

HKMAG Terms 2021

effective 1st September 2021

Substantially based on the LMAA Terms 2021, by kind permission of the London Maritime Arbitrators Association

PRELIMINARY

1. These Terms may be referred to as **“the HKMAG Terms 2021”**.
2. In these Terms, unless the context otherwise requires;
 - (a) **“the Ordinance”** means the Hong Kong Arbitration Ordinance (Cap.609) or any statutory modification thereof;
 - (b) **“HKMAG”** means the Hong Kong Maritime Arbitration Group; **“Member of HKMAG”** includes full members, members and supporting members; **“President”** means the President for the time being of HKMAG or, where the President cannot act, such other member of the Committee of HKMAG as the President may designate;
 - (c) **“tribunal”** includes a sole arbitrator, a tribunal of two or more arbitrators, and an umpire;
 - (d) **“original arbitrator”** means an arbitrator appointed (whether initially or by substitution) by or at the request of a party as its nominee and any arbitrator duly appointed so to act following failure of a party to make its own nomination.
3. The purpose of arbitration according to these Terms is to obtain the fair resolution of maritime and other disputes by an impartial tribunal without unnecessary delay or expense. The arbitrators at all times are under a duty to act fairly and impartially between the parties and an original arbitrator is in no sense to be considered as the representative of that arbitrator’s appointer.

APPLICATION

4. These Terms apply to arbitral proceedings commenced on or after 1st September 2021. Section 49 of the Ordinance shall apply for the purpose of determining on what date arbitral proceedings are to be regarded as having commenced.

5. These Terms shall apply to an arbitration agreement whenever the parties have agreed that they shall apply and the parties shall in particular be taken to have so agreed;
 - (a) whenever the dispute is referred to a sole arbitrator who is a Full Member of HKMAG and whenever both the original arbitrators appointed by the parties are Full Members of HKMAG, unless both parties have agreed or shall agree otherwise;
 - (b) whenever a sole arbitrator or both the original arbitrators have been appointed on the basis that these Terms apply to their appointment;and whenever a sole arbitrator or both the original arbitrators have been appointed on the basis referred to at (b), such appointments or the conduct of the parties in taking part in the arbitration thereafter shall constitute an agreement between the parties that the arbitration agreement governing their dispute has been made or varied so as to incorporate these Terms and shall further constitute authority to their respective arbitrators so to confirm in writing on their behalf.
6. In the absence of any agreement to the contrary, the parties to all arbitral proceedings to which these Terms apply agree;
 - (a) that the law applicable to their arbitration agreement is Hong Kong law, and;
 - (b) that the seat of the arbitration is in Hong Kong.
7. (a) Subject to paragraph (b), the arbitral proceedings and the rights and obligations of the parties in connection therewith shall be in all respects governed by the Ordinance, save to the extent that the provisions of the Ordinance are varied, modified or supplemented by these Terms.

(b) Where the seat of the arbitration is outside Hong Kong the provisions of these Terms shall nevertheless apply to the arbitral proceedings, save to the extent that any mandatory provisions of the law applicable to the arbitration agreement otherwise provide.
8. Parties seeking the benefits of a wholly or partially administered arbitration while maintaining the flexibility afforded by these Terms are referred to the 'Procedure for the Administration of Arbitration under the HKMAG Terms (2021)'. HKMAG is the only organisation authorised to administer arbitrations under HKMAG Terms 2021.

THE ARBITRAL TRIBUNAL

9. (a) If the arbitration agreement provides that these Terms are to apply but contains no provision as to the number of arbitrators, the agreement shall be deemed to provide for a tribunal of three arbitrators as in (b) below.

(b) Subject to the terms of the arbitration agreement, if the tribunal is to consist of three arbitrators;

(i) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so;

(ii) the two so appointed may at any time thereafter appoint a third arbitrator so long as they do so before any substantive hearing or forthwith if they cannot agree on any matter relating to the arbitration, and if the two said arbitrators do not appoint a third within 14 days of one calling upon the other to do so, the President shall, on the application of either arbitrator or of a party, appoint the third arbitrator;

(iii) the third arbitrator shall be the chairperson unless the parties shall agree otherwise;

(iv) before the third arbitrator has been appointed or if the position has become vacant, the two original arbitrators, if agreed on any matter, shall have the power to make decisions, orders and awards in relation thereto;

(v) after the appointment of the third arbitrator decisions, orders or awards shall be made by all or a majority of the arbitrators, and, if any of the original arbitrators subsequently resigns or is no longer able to continue, the remaining two arbitrators, if agreed on any matter, shall have the power to make decisions, orders and awards in relation thereto;

(vi) the view of the third arbitrator shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under paragraph (v).

10. Subject to the terms of the arbitration agreement, if the tribunal is to consist of two arbitrators and an umpire:

(a) each party shall appoint one arbitrator no later than 14 days after service of a request in writing by either party to do so;

(b) the two so appointed may appoint an umpire at any time after they themselves are appointed and shall do so before any substantive hearing or forthwith if they cannot agree on any matter relating to the arbitration, and if the two said arbitrators do not appoint an umpire within 14 days of one calling upon the other to do so, the President shall, on the application of either arbitrator or of a party, appoint the umpire;

(c) the umpire shall attend any substantive hearing and shall following appointment be supplied with the same documents and other materials as are supplied to the other arbitrators;

(d) the umpire may take part in and, if the original arbitrators so agree, chair the hearing and deliberate with the original arbitrators;

(e) decisions, orders and awards shall be made by the original arbitrators unless and until they cannot agree on a matter relating to the arbitration. In that event they shall forthwith give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the tribunal with power to make decisions, orders and awards as if the umpire were the sole arbitrator.

(f) if the umpire constitutes the tribunal by reason of sub-paragraph (e), above, and the umpire resigns, retires or is no longer able to continue, upon the written application of either party the President shall appoint a substitute. The substitute umpire has all the powers of his/her predecessor.

11. A party wishing to refer a dispute to arbitration in accordance with paragraph 9(b)(i) or paragraph 10(a) above shall appoint its arbitrator and send notice of such appointment in writing to the other party, requiring the other party to appoint its own arbitrator within 14 calendar days of the notice, and stating that the requesting party will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified in the notice, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator appointed in this manner shall be binding on both parties as if the sole arbitrator had been appointed by agreement.

12. Subject to the terms of the arbitration agreement, where it provides for these Terms to apply and if the tribunal is to consist of a sole arbitrator, if within 14 days of one party calling for arbitration the parties have not agreed upon a sole arbitrator;

(a) either party may apply in writing for the appointment of a sole arbitrator by the President of the HKMAG;

(b) such application shall be accompanied by a remittance in favour of the HKMAG for making the appointment (the amount of such remittance being specified from time to time on the HKMAG's website);

(c) the party applying to the President shall give a concise explanation of the issues likely to arise, and as to whether any particular expertise on the part of the arbitrator is required but shall not suggest any particular names of potential arbitrators; (d) the President, having considered the nature of the dispute, shall appoint a sole arbitrator and give notice of such appointment to the parties.

