1. Introduction

1.1 These guidelines (the “Guidelines”) set out certain principles of practice and conduct which CIETAC HKAC encourages parties and arbitrators to observe in respect of actual or anticipated arbitration proceedings in which there is or may be an element of third party funding.

1.2 For the purposes of these Guidelines, third party funding (“Funding”) arises when a professional third person or entity (“Funder”) contributes funds, or other material support to a party in arbitration (“Funded party”) and has a direct economic interest in the award to be rendered in the arbitration.

1.3 However, Funding under these Guidelines does not arise merely because a party arranges financial support from a group company; procures insurance; and/or obtains legal services on a deferred or contingency basis.

1.4 The Guidelines are voluntary. Accordingly, parties and arbitrators shall not be deemed to have adopted all or any part of the Guidelines simply because of their participation in arbitration proceedings in which there is an element of Funding.

1.5 The Guidelines reflect the understanding of the working group members listed in Schedule I to the Guidelines (“Working Group Members”) as to certain principles of international best practice in relation to Funding.

1.6 The Guidelines may be cited as CIETAC HKAC TPF Guidelines.

2. Parties seeking Funding

2.1 Arbitration Funding Agreement: A party seeking Funding should ensure that the terms and conditions of any Funding arrangement are set out in a formal arbitration funding agreement (“AFA”).

2.2 Legal advice: Prior to entering into an AFA, a party seeking Funding should consider obtaining legal advice to, *inter alia*, establish the permissibility of Funding under the laws applicable to the arbitration and review the terms of the prospective AFA.

2.3 Incorporation of Funder: If a prospective Funder purports to be an incorporated company, a party seeking Funding should satisfy itself that the prospective Funder is duly incorporated in accordance with applicable laws.

2.4 Capital adequacy of Funder: A party seeking Funding should further satisfy itself that a prospective Funder has sufficient available capital to meet the funding arrangements anticipated in the terms of the prospective AFA.

2.5 Confidentiality: In applying for or negotiating the terms of any Funding arrangement, a party should consider the effect of any applicable confidentiality provisions or laws.
In particular, it should give consideration to any disclosure, relating to the proceedings, which a Funder may require pursuant to its decision to Fund, or under the AFA.

2.6 Subject to the above, parties concluding commercial arrangements may wish to agree in their arbitration agreements whether and to what extent such information may be disclosed to prospective Funders.

2.7 To further protect the confidentiality of information disclosed to any prospective Funder, a party seeking Funding should also consider entering into a non-disclosure agreement with all prospective Funders.

2.8 **Privilege and disclosure:** A party seeking Funding should consider whether communications between itself and any prospective Funder may be disclosable in subsequent proceedings. If necessary, a party should take legal advice before providing any potentially confidential information to the prospective Funder.

2.9 **Conflicts of Interest:** A party obtaining Funding should without delay disclose to the tribunal and other party any circumstances arising from that Funding that might give rise to any possible issues of conflict of interest under applicable laws and rules.

2.10 **Control of proceedings:** A party seeking Funding should carefully consider the nature and extent of the prospective Funder’s control over proceedings. Where the AFA anticipates significant Funder consultation on case strategy and settlement, legal advice may need to be taken as to the implications of such arrangements.

2.11 **Withdrawal of Funding:** Parties seeking funding should consider carefully the nature and effect of the termination and withdrawal provisions under the prospective AFA.

3. **Arbitral tribunal**

3.1 **Disclosure:** Where the tribunal considers it appropriate, it may invite, or in certain cases direct, any Funded party to disclose its Funding. In so doing a tribunal should give due consideration to any relevant duties of disclosure as may exist under applicable laws or rules.

3.2 An order that a Funded party disclose its Funding may require disclosure by the Funded party of the fact that it is funded; the name and address of the Funder; and any other information required by applicable laws or rules or which the tribunal otherwise considers necessary.

3.3 **Conflicts of interest:** Upon becoming aware of the existence of Funding in respect of any proceedings, the tribunal should positively consider its own independence and impartiality in light of this information and take any such steps as are required under applicable laws or rules.

3.4 **Security for costs:** A tribunal may, to the extent permitted by applicable laws or rules, consider the nature and extent of a parties’ Funding as a relevant factor when considering any application for security for costs.
Schedule I. Working group members

Dr. Nicolas Wiegand, and Dr. Dorothee Ruckteschler, CMS Hasche Sigle (Hong Kong/Germany)

Paul Starr, and James McKenzie, King & Wood Mallesons

James Rogers, and Matthew Townsend, Norton Rose Fulbright

Christopher Boog, Schellenberg Wittmer

Robert Rhoda, Bird & Bird

James MacKinnon, Herbert Smith Freehills

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*We appreciate all the opinions to be sent to Brad Wang at CIETAC Hong Kong Arbitration Center (bradwang@cietac.org)

The public consultation will finish on 19 July.