

DECISION OF THE JOINT EFTA-HONG KONG, CHINA COMMITTEE  
(HEREINAFTER REFERRED TO AS "THE JOINT COMMITTEE")

No. 2 of 2017

(Adopted on 31 October 2017)

ESTABLISHING THE MODEL RULES OF PROCEDURE FOR THE  
ARBITRATION PANEL

THE JOINT COMMITTEE,

HAVING regard to the Free Trade Agreement between the EFTA States on the one part, and the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "Hong Kong, China"), on the other, signed in Schaan on 21 June 2011, hereinafter referred to as "the Agreement",

NOTING that paragraph 1 of Article 10.6 of the Agreement provides that the Joint Committee shall adopt the Model Rules of Procedure for the arbitration panel,

DECIDES:

1. The Model Rules of Procedure for the arbitration panel as set out in the Annex to this Decision are adopted.
  2. This Decision shall enter into force on the date of its adoption.
  3. The Secretary-General of the European Free Trade Association shall deposit the text of this Decision with the Depositary.
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## **MODEL RULES OF PROCEDURE FOR ARBITRATION PANEL**

### **SECTION I**

#### **ARBITRATORS**

##### Article 1

##### *Self-Disclosure Obligations for Candidates*

1. A candidate shall disclose in writing to the Parties to the dispute any interest, relationship or matter that is likely to affect or give rise to justifiable doubts as to the candidate's independence or impartiality. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and circumstances.
2. Candidates shall always disclose in writing to the Parties to the dispute:
  - (a) any personal financial interest or any financial interest of their employer, partner, business associate or family member:
    - (i) in the arbitration panel proceedings or their outcome; and
    - (ii) in administrative proceedings, domestic court proceedings, other arbitration panel proceedings or any other proceedings, that involve issues under consideration in the arbitration panel proceedings at hand;
  - (b) any past or existing financial, business, professional, family or social relationship with any interested party in the proceedings or its representatives or advisors, or any such relationship involving a candidate's employer, partner, business associate or family member; and
  - (c) public advocacy or legal or other representation concerning an issue in dispute in the arbitration panel proceedings or involving the same goods or services.

##### Article 2

##### *Duties of Arbitrators*

1. Upon selection, an arbitrator shall perform his or her duties thoroughly and expeditiously, and with fairness and diligence, throughout the course of the arbitration panel proceedings.

2. An arbitrator shall consider, in accordance with the terms of reference for the arbitration panel under paragraph 3 of Article 10.4 of the Agreement, only those issues that are raised in the proceedings and that are necessary for a ruling and shall not delegate this duty to any other person.
3. An arbitrator shall be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be, or appear to be, influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party to the dispute or fear of criticism.
4. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.
5. Once appointed, and throughout the arbitration panel proceedings, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to under Article 1 and shall disclose them in writing to the Parties to the dispute.
6. Any Party to the dispute or arbitrator who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by an arbitrator which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time submit such evidence to the arbitration panel and the Parties to the dispute in a written statement specifying the relevant facts and circumstances.

## **SECTION II**

### **PROCEEDINGS**

#### Article 3

##### *Operation of Arbitration Panels*

1. The chair of the arbitration panel shall preside at all of its meetings. An arbitration panel may delegate to the chair the authority to make administrative and procedural decisions related to the arbitration panel proceedings. The chair shall be responsible for organising the proceedings, in particular the hearings, unless otherwise agreed by the Parties to the dispute.
2. Except as otherwise provided in these rules, the arbitration panel may conduct its activities by any means, including telephone, facsimile, computer links, video conferencing or e-mails.

3. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants, administrative staff, interpreters and translators to be present during such deliberations.
4. The drafting of any decision or ruling shall remain the exclusive responsibility of the arbitration panel.
5. Where a procedural question arises that is not covered by these rules, an arbitration panel may adopt an appropriate procedure that is consistent with the Agreement.

#### Article 4

##### ***Commencing the Arbitration***

1. Unless the Parties to the dispute otherwise agree, they shall meet with the arbitration panel within 15 days following the establishment of the arbitration panel in order to determine such matters as the Parties to the dispute or the arbitration panel deem appropriate, including the administration of and the timetable for the arbitration panel proceedings, deadlines for written submissions, the remuneration and expenses that shall be paid to the arbitrators, as well as working procedures for hearings.
2. The arbitration panel shall, as soon as practicable and whenever possible within five days after the meeting with the Parties to the dispute, determine the timetable for the arbitration panel proceedings.

#### Article 5

##### ***Written Submissions***

Each Party to the dispute shall have the right to provide initial and rebuttal written submissions.

#### Article 6

##### ***Hearings***

1. Subject to paragraph 3 of Article 10.6 of the Agreement, the chair shall determine the location, date and time of the hearing in consultation with the Parties to the dispute and the other members of the arbitration panel. The Parties to the dispute shall be notified in writing thereof.
2. Unless any of the Parties to the dispute disagrees, the arbitration panel may decide to convene additional hearings or not to convene a hearing at all.
3. All arbitrators shall be present at all hearings.

4. No later than five days before the date of a hearing, each Party to the dispute shall deliver to the other Party to the dispute and the arbitration panel a list of the names of its representatives or advisors who will be attending the hearing together with a list of any witnesses that will participate.
5. The arbitration panel may decide to hold any part of the hearing in closed session if the Parties to the dispute agree. In such cases, the following persons may attend:
  - (a) representatives of a Party to the dispute;
  - (b) advisors of a Party to the dispute; and
  - (c) necessary personnel to assist in the arbitration panel proceedings including interpreters, translators, court reporters and arbitrators' assistants.
6. The arbitration panel may direct questions to anyone participating at the hearing at any time during a hearing.
7. The hearings shall be conducted so that the complaining Party and the Party complained against are afforded equal time. In addition to presenting their arguments, they shall be offered the possibility of presenting rebuttal arguments.
8. The arbitration panel shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties to the dispute.
9. Within 15 days after the date of the hearing, each Party to the dispute may deliver a supplementary written statement responding to any matter that arose during the hearing.

