tribunal may make its decision on jurisdiction either during the arbitral proceedings or in the arbitral award.

(5) Where the BAC, or the Arbitral Tribunal as authorized by the BAC, determines that it has no jurisdiction, an order for dismissal of the case shall be made by the Arbitral Tribunal, or if no Arbitral Tribunal has been constituted, by the BAC.

Chapter III: Application for Arbitration, Defense and Counterclaim

Article 7: Application for Arbitration

- (1) A party applying for arbitration (the “Claimant”) shall submit:
- (a) the arbitration agreement;
 - (b) its application for arbitration (the “Application for Arbitration”), containing the following information:
 - (i) the names, addresses, postcodes, telephone numbers, facsimile numbers, email addresses and details of any other effective means of communication with the Claimant and the Respondent; where a party concerned is a legal person or other organization, the name, position, address, postcode, telephone number, facsimile number, email address and details of any other effective means of communication with the legal representative or the person in charge;
 - (ii) its claim for relief (the “Claim”); and
 - (iii) the facts and grounds on which the Claim is based.
 - (c) the evidence and/or other supporting documents on which the Application for Arbitration is based; and
 - (d) proof of the Claimant’s identity.
- (2) The Claimant shall deposit an advance on the arbitrator’s fees and the administration fees (together, the “arbitration fees”) in accordance with the provisions of the Beijing Arbitration Commission Schedule of Arbitration Fees [Annex I]. Where the amount in dispute is not specified in the Application for Arbitration, the BAC shall determine the amount in dispute or the amount of the arbitration fees that shall be deposited in advance.

(3) If a party is unable to deposit the required advance on the arbitration fees within the specified time period due to special circumstances, it may apply to the BAC for an extension of time, and the BAC shall determine whether to grant the extension. If a party has neither deposited the required advance nor applied for an extension of time, or has failed to deposit the full amount of the advance on arbitration fees within an extended time limit granted by the BAC, it shall be deemed not to have submitted or to have withdrawn its Application for Arbitration, as the case may be.

Article 8: Single Arbitration under Multiple Contracts

(1) A party may apply to commence a single arbitration concerning disputes arising out of or in connection with multiple contracts, provided that:

(a) the arbitration agreements in such contracts are identical or compatible;

(b) such contracts consist of a principal contract and its ancillary contract(s); or such contracts involve the same parties and disputes under such contracts involve the same or related subject matter.

(2) In the event that a party applies to commence a single arbitration concerning disputes arising out of or in connection with multiple contracts, the BAC shall, having regard to the specific circumstances of the case, decide whether to accept such application.

Article 9: Acceptance

(1) After receiving the Application for Arbitration [Article 7], the BAC shall, if it finds that the requirements for acceptance have been met, accept the Application for Arbitration within 10 days from the date of deposit by the Claimant of its advance on the arbitration fees.

(2) Where the Application for Arbitration does not comply with the requirements of Article 7(1), the Claimant shall rectify it within the time limit specified by the BAC, failing which the Claimant shall be deemed not to have submitted an Application for Arbitration.

(3) The arbitral proceedings shall be deemed to commence on the date of acceptance of the Application for Arbitration by the BAC.

Article 10: Notice of Arbitration

Within 10 days of the acceptance of the Application for Arbitration, the BAC shall send to the Claimant a notice of acceptance (the “Notice of Acceptance”), a copy of the Rules, and a list of the BAC’s Panel of Arbitrators [Article 19] (the “Panel of Arbitrators”). The BAC shall send to the Respondent a request for submission of the defense (the “Request for Submission of Defense”), as well as a copy of the Application for Arbitration,

together with its attachments, a copy of the Rules and a list of the Panel of Arbitrators.

Article 11: Defense

(1) Within 15 days of receiving the Request for Submission of Defense, the Respondent shall submit:

(a) its statement of defense (the “Statement of Defense”), containing the following information:

(i) the name, address, postcode, telephone number, facsimile number, email address and details of any other effective means of communication with the Respondent; where a party concerned is a legal person or other organization, the name, position, address, postcode, telephone number, facsimile number, email address and details of any other effective means of communication with the legal representative or the person in charge;

(ii) its defense to the Claim, and the facts and grounds on which the defense is based.

(b) the evidence and/or other supporting documents on which the defense is based; and

(c) proof of the Respondent’s identity.

(2) Within 10 days of receiving the Statement of Defense, the BAC shall send to the Claimant a copy of the Statement of Defense, together with its attachments.

(3) Failure by the Respondent to submit its Statement of Defense shall not affect the progress of the arbitral proceedings.

Article 12: Counterclaim

(1) The Respondent shall file its counterclaim (the “Counterclaim”), if any, by submitting a written application for counterclaim (the “Application for Counterclaim”) within 15 days from the date of receiving the Request for Submission of Defense. If the Counterclaim is raised after the expiration of the time limit (a “late Counterclaim”), the decision on whether to accept a late Counterclaim shall be made by the Arbitral Tribunal, or if no Arbitral Tribunal has been constituted, by the BAC.

(2) When determining whether to accept a late Counterclaim, the BAC or the Arbitral Tribunal, as the case may be, shall take into account the necessity to hear the late Counterclaim and the Claim at the same time in a single arbitration, the extent of the delay in lodging the Application for Counterclaim, unnecessary delay that will be caused to the arbitral proceedings and any other relevant factors.

(3) The provisions of Articles 7 and 9 of the Rules shall apply *mutatis mutandis* to the submission and acceptance of the Counterclaim.

(4) Within 10 days of accepting the Counterclaim, the BAC shall send to the Claimant a request for submission of its defense to the Respondent's Counterclaim (the "Request for Submission of Defense to Counterclaim"), as well as the Application for Counterclaim together with its attachments.

(5) The provisions of Article 11 shall apply to submission by the Claimant of its statement of defense to the Counterclaim (the "Statement of Defense to Counterclaim").

(6) Any other matters concerning the Counterclaim which are not expressly provided for in these Rules shall be dealt with by reference to provisions concerning the Application for Arbitration [Article 7], insofar as they are relevant.

Article 13: Amendments to Claim or Counterclaim

(1) A party may apply to amend its Claim or Counterclaim. The application to amend (the "Application to Amend") shall be in writing and will be determined by the Arbitral Tribunal or, if no Arbitral Tribunal has been constituted, by the BAC.

(2) Where an Application to Amend is unreasonably delayed and may adversely affect the ordinary course of the arbitral proceedings, the BAC or the Arbitral Tribunal may refuse such amendment.

(3) The provisions of Article 7 and Articles 9 to 11 of the Rules shall apply *mutatis mutandis* to the submission of, acceptance of and response to an Application to Amend.

Article 14: Joinder of Additional Parties

(1) Before the Arbitral Tribunal is constituted, the parties may apply to join an additional party to the arbitration under the same arbitration agreement, subject to approval by the BAC.

(2) A party applying to join an additional party to the arbitration shall submit an application for arbitration against the additional party (the "Application for Joinder"). The provisions of Article 7 and Articles 9 to 11 of the Rules shall apply *mutatis mutandis* in respect of the content of such application, its acceptance and the submission of a defense.

