



| <i>For Official Use</i> |  |
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| Case Reference:         |  |
| Issue Date:             |  |
| Issued By:              |  |

**Practice Note No. 3 of 2022  
(Amendment No. 1 dated 21 November 2022)**

**Pursuant to Rule 42 of the SCMA Rules, 4<sup>th</sup> Edition (1 January 2022)**

**FUND HOLDING AGREEMENT**

**1. Purpose**

- 1.1. This Practice Note contains the Fund Holding Agreement (the “**Agreement**”) pursuant to Rule 42 of the Arbitration Rules of the Singapore Chamber of Maritime Arbitration 4<sup>th</sup> Edition (1 October 2021) (the “**SCMA Rules**”).
- 1.2. The Agreement governs the fund holding service provided by the Singapore Chamber of Maritime Arbitration (“**SCMA**”) with effect from 1 October 2021.
- 1.3. The fund holding service may be used to collect funds from disputants as an advance to secure the fees and expenses of one or more arbitrators pursuant to the arbitral rules of SCMA or otherwise.
- 1.4. This Agreement may also be used to secure legal costs and expenses in accordance with any written directions of an arbitral tribunal or other applicable authority.

**2. Interpretation**

- 2.1. In this document, unless the context requires otherwise:
  - 2.1.1. “**Agreement**” refers to this Fund Holding Agreement.
  - 2.1.2. “**Fund Holding Fee**” refers to the annual cost for the fund holding service as set out in Clause 6.3.
  - 2.1.3. “**Party**” or “**Parties**” (as applicable) means a party or parties to any arbitration reference that engages use of SCMA’s fund holding service.
  - 2.1.4. “**Schedule of Fees**” means the fee schedule maintained by the Chamber which may be amended from time to time.
  - 2.1.5. “**SCMA**” refers to the Singapore Chamber of Maritime Arbitration.
  - 2.1.6. “**SCMA Rules**” refers to the Arbitration Rules of the Singapore Chamber of Maritime Arbitration 4<sup>th</sup> Edition (1 January 2022).
  - 2.1.7. “**Transaction Fee**” refers to the transaction costs that may be incurred during the period of the fund holding service as set out in Clause 6.4.
  - 2.1.8. “**Tribunal**” may refer to a sole arbitrator, or all of the arbitrators when more than one is appointed.
  - 2.1.9. “**Year**” means a calendar year commencing on the date of receipt of any funds pursuant to the fund holding service.

### **3. Commencement of Fund Holding**

- 3.1. By execution of this Agreement and/or by depositing funds with SCMA for the purpose of engaging the fund holding service, the Parties agree to be bound by the terms of this Agreement.
- 3.2. The Tribunal or the Parties shall provide the SCMA with written instructions to the Parties containing directions on the amount that is intended to be held/added, and the date of expected transfer of monies.
- 3.3. The SCMA will only receive and administer funds in Singapore Dollars (SGD), British Pound Sterling (GBP), or United States Dollars (USD). Such funds shall be received by the SCMA net of all bank charges.
- 3.4. All funds paid pursuant to this Agreement will be maintained in a bank account in Singapore. Interest accrued on the funds, if any, shall be wholly retained by the SCMA for its sole benefit.
- 3.5. The receipt of any funds by the SCMA is subject to regulatory and compliance checks conducted by the SCMA. The Parties agree to provide any information as may be required by for SCMA to comply with any anti-money laundering laws, procedures and regulations.
- 3.6. The SCMA may at its sole discretion refuse to accept funds and/or administer the fund holding service. In such event, any monies remitted to SCMA will be returned to the remitting entity (unless otherwise advised) less any applicable Transaction Fee, handling costs, and bank charges.
- 3.7. The Parties shall act in accordance with all applicable anti-money laundering and suppression of terrorism financing legislation in Singapore or elsewhere, and undertake that no money laundering or other unlawful act is committed in connection with the use of the fund holding service.
- 3.8. The Parties or their representatives shall promptly advise SCMA of any sanction, restriction, or embargo that may affect any Party, whether directly or indirectly. The Parties or their representatives shall upon request make available all source documents, data or information required for SCMA to verify information required as part of any anti-money laundering, suppression of terrorism financing or other legislation or law.

### **4. Disbursements of Funds**

- 4.1. The SCMA shall disburse monies out of a fund holding account only in the following circumstances:
  - 4.1.1. Upon the Tribunal's written instructions, together with copies of supporting documentation of the fees and expenses incurred.
  - 4.1.2. After confirmation that the Tribunal no longer requires the fund holding service and upon the termination of the service.
  - 4.1.3. Deduction of a Fund Holding Fee.
  - 4.1.4. Deduction of a Transaction Fee.
  - 4.1.5. Deduction of any handling or bank charges.
  - 4.1.6. Unanimous agreement of the Tribunal and all parties.

- 4.2. Unless otherwise instructed by the Tribunal, or agreed by the parties, all handling and bank charges, Transaction Fees and Fund Holding fees shall be deducted from the fund held and shall be borne amongst all depositors in equal portions.
- 4.3. At the termination of the fund holding service, the return of any balance monies to the Parties shall, unless directed by the Tribunal or agreed by the parties, be returned *pari passu* in relation to each party's cumulative deposits, and after deduction of all applicable handling or bank charges, Fund Holding Fees or Transaction Fees.
- 4.4. For the purposes of Clause 4.1.1. above:
  - 4.4.1. Written instructions and supporting documents are required from each member of the Tribunal for the purpose of record. While the SCMA is not obliged to verify or check the accuracy of any supporting document, the SCMA may raise queries to avoid any errors in computation.
  - 4.4.2. In case of any disagreement between the Tribunal members on the disbursement of funds, the view of the majority of the Tribunal shall prevail.
  - 4.4.3. In relation to a disbursement in respect of a Tribunal where there is neither unanimity nor a majority decision, the view of the third arbitrator (or where there is no third arbitrator, the Chairperson of SCMA) shall prevail.
  - 4.4.4. If the Tribunal is incapacitated or for any other reason no longer able to provide instructions on the disbursement of funds, the Parties may by agreement instruct the SCMA on the disposal of the funds in the manner agreed.
- 4.5. The SCMA may without notice to the Parties or the Tribunal, deduct from the fund any Fund Holding Fee, Transaction fee, handling and bank charges incurred by the SCMA in respect of the fund holding service. For all other deductions to be made to the fund, the SCMA shall provide notice to all Parties and the Tribunal before any deduction or disbursement is made out of the fund holding account. The Parties shall have 2 business days after the date of such notice to raise queries directly to the Tribunal in relation to any clerical or typographical errors. Where no queries are raised, the deduction or disbursement shall be paid out accordingly by the SCMA. Where queries are raised by the Parties, the Tribunal may instruct the SCMA not to make the disbursement or deduction until such query is resolved.

## 5. **Accounting**

- 5.1. The SCMA shall provide the Parties with an official receipt upon the receipt of an amount into the fund subject always to Clauses 3.4 and 3.5 above.
- 5.2. The SCMA shall render a statement of account to the Parties and the Tribunal on the following occasions:
  - 5.2.1. When the fund has been fully collected by all the Parties (100%).
  - 5.2.2. When any deduction or disbursement is charged to the fund.
  - 5.2.3. When the fund has been fully depleted (0%).
  - 5.2.4. Upon request by any Party or the Tribunal within ten (10) days of such request.
- 5.3. An invoice for any Transaction Fee of Fund Holding Fee shall be issued to the Parties as and when such fees are incurred.

## **6. Costs of the Fund Holding Service**

- 6.1. A Fund Holding Fee is chargeable on the date of receipt of funds from any Party and subsequently, the first working day of every year thereafter.
- 6.2. A Transaction Fee is chargeable for every occasion a deduction or disbursement is made on the fund.
- 6.3. The Fund Holding Fees are SGD 1,200 or such other rate as specified by the Chamber in the Schedule of Fees.
- 6.4. The Transaction Fees are SGD 100 or such other rate as specified by the Chamber in the Schedule of Fees.
- 6.5. The Fund Holding Fees and the Transaction Fees take priority over all other deductions or disbursements on the fund.

## **7. Termination**

- 7.1. Either the SCMA on one part, or the Parties with the Tribunal's written consent on the other part, may terminate this Agreement by giving the other party four (4) weeks' written notice of termination. The effective date of termination of this Agreement shall be (4) four weeks from the date of the notice of termination.
- 7.2. In the case of termination, the SCMA shall continue to complete the processing of any deductions in Clause 4 above up to and including the effective date of termination of the Agreement.

## **8. Liability**

- 8.1 In performing the services under this Agreement, the SCMA shall:
  - 8.1.1 not be responsible for reminding the parties to make deposits pursuant to any Tribunal's directions; and
  - 8.1.2 not be responsible for ensuring that any supporting documentation provided by the Tribunal accords with the Tribunal's written instructions to the SCMA.
- 8.2 The Parties agree that they shall release and discharge, indemnify and hold harmless the SCMA and any of its officers or employees from and against any claims, liabilities, demands