13. Where:

(a) an arbitrator resigns, dies or becomes incapable of conducting the proceedings or, where a hearing has been fixed, of attending the hearing (or there are justifiable doubts as to the arbitrator's capacity to conduct the proceedings or attend a hearing);

(b) an application is made by a party or parties to the President for the appointment of a substitute arbitrator;

(c) notice of the application has been given to the other parties, the affected arbitrator (where appropriate) and other members of the tribunal, and

(d) in the opinion of the President:

(i) one or more of the parties is unwilling or unable to appoint a substitute arbitrator within a reasonable time, or, where a hearing has been fixed, in time for the hearing to proceed, and

(ii) it is, in all the circumstances, appropriate to make a substitute appointment,

the President may appoint such substitute arbitrator, and such appointment shall be binding on the parties.

(For the avoidance of doubt, this provision is not intended to prevent a party from applying to the Court for the removal or substitution of an arbitrator, or for the filling of a vacancy, in accordance with the provisions of the Ordinance.)

JURISDICTION

14. Notwithstanding the terms of any appointment of an arbitrator, unless the parties otherwise agree the jurisdiction of the tribunal shall extend to determining all disputes arising under or in connection with the transaction the subject of the reference, and each party shall have the right before the tribunal makes its award (or its last award, if more than one is made in a reference) to refer to the tribunal for determination any further dispute(s) arising after the commencement of the arbitral proceedings. When and how such dispute is dealt with in the reference shall be in the discretion of the tribunal.

TRIBUNAL'S FEES

15. Provisions regulating fees payable to the tribunal and other related matters are set out in the First Schedule. Save as therein or herein otherwise provided, payment of the tribunal's fees and expenses is the joint and several responsibility of the parties. An arbitrator shall be entitled to resign from a reference in the circumstances set out in Section (C) of the **First Schedule**.

ARBITRATION PROCEDURE

16. (a) It shall be for the tribunal to decide all procedural and evidential matters, but the tribunal will where appropriate have regard to any agreement reached by the parties on such matters. The normal procedure to be adopted is set out in the **Second Schedule**, subject to the tribunal having power at any time to vary that procedure.

(b) In the absence of agreement it shall be for the tribunal to decide whether and to what extent there should be oral or written evidence or submissions in the arbitration. The parties should however attempt to agree at an early stage whether the arbitration is to be on documents alone (i.e. without any oral hearing) or whether there is to be such a hearing.

(c) For the avoidance of doubt, hearings (which expression for these purposes includes preliminary meetings) pursuant to these Terms include hearings conducted wholly or partly by video conference, telephone conference call, or other means of communication considered appropriate by the tribunal (or by a combination of such methods of conducting a hearing). References in these Terms to hearings should be interpreted accordingly.

(d) Where a virtual, or part-virtual hearing, is to take place, parties should follow the 'Guidelines for the Conduct of Virtual and Semi-Virtual Hearings' (as set out in the **Sixth Schedule** to these Terms, and published on the HKMAG website), subject to any modifications to the Guidelines issued in writing by the HKMAG or ordered by the Tribunal.

INTERLOCUTORY PROCEEDINGS

17. (a) In all cases parties should be guided by the procedure set out in the Second Schedule.

(b) Applications for directions should not be necessary but, if required, they should be made in accordance with the Second Schedule.

(c) *Arbitrations on documents alone*

Following completion of the steps covered by the Second Schedule, if it has been agreed by the parties or is determined by the tribunal that the case is to be dealt with on documents alone, the tribunal will then give notice to

the parties of its intention to proceed to its award and will so proceed unless either party within 7 days requests, and is thereafter granted, permission to serve further submissions and/or documents.

(d) *Oral hearings*

If it is determined or agreed that there shall be an oral hearing, then following the fixing of the hearing date a booking fee will be payable in accordance with the provisions of the First Schedule.

POWERS OF THE TRIBUNAL

18. In addition to the powers set out in the Ordinance, the tribunal shall have the following specific powers to be exercised in a suitable case so as to avoid unnecessary delay or expense, and so as to provide a fair means for the resolution of the matters falling to be determined;

(a) The tribunal may

(i) direct either that no expert be called on any issue(s) or that no expert evidence shall be called save with the permission of the tribunal;

(ii) limit the number of expert witnesses to be called by any party or direct that a single joint expert be appointed and/or fix the length of any report to be served by any such witness.

(b) Where two or more arbitrations appear to raise common issues of fact or law, the tribunals may direct that they shall be conducted and, where an oral hearing is directed, heard concurrently. Where such an order is made, the tribunals may give such directions as the interests of fairness, economy and expedition require including;

(i) that time limits for service of submissions may be abbreviated or modified in the interests of saving costs or minimizing delay, or otherwise enhancing efficiency;

(ii) that the documents disclosed by the parties in one arbitration shall be made available to the parties to the other arbitration upon such conditions as the tribunals may determine;

(iii) that the evidence given in one arbitration shall be received and admitted in the other arbitration, subject to all parties being given a reasonable opportunity to comment upon it and subject to such other conditions as the tribunals may determine.

(c) If a party fails to comply with a peremptory order of the tribunal to provide security for costs, then without prejudice to the power granted by section 56(4) of the Ordinance, the tribunal shall have power to stay that party's claim or such part of it as the tribunal thinks fit in its sole discretion.

PRELIMINARY MEETINGS

19. (a) The tribunal may decide at any stage that the circumstances of the arbitration require that there should be a preliminary meeting to enable the parties and the tribunal to review the progress of the case; to reach agreement so far as possible upon further preparation for, and the conduct of the hearing; and, where agreement is not reached, to enable the tribunal to give such directions as it thinks fit.
- (b) A preliminary meeting should be held in complex cases including most cases involving a hearing of more than 5 days' duration. Exceptionally more than one preliminary meeting may be required.
- (c) All preliminary meetings (whether required by the tribunal or held on the application of the parties) should be preceded by a discussion between the parties' representatives who should attempt to identify matters for discussion with the tribunal, attempt to reach agreement so far as possible on the directions to be given, and prepare for submission to the tribunal an agenda of matters for approval or determination by it.
- (d) Before the preliminary meeting takes place the parties should provide the tribunal with a paginated bundle of appropriate documents, together with information sheets setting out the steps taken and to be taken in the arbitration, a list of any proposed directions whether agreed or not and an agenda of matters for discussion at the hearing. The information sheets should include estimates of readiness for the hearing and the likely duration of the hearing.

SETTLEMENT

20. It is the duty of the parties;
- (a) to notify the tribunal immediately if the arbitration is settled or otherwise terminated
- (b) to make provision in any settlement for payment of the fees and expenses of the tribunal, and
- (c) to inform the tribunal of the parties' agreement as to the manner in which payment will be made of any outstanding fees and expenses of the tribunal, e.g. for interlocutory work not covered by any booking fee paid. The same duty arises if the settlement takes place after an interim award has been made. Upon being notified of the settlement or termination of any matter the tribunal may dispose of the documents relating to it.

21. Any booking fee paid will be dealt with in accordance with the provisions of paragraph (D)(1)(d) of the First Schedule. Any other fees and expenses of the tribunal shall be settled promptly and at latest within 28 days of presentation of the relevant account(s). Notwithstanding the terms of any settlement between them the parties shall remain jointly and severally responsible for all

ADJOURNMENT

22. If a case is for any reason adjourned part-heard, the tribunal will be entitled to an interim payment, payable in equal shares or otherwise as the tribunal may direct, in respect of fees and expenses already incurred, appropriate credit being given for the booking fee.