(3) No Application for Joinder will be accepted after the Arbitral Tribunal has been constituted, unless the Claimant, the Respondent and the party to be joined otherwise agree.

Article 15: Claims between Multiple Parties

(1) Where there are two or more Claimants or Respondents in a single arbitration, or any additional party is joined to the arbitration [Article 14], any party may raise claims against any other party under the same arbitration

agreement. The decision on whether to accept such claims shall be made by the Arbitral Tribunal, or if no Arbitral Tribunal has been constituted, by the BAC.

(2) The provisions of Article 7, Articles 9 to 11 and Article 13 shall apply *mutatis mutandis* to the submission and acceptance of defense(s) to and amendment of claims raised under this Article.

Article 16: Submission of Documents and Number of Copies

(1) Unless otherwise agreed by the parties, the parties shall submit to the BAC documents in the arbitration, which the BAC shall forward to the Arbitral Tribunal and to the other parties. If the parties agree to submit documents in the arbitration directly to the Arbitral Tribunal, copies of such documents shall be filed with the BAC.

(2) The Application for Arbitration [Article 7], the Statement of Defense [Article 11], the Application for Counterclaim [Article 12], evidence and any other written documents shall be submitted in quintuplicate. Where there are more than two parties, additional copies shall be provided accordingly. If the Arbitral Tribunal is comprised of a sole arbitrator, the number of copies shall be reduced by two.

Article 17: Preservation Measures

(1) In the event that enforcement of any award is likely to become difficult or if any other detriment is likely to be caused to one party as a result of the conduct of the other party or of the existence of any other relevant factors, a party may apply for an order to preserve property or assets of the other party or parties, or to require that party or those parties to take or to refrain from taking certain actions.

(2) A party may apply for an order to preserve evidence if there is a risk that such evidence might be lost or destroyed, or might subsequently become difficult to obtain.

(3) Where a party submits an application to the BAC under Article 17(1) or (2), the BAC shall forward the application to the competent court for determination.

(4) In urgent circumstances, such as where a party's lawful rights and interests would be irreparably damaged, or evidence might be lost, destroyed or subsequently become difficult to obtain if no preservation measure is applied for immediately, a party may file an application for preservation measures before submitting its Application for Arbitration [Article 7].

Article 18: Representation

Where a party engages one or more representatives for the arbitration, it

shall submit to the BAC a power of attorney setting out the matters specifically entrusted to each representative and the scope of each representative's authority.

Chapter IV: The Arbitral Tribunal

Article 19: Panel of Arbitrators

The BAC shall establish a Panel of Arbitrators. The parties shall choose arbitrators from the Panel of Arbitrators maintained by the BAC.

Article 20: Composition of the Arbitral Tribunal

(1) Unless otherwise agreed by the parties or provided for in the Rules, the Arbitral Tribunal shall comprise 3 arbitrators.

(2) Within 15 days of receiving the Notice of Arbitration [Article 10], each party shall nominate or request the Chairperson to appoint an arbitrator from the Panel of Arbitrators [Article 19]. If a party fails to nominate an arbitrator or fails to request the Chairperson to appoint an arbitrator within the time limit, the arbitrator shall be appointed by the Chairperson.

(3) Within 15 days of receipt by the Respondent of the Notice of Arbitration, the parties shall jointly nominate or jointly request the Chairperson to appoint the presiding arbitrator. The parties may each nominate between 1 and 3 arbitrator(s) as candidate(s) for the role of presiding arbitrator within the time limit. Where the parties agree or make an application to the BAC, the BAC may also provide a list of between 5 and 7 candidates for presiding arbitrator from which the parties may each select between 3 and 4 candidates within the time limit specified by the BAC. Where there is only one common candidate on both parties' lists for nomination or selection, that candidate shall be deemed to have been jointly nominated by both parties as presiding arbitrator. If there are two or more common candidates, the Chairperson shall, taking into consideration the particular circumstances of the case, appoint one of those candidates as the presiding arbitrator, who shall be deemed to have been jointly nominated by the parties. If there are no common candidates, the Chairperson shall appoint an arbitrator who is not on the list of nomination or the list of selection as the presiding arbitrator, as the case may be.

(4) If the parties fail to nominate the presiding arbitrator jointly, in accordance with Article 20(2) and (3), the presiding arbitrator shall be appointed by the Chairperson.

(5) Where there are two or more Claimants or Respondents, each set of Claimants or Respondents shall, by agreement, jointly nominate or jointly request the Chairperson to appoint an arbitrator. If no joint nomination or joint request has been made within 15 days of receipt of the Notice of

Arbitration by the last party, the Chairperson shall then appoint the arbitrator.

(6) In the event of a joinder [Article 14], the joined party shall nominate the arbitrator jointly with either the Claimant or the Respondent, as the case may be. If no such a nomination has been made, all members of the Arbitral Tribunal shall be appointed by the Chairperson.

(7) Where a party nominates an arbitrator who resides outside Beijing, that party shall bear the necessary travel and accommodation expenses incurred by that arbitrator for hearing the case. If that party has not deposited the advance on such expenses within the period specified by the BAC [Article 7(2)], it shall be deemed not to have nominated that arbitrator. In this event, the Chairperson may appoint another arbitrator for that party in accordance with this Article.

(8) Where an arbitrator declines to accept a party's nomination or is unable to participate in the arbitration, due to illness or any other relevant factors that may prevent him or her from performing an arbitrator's usual functions and duties, that party shall nominate another arbitrator within 5 days of receipt of notice of re-nomination (the "Notice of Re-nomination"). If that party fails to nominate another arbitrator within the time limit, the arbitrator shall be appointed by the Chairperson.

Article 21: Notice of Constitution of the Arbitral Tribunal

Within 5 days of the constitution of the Arbitral Tribunal, the BAC shall notify the parties accordingly. The Case Manager [Article 1(4)] shall forward the case file to the Arbitral Tribunal promptly thereafter.

Article 22: Disclosure by Arbitrators

(1) Upon accepting appointment, each arbitrator shall sign a statement of independence and impartiality, a copy of which shall be forwarded to each party by the Case Manager.

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

(3) Within 10 days of receiving a written disclosure under Article 22(2), either party shall state in writing whether it intends to challenge the arbitrator.

(4) The provisions of Article 23(1), (2), (4), (5) and (6) shall apply to the challenge to an arbitrator on the basis of circumstances disclosed by the arbitrator under Article 22(2).

(5) A party who fails to challenge an arbitrator within the period of time specified in Article 23(3) shall not be permitted to challenge the arbitrator at

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

Article 23: Challenge to the Arbitrator

(1) A party may challenge any arbitrator on the basis of its reasonable doubts as to the independence or impartiality of the arbitrator.

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

(3) A challenge shall be raised before the first oral hearing. A challenge based on circumstances that become known after the first oral hearing may be raised prior to the closure of the final oral hearing. Without prejudice to Article 22(3), where no further oral hearing will be conducted, or in a documents-only arbitration, a challenge shall be raised within 10 days after the challenging party becomes aware of the circumstances giving rise to a challenge.

(4) The Case Manager shall promptly forward the application for challenge (the “Application for Challenge”) to the other party and to each member of the Arbitral Tribunal.

