

**ARBITRATION RULES FOR THE CHINESE EUROPEAN ARBITRATION
CENTRE (CEAC) IN HAMBURG**

(CEAC HAMBURG ARBITRATION RULES)

OR

(CEAC RULES)

PRELIMINARY REMARK

The UNCITRAL Arbitration Rules which are the basis of these CEAC Hamburg Arbitration Rules are in a process of revision. The following version is based on the existing rules of 1976 and will have to be modified once the revision process will have been completed. According to § 3 sub-paragraph 2 sentence 3 of the Articles of Association for the Chinese European Arbitration Centre GmbH (“CEAC GmbH”), the General Assembly of the CEAC GmbHⁱ will issue the first set of rules as internationally negotiated. (It has such competence until the Advisory Board of the CEAC GmbH is duly installed).

As soon as the revised UNCITRAL Arbitration Rules will have been adopted, the Advisory Board of the CEAC GmbH will have the task to decide whether further adaptations are necessary.ⁱⁱ

Further, it is intended to produce a **Consolidated Version** of these Rules which shall include the necessary amendments to and the current version of the UNCITRAL Arbitration Rules.

In addition to these Rules the **Statutes for the Chinese European Arbitration Centre in Hamburg** govern the organisation and structure of the Chinese European Arbitration Centre.

ⁱ That is in fact the Board of Directors of the sole shareholder, the CHINESE EUROPEAN LEGAL ASSOCIATION e.V. (“CELA e.V.”).

ⁱⁱ See § 7 sub-paragraph 3 sentence 2 Articles of Association of the CEAC GmbH.

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Preamble

- A.** The phenomenon of “globalisation” has brought about a substantial increase of
- trade between China and traders from all over the world including Europe,
 - global investments in China,
 - international investments in China and
 - Chinese investments in the world.
- B.** ¹Where international trade takes place, disputes may arise. ²The *Chinese European Arbitration Centre* (“CEAC”) offers a possibility to settle such disputes in an international spirit by institutional arbitration. ³In this context, it is important to note that presently the recognition and enforcement of foreign judgements in China and of Chinese judgements in foreign countries is often difficult or even impossible. ⁴As a result, the recourse to international arbitration is an important tool to enforce rights of the participants in international trade.
- C.** For that purpose, the *CHINESE EUROPEAN LEGAL ASSOCIATION e.V.* – a non-profit organisation dedicated to support the interaction and exchange between China, Europe and the world regarding issues of law and legal culture – has established the

Chinese European Arbitration Centre GmbH which operates the *Chinese European Arbitration Centre (CEAC)* according to its Statutes and these *CEAC Hamburg Arbitration Rules*.

- D. ¹These *CEAC Hamburg Arbitration Rules* have been developed in interaction with experts from numerous jurisdictions from around the globe in a truly international spirit and with special regard to the needs of intercultural arbitrations, in particular in cases in which one party comes from China. ²However, if the parties so explicitly desire, arbitration under the *CEAC Hamburg Arbitration Rules* shall also be open to other international arbitrations.ⁱⁱⁱ
- E. ¹Hamburg, the sister-city of Shanghai, has a longstanding tradition in international trade, including trade with China, and in international arbitration and conciliation. ²Over 20 years ago, in 1987, Chinese and German lawyers have created the *Beijing-Hamburg Conciliation Centre*. ³These *CEAC Hamburg Arbitration Rules* provide, *inter alia*, for a possibility to refer the case to conciliation under the rules of the *Beijing-Hamburg Conciliation Centre*.
- F. In order to tailor these *CEAC Hamburg Arbitration Rules* best to the needs of intercultural arbitration, these *CEAC Hamburg Arbitration Rules* are embedded in an international environment:
- If the parties do not reach an agreement on a Chairman, or if one party is defaulting in appointing an arbitrator, the Appointing Authority shall appoint a Chairman from a neutral jurisdiction whereby it operates in Chambers with international experts from China, Europe and other regions of the world.
 - The *CEAC Hamburg Arbitration Rules* refer the parties, on a voluntary basis, to the possibility to choose neutral law^{iv} or neutral rules of law^v which are known, to different degrees, worldwide and in particular in China.
 - The *CEAC Hamburg Arbitration Rules* contain a number of provisions, e.g. Article 3 paragraph 1, which comply with the special requirements for enforceability of arbitral awards in China.^{vi}

ⁱⁱⁱ The openness, upon explicit request of the parties, to other international arbitrations which is not necessarily or only remotely or indirectly related to China was suggested by a number of supporters. The point was followed: The degree of relation of a case to China-related trade should never become an issue which might endanger the validity of an arbitration proceeding.