AVAILABILITY OF ARBITRATORS

23. (a) In cases where it is known at the outset that an early hearing is essential, the parties should consult and ensure the availability of the arbitrator(s) to be appointed by them.

(b) If, in cases when the tribunal has already been constituted, the fixture of an acceptable hearing date is precluded by the commitments of the original appointee(s), the provisions of the **Fifth Schedule** shall apply.

THE AWARD

24. The time required for preparation of an award must vary with the circumstances of the case. The award should normally be available within not more than six weeks from the close of the proceedings. In many cases, and in particular where the matter is one of urgency, the interval should be substantially shorter. At the end of the hearing or in the case of an arbitration on documents alone, upon receipt of final submissions the tribunal will, if asked, do its best to indicate when its award will be available.
25. The members of a tribunal need not meet together for the purpose of signing their award or of effecting any corrections thereto. Unless the parties agree otherwise, or the tribunal directs otherwise, awards may be signed (or corrections effected) electronically, including by electronic transfer of a scanned signature, and/or in counterparts, and may be notified to the parties by email, or other electronic means. Where a party wishes an award (or correction) to be signed with original handwritten signatures, and/or notified by service of a hard copy or an original signed award (or correction), it is the responsibility of that party to make a request to that effect to the tribunal prior to the production of the award (or prior to the effecting of a correction).

26. Unless agreed otherwise, the parties agree to opt into the provisions of Section 4, 5, 6 and 7 of Schedule 2 of the Ordinance ('Challenging arbitral award on ground of serious irregularity', 'Appeal against arbitral award on question of law', 'Application for leave to appeal against arbitral award on question of law', and 'Supplementary provisions on challenge to or appeal against arbitral award').
27. (a) An award will contain the reasons for it unless the parties agree otherwise
- (b) The parties may agree to dispense with reasons in which case notice shall be given to the tribunal before the award is made. [Note: the effect of such agreement is to opt-out of article 26 above]
- (c) Where in accordance with paragraph (b) the parties have agreed to dispense with reasons the tribunal will issue an award without reasons together with a document which does not form part of the award but which gives, on a confidential basis, an outline of the reasons for the tribunal's decision (hereafter called "**privileged reasons**").
- (d) Unless the court shall otherwise determine, the document containing privileged reasons may not be relied upon or referred to by either party in any proceedings relating to the award.
28. As soon as possible after an award has been made, the tribunal shall give written notice thereof to the parties which notice will also inform the parties of:
- (a) the amount of the outstanding fees and expenses of the tribunal, and
- (b) that the award will be made available to be sent to or collected by the parties upon full payment of such amount.
- At the stage of notification neither the award nor any copy thereof need be served on the parties and the tribunal shall be entitled thereafter to refuse to deliver the award or any copy thereof to the parties except upon full payment of its fees and expenses.
29. If any award has not been paid for and collected within one month of the date of publication, the tribunal may give written notice to any party requiring payment of the costs of the award, whereupon such party shall be obliged to pay for and collect the award within 14 days.
30. (a) In addition to the powers set out in section 69 of the Ordinance, the tribunal shall have the following powers to correct an award or to make an additional award;

(i) The tribunal may on its own initiative or on the application of a party correct any accidental mistake, omission or error of calculation in its award.

(ii) The tribunal may on the application of a party give an explanation of a specific point or part of the award.

(iii) The tribunal may on the application of a party review an award of costs if, when making the award, the tribunal was not aware of any information relating to costs (including offers of settlement) which it should have considered.

(b) An application for the exercise of the powers set out above and in section 69 of the Ordinance (including section 69(3)) must be made within 30 days of the date of the award unless the tribunal shall think fit to extend the time.

(c) The powers set out above shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal.

(d) Any correction of or explanation for an award may be effected in writing on the original award or in a separate memorandum which shall become part of the award. It shall be effected within 90 days of the date of the original award unless all parties shall agree a longer period.

31. If the tribunal considers that an arbitration decision merits publication and gives notice to the parties of its intention to release the award for publication, then unless either or both parties inform the tribunal of its or their objection to publication within 21 days of the notice, the award may be publicised under such arrangements as the HKMAG may effect from time to time. The publication will be so drafted as to preserve anonymity as regards the identity of the parties, of their legal or other representatives, and of the tribunal.

SERVICE OF DOCUMENTS

32. Where a party is represented by a lawyer or other agent in connection with any arbitral proceedings, all notices or other documents required to be given or served for the purposes of the arbitral proceedings together with all decisions, orders and awards made or issued by the tribunal shall be treated as effectively served if served on that lawyer or agent.

GENERAL

33. Where an award reserves any questions relating to costs and/or interest any application to the tribunal to deal with such matter should be made within three months of the award unless the tribunal agrees a longer period.

34. Three months after the publication of an award the tribunal may dispose of its papers (including materials provided in electronic form) unless either;

(a) the parties or any of them request it not to do so, or

(b) it is notified of an application to a court in Hong Kong arising out of the award.

In either case the tribunal may dispose of the papers six months after such request or a final decision of the court, unless one of the parties reasonably requests the tribunal to retain the papers for a further period.

35. In relation to any matters not expressly provided for herein the tribunal shall act in accordance with the tenor of these Terms.

The First Schedule

Tribunal Fees

(A) Appointment fee

1. An appointment fee is payable on appointment by the appointing party or by the party at whose request the appointment is made.
2. The appointment fee shall be a standard fee fixed by the Committee of HKMAG from time to time.
3. Unless otherwise agreed, the appointment fee of a third arbitrator shall in the first instance be paid by the claimant, and the appointment fee of an agreed sole arbitrator shall be paid by each party in equal shares.

(B) Interim fees

4. An arbitrator may in his/her discretion require payment of fees to date (which expression shall for these purposes include any expenses) at appropriate intervals (which shall be not less than three months). Any such demand for payment shall be addressed to the arbitrator's appointing party and shall be copied to any other member of the tribunal and other parties. A sole arbitrator or third arbitrator shall require payment from the parties in equal shares.
5. Any such demand for payment is without prejudice;
 - (a) to ultimate liability for the fees in question, and
 - (b) to the parties' joint and several liability therefor.
6. Without prejudice to the foregoing, a party may ask an arbitrator to provide an interim account of fees at intervals which shall not be less than three months.

(C) Right to resign for non-payment

7. (a) If any amount due under (A) or (B) above remains unpaid for more than 28 days after payment has been demanded, the arbitrator, in the arbitrator's sole discretion, may give written notice to his/her appointer and to the other parties and arbitrators that he/she will resign if such amount still remains unpaid 14 days after such notification.
- (b) Without prejudice to ultimate liability for the fees in question, any other party may prevent such resignation by paying the amount demanded within the said 14 days.
- (c) Upon any resignation under this paragraph the arbitrator will be entitled to immediate payment of the arbitrator's fees to date, and shall be under no liability to any party for any consequences of resignation.