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

(6) Unless Article 23(5) applies, the Chairperson shall decide on the challenge. The decision of the Chairperson shall be final. The Chairperson may decide, according to the particular circumstances of the case and as a matter of discretion, whether to provide reasons for the decision.

(7) A party who, after becoming aware of the composition of the Arbitral Tribunal, appoints authorized representatives [Article 18] whose appointment may give rise to grounds for the challenge of any arbitrator, shall be deemed to have waived its right to challenge the arbitrator on those grounds; the right of the other party to challenge the arbitrator shall not, however, be affected. Additional costs resulting from any delay caused to the arbitral proceedings in these circumstances shall be borne by the party responsible for giving rise to the grounds for challenge.

Article 24: Replacement of the Arbitrator

(1) An arbitrator shall be removed if he or she becomes unable to conduct the arbitration as a result of death or illness, or withdraws from the arbitration, or the Chairperson decides that he or she is to withdraw from the arbitration [Article 23(6)], or is requested by all the parties to withdraw from the arbitration [Article 23(5)].

(2) An arbitrator may also be removed on the initiative of the Chairperson if the Chairperson decides that the arbitrator is prevented de jure or de facto from fulfilling his or her functions and duties as an arbitrator, or is not fulfilling his or her functions and duties as required by the Rules.

(3) Before making any decision pursuant to the provisions of Article 24(2), the Chairperson shall provide the parties and all members of the Arbitral Tribunal with an opportunity to comment thereon in writing.

(4) If the arbitrator to be removed was nominated by a party, that party shall nominate a substitute arbitrator within 5 days of its receipt of the notice of removal. If the arbitrator to be removed was appointed by the Chairperson, the Chairperson shall appoint a substitute arbitrator. Within 5 days of such nomination or appointment of the substitute arbitrator, the BAC shall send a notice of reconstitution of the Arbitral Tribunal to the parties. After the reconstitution of the Arbitral Tribunal, either party may request the previous arbitral proceedings to be repeated and the Arbitral Tribunal shall determine whether such repetition is necessary. The Arbitral Tribunal may also, on its own initiative, decide whether and to what extent the previous arbitral proceedings shall be repeated. If the Arbitral Tribunal decides to repeat the arbitral proceedings in their entirety, the time limit provided for in Articles 48, 59 and 68 shall be recalculated from the date of the reconstitution of the Arbitral Tribunal.

Chapter V: The Arbitral Proceedings

Article 25: Mode of Proceeding

(1) The Arbitral Tribunal shall hold an oral hearing.

(2) If the parties agree on a documents-only arbitration, or if the Arbitral Tribunal considers an oral hearing unnecessary and the parties so agree, the Arbitral Tribunal may decide the arbitration on the basis of the documents submitted by the parties.

(3) Regardless of the mode of proceeding adopted, the Arbitral Tribunal shall treat the parties fairly and impartially and give each party a reasonable opportunity to make submissions and arguments.

Article 26: Confidentiality

(1) All arbitration hearings shall be conducted in private. If the parties agree on a public hearing, the arbitration hearing may proceed in public, except where the case involves state secrets, any third party's commercial secrets, or any relevant circumstances in which the Arbitral Tribunal considers that a public hearing is inappropriate.

(2) Where an arbitration is conducted in private, neither the parties, nor their authorized representatives, nor any witnesses, arbitrators, experts con-

sulted by the Arbitral Tribunal and appraisers appointed by the Arbitral Tribunal, nor the staff of the BAC shall disclose to third parties any information concerning the arbitration, whether substantive or procedural.

Article 27: Seat of Arbitration

(1) Unless otherwise agreed by the parties, the seat of arbitration shall be the location of the BAC [Article 1(1)]. The BAC may also determine the seat of arbitration according to the particular circumstances of the case.

(2) The arbitral award shall be deemed to have been rendered at the seat of the arbitration.

Article 28: Place of Hearing

(1) Unless the parties otherwise agree, hearings shall be held at the BAC's premises.

(2) If the parties agree upon a hearing at any other location, the resulting additional costs shall be borne by the parties. The parties shall deposit an advance on such additional costs in accordance with the proportion agreed by them or decided upon by the Arbitral Tribunal within a period specified by the BAC. If such deposit is not made, the hearing shall be held at the BAC's premises.

Article 29: Concurrent Hearings

(1) The Arbitral Tribunal may order concurrent hearings, provided that:

(a) the arbitrations concerned involve the same or related subject-matter;

(b) a party applies for concurrent hearings with the consent of all other parties concerned; and

(c) the composition of the Arbitral Tribunals in the arbitrations concerned is identical.

(2) The Arbitral Tribunal may, according to the particular circumstances of the case, decide on the detailed procedure for the arbitral proceedings as a result of its order.

Article 30: Consolidation of Arbitrations

(1) Where the parties so agree, or where one party applies and the BAC, in its discretion, considers it necessary, the BAC may decide to consolidate two or more arbitrations pending under the Rules into a single arbitration. Where an order for consolidation is made, arbitrations shall be consolidated into the arbitration that commenced first, unless otherwise agreed by the parties.

(2) In deciding whether to order consolidation, the BAC shall take into account the specific circumstances of arbitration agreements on which the relevant arbitrations are based, the nexus between those arbitrations, the stage that each set of arbitration proceedings has reached, the arbitrators already nominated or appointed in the relevant arbitrations and any other relevant factors.

Article 31: Notice of Hearing

(1) Where an arbitration is to be conducted by way of an oral hearing, the Arbitral Tribunal shall notify the parties of the date of the first hearing at least 10 days in advance. The first hearing may be rescheduled to an earlier date by the Arbitral Tribunal with the agreement of the parties. A party may, no less than 5 days in advance of the hearing, request a postponement of the first hearing, provided that there are grounds justifying the postponement. The Arbitral Tribunal shall, in its discretion, decide whether to postpone the first hearing, having regard to all relevant circumstances.

(2) A notification of the date of any subsequent hearing, or of the date of a postponed hearing, shall not be subject to the 10-day time limit in Article 31(1).

Article 32: Default

(1) Having been duly notified in writing of the hearing under Article 31, if the Claimant fails to appear at the hearing without any justification, or withdraws from an ongoing hearing without the permission of the Arbitral Tribunal, the Claimant may be deemed to have withdrawn its Application for Arbitration. Where the Respondent has raised a Counterclaim, the Claimant's default shall not affect the hearing of the Counterclaim by the Arbitral Tribunal.

(2) Having been duly notified in writing of the hearing, if the Respondent fails to appear at the hearing without any justification, or withdraws from an ongoing hearing without the permission of the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration. Where the Respondent has raised a Counterclaim, such Counterclaim shall be deemed to have been withdrawn.

Article 33: Production of Evidence

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

(2) The Arbitral Tribunal may require the parties to produce their evidence within a specified period of time and the parties shall comply with any such order. The Arbitral Tribunal may reject any evidence not produced

within the specified period of time, unless the parties agree otherwise or the Arbitral Tribunal considers it necessary to accept the evidence.

(3) If a party having the burden of proof fails to produce evidence within the specified period of time, or if the evidence produced is insufficient to discharge its burden of proof, it shall bear the adverse consequences of such failure.