^{iv} For example, the United Nations Vienna Convention on the International Sale of Goods (CISG) is part of New York law, part of Chinese law and part of German law.

^v The UNIDROIT Principles have been used as a reference by a number of legislators including, for example, the Chinese and the German legislator.

^{vi} According to Chinese law, it is important that (i) the arbitration concerns a commercial matter and (ii) the parties refer the arbitration to institutional arbitration.

Based on the above, the following Rules have been adopted:

Article 1
Scope of Application,
Relation to the Beijing-Hamburg Conciliation Centre

- (1) Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under the CEAC Hamburg Arbitration Rules, then such disputes shall be settled in accordance with these Rules as existing at the time of the agreement of the parties.
- (2) These Rules shall govern the arbitration except that where any of these Rules are in conflict with any provision from which the parties cannot derogate, that provision shall prevail.
- (3) ¹Prior to the initiation of an arbitration proceeding under the CEAC Hamburg Arbitration Rules or within 21 days after receipt of the notice of arbitration by the respondent, either party is entitled to request in writing the other party's express written consent to carry out a conciliation proceeding under the Rules of the *Beijing-Hamburg Conciliation Centre* or any other mediation or conciliation proceeding.
²Upon receipt of such consent, the arbitral proceedings including all deadlines is/are interrupted for
 - (a) up to 3 months (or until the termination of the conciliation or mediation proceeding, whatever is earlier); or
 - (b) upon an earlier application provided that the conciliation or mediation proceeding is initiated within a week after receipt of such consent. If the mediation is not finished within the 3 months time period, a further interruption of the arbitral proceedings requires mutual written consent of all parties which may be contained in separate documents.

Article 2
Application of the UNCITRAL Arbitration Rules

These Rules shall incorporate the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL Arbitration Rules; see www.uncitral.org) in the version

in force at commencement of the arbitral proceedings and as supplemented or amended by the additional rules contained in Article 3 which have priority unless provided for differently by the parties.

Article 3 Additional Rules

In order to adapt the arbitral proceedings at the Chinese European Arbitration Centre to its specific needs and the needs of China trade, the UNCITRAL Arbitration Rules shall be supplemented and amended by the following Additional Rules:

- (1) **Arbitration Institution:** Where the parties agree to refer their disputes to arbitration under the "CEAC Hamburg Arbitration Rules", the "CEAC Rules" or the "Rules of the Chinese European Arbitration Centre" without providing the name of an arbitration institution, they shall be deemed to have agreed to refer the dispute to institutional arbitration by the Chinese European Arbitration Centre in Hamburg (Germany).^{vii}
- (2) **Model Clause:** In Article 1 UNCITRAL Arbitration Rules the Model Arbitration Clause shall be deemed to read as follows:

"MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in Hamburg (Germany) in accordance with the CEAC Hamburg Arbitration Rules.

- (a) *The number of arbitrators shall be ___ ((i) one or (ii) three or (iii) three unless the amount in dispute is less than € ___ [e.g. 100.000 €] in which case the matter shall be decided by a sole arbitrator) ;*
- (b) *Regardless of the seat of arbitration, the arbitral tribunal is free to hold hearings in _____ (town and country);*
- (c) *The language(s) to be used in the arbitral proceedings shall be _____;*

^{vii} This wording is based on recommendations made from experts with particularly extensive experience of arbitration law in China. As an arbitration clause may forget to explicitly refer to the "institution" CEAC, the clause is important.

- (d) Documents also may be submitted in _____ (language).
- (e) The Arbitration shall be confidential. The parties agree that also the mere existence of an arbitral proceeding shall be kept confidential except to the extent disclosure is required by law, regulation or an order of a competent court.
- (f) The arbitral tribunal shall apply the CEAC Hamburg Arbitration Rules as in force at the moment of the commencement of the arbitration unless one of the parties requests the tribunal, within 4 weeks as of the constitution of the arbitral tribunal, to operate according to the CEAC Hamburg Arbitration Rules as in force at the conclusion of this contract.”

(3) Notice of Arbitration: ¹To constitute an effective Notice of Arbitration under these Rules, the Notice of Arbitration needs to be sent to the Chinese European Arbitration Centre in Hamburg. ²As a result,

- (i) Article 3 (2) UNCITRAL Arbitration Rules shall be deemed to be amended and supplemented as follows:

“2. ¹The claimant shall send the notice of arbitration to the Chinese European Arbitration Centre (CEAC) in Hamburg together with a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. ²Upon filing of the notice of arbitration, the claimant shall pay the administration fee determined in accordance with the Schedule of Costs of the CEAC. ³If the administration fee is not paid upon filing of the notice of arbitration, the management of the CEAC shall set a time period within which the claimant is requested to pay the administration fee which will be counted on the advance of costs according to Article 41 of these CEAC Hamburg Arbitration Rules. ⁴If the administration fee is not paid within the time period set, the claim shall be deemed to be withdrawn. ⁵Arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the CEAC.”