(D) Booking fees

8. (a) (i) For a hearing of up to 10 days' duration there shall be payable to the tribunal a booking fee of such sum per arbitrator as the Committee of the HKMAG may from time to time decide, for each day reserved.
- (ii) The booking fee will be invoiced to the party asking for the hearing date to be fixed or to the parties in equal shares at the discretion of the tribunal and shall become due and shall be paid within 14 days of confirmation of the reservation or six months in advance of the first day reserved ("**the start date**"), whichever date be the later. If the fee is not paid in full by the due date, the tribunal will be entitled to cancel the reservation forthwith without prejudice to its entitlement to be paid the fee in question or the appropriate proportion thereof in accordance with sub-paragraph (d) below.
- (iii) In the event of a cancellation under this provision either party may secure reinstatement of the reservation by payment within 7 days of any balance outstanding.
- (b) For hearings over 10 days' duration the booking fee in sub-paragraph (8)(a) above shall for each day reserved be increased by 30% in the case of a hearing of up to 15 days and 60% in the case of a hearing of up to 20 days and may, at the discretion of the tribunal, be subscribed in non- returnable instalment payments. For hearings in excess of 20 days the booking fee shall be at the rate for a hearing of 20 days plus such additional sum as may be agreed with the parties in the light of the length of the proposed hearing.
- (c) The booking fee for any third arbitrator or umpire shall be due and payable as above, save that the booking fee due to any third arbitrator appointed less than six months before the start date shall be due forthwith upon appointment and payable within 14 days thereof.

(d) Where;

- (i) at the request of one or both of the parties, or
- (ii) by reason of settlement of any dispute, or
- (iii) by reason of cancellation pursuant to sub-paragraph (a) above, or
- (iv) by reason of the indisposition or death of any arbitrator or umpire

a hearing is adjourned or a hearing date vacated prior to or on or after the start date, then, unless non-returnable instalment or other payments have been agreed, the booking fee will be retained by (or, if unpaid, shall be payable to) the tribunal;

- (i) in full if the date is adjourned or vacated less than three months before the start date or on or after that date,
- (ii) as to 50 per cent if the date is adjourned or vacated three months or more before the start date.

Any interlocutory fees and expenses incurred will also be payable or, as the case may be, deductible from any refund under (ii).

(e) Where, at the request of one or both of the parties, or by reason of the indisposition or death of any arbitrator or umpire a hearing is adjourned or a hearing date is vacated and a new hearing date is fixed, a further booking fee will be payable in accordance with sub-paragraphs (a) and (b) above.

9. An arbitrator or umpire who, following receipt of the booking fee or any part thereof, is for any reason replaced is, upon settlement of fees for any interlocutory work, responsible for the transfer of the booking fee to the person appointed to act in the arbitrator's place. In the event of death, the personal representative shall have corresponding responsibility.

(E) Security for tribunal costs

10. Without prejudice to the rights provided for in sections (A), (B) and (D) above, a tribunal is entitled to reasonable security for its estimated costs (including its fees and expenses) up to the making of an award. In calculating such amount credit will be given for any booking fees paid. A tribunal is entitled to request security whenever it considers it appropriate to do so, and may stipulate when such security is to be provided. Where a tribunal has not stipulated for security to be provided at an earlier date, it shall be provided no later than 21 days before the start of any oral hearing intended to lead to an award or, in the case of a documents alone arbitration, no later than immediately before the tribunal starts reading and drafting with a view to producing an award.

11. If a tribunal exercises the right to request security under paragraph (10) above, it shall advise the parties of its total estimated costs no later than 28 days before the security must be in place.
12. Requests for security hereunder shall be addressed to the party requesting any oral hearing, and to the claimant (or to the party requesting an award) in the case of a documents-only arbitration unless a tribunal considers, in the exercise of its discretion, that security should be provided in whole or in part by another party. If a party directed to provide security fails to provide such security within the time set any other party will be given 7 days' notice in which to provide it, failing which the tribunal may suspend its work pending provision of security, and vacate any hearing dates or, in the case of a documents alone arbitration, refrain from reading and/or drafting.
13. For the avoidance of doubt, in any case where time does not allow for the periods in paragraphs 10, 11 and 12 above, the tribunal shall be entitled at its discretion to set such shorter periods as are reasonable in the circumstances.
14. The form of such security shall be in the tribunal's discretion. Normally an undertaking from an appropriate firm of lawyers or a P&I or Defence Association will be acceptable. However, a tribunal may require a cash deposit or bank guarantee. Any undertaking or guarantee must undertake to pay the sum covered no later than 5 weeks after publication of the relevant award and shall not be conditional upon the award being released (unless the costs thereof are wholly covered by the relevant security).
15. No estimate given hereunder shall prejudice the tribunal's entitlement to its reasonable fees and expenses.
16. Any security provided or payment made in accordance with these provisions shall be without prejudice to ultimate liability as between the parties for the fees and expenses in question, and to the parties' joint and several liability to the tribunal until all outstanding fees and expenses have been paid in full.
17. For the avoidance of doubt;
 - (a) a failure to provide security for a tribunal's estimated costs in accordance with an order or direction of a tribunal constitutes, for the purpose of these Terms, a failure to comply with an order or direction which would enable a tribunal to make a peremptory order pursuant to section 56(1) of the Ordinance, and
 - (b) if a claimant fails to comply with a peremptory order to provide such security, a tribunal may make an award dismissing the claimant's claim pursuant to section 56(4) of the Ordinance.

(F) Accounting for payments made on account

18. Where the case proceeds to an award, or is settled after the start of the hearing, appropriate credit will be given for any amounts paid under sections (B), (D) or (E) above in calculating the amount to be paid in order to collect the award, or as the case may be, the amount payable to the tribunal upon settlement of the case.

(G) Accommodation

19. (a) If accommodation and/or catering is arranged by the tribunal, the cost will normally be recovered as part of the cost of the award, but where a case is adjourned part-heard or in other special circumstances, the tribunal reserves the right to direct that the cost shall be provisionally paid by the parties in equal shares (or as the tribunal may direct) promptly upon issue of the relevant account.

(b) Prior to booking accommodation and/or catering the tribunal may, if it thinks fit, request that it be provided with security sufficient to cover its prospective liabilities in respect thereof.

20. If accommodation is reserved and paid for by the parties and it is desired that the cost incurred be the subject of directions in the award, the information necessary for that purpose must be furnished promptly to the tribunal.

The Second Schedule

Arbitration Procedure

1. The normal procedure requires service of submissions by each party as set out below. Whether the submissions are informal or are framed more formally as statements of case, they must;
 - (a) set out the position of the parties in respect of the issues that have arisen between them as clearly, concisely and comprehensively as possible;
 - (b) be contained in numbered paragraphs;
 - (c) be accompanied by paginated supporting documentation relevant to the issues between the parties, other than documents which accompanied previous submissions.

Such documentation shall be served on all other parties.

A party intending to serve supporting documentation upon the tribunal must check with the tribunal whether it wishes to receive copies of all or some of the documentation at that stage. The aim should be for a tribunal to see enough documentation to be able to identify the issues in the case but not to be burdened with, for instance, copy invoices at the commencement of a reference.