(4) Each party shall properly bind, number, and paginate the evidence it produces. The file of evidence shall be accompanied by a list stating briefly the title of each piece of evidence and the purpose of producing it. The evidence list shall be signed, sealed and dated.

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

(6) Unless otherwise agreed by the parties or otherwise provided for in the Rules, evidence and written documents submitted in a foreign language shall be accompanied by a Chinese translation. The Arbitral Tribunal may, if necessary, require the parties to provide a translation of the evidence and of any written documents in another language or in other languages.

Article 34: Investigation and Collection of Evidence by the Arbitral Tribunal

(1) If a party makes an application and the Arbitral Tribunal considers it necessary, or there is no such application but the Arbitral Tribunal considers it necessary according to the particular circumstances of the case, the Arbitral Tribunal may undertake investigations and/or collect evidence on its own initiative. If the Arbitral Tribunal considers it necessary to require the parties to be present when it undertakes investigations or collects evidence, it shall notify the parties in a timely fashion. Provided that the parties have been duly notified, the Arbitral Tribunal may proceed with the investigations or the collection of evidence even if they fail to appear.

(2) Evidence collected by the Arbitral Tribunal on its own initiative shall be forwarded to both parties for their comments in a timely fashion before an award is made.

Article 35: Appraisal

(1) If a party requests an appraisal and the Arbitral Tribunal agrees with the request, or neither party makes an application but the Arbitral Tribunal considers it necessary to conduct an appraisal, the Arbitral Tribunal may notify the parties to nominate an appraiser jointly within a period of time specified by the Arbitral Tribunal, or appoint the appraiser at its own discretion.

(2) The parties shall deposit an advance on the appraisal costs in accordance with a proportion agreed by them or decided by the Arbitral Tribunal. The Arbitral Tribunal may decide not to conduct the appraisal if the parties do not deposit an advance.

(3) The Arbitral Tribunal may require the parties, and the parties shall be under the obligation, to provide or present to the appraiser any relevant document, data, property or any other goods required for the appraisal. The Arbitral Tribunal shall decide upon any disagreement between any party and the appraiser as to whether a document, data, property or any other goods required for the appraisal is relevant to the case.

(4) The appraiser shall provide an appraisal report in writing. A copy of the appraisal report shall be sent to each party. Each party may express opinions on the appraisal report.

(5) If the Arbitral Tribunal considers it necessary or if any party so requests, the Arbitral Tribunal may notify the appraiser to attend the hearing. The parties may, with the permission of the Arbitral Tribunal, question the appraiser on relevant aspects of the appraisal report.

(6) Any period of time taken to conduct an appraisal shall not be taken into account for the purposes of calculating the time limits provided for in Articles 48, 59 and 68 of these Rules.

Article 36: Procedural Orders

The Arbitral Tribunal may, according to the particular circumstances of the case, make procedural orders, including but not limited to the preparation of the procedural timetable for the hearing, issuing lists of questions, holding pre-hearing conferences, and producing terms of reference. The Arbitral Tribunal may authorize the presiding arbitrator to make any of these procedural orders.

Article 37: Examination of Evidence

(1) The Arbitral Tribunal may, according to the particular circumstances of the case, require the parties to take appropriate steps to verify the authenticity of the copies of the evidence. The Arbitral Tribunal may delegate the Case Manager to coordinate this process.

(2) Where an oral hearing is to be held, evidence exchanged between the parties prior to the hearing shall be presented by them for examination during the hearing. Evidence produced by a party may be admitted and accepted as the basis of fact finding without being presented at the hearing for examination if the other party has acknowledged its admissibility and the Arbitral Tribunal has, during the hearing, confirmed the other party's acknowledgement of this.

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

Article 38: Assessment of Evidence

(1) The Arbitral Tribunal shall have the authority to assess the evidence. It shall also decide on whether to adopt an appraiser's opinion.

(2) When assessing any evidence, the Arbitral Tribunal may, in addition to referring to relevant laws, regulations and judicial interpretations, conduct its assessment by taking into consideration factors such as industry practices and trade usages, and shall consider the case in its totality.

Article 39: Presentation of Arguments

Each party may present oral arguments during the hearing [Article 25(1)]. The Arbitral Tribunal may also require the parties to submit written arguments on particular issues according to the circumstances of the case.

Article 40: Closing Statements

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

Article 41: Record of Hearing

(1) The Arbitral Tribunal shall make a written record of the hearing, except in the case of mediation proceedings [Articles 43 and 67].

(2) The Arbitral Tribunal may make an audio or video record of the hearing.

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

(4) The Arbitral Tribunal, person who makes the recording, the parties and other participants in the arbitration shall sign or affix their seals on the written record.

(5) Upon a joint request by both parties, or a request by one party that has been approved by the BAC, the BAC may appoint one or more stenographers to record the hearing. The resulting additional costs shall be borne by the parties or the requesting party, as the case may be.

Article 42: Withdrawal of an Application for Arbitration and Dismissal of Cases

(1) The Claimant may withdraw the Application for Arbitration [Article 7]. Where the Respondent has raised a Counterclaim [Article 12], withdrawal of the Application for Arbitration shall not affect the hearing and determination of such counterclaim by the Arbitral Tribunal. The Respondent may withdraw its counterclaim. Withdrawal of the Counterclaim shall not affect the hearing and determination of the Claimant's claim by the Arbitral Tribunal.

(2) Where all claims and counterclaims (if any) have been withdrawn, the case can be dismissed. Dismissal of the case shall be decided by the Arbitral Tribunal, or if no Arbitral Tribunal has been constituted, by the BAC.

(3) Where it becomes unnecessary or impossible to continue the arbitral proceedings for any reason, the BAC or the Arbitral Tribunal, as the case may be, may dismiss the case.

(4) Where the case has been dismissed, the BAC may decide whether to refund the advance on the arbitration fees or any other fees paid in advance, as well as the specific amount of such refund, according to the circumstances of the case.

Article 43: Mediation by the Tribunal

(1) The Arbitral Tribunal may, at the request or with the consent of the parties, conduct a mediation of the case in such manner as it considers appropriate.

(2) If the mediation leads to a settlement, the parties may withdraw their claims and counterclaims (if any), or may request the Arbitral Tribunal either to issue a Statement of Mediation [Article 43(3)] or to render an award in accordance with the terms of the settlement agreement.

(3) The Statement of Mediation shall state the claims and the terms of the resulting settlement agreement reached by the parties. It shall be signed by the arbitrators, sealed by the BAC, and served on all the parties. The Statement of Mediation shall be legally binding after all the parties have acknowledged receipt of it in writing.

(4) The Arbitral Tribunal shall rectify any clerical and computational errors or similar errors in the Statement of Mediation. The parties may request such rectification within 30 days from the date on which the parties sign the receipt of the Statement of Mediation. Any such rectification shall become part of the Statement of Mediation and shall take effect immediately after being served on the parties.

(5) If the mediation fails to lead to a settlement, neither party shall be permitted to adduce evidence of or to refer to or use any statements, opinions, views or proposals expressed by the other party or by the Arbitral Tribunal

during the mediation in support of any claim, defense, or counterclaim in the subsequent arbitral proceedings, or as grounds in any judicial or other proceedings.