#### Article 7

##### ***No ex parte Communication***

1. The arbitration panel shall not meet or discuss matters under consideration with a Party to the dispute in the absence of the other Party to the dispute.
2. No arbitrator shall discuss matters under consideration with any or all Parties to the dispute in the absence of the other arbitrators.

#### Article 8

##### ***Questions in Writing***

The arbitration panel may at any time during the arbitration panel proceedings address questions in writing to the Parties to the dispute. Each of the Parties to the

dispute shall receive a copy of any questions put by the arbitration panel and the written replies thereto. The Party to the dispute that was not the addressee of the questions shall be given the opportunity to provide written comments on the reply of the other Party to the dispute within ten days after the date of receipt.

#### Article 9

##### ***Resignation, Removal or Inability to act of Arbitrators***

If an arbitrator resigns, is removed or is unable to act, the arbitration panel shall, after the appointment of a new arbitrator and after consulting the Parties to the dispute, decide on any necessary modifications to their working procedures or timetable, including whether a hearing should be repeated in whole or in part.

#### Article 10

##### ***Procedural or Administrative Adjustments***

Unless otherwise agreed by the Parties to the dispute, an arbitration panel may, in consultation with the Parties to the dispute, modify any time period established pursuant to Article 10.11 of the Agreement and these rules and make such other procedural or administrative adjustments as may be required in the arbitration panel proceedings. Prior to the consultation with the Parties to the dispute, the arbitration panel shall inform the Parties to the dispute of the reasons for the modification or adjustment with an indication of the period or adjustment needed.

### **SECTION III**

#### **GENERAL PROVISIONS**

#### Article 11

##### ***Notifications***

1. A written submission, request, notice or other document shall be considered received when it has been delivered against receipt, registered post, courier, facsimile, electronic transmission or any other means of telecommunication that provides a record of the receipt thereof.
2. Written communications, including any written submission, request, notice or other document, shall, at the same time as it is submitted to the arbitration panel, be transmitted to all Parties to the dispute. A copy of the written communication shall be provided in electronic format.

3. Minor errors of a clerical nature in any written submission, request, notice or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

## Article 12

### ***Confidentiality***

1. Everyone involved in the arbitration panel proceedings, including the Parties to the dispute, the arbitrators and any attendees of the hearing, shall treat as confidential any information submitted to the arbitration panel designated as confidential.
2. During open hearings and where a Party to the dispute runs the risk of disclosing confidential information, adequate measures shall be adopted to maintain the confidentiality of such information.
3. Where a Party to the dispute submits a confidential version of its written submissions to the arbitration panel it shall, at the request of the other Party to the dispute, also provide the arbitration panel with a non-confidential summary of the information contained in its submissions that could be disclosed to the public, no later than 15 days after the hearing.
4. Nothing in these rules shall preclude any Party to the dispute from disclosing statements of its own positions to the public.

## Article 13

### ***Third Party Participation***

These rules shall apply *mutatis mutandis* to any Party participating in the arbitration panel proceedings pursuant to paragraph 5 of Article 10.4 of the Agreement, unless otherwise specified in the Agreement or these rules.

## Article 14

### ***Language***

1. The language of the arbitration panel proceedings shall be English.
2. Written submissions, documents, oral arguments or presentations at the hearings, initial and final reports of the arbitration panel, as well as all other written or oral communications between the Parties to the dispute and between the Parties to the dispute and the arbitration panel shall be in English.

## Article 15

### *Calculation of Time Periods*

1. Unless otherwise specified, all time periods laid down in Chapter 10 of the Agreement and these rules shall be calculated from the day following the act or fact to which they refer. If the last day of such period is a non-working day in the Party of the addressee, the period is extended to the next working day. The Parties to the dispute shall provide information on their respective non-working days during the meeting referred to in paragraph 1 of Article 4 or when they join or participate in the arbitration panel proceedings.
2. Where a Party to the dispute receives a document on a date other than the date on which the same document is received by the other Party to the dispute, a time period depending on such receipt shall be calculated from the later date.

## Article 16

### *Experts*

At the request of a Party to the dispute or on its own initiative, the arbitration panel may seek information and technical advice from any individual or body which it deems appropriate. The Parties to the dispute shall be informed in writing thereof. Any information or technical advice so obtained shall be submitted to the Parties to the dispute for comment.

## Article 17

### *Costs*

1. The costs of arbitration shall be borne by the Parties to the dispute in equal shares, while the individual costs of the Parties to the dispute shall be borne by each of the Parties to the dispute. The arbitration panel may, however, decide that the costs be distributed differently taking into account the particular circumstances of the case.
2. Unless otherwise agreed by the Parties to the dispute, the term “costs of arbitration” shall include:
  - (a) remuneration of the arbitrators, which shall normally conform to WTO standards;
  - (b) travel and other expenses incurred by the arbitrators;
  - (c) costs of expert advice and of other assistance required by the arbitration panel;
  - (d) fees and expenses of the appointing authority or the authority deciding a challenge; and



- (e) any other items decided by the arbitration panel in consultation with the Parties to the dispute.

3. The costs of arbitration shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.

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