2. An allegation that relevant documentation has not been disclosed with any submissions will not normally be a reason for allowing additional time for service of submissions in response. However a failure at the appropriate stage to disclose relevant documentation may be penalised in costs.
3. Claim submissions are normally to be served within 28 days after appointment of a sole arbitrator or, if the tribunal is to consist of more than one arbitrator, within 28 days after appointment of the second arbitrator.
4. Save in exceptional cases (e.g. applications for interim or partial final awards for sums which are said to be indisputably due and owing) defence and, if applicable, counterclaim submissions are to be served within 28 days after service of the claim submissions.
5. (a) Submissions in reply are to be served within 14 days after service of defence submissions unless there is also a counterclaim, in which case 28 days shall be allowed for submissions in reply and defence to counterclaim.

(b) Any submissions in reply to the defence to counterclaim are to be served within 14 days thereafter.

(c) If a party wishes to serve any further submissions, it should apply to the tribunal for permission to do so, explaining why such further submissions are necessary.

6. Bare denials in defence and subsequent submissions in response to an allegation will not be acceptable. If an allegation is denied, reasons must be given and if appropriate a positive contrary case put forward.
7. Applications for security for costs will not normally be considered until after service of defence submissions. Any application must be accompanied by a justification for it and a breakdown of the costs which it is reasonably anticipated will be incurred up to the stage of the reference for which security is sought. In the light of section (E) of the **First Schedule** it will not be appropriate for security for costs to include any provision for the costs of a tribunal, except in relation to costs already paid to a tribunal (or any member of a tribunal) by the party seeking security for costs, or in relation to costs of a tribunal in respect of which the party seeking security for costs has already provided security.
8. If a party wishes to obtain disclosure of certain documents prior to service of submissions, it must seek the agreement of the other party, failing which it should make an appropriate written application to the tribunal, explaining the rival positions of the parties in question.
9. Subject to any specific agreement between the parties or ruling from the tribunal, the parties are entitled at any stage to ask each other for any documentation that they consider to be relevant which has not previously been disclosed. Parties will not generally be required to provide broader disclosure than is required by Hong Kong court rules of procedure. Generally, a party will only be required to disclose the documents on which it relies or which adversely affect its own case, as well as documents which either support or affect the other party's case.
10. In appropriate cases the tribunal may order the service of a statement of truth signed by a properly authorised person or an officer of the party on whose behalf it is served confirming the accuracy of any submissions or of any declarations that a reasonable search for relevant documentation has been carried out.
11. (a) Unless the parties agree that the reference is ready to proceed to an award on the exclusive basis of the written submissions that have already been served, both parties must complete the Questionnaire set out in the **Third Schedule** within 14 days of the service of the final submissions as set out in paragraph 5 above. Every such Questionnaire must contain the declaration set out at the end thereof, which shall be signed by a properly

authorised officer of the party on whose behalf it is served. Completed Questionnaires must be served on the tribunal and all other parties. Unless the parties agree, the tribunal will then establish the future procedural course of the reference, either on the basis of the Questionnaires and any other applications made to it in writing or, if appropriate, after a preliminary meeting.

(b) In order to avoid uncertainty and minimise delay following an exchange of Questionnaires, a tribunal will normally allow the parties 21 days from the date of such exchange to agree future procedural directions, or to make submissions regarding such directions, following which period a tribunal will make such directions, or take such action regarding the future conduct of the proceedings, as it considers appropriate on the basis of the material before it, including the Questionnaires.

12. Subject to contrary agreement of the parties or an appropriate ruling by the tribunal, the parties will be required to exchange statements of evidence of fact (whether to be adduced in evidence under the Evidence Ordinance Cap.8 or to stand as evidence in chief) as well as expert evidence covering areas agreed by the parties or ordered by the tribunal within a time scale agreed by the parties or ordered by the tribunal. Statements of evidence of fact or expert evidence that have not been exchanged in accordance with these provisions will not be admissible at a hearing without permission of the tribunal.
13. Parties and tribunals should actively consider ways in which to make the arbitral process as cost effective and efficient as possible. In doing so, they should take account of the guidelines as set out in the Checklist set out in the Fourth Schedule, in relation to matters such as: the preparation of factual and expert evidence; the use of documents; skeleton arguments, and transcripts.
14. Any application to a tribunal for directions as to procedural or evidential matters should, save in exceptional circumstances, be made only after the other parties have been afforded an opportunity to agree, within 3 working days, the terms of the directions proposed. Any application that has not previously been discussed with the representatives of such other parties and that does not fully record the rival positions of the parties will normally simply be rejected by a tribunal. If a party has been requested by another party to discuss and agree any application, but has failed to respond within 3 working days (or such other time as may be allowed by the tribunal), the tribunal will not seek to elicit the comments of that party or make orders conditional on objections not being received.
15. Parties should not routinely copy to the tribunal exchanges between them unless and until a ruling is required or there is other good reason to keep it informed.
16. Communications regarding procedural matters should be made expeditiously.

17. Tribunals will not acknowledge receipt of correspondence despite any request to that effect unless there is particular reason to do so.
18. Only in the most exceptional circumstances can it be appropriate for a party to question the terms of any procedural order made or seek a review of it by the tribunal.
19. (a) If a tribunal considers that unnecessary costs have been incurred at any stage of a reference, it may on the application of a party or, after giving the parties the opportunity to comment, of its own volition make rulings as to the liability for the relevant discrete costs. Unnecessary costs may be incurred by, e.g., inappropriate applications or appropriate applications inappropriately resisted, unnecessary communications, excessive photocopying or duplicated communications. Tribunals may order such costs to be assessed and paid immediately.

(b) A tribunal will be entitled, in exercising its discretion as to liability for costs, and in assessing costs, to take account of unreasonable or inefficient conduct by a party, including a failure to comply with the Checklist at the **Fourth Schedule**, and to take account of offers made without prejudice save as to costs. A tribunal may also take into account the costs estimates provided by both parties in the HKMAG Questionnaire.

(For the avoidance of doubt, the provisions of Order 22 of the Hong Kong Civil Procedure Rules, which deal with sanctioned offers and sanctioned payments and which are similar to the English High Court procedure known as Part 36 Offers, are not applicable to arbitrations conducted under these Terms, and paragraph (b) above is not intended to limit the matters which may be considered by a tribunal in the exercise of its discretion.)
20. A party should give prompt notice to other parties and to a tribunal of its instruction of lawyers or other representatives to represent it in an arbitration, and of any change in its representation. In the absence of exceptional circumstances, late instruction of legal or other representatives, or a change in representation, will not be considered as a valid ground for delaying the progress of an arbitration, nor as a valid ground for the adjournment of a hearing.
21. Where parties agree that an order or direction which is agreed between them shall be deemed to be an order of the tribunal, they must notify the tribunal of such agreement, and, unless otherwise directed by the tribunal, the agreed order or direction shall take effect as an order or direction of the tribunal, and shall be an order or direction of the tribunal for the purpose of section 53 of the Ordinance (which deals with the powers of a tribunal in the case of a party's default).
22. Parties are at liberty to apply to a tribunal for directions which differ from those contemplated above, but any such application should clearly explain why it is appropriate for some different course to be followed.

The Third Schedule

Questionnaire

(Information to be provided as required in paragraph 11 of the **Second Schedule** to the HKMAG Terms)

Note: The Questionnaire is an important document in the arbitration process. It provides an opportunity to consider the issues that have been raised in the submissions, and the most appropriate way of progressing an arbitration.