Article 44: Independent Mediation

(1) During the arbitral proceedings, the parties may enter into a voluntary settlement agreement or may apply to the Mediation Center of the BAC (the “Mediation Center”) for mediation by the mediators of the Mediation Center in accordance with the Mediation Rules of the Mediation Center of the BAC.

(2) Where a settlement agreement is concluded through an independent mediation under this Article, the parties may jointly request the constitution of an Arbitral Tribunal either to issue a Statement of Mediation or to render an award in accordance with the terms of the settlement agreement. The parties shall bear the resulting additional costs.

Article 45: Suspension and Resumption of Arbitral Proceedings

(1) If the parties jointly request, or if one party requests and the other parties do not object, the arbitral proceedings may be suspended. The arbitral proceedings may be resumed if one party so requests or the BAC or the Arbitral Tribunal deems this necessary.

(2) The arbitral proceedings may be suspended if any exceptional circumstances occur that necessitate suspension. The arbitral proceedings shall be resumed once such circumstances cease to exist.

(3) The suspension and resumption of the arbitral proceedings shall be decided by the Arbitral Tribunal, or if no Arbitral Tribunal has been constituted, by the BAC. Any period of time during which the arbitral proceedings were suspended shall not be taken into account for the calculation of the time limits provided for in Articles 48, 59 and 68.

Article 46: Continuation of the Arbitral Proceedings with Majority of the Arbitral Tribunal

In the event that, after the conclusion of the last hearing, an arbitrator on a three-member Arbitral Tribunal is unable to participate in the deliberations and render an award as a result of his or her death or for other reasons, the Chairperson may replace that arbitrator with a substitute arbitrator, pursuant to Article 24 of the Rules. Alternatively, provided that the parties consent and with the approval of the Chairperson, the two remaining arbitrators may continue with the arbitral proceedings and make decisions, or issue an arbitral award.

Chapter VI: Decisions and Awards

Article 47: Decisions on Procedural Matters

(1) The Arbitral Tribunal may decide upon procedural matters during the arbitral proceedings.

(2) Any decision of an Arbitral Tribunal comprising 3 arbitrators shall be made by a majority of the arbitrators. If the Arbitral Tribunal fails to reach a majority decision, the decision of the presiding arbitrator shall prevail.

(3) The presiding arbitrator may, with the consent of the parties or with the authorization of the Arbitral Tribunal, decide upon procedural matters.

Article 48: Time Limit for Rendering the Award

The Arbitral Tribunal shall render its award within 4 months of its constitution [Articles 20 and 21]. If there are special circumstances justifying an extension to this period, the Secretary-General may approve an extension of an appropriate time period at the request of the presiding arbitrator.

Article 49: Rendering the Award

(1) The award of an Arbitral Tribunal comprising 3 arbitrators shall be made by a majority of the arbitrators. The minority dissenting opinion may be recorded in writing. If the Arbitral Tribunal fails to reach a majority decision, the award shall be made in accordance with the opinion of the presiding arbitrator.

(2) The award shall state the claims, the facts associated with the dispute, the reasons upon which the award is based, operative directions disposing of the dispute, the allocation of arbitration fees [Article 52], the date of the award, and the seat of the arbitration. The Arbitral Tribunal shall not be required to state the facts associated with the dispute or the reasons upon which the award is based if the parties so agree, or if the award is made in accordance with the terms of a settlement agreement between the parties [Articles 43 and 44].

(3) The award shall be signed by every member of the Arbitral Tribunal. A dissenting arbitrator may elect not to sign the award. An arbitrator who elects not to sign the award shall issue a dissenting opinion in writing, which shall be sent by the BAC to the parties together with the award. A dissenting opinion shall not form part of the award.

(4) After an award has been signed by the arbitrator(s), the BAC's seal shall be affixed to it.

Article 50: Partial Award and Interim Award

(1) Where the Arbitral Tribunal considers it necessary, or where a party so requests and the Arbitral Tribunal approves, the Arbitral Tribunal may render a partial award disposing of particular claims before the proceeding to render the final award.

(2) Where the Arbitral Tribunal considers it necessary, or where a party so requests and the Arbitral Tribunal approves, the Arbitral Tribunal may render an interim award on disputed procedural or substantive issues.

(3) The parties concerned shall perform any partial award and interim award. Failure by any party to perform a partial award or an interim award shall neither affect the subsequent arbitral proceedings nor prevent the Arbitral Tribunal from rendering the final award.

Article 51: Validity and Performance of the Award

(1) An award shall be legally binding from the date on which it is made.

(2) After an award has been made, the parties concerned shall perform the award in accordance with the time limit for performance specified in the award. Where an award does not specify the time limit for performance, it shall be performed immediately. Where any party fails to perform the award, the other party may apply to the competent court for enforcement.

Article 52: Allocation of Costs

(1) The Arbitral Tribunal may determine in its award how the arbitration fees and any expenses actually incurred shall be borne by the parties, including but not limited to appraisal fees, evaluation fees and audit fees.

(2) Unless otherwise agreed by the parties, the costs of the arbitration shall in principle be borne by the losing party. If either party is only partially successful, the Arbitral Tribunal shall determine the proportion of each party's share of the costs on the basis of the extent of the liability of each party. If the parties reach a settlement either independently or as a result of mediation by the Arbitral Tribunal [Article 43], they may agree upon the proportion of their respective shares.

(3) Where the circumstances described in Article 23(7) of the Rules apply, or there exist any other breaches of the Rules that cause delay in the arbitral proceedings, the allocation of arbitration costs to the party at fault shall not be limited by the provisions of Article 52(2). Where other costs are incurred or increased due to such delay in the arbitral proceedings, the party causing the delay shall also bear the costs so incurred or increased.

(4) The Arbitral Tribunal may, pursuant to a party's request, order that the losing party shall bear the winning party's reasonable costs and expenses for the conduct of the arbitration, including but not limited to attorney's fees,

the costs of preservation measures, travel and accommodation expenses, and notarial fees. Where the Arbitral Tribunal determines the amount of these costs and expenses, it shall take into consideration the outcome of the case, its complexity, the actual workload of the parties or their attorneys, the amount in dispute, and any other relevant factors.

Article 53: Correction of the Award and Supplementary Award

(1) The Arbitral Tribunal shall correct any clerical error or computational error, and address any omission of issues that have been raised by a party in its claim and decided upon by the Arbitral Tribunal but omitted in the operative directions disposing of the dispute. In the event that any claim is omitted entirely from the award, the Arbitral Tribunal shall render a supplementary award thereon.

(2) Upon discovering the existence of any of the circumstances described in Article 53(1), a party may, within 30 days of the date of receiving the award, request in writing that the Arbitral Tribunal rectify the award or render a supplementary award.

(3) Any rectification by or supplementary award of the Arbitral Tribunal shall form part of the original arbitral award.

Chapter VII: Expedited Procedure

Article 54: Scope of the Application of Expedited Procedure

(1) Unless otherwise agreed by the parties, the expedited procedure set out in this Chapter (the “Expedited Procedure”) shall apply if the amount in dispute does not exceed RMB 5,000,000.