- (ii) Article 3 UNCITRAL Arbitration Rules shall be deemed to be supplemented by the following paragraph:

“5. The CEAC may require from either party such information as it deems reasonably necessary to fulfil its function.”

³In view of this supplement, Article 8 paragraph 1 of the UNCITRAL Arbitration Rules shall be deemed to be deleted.

- (4) Consolidation of Disputes Relating to the Same Subject Matter:** An additional Art. 3a shall read as follows:

“Art. 3a

When a party initiates recourse to arbitration in connection with a legal relationship in respect of which arbitral proceedings between the same parties are already pending under these Rules, the management of the CEAC may, at the request of a party, ask the other party to consent within a reasonable timeframe to include the claims contained in the initiated recourse to the arbitration in the pending proceedings. If no declaration of consent is received within the timeframe, the proceedings shall be kept separately.”

- (5) Appointing Authority:**

¹By agreeing to arbitration under the CEAC Hamburg Arbitration Rules, the Chinese European Arbitration Centre shall be deemed to have been agreed as appointing authority according to Art. 6 (1) (b) UNCITRAL Rules.

²As a result, wherever the UNCITRAL Arbitration Rules provide for the parties' agreement on an appointing authority (e.g. in Art. 6 paragraph 2 sentence 1) or for the existence of an appointing authority (e.g. Art. 12 paragraph 1 lit. (a) UNCITRAL Arbitration Rules), by agreeing to these CEAC Hamburg Arbitration Rules, the parties accept the Appointing Authority of the Chinese European Arbitration Centre as appointing authority. ³In particular, the following articles of the UNCITRAL Arbitration Rules are thereby modified:

- Art. 6 paragraph 1 lit. (b) shall be deemed to be deleted.
- Art. 6 paragraph 2 second sentence shall be deemed to be deleted.
- Art. 7 paragraph 2 lit. (b) shall be deemed to be deleted.
- Art. 12 paragraph 1 lit. (c) shall be deemed to be deleted.

(6) Multi-Party Proceedings:

An additional Article 6a shall read as follows (until this issue is covered by the future UNCITRAL Arbitration Rules and, as a result, Article 6a shall be amended to document the international compromise which is likely to be reached on this matter):

“Article 6a

(1) Unless otherwise agreed by the parties, multiple claimants shall jointly nominate one arbitrator in their statement of claim.

(2) ¹If two or more respondents are named in the statement of claim, unless otherwise agreed by the parties, the respondents shall jointly nominate one arbitrator within 21 days after their receipt of the statement of claim. ²If the respondents have received the statement of claim at different times, the time-limit shall be calculated by reference to the time of receipt by the respondent who last received the statement of claim. ³The Appointing Authority may extend the time-limit. ⁴If the respondents fail to agree on a joint nomination within the time-limit, the Appointing Authority, after having consulted the parties, nominates two arbitrators, unless the parties agree otherwise. ⁵In that case, the nomination made by the claimant's side is set aside by the Appointing Authority's nomination. ⁶The two arbitrators nominated by the parties or the Appointing Authority shall nominate the Chairman of the arbitral tribunal. ⁷Article 7 paragraph 3 UNCITRAL Arbitration Rules applies mutatis mutandis.”

(7) Place of Arbitral Proceedings: Art. 16 paragraph 1 of the UNCITRAL Arbitration Rules shall be deemed to read as follows:

“Regardless of the seat of the arbitration, the parties are free to determine any appropriate place for hearings.”

(8) Applicable law: Art. 33 paragraph 1 of the UNCITRAL Arbitration Rules shall be deemed to read as follows^{viii}:

“¹The arbitral tribunal shall apply the law or rules of law designated by the parties as applicable to the substance of the dispute. ²The parties may wish to consider the use of this model clause with the following option by marking one of the following boxes:

³This contract shall be governed by

^{viii}

This clause was subject to several proposals and debate. This proposal is a compromise with particular regard to the observations of the Principal Legal Officer of UNCITRAL, Mr. Renaud Sorieul, Professor and of Prof. Michael Joachim Bonell of Unidroit.

- a) *the law of the jurisdiction of _____ [country to be supplemented]^x, or*
- b) *the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG)^x without regard to any national reservation, supplemented for matters which are not governed by the CISG^{xi}, by the UNIDROIT Principles of International Commercial Contracts^{xii} and these supplemented by the otherwise applicable national law, or*
- c) *the UNIDROIT Principles of International Commercial Contracts supplemented by the otherwise applicable law.*

⁴*In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate. “*

- (9) Decision Solely Based on Documents^{xiii}:** An additional Art. 24a shall read as follows:

“The arbitral tribunal may decide the case solely on the basis of documents submitted by the parties unless any of the parties requests a hearing.”