The following requirements regarding the Questionnaire should be observed;

(a) where more than one question is raised in a section of the Questionnaire, separate answers should be provided for each question;

(b) when responding to Question 13 (as to witnesses of fact and experts), parties should state:

(i) whether it is considered necessary for all factual witnesses and experts to give evidence in person, or

(ii) whether it would be necessary or desirable for some witnesses to give evidence by video link or similar means;

(c) when responding to Question 16(a) (as to the estimated costs of each party), a breakdown of the figures should be provided, identifying separately, amongst other things the actual or estimated fees of: solicitors/consultants (and the number anticipated to be required), Counsel (and specifying whether senior or junior Counsel will be involved), and experts, including relevant charge out rates

As many as possible of the procedural issues should be agreed by the parties. If agreement has been possible, then please make that clear in the answers to the Questionnaire.

1. What, briefly, is the nature of the claim (e.g. “unsafe port” or “balance of accounts dispute”)?
2. What is the approximate quantum of the claim?

3. What is the approximate quantum of any counterclaim?
4. What are the principal outstanding issues requiring determination raised by the claim and any counterclaim?
5. Are any amendments to the submissions required?
6. Are any of the issues in the reference suitable for determination as a preliminary issue?
7. Are there any areas of disclosure that remain to be dealt with?
8. Would a preliminary meeting be useful, and if so at what stage?
9. What statement evidence is it intended to adduce, from whom and when? Which issues will be addressed by statement evidence? Is it possible to limit the length of statements or to avoid duplication of evidence? If there is to be a hearing what oral evidence will be adduced?
10. What expert evidence is it intended to adduce by way of reports and/or oral testimony and by when will experts' reports be exchanged? Which issues will be addressed by expert evidence? Can the length of experts' reports be limited? Unless the parties agree or the tribunal rules that a meeting between experts would not be appropriate, when should the meeting take place and when should a record of that meeting be provided?
11. What is the suggested timetable for the close of submissions if the case is to go ahead on documents alone or for a hearing if that is appropriate?
12. What is the estimated length of the hearing, if any?
13. Which witnesses of fact and experts is it anticipated will be called at the hearing, if there is to be one? Will interpreters be required at the hearing for any witnesses?
14. Is it appropriate for a hearing date to be fixed now? (Save in exceptional circumstances, a hearing date will not be fixed until the preparation of the case is sufficiently advanced to enable the duration of the hearing to be properly estimated; this will normally be after disclosure of documents has been substantially completed.)
15. Is it contemplated that the hearing should take the form of a virtual, or semi-virtual hearing (e.g. being conducted wholly or partly by video conference)? If so, what arrangements are contemplated?
16. (a) What are the estimated costs of each party
 - (i) up to completion of this Questionnaire; and

(ii) through to the end of the reference?

Note: a breakdown should be given, identifying separately, among other things, the actual/estimated fees of solicitors/consultants (and the number anticipated to be required), Counsel (and specifying whether senior or junior Counsel will be involved), and experts, including relevant charge out rates.

(b) Is this an appropriate case for the tribunal to cap costs, and if so why and at what level?

17. Does any party consider that it is entitled to security for costs and, if so, in what amount?

18. Are there any orders which are now sought?

19. Have the parties considered whether mediation might be worthwhile?

DECLARATION (TO BE SIGNED BY A PROPERLY AUTHORISED OFFICER OF THE PARTY COMPLETING THE QUESTIONNAIRE: SEE SECOND SCHEDULE, PARA. 11(a)):

On behalf of the [claimant/respondent] I, the undersigned [name] being [state position in organization] and being fully authorised to make this declaration, confirm that I have read and understood, and agree to, the answers given above. I also understand that in the event of the arbitration settling or being otherwise terminated, I will immediately notify the tribunal.

Signed and dated...

The Fourth Schedule

Checklist

The following guidelines are issued with a view to making the decision-making process as cost-effective and efficient as possible. Those objectives should be borne in mind in applying them.

Where a virtual, or semi-virtual, hearing is to take place, parties should follow the Guidelines for the Conduct of Virtual and Semi-Virtual Hearings (as set out in the **Sixth Schedule**, and published on HKMAG website), subject to any written modifications issued by HKMAG or ordered by the tribunal.

1. Arbitrations on documents alone

- (a) The parties should consider at the outset whether the case is suitable to be decided without an oral hearing (see **Second Schedule** paragraph 11(a)).
- (b) If the arbitration is to be decided on documents alone, the parties should consider how best to present the case to the tribunal. In particular, they should consider amalgamating the documents which each party has provided into a single chronological bundle. They should also take into account such matters referred to in paragraphs 2-4 below as may be relevant in the particular case.

2. Factual evidence

- (a) A witness statement should ideally be in the witness' own words. It should only contain evidence as to matters of fact which need to be proved by the evidence of the witness in relation to one or more issues of fact to be decided, and about which the witness has personal knowledge or recollection. A witness statement should never be used to argue a case.
- (b) Witness statements should always be in numbered paragraphs, and should contain margin cross- references to where documents appear in other bundles.
- (c) Consideration should be given to supplementary witness statements picking up the paragraph numbering from the initial statement, so that the two can be read as one continuous document.
- (d) The parties should seek to agree well in advance of any hearing whether or not the witness should be required to give oral evidence.

(e) The parties should seek to agree whether all or some of a witness' statement may stand as evidence in chief. Unless otherwise agreed or ordered by the tribunal, the witness statement shall stand as evidence in chief.

(f) If a witness is to give oral evidence through or with the assistance of an interpreter, a copy of that witness' statement in his own language should be available. (The same applies to any critical document upon which the witness may be examined). Parties are expected to deal with arrangements for interpreters, and to seek to agree the identity of interpreters, well in advance of a hearing.

(g) In a substantial case involving a number of witnesses, it makes sense to have separate bundles of the claimants' and respondents' witness statements respectively.

3. Expert evidence

(a) Paragraphs 2(a)-(f) above are repeated.

(b) The reports of the claimants' and respondents' respective experts should normally be in separate bundles, unless they are not voluminous.

(c) If the reports annex documents (and this practice is to be discouraged, save as to documents adduced by experts themselves), documents that appear elsewhere should not be duplicated here.

(d) Experts should be instructed that, when giving evidence, they should ensure that the version of any report or document to which they may wish to refer bears the same numbering as that before the tribunal. Reports should contain margin cross-references to where documents appear in other bundles.

(e) Without prejudice to the tribunal's power to require experts to give evidence simultaneously ("hot-tubbing"), the parties should seek to agree whether this would be appropriate.

(f) The party instructing an expert must draw the expert's attention to the Code of Conduct for Expert Witnesses contained in Appendix D to the Rules of the High Court of Hong Kong (Cap. 4A) available at:

www.elegislation.gov.hk/hk/cap4A

Each expert report must contain a Declaration in terms of the Code.

4. Documents for hearing

(a) Serious effort must be made to ensuring the elimination of unnecessary documents and the inclusion of only one copy of any document (with particular attention to emails). Only documents relevant to the issues (as distinct from loosely touching on the case) should be included.

(b) Where documentation is at all substantial, a core bundle should normally be produced, containing the documents essential to the disputes. Sufficient space should be allowed for the insertion of as many pages again as it presently contains. Normally it will be appropriate for documents in the core bundle to have the same page numbering as in the main bundle sequence where such documents appear.