(2) Unless otherwise agreed by the parties, the Expedited Procedure shall apply where the parties have agreed that the arbitration concerned shall be heard by a sole arbitrator.

(3) Unless otherwise agreed by the parties, the ordinary procedure set out in Chapter V (the “Ordinary Procedure”) shall apply where the parties have agreed that the arbitration concerned shall be heard by an Arbitral Tribunal composed of three arbitrators where the amount in dispute does not exceed RMB 5,000,000.

(4) The parties may also agree to apply the Expedited Procedure where the amount in dispute exceeds RMB 5,000,000. In such a case, the arbitration fees shall be reduced accordingly.

(5) If the parties agree to apply the Ordinary Procedure when the amount in dispute does not exceed RMB 5,000,000, they shall bear any resulting additional arbitration fees.

(6) Where Chapter VIII of the Rules makes special provision for the Expedited Procedure, such provisions shall apply.

Article 55: Composition of the Arbitral Tribunal

(1) Arbitrations conducted in accordance with the Expedited Procedure shall be heard by a sole arbitrator.

(2) Within 10 days of receipt of the Notice of Arbitration [Article 10] by all parties, the parties shall jointly nominate a sole arbitrator or jointly request the Chairperson to appoint a sole arbitrator from the Panel of Arbitrators. The sole arbitrator may be selected in the manner prescribed by Article 20(3). If the parties fail jointly to nominate a sole arbitrator or request the Chairperson to appoint a sole arbitrator within the specified period, the Chairperson will appoint the sole arbitrator.

Article 56: Time Limit for Defense and Counterclaim

Within 10 days of receipt of the Request for Submission of Defense [Article 10], the Respondent shall submit to the BAC its Statement of Defense [Article 11], together with any relevant supporting documents. A Counterclaim [Article 12], if any, shall also be submitted within 10 days of receipt of the Request for Submission of Defense, together with any relevant supporting documents.

Article 57: Notice of Hearing

(1) Where an oral hearing [Article 25(1)] is to be held, the Arbitral Tribunal shall notify the parties of the date of the hearing at least 3 days in advance.

(2) If the Arbitral Tribunal decides to hear the case by way of oral hearing, it shall hold one hearing only. Where necessary, however, the Arbitral Tribunal may on its own initiative decide to hold further hearings. Notification of the date of any further hearing shall not, however, be subject to the 3-day time limit under Article 57(1).

Article 58: Expedited Procedure Converted into Ordinary Procedure

(1) Proceedings under the Expedited Procedure may be converted into proceedings under the Ordinary Procedure upon the joint request of the parties or upon the request of one party with the approval of the other parties.

(2) Proceedings under the Expedited Procedure shall not be affected by reason of any amendment to the Claim, the submission of a Counterclaim or any amendment causing the amount in dispute to exceed RMB 5,000,000. If a party is of the opinion that the proceedings under the Expedited Procedure may be so affected, it may request the Chairperson to convert the proceedings into proceedings under the Ordinary Procedure. The Chairperson shall decide whether to approve such application.

(3) The parties shall agree upon their respective proportions of the advance on the additional arbitration fees arising from the conversion of proceedings from the Expedited Procedure into the Ordinary Procedure. Where the parties fail to agree, such proportions shall be determined by the BAC. Where the parties fail to deposit an advance on the resulting additional costs in accordance with the requirements of the BAC, no conversion of procedure shall be ordered.

(4) In the event of conversion of proceedings from the Expedited Procedure into the Ordinary Procedure after the constitution of the Arbitral Tribunal, the parties shall, within 5 days of receipt of a notice of the conversion of the procedure (“Notice of Conversion of Procedure”), respectively nominate or respectively request the Chairperson to appoint their arbitrators in accordance with Article 20 of the Rules. Unless otherwise agreed by the parties, the sole arbitrator originally appointed shall become the presiding arbitrator. The reconstituted Arbitral Tribunal shall decide whether and to what extent the arbitral proceedings conducted prior to the reconstitution shall be repeated. Where the reconstituted Arbitral Tribunal decides to repeat the arbitral proceedings in their entirety, the time limit provided for in Articles 48 and 68 of the Rules shall be recalculated from the date of the reconstitution of the Arbitral Tribunal.

(5) The Expedited Procedure shall cease to apply to the arbitral proceedings from the date of the conversion.

Article 59: Time Limit for Rendering the Award

The Arbitral Tribunal shall render its award within 75 days from the date of its constitution. If there are special circumstances justifying an extension of this period, the Secretary-General may approve an appropriate extension of time at the request of the sole arbitrator.

Article 60: Reference to other Provisions of the Rules

In respect of matters not provided for in this Chapter, other relevant provisions of the Rules shall apply.

Chapter VIII: Special Provisions for International Commercial Arbitration

Article 61: Scope of Application of this Chapter

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

(2) Arbitrations relating to the Hong Kong Special Administrative Re-

gion (“SAR”), the Macao SAR and the Taiwan region may also be conducted by reference to the provisions of this Chapter.

(3) Any dispute between the parties as to the existence of international elements shall be referred to the Arbitral Tribunal for a decision. The decision of the Arbitral Tribunal shall not affect arbitral proceedings already conducted. This Chapter shall apply if the Arbitral Tribunal decides that international elements exist in the case.

Article 62: Interim Measures

(1) At the request of the parties, the Arbitral Tribunal may order any interim measures it deems appropriate in accordance with the applicable law. An order for interim measures may take the form of a decision of the Arbitral Tribunal, an interim award [Article 50], or any other form permitted by the applicable law. Where necessary, the Arbitral Tribunal may require the requesting parties to provide appropriate security.

(2) The parties may also directly apply for interim measures to the competent court in accordance with the applicable law.

Article 63: Emergency Arbitrator

(1) Before the constitution of the Arbitral Tribunal [Article 64], any party that wishes to apply for interim measures may submit a written application to the BAC for the appointment of an emergency arbitrator in accordance with the applicable law. The BAC shall decide whether to approve such application.

(2) The written application for the appointment of an emergency arbitrator shall include: basic information of the parties concerned; effective contact information of the opposing party for the purpose of service; reasons for applying for the appointment of an emergency arbitrator and interim measures; the emergency relief sought; and such other content as the applicant considers necessary.

(3) Where the BAC approves the appointment of an emergency arbitrator, it shall appoint an emergency arbitrator from the Panel of Arbitrators within 2 days after the parties concerned deposit the corresponding fees in accordance with the Schedule set out in Annex II to these Rules, and shall notify the parties of such appointment.

(4) Unless otherwise agreed by the parties, the BAC or the emergency arbitrator may serve relevant documents upon the parties by means of electronic telecommunication.

(5) The provisions of Articles 22 and 23 shall apply *mutatis mutandis* to disclosure by and challenge to an emergency arbitrator and the procedures applicable to these matters.

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

(7) The emergency arbitrator shall issue a decision, order or award, stating the grounds on which the interim measures are based, within 15 days after his or her appointment. Such decision, order or award shall be sent to the parties after being signed by the emergency arbitrator and affixed with the seal of the BAC.

