

SCIA Guidelines for the Optional Appellate Arbitration Procedure

Effective as from 21 February 2019

Parties who want to resolve their dispute in accordance with Article 68 of the SCIA Arbitration Rules and the SCIA Guidelines for the Optional Appellate Arbitration Procedure may include the following model clause to a contract:

Any dispute arising from or in connection with this contract shall be submitted to the Shenzhen Court of International Arbitration (the SCIA) for arbitration. The parties grant each other the right to appeal to the SCIA against the award or awards rendered by the arbitral tribunal. The appellate tribunal renders the final award. The place of arbitration shall be _____. (State the country or jurisdiction where the Appellate Arbitration is not prohibited)

Guidelines for the Optional Appellate Arbitration Procedure of the Shenzhen Court of International Arbitration

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Article 1 Basis

The Guidelines for the Optional Appellate Arbitration Procedure of the Shenzhen Court of International Arbitration (hereinafter, the “Guidelines”) are formulated by the Shenzhen Court of International Arbitration (also known as the “Shenzhen Arbitration Commission” and the “South China International Economic and Trade Arbitration Commission”, hereinafter the “SCIA”) in accordance with the Arbitration Rules of Shenzhen Court of International Arbitration (hereinafter, the “Arbitration Rules”).

Article 2 Scope of Application

Unless prohibited by the laws of the place of arbitration, the Guidelines shall apply where the parties agree that the award rendered by the arbitral tribunal according to Chapter VIII of the Arbitration Rules (hereinafter, the “Original Award”) may be submitted to the SCIA for appellate arbitration in accordance with Article 68 of the Arbitration Rules.

Article 3 Commencement of the Appellate Arbitration Procedure

1. The appellant shall apply for appellate arbitration within fifteen (15) days of its receipt of the Original Award.

2. The appellant shall submit the Application for Appellate Arbitration in accordance with Article 4 of the Guidelines, attach the supporting evidentiary materials, and pay the appellate arbitration fees and costs in advance within the required time-limit in accordance with the notice from the SCIA. The provisions of the Arbitration Rules shall apply mutatis mutandis to the fees and costs of the appellate arbitration.

Article 4 Application for Appellate Arbitration

The Application for Appellate Arbitration shall include:

1. the arbitration agreement on appellate arbitration between the appellant(s) and the appellee(s);
2. the element(s) of the Original Award that are being appealed;
3. the application for appeal; and
4. the facts and grounds on which the request for appeal is based.

Article 5 Composition of the Appellate Arbitral Tribunal

1. The appellate arbitral tribunal shall be composed of three (3) arbitrators, with one (1) serving as the presiding arbitrator. No member of the appellate arbitral tribunal shall be selected from the original arbitral tribunal and all shall be selected by the President of the SCIA from the Panel of Arbitrators of Shenzhen Court of International Arbitration.
2. Where two or more parties have filed for appeal with respect to the same Original Award, the case shall be arbitrated by the same appellate arbitral tribunal.

Article 6 Effectiveness of the Original Award

1. Where an appeal may be filed in accordance with the Guidelines, the Original Award shall not be deemed final and effective before the expiration of the period for filing for appeal.
2. If no party files for appeal or applies to withdraw its filing within the time-limit specified in Article 3 of the Guidelines, the Original Award shall be deemed final and effective as of the date of expiration of such time-limit.
3. If the appellant applies to withdraw its filing after the time-limit specified in Article 3 of the Guidelines, the Original Award shall be deemed final and effective as of the date of such withdrawal.

Article 7 Appellate Award

The appellate arbitral tribunal may either affirm or modify the Original Award. The award rendered by the appellate arbitral tribunal shall be the final award and be binding upon the parties, in lieu of the Original Award.

Article 8 Allocation of Fees and Costs

The appellate arbitral tribunal shall have the power to decide the allocation of the original arbitration fees and costs, the appellate arbitration fees and costs, the actual expenses, and the reasonable expenses incurred by the parties based on the results of the appellate arbitration and the specific circumstances of the case.

Article 9 Miscellaneous

The relevant provisions of the Arbitration Rules shall apply *mutatis mutandis* to such procedural matters of appellate arbitration as case acceptance, notice, defence, hearing, mediation and settlement, and award unless they are specifically provided in the Guidelines.

Article 10 Interpretation and Implementation

1. The Guidelines shall be interpreted by the SCIA.
2. The Guidelines shall take effect on 21 February 2019.