(c) Consideration must be given to the orderly presentation of documents, e.g. by topic or chronologically. The default position is that documents should be presented chronologically. Repetition of emails in bundles is to be avoided, so far as possible. Thus, email “chains” should either be broken up into separate messages, paginated individually and in time order, or should incorporate a series of exchanges that do not occur elsewhere.

(d) Bundles should be paginated consecutively. Although flags or dividers can be useful in moderation, they should not replace or interrupt consecutive pagination and individual documents should not be separated by dividers unless they are very substantial. No 5cm-thick ring binder should contain no more than 300 sheets.

(e) Bundles should be clearly marked with a large letter or number on both the spine and the left-hand inside cover. Each bundle should have its own unique letter or number, i.e. wherever possible avoid A(1), A(2) etc., although such denominations may be appropriate where, e.g., what is effectively one bundle is divided because of size.

(f) Photographs should be reproduced to the highest possible quality in the bundles, and originals should be available at a hearing whenever possible.

(g) In a substantial case, consideration should be given to the tribunal receiving bundles in A5 rather than A4 format, but the tribunal must be consulted on any such proposal.

(h) Where an unstructured document is liable to be subject to close analysis, thought should be given to adding line or paragraph numbers.

(i) There should be no bundles of solicitors’ correspondence unless it is certain that such correspondence is going to be referred to at the hearing, in which event only what is relevant should be included.

(j) Section 5 of the **Sixth Schedule** applies to all hearings, unless the parties agree or the tribunal orders otherwise.

5. Skeleton arguments

(a) The parties should seek to agree whether skeleton arguments are to be exchanged consecutively or concurrently.

(b) Skeleton arguments should be in numbered paragraphs.

(c) The skeleton argument of the party who is opening the proceedings should;

(i) contain sufficient detail that no more than a brief oral presentation will be required;

(ii) be accompanied by a *dramatis personae*, chronology and agreed timetable for the presentation of argument and the calling of witnesses;

(iii) identify any documents or authorities which it is desired that the tribunal read in advance of the hearing; and

(iv) give an estimate of the amount of time which pre-reading is likely to involve.

(d) Assuming that the skeleton arguments and other documents relevant to the tribunal's understanding reach the tribunal no later than two working days before the hearing and do not involve an inordinate amount of time to absorb, the parties are entitled to assume that such have been read by the tribunal.

6. Transcripts

The parties must ask the tribunal whether they require printouts of the transcript. If they are printed, transcripts must be paginated consecutively, with dividers for each separate day, and printed on both sides of the paper.

The Fifth Schedule

Reconstitution of the tribunal

The following provisions are directed to avoiding delay which the parties or either of them consider unacceptable, but if both parties prefer to retain a tribunal as already constituted they remain free so to agree.

1. The governing factor will be the ability of the tribunal to fix a hearing date within a reasonable time of the 'expected readiness date' as notified by the parties on application for a date or, if they are not agreed as to the expected readiness date, within a reasonable time of whichever forecast date the tribunal considers more realistic.
2. For hearings of up to 10 days' estimated duration, what constitutes a reasonable time will (unless the parties apply for a date further ahead) be determined by reference to the estimated length of hearing as follows:

Estimated Duration	Reasonable Time
(i) Up to 2 days	3 months
(ii) 3-5 days	6 months
(iii) 6-10 days	10 months

"Relevant timescale" is used below to mean whichever of the foregoing periods is applicable and, in cases of more than 10 days' duration, such corresponding timescale as the tribunal may consider appropriate.

3. A sole arbitrator who is unable to offer a date within the relevant timescale will offer to retire and, if so requested by the parties or either of them, will retire upon being satisfied that an appropriate substitute appointment has been effected by the parties; in event of their disagreement, either party may request the President to make the necessary substitute appointment.
4. In all other cases, unless all members of the tribunal are able to offer a matching date within the relevant timescale;
 - (a) the tribunal will have regard to any agreed preference of the parties, but if there is no agreed preference the tribunal will fix;
 - (i) the earliest hearing date that can be given by any member(s) able to offer a guaranteed date within the relevant timescale;

(ii) if a guaranteed date within the relevant timescale cannot be offered by any member of the tribunal, the earliest date thereafter which can be guaranteed by any member(s) of the tribunal; on the basis, in either case, that any member then unable (by reason of a prior commitment) to guarantee the date so fixed will (unless that prior commitment has meanwhile cleared) retire by notice given six clear weeks prior to the start date.

(b) Upon notification of any such retirement an appropriate substitution will be effected as follows;

(i) If an original arbitrator retires the substitute shall be promptly appointed by that arbitrator's appointer or, failing such appointment at least 21 days prior to the start date the substitute will then be appointed by the umpire or third arbitrator or, if a third arbitrator has not yet been appointed, the substitute will be appointed by the President;

(ii) If an umpire or third arbitrator retires the substitute will be appointed by the original arbitrators.

5. For the purpose of Paragraph 4;

(a) "appropriate substitution" means appointment of a substitute able to match the hearing date established in accordance with sub-paragraph (a);

(b) "start date" means the first date reserved for the hearing;

(c) An umpire or third arbitrator will retain power to make any necessary substitution under sub- paragraph (b)(i) notwithstanding that the umpire or arbitrator may have given notice of retirement under sub- paragraph (a) and an original arbitrator will retain the like power under subparagraph (b)(ii).

6. An arbitrator who retires as mentioned above shall;

(a) be entitled to payment of fees and expenses incurred to the date of retirement within 7 days of delivery of his/her fee note; and

(b) incur no liability to any party by reason thereof.

The Sixth Schedule

Guidelines for the conduct of virtual and semi-virtual hearings

For the purpose of this Schedule, the “**Host**” is the person or organisation that operates the technological platform through which the remote hearing is organised and broadcast. This may be an independent third party, an arbitral administrative organisation or one or more of the firms of lawyers involved in the arbitration.

1. Early preparation for the hearing

The parties’ representatives should, so far as possible, confirm the following in advance of the hearing:

1.1 Counsel, solicitors or legal representatives, all witnesses, interpreters and transcribers have tested the technology to be employed for the hearing and practised using it. Ideally, a “practice run” should be conducted shortly before the hearing with all these participants and the tribunal, to ensure that the relevant technological requirements for the hearing can be met.

1.2 The platform and technologies to be used are adequate and have been satisfactorily tested by all participants.

1.3 Where suitable, arrangements have been made for an appropriate levels of IT support for the hearing (e.g. from the solicitor firms or from a third party) to provide services such as hosting the meeting and arranging for participants to be sent to “break out” rooms, but also to assist if technical problems occur during the hearing.

1.4 Witnesses and interpreters have received hard copy and/or electronic bundles well in advance of the hearing.

1.5 The parties have considered contingency measures in case of outages and/or other technical failures. The parties must endeavour to ensure that there are adequate backups in place should the virtual hearing fail, including teleconferencing or alternative methods of video/audio conferencing.

1.6 All participants, including any third-party technical support, are to be bound by the traditional confidentiality undertaking. Any other confidentiality issues (by reason of the hearing being conducted virtually) are to be raised before the hearing.

1.7 No participant shall record the hearing unless the tribunal gives approval in advance. Arrangements may be made for recording if agreed and/or ordered by the tribunal, as part of the organisation of the virtual hearing

1.8 The parties must decide whether hearing bundles will be prepared in hard copy and/or electronically. If the bundles are to be produced electronically, paragraph 5 contains suggestions as to how these should be set out.

2. In advance of the hearing day

The Claimant's legal representatives are to:

2.1 Circulate a contact sheet listing all the participants (including witnesses, interpreters and transcribers) by name, organisation, time zone indicated by reference to Hong Kong Time and (except for witnesses, interpreters and transcribers) email addresses and landline/mobile telephone numbers.

The contact sheet must state telephone numbers and email addresses for the use of any person that has technical or connection issues during the hearing.

Contact details (telephone numbers and email addresses) for any IT support must also be included in the contact sheet.

2.2 Arrange for all relevant participants to receive an invitation (link, meeting i.d., password) to the hearing each day in advance of the start-time.

2.3 Provide the tribunal with a detailed hearing schedule (to be agreed, if possible), taking account of the need to;

- (a) co-ordinate the participants in the hearing;
- (b) provide for appropriate breaks during hearing days, and
- (c) allow for possible technical problems during the hearing.

3. Etiquette in-hearing

3.1 At the start of the hearing each day, every participant will be asked to identify themselves to the Host of the meeting and confirm the names of any person in the room with them. Any person not listed on the contact sheet will only be allowed into the meeting if the Host receives confirmation from one of the parties that that person is permitted to join. (Any disagreement as to

whether a participant is permitted to join should be raised with the tribunal). Upon permission being given to attend, the relevant person's name will be added to the contact sheet by the Claimant who will re-circulate an updated contact list.

3.2 Only participants with speaking roles should be visible and audible; all participants should self-mute when not speaking.

3.3 Connection issues (such as screen freezing or deterioration in quality of the connection) can sometimes be resolved by the affected participant disconnecting and re-connecting.

3.4 During cross-examination, the tribunal might require the legal representatives of the witness to be visible (but muted).

3.5 All participants with non-speaking roles may be muted by the Host (and should self-mute in any case) and may be asked to switch off their video to avoid distraction and using too much bandwidth. Participants should take steps in advance so as to avoid or at least minimise disruptions that can interfere with the smooth-running of the hearing (e.g. barking dogs). Any participant who is muted and has their video switched off will still see and hear what is taking place in the hearing room.

3.6 Any participant other than a speaker but who wishes to speak, should either put up their hand (physically) and/or utilise the virtual 'raise hand' feature (if implemented) to alert the meeting Host/tribunal, and wait an invitation to speak. Interruptions not complying with these requirements may be muted.

3.7 If a party's connection is interrupted, the person disconnected should email everyone listed on the contact sheet or use the telephone a number listed on the contact sheet made available at the start of the hearing. Even if it is not possible to re-connect promptly, the party affected must await the instructions of the tribunal.

3.8 The tribunal may terminate the virtual hearing if the tribunal deems the hearing so unsatisfactory as to be unfair to any party to continue.

4. Oral testimony from witnesses

4.1 Witnesses, while giving evidence, must not;

- (a) communicate with third parties;
- (b) be prompted, or
- (c) consult documents other than those in the agreed bundles.

(If an e-bundle is utilised, it may be helpful for a witness to have two screens, one for the video conference, and one for documents).

4.2 (a) When witnesses give evidence, in addition to the other participants being able to view the witness, arrangements must be made for the room in which the witness is situated to be visible (e.g. by positioning a camera behind the witness if the witness has 2 cameras, or for the witness at the start of giving evidence and if required by the tribunal at intervals, to turn the camera 360° to show the whole room) so if anyone else is in the room with a witness they can be seen.

(b) The witness shall have no electronic devices, or other potential prompts, apart from the screens that display the virtual hearing and the electronic documents, if any.

(c) It may be appropriate for a camera to be positioned behind the witness to confirm that the screen(s) used for the virtual hearing is not also being utilised to prompt the witness.

(d) The witness will be asked to confirm that he/she will comply with each of these conventions at the start of each examination.

4.3 The chain of interactions from counsel-interpreter-witness-interpreter and back to counsel are the events most likely to result in over-speaking and repetition. The parties will devise a practical protocol to minimise this problem (e.g. utilising short sentences and posing short questions).

4.4 Witnesses must leave their mobile telephones and/or other communication devices outside the room when giving evidence.

5. Electronic bundles

5.1 (a) Bundles should be contained in a single PDF, but if impractical (because of numbers of documents) a PDF must consist of a maximum of 1,000 pages.

(b) If possible, the PDF should enable word-searches.

(c) (i) For ease of reference, PDFs should contain index entries and (where appropriate) bookmarks.

(ii) The indexes or bookmarks should bear descriptions corresponding with tabs inserted into hard copy bundles.

N.B. Each arbitration will be different, but usually it will be appropriate to give a description such as 'Mr X's witness statement, contract', etc, rather than Tab 1, Tab 2 etc.

(d) The electronic bundle should be paginated from first to last.

(e) The electronic bundle and any hard copy bundle must share identical pagination. PDFs must have internal numbering displayed at the top of the PDF page matching the pagination number in the hard copy bundle, (i.e. by paginating hard copy files so that each tab starts at 1; or, by using a PDF editing programme [e.g. Nuance or Adobe Acrobat Pro] whereby the internal number displayed in the PDF viewer matches the pagination).

(f) (i) Hyperlinks and bookmarks should be used. The contents page should contain hyperlinks to particularly relevant documents (e.g. the contract).

(ii) Bookmark functions can be used to locate documents within the PDF file and be labelled, if they are not already identified as being particular 'tabs'.

(g) A separate non-PDF electronic bundle might be necessary (to refer to metadata or other embedded data or to videos).

5.2 During the hearing, advocates should endeavour to refer only to documents in electronic bundles where necessary to minimise the number of PDFs open concurrently.

5.3 The parties should agree and use a core bundle where electronic bundles are being used, unless the number of documents in the bundles makes this unnecessary.

5.4 It may be appropriate in some cases to have a 'document management provider', (e.g. one of the solicitor's firms or a third party) to display on each participant's screen any document cited during the hearing.

5.5 (a) If documents are introduced during the hearing (whether 'handed up' electronically by the 'chat' function of Zoom or email), they must be included in the hearing bundles.

(b) The documents must be loaded immediately;

(i) being printed and placed in the hard copy 'inserts' folder or, with functions such as Adobe Acrobat Pro, incorporated into the electronic bundles); or

(ii) within a separate electronic bundle for those inserts provided that day or one single electronic file into which all inserts handed-up during the hearing are placed.

N.B. A new bundle incorporating inserts may be inappropriate as participants will probably have marked-up existing bundles

6. Screens

6.1 (a) Participants should consider the number of screens required for the hearing, such as whether or not there is a document management provider or a real-time transcript.

(b) It may not be necessary to have more than one screen for each of the requirements listed, but more than one will probably be required for most of them.

(c) Screens will be required for;

(i) Connecting the participant to the video feed;

(ii) Accessing and viewing real-time transcripts;

(iii) The document management provider displaying documents to be viewed during the hearing (either on a separate screen or sharing a screen which has the video feed), and

(iv) Viewing documents referred to during the hearing.

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