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

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

(10) Any decision, order or award made by an emergency arbitrator [Article 63(7)] will not be binding upon the Arbitral Tribunal. The Arbitral Tribunal may amend, suspend or revoke such a decision, order or award.

Article 64: Composition of the Arbitral Tribunal

(1) Arbitrators may be selected by the parties from the Panel of Arbitrators maintained by the BAC [Article 19] or from amongst arbitrators who are not on the Panel of Arbitrators.

(2) Parties who wish to select arbitrators who are not on the Panel of Arbitrators shall submit their candidates' resumes and contact details to the BAC. A candidate selected from amongst arbitrators who are not on the Panel of Arbitrators may act as an arbitrator with the approval of the BAC.

(3) Within 20 days of receipt of the Notice of Acceptance [Article 10], the parties shall, pursuant to the provisions of Article 20, nominate or request the Chairperson to appoint their arbitrators and jointly nominate or jointly request the Chairperson to appoint the presiding arbitrator. If the parties fail to nominate or request the Chairperson to appoint their arbitrators or the presiding arbitrator in accordance with those provisions, the arbitrators or the presiding arbitrator shall be appointed by the Chairperson.

(4) Where a party agrees to an increased fee for a foreign arbitrator, that party shall deposit a corresponding advance on costs within the period specified by the BAC. If a party fails to deposit such advance on costs within the period specified, it shall be deemed not to have nominated the arbitrator. The Chairperson may then appoint an arbitrator for that party in accordance with the Rules.

(5) Where Article 54 applies, the Arbitral Tribunal shall be constituted in accordance with Article 55 of the Rules.

Article 65: Defense and Counterclaim

Within 45 days (or 30 days where Article 54 applies) of receipt of the Request for Submission of Defense [Article 10], the Respondent shall submit to the BAC its Statement of Defense [Article 11], together with any relevant supporting documents. The Respondent shall also submit in writing the Application for Counterclaim [Article 12], if any, within the time limit.

Article 66: Notice of Hearing

(1) Where an oral hearing is to be held, the Arbitral Tribunal shall notify the parties of the date of the hearing at least 30 days (or 10 days where Article 54 applies) in advance of the hearing. The date of the first hearing may be brought forward by the Arbitral Tribunal with the agreement of the parties. A party may request in writing a postponement of the first hearing, no less than 12 days (or 5 days where Article 54 applies) in advance, provided that there are grounds justifying the postponement. The Arbitral Tribunal shall decide whether to order postponement.

(2) A notification of the date of any further hearing or postponed hearing shall not be subject to the 30-day or 10-day requirement under Article 66(1).

Article 67: Mediation by the Tribunal

(1) The Arbitral Tribunal may, with the consent of the parties, conduct a mediation of the case in such manner as it considers appropriate.

(2) If, upon the termination of unsuccessful mediation proceedings, all parties request the replacement of an arbitrator on the ground that the outcome of the award may be affected by the mediation proceedings, the Chairperson may approve such request. The resulting additional costs shall be borne by all the parties.

Article 68: Time Limit for Rendering the Award

The Arbitral Tribunal shall render its award within 6 months (or 90 days where Article 54 applies) of the date of its constitution. If there are special circumstances justifying an extension of this period, the Secretary-General may approve an appropriate extension of time at the request of the presiding arbitrator or the sole arbitrator, as the case may be.

Article 69: Applicable Law

(1) The Arbitral Tribunal shall apply the law agreed upon by the parties to decide the dispute. Unless otherwise agreed by the parties, the agreed applicable law refers to the substantive rules of law but not to the rules of conflict of laws.

(2) In the absence of an agreed choice of law, the Arbitral Tribunal may determine the applicable law according to all the relevant circumstances of the case.

(3) By agreement of the parties, whether before or during the arbitral proceedings, the Arbitral Tribunal may render its award as *amiable compositeur* or *ex aequo et bono*. Such award shall not, however, violate the mandatory provisions of the applicable law and the public interest.

(4) In all cases, the Arbitral Tribunal shall render its award in accordance with the valid terms of the parties' agreement and take into account the relevant industry practices and trade usages.

Chapter IX: Supplementary Provisions

Article 70: Calculation of Time Limits

(1) Any period of time specified or determined in accordance with the Rules shall start to run on the day following the date on which such period commences. The day on which such period commences does not form part of the period of time.

(2) If the day following the date on which the period of time commences is an official holiday or a non-business day at the place of the service, the period of time shall begin to run on the first following business day. Official holidays or non-business days occurring within such period are included in the calculation of the period of time. If the last day of the relevant period of time falls on an official holiday or a non-business day, the period of time shall expire on the first following business day.

(3) Time for delivery shall not be included in the period of time. Any arbitral document, notice, or material that has been mailed or dispatched within the time limit shall be deemed to have been delivered in time.

(4) If a party exceeds a time limit because of *force majeure* events or other legitimate reasons, it may apply for an extension of that time limit within 10 days of the events or other reasons ceasing to have effect. The BAC or the Arbitral Tribunal, as the case may be, shall decide upon the application.

(5) Time limits specified in the Rules that fall within the scope of the BAC's case management functions (including but not limited to time limits specified in Articles 9(1), 10, 11(2), 12(4) and 21) may be extended upon the approval of the Secretary-General taking into account the specific circumstances of the case.

Article 71: Service

(1) Arbitral documents, notices and other materials may be served on the parties or their authorized representatives in person or by mail, courier, facsimile, email, or any other means that the BAC or the Arbitral Tribunal, as the case may be, considers appropriate.

(2) Arbitral documents, notices and materials shall be deemed to have been served if they have been delivered to the parties or their authorized representatives in person or by mail to the addressee's place of business, place

of registration, place of residence, address indicated on ID card, *Hukou* address, address for service agreed by the parties or any other correspondence address provided by the addressee or the counterparty.

(3) If, despite reasonable inquiries, the addressee's place of business, place of registration, place of residence, address indicated on ID card, *Hukou* address, address for service agreed by the parties, or other correspondence address cannot be found, service shall be deemed to have been effected if the document, notice or material is delivered to the addressee's last known place of business, place of registration, place of residence, address indicated on ID card, *Hukou* address, address for service agreed by the parties or other correspondence address, whether by mail, courier or by any other means of delivery which allows for a record of delivery.

Article 72: Language

(1) The parties may agree upon the language(s) to be used in the arbitral proceedings. Where the parties make no such agreement, the BAC or the Arbitral Tribunal, as the case may be, may determine that Chinese and/or any other language(s) shall be used in the arbitral proceedings according to the particular circumstances of the case.

(2) Where the parties have agreed upon the use of two or more languages in the arbitral proceedings, the Arbitral Tribunal may, upon obtaining consent from the parties, decide to adopt one language. If the parties fail to reach a unanimous agreement thereon, the arbitral proceedings may be conducted in multiple languages, in which case the resulting additional costs shall be borne by the parties.

(3) The BAC or the Arbitral Tribunal, as the case may be, may determine, in accordance with the particular circumstances of the case, whether written documents in international commercial arbitral proceedings shall be accompanied by a translation into Chinese or other language(s).

(4) If translation services are required by the parties or their authorized representatives or witnesses, translators may be provided either by the BAC or by the parties themselves. The parties shall bear the costs of translation.

Article 73: Interpretation of the Rules

(1) The Rules shall be interpreted by the BAC.

(2) Other documents issued by the BAC shall not constitute part of the Rules, unless the BAC states otherwise.

Article 74: Official Versions of the Rules

Each of the Chinese, English and other language versions of the Rules published by the BAC is an official version. In the event of any conflict between the different versions, the Chinese version shall prevail.

Article 75: Implementation of the Rules

The Rules shall take effect on September 1, 2019 and apply to all cases accepted by the BAC on or after that date. For cases accepted by the BAC before the Rules came into effect, the edition of the Arbitration Rules effective at the time of such acceptance shall apply. These Rules may, however, apply in such a case if the parties so agree and with the approval of the BAC.

Annex I:

Beijing Arbitration Commission Schedule of Arbitration Fees

The applicable arbitration fees of the Beijing Arbitration Commission are set out in this Schedule:

Sum in Dispute (in RMB)	Arbitrator's Fees (in RMB)	Administration Fees (in RMB)
Up to (and including) 250,000	12,000	5,000
From 250,000 to (and including) 500,000	12,000 + 2.00% of the sum over 250,000	5,000 + 1.20% of the sum over 250,000
From 500,000 to (and including) 1,000,000	17,000 + 1.20% of the sum over 500,000	8,000 + 0.75% of the sum over 500,000
From 1,000,000 to (and including) 3,000,000	23,000 + 0.41% of the sum over 1,000,000	11,750 + 0.30% of the sum over 1,000,000
From 3,000,000 to (and including) 5,000,000	31,200 + 0.40% of the sum over 3,000,000	17,750 + 0.28% of the sum over 3,000,000
From 5,000,000 to (and including) 10,000,000	55,000 + 0.50% of the sum over 5,000,000	23,500 + 0.45% of the sum over 5,000,000
From 10,000,000 to (and including) 20,000,000	80,000 + 0.40% of the sum over 10,000,000	46,000 + 0.35% of the sum over 10,000,000
From 20,000,000 to (and including) 40,000,000	120,000 + 0.35% of the sum over 20,000,000	81,000 + 0.30% of the sum over 20,000,000
From 40,000,000 to (and including) 100,000,000	190,000 + 0.31% of the sum over 40,000,000	141,000 + 0.25% of the sum over 40,000,000
From 100,000,000 to (and including) 200,000,000	376,000 + 0.28% of the sum over 100,000,000	291,000 + 0.20% of the sum over 100,000,000
From 200,000,000 to (and including) 500,000,000	656,000 + 0.26% of the sum over 200,000,000	491,000 + 0.19% of the sum over 200,000,000
From 500,000,000 to (and including) 1,000,000,000	1,436,000 + 0.24% of the sum over 500,000,000	1,061,000 + 0.18% of the sum over 500,000,000
Over 1,000,000,000	2,636,000 + 0.20% of the sum over 1,000,000,000	1,961,000 + 0.17% of the sum over 1,000,000,000
Where the sum in dispute is over RMB 5,000,000,000 (including RMB 5,000,000,000), the administration fee shall be capped at RMB 8,761,000. Where the sum in dispute is over RMB 8,682,000,000 (including RMB 8,682,000,000), the arbitrator's fee shall be capped at RMB 18,000,000.		

1. The amount of money claimed by the Claimant shall be deemed the sum in dispute as set forth in this Schedule. If there is a difference between the amount claimed and the actual sum in dispute, the actual sum in dispute shall prevail. This principle shall apply *mutatis mutandis* to any claim raised as a counterclaim or in the event of joinder of additional parties to ascertain the sum in dispute.

2. Where the sum in dispute is not specified, this sum or the arbitration fees shall be determined by the Secretariat of the Beijing Arbitration Commission.

3. Where the parties agree to apply the Ordinary Procedure when the sum in dispute does not exceed RMB 5,000,000, the arbitrator's fees and the administration fees shall be ascertained in accordance with the minimum standard of arbitration fees under the Ordinary Procedure. Where the parties agree to apply the Expedited Procedure when the sum in dispute exceeds RMB 5,000,000, the arbitrator's fees shall be ascertained at 60% of the arbitrator's fees chargeable under the Ordinary Procedure, but no less than RMB 39,200, and the administration fees shall be ascertained at 100% of the administration fees chargeable under the Ordinary Procedure.

4. The BAC may, taking into account the specific circumstances of the case, charge an extra percentage of arbitrator's fees and administration fees calculated as per the Schedule. Such circumstances shall include but not be limited to cases where there are two or more Claimants or Respondents, the arbitration involve multiple contracts, the parties agree on two or more languages as the languages of the arbitration, and any other special circumstances.

5. The BAC may charge for extra reasonable expenditures in accordance with relevant provisions of the BAC Arbitration Rules in addition to the arbitrator's fees and administration fees calculated in accordance with the Schedule.

6. Where the parties so agree, the arbitrator's fees may be calculated on the basis of an hourly rate.

(1) The hourly rate for arbitrators nominated by the parties shall be the rate agreed upon by that arbitrator and the nominating party thereof.

(2) The hourly rate of the sole arbitrator or the presiding arbitrator shall be agreed upon by that arbitrator and all parties.

(3) Where the hourly rate cannot be agreed upon by the parties within the time limit specified in the notice of the BAC, the hourly rate of the arbitrator may be determined by the BAC.

(4) No matter how the hourly rate is fixed, the arbitrator's hourly rate shall, in principle, not exceed RMB 5,000.

(5) Where the arbitrator's fees are calculated on the basis of an hourly rate, the BAC may, taking into account the status of the arbitral proceedings, require the parties to deposit an advance in an amount it deems appropriate based on the arbitrator's fees.

(6) The parties shall be jointly and severally liable for the payment of the arbitrator's fees, no matter which party nominates that arbitrator.

Annex II:

**Schedule of Fees for Appointing
Emergency Arbitrators and Applying for Interim Measures**

Where a party applies to the BAC for the appointment of an emergency arbitrator in relation to interim measures in accordance with Article 63 of the BAC Arbitration Rules, the applicable fees set out in this Schedule are as follows.

1. The administration fee shall be RMB 10,000 and is non-refundable. In the event of replacement of the emergency arbitrator, an extra administration fee of RMB 2,000 shall be charged for each of replacement.

2. The minimum emergency arbitrator's fees shall be RMB 20,000. Where the party applies for multiple interim measures, amendments to the interim measures sought, and change of a determination on interim measures, etc., the BAC may charge extra emergency arbitrator's fees while taking into account the specific circumstances of the case.

3. The parties may agree that the emergency arbitrator's fees be calculated on the basis of an hourly rate that is to be agreed upon by them and the emergency arbitrator and does not exceed RMB5,000 in principle. In the event the parties agree that the emergency arbitrator's fees be so calculated, the BAC may require the parties to deposit an advance in the amount it deems appropriate on the emergency arbitrator's fees.

4. In addition to the above fees, the BAC may, taking into account the specific circumstances of the case, charge for other extra reasonable expenditure.