- (10) Time Limit for the Award:** An additional Art. 31a shall be deemed to read as follows:

“(1) Unless otherwise agreed by the parties, the time limit within which the arbitral tribunal must render its final award is nine months. Such time limit shall start to run from the date on which the Notice of Arbitration is received by the CEAC.

(2) The management of the CEAC may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides this to be necessary.”

^{ix} With respect to sales contracts it should be noted that, according to Art. 1 lit. b) CISG, such national law may include the *United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG)* in their “nationalised” version: That is the version applicable with due consideration of the national reservations made by the state whose law is chosen. In the case of choice of Chinese law this includes the Chinese reservation made according to Art. 95 CISG. That reservation concerns the form of the conclusion of contracts – it requires the written form – which was made in view of the Chinese national law in force at the time of issuance of the reservation while the Chinese Civil Law has changed ever since.

^x See e.g. the literature and cases referred to at www.unidroit.org.

^{xi} This limitation reflects the UNCITRAL report 2007 regarding the discussion with respect to the relationship between the CISG and the UNIDROIT Principles at the 2007 session of UNCITRAL. Matters which are governed by the CISG are to be interpreted according to the CISG (including Art. 7 CISG).

^{xii} See www.unidroit.org.

^{xiii} This provision was inserted in view of the desire expressed by one of the commentators to offer to the parties to reduce costs (e.g. for travelling).

(11) Liability of arbitral tribunal, CEAC and others: ¹No arbitrator, employee or agent of an arbitrator shall be liable to any person for any act or omission in connection with an arbitration unless they are shown to have intentionally caused damage by conscious and deliberate wrongdoing. ²Similarly, the CEAC, its organs (Managers, Advisory Board) and employees are not liable with respect to any act or omission in connection with an arbitration unless they are shown to have intentionally caused damage by conscious and deliberate wrongdoing.

(12) Costs of Arbitral Proceedings:

- Art. 38 shall be deemed to read as follows.

“The arbitral tribunal shall state the costs of arbitration in its award according to the prior determination of costs by the management of the CEAC. The term "costs" includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator;

(b) The travel and other expenses incurred by the arbitrators;

(c) The costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the Chinese European Arbitration Centre.”

- Art. 39 paragraphs 1 through 3 of the UNCITRAL Arbitration Rules shall be deemed to read as follows:

“1. ¹Before rendering the final award, the arbitral tribunal shall request the management of the CEAC to finally determine the costs of the arbitral proceedings. ²The fees of the arbitral tribunal and the CEAC shall be calculated according to the Schedule of Costs of the CEAC as in force at the time of commencement of the arbitral proceedings.

2. If the arbitral proceedings are terminated before the final award is rendered, the management of the CEAC shall finally determine the costs of the arbitral proceedings having regard to when the arbitral proceedings terminate, the work performed by the arbitral tribunal and other relevant circumstances.

3. The parties are jointly and severally liable to the arbitrator(s) and the CEAC for the costs of the arbitral proceedings.”

- Art. 39 paragraph 4 shall be deemed to be deleted.
- Art. 41 of the UNCITRAL Arbitration Rules shall be deemed to read as follows:

“1. Upon filing of the statement of claim by claimant, the management of the CEAC may request the parties to deposit an amount as an advance for the costs referred to in article 38 and 39 of these Rules.

2. ¹Each party shall pay half of the advance on costs, unless separate advances are determined (e.g. in a multi-party arbitration). ²Where counterclaims are submitted, the management of the CEAC may determine separate advances on costs for the claims and the counterclaims and each of the parties shall pay the advances on costs corresponding to its claim. ³Upon request by the arbitral tribunal, the management of the CEAC may order the parties to pay additional advances during the course of the arbitral proceedings.

3. ¹If a party fails to make a required payment, the management of the CEAC shall give the other party an opportunity to do so within a specified period of time. ²If the required payment is not made within such period of time, the claim shall be deemed to be withdrawn. ³If the other party makes the required payment, the arbitral tribunal may, at the request of such party, render a separate award for reimbursement of the payment.

4. At any stage during the arbitral proceedings or after the award has been rendered, the management of the CEAC may draw on the advance on costs to cover the costs of the arbitral proceedings.

5. The management of the CEAC may decide that part of the advance on costs shall be provided in the form of a bank guarantee or other form of security.

6. After the award has been issued, the management of the CEAC shall render to the parties an accounting of the deposits received and return the balance, if any, to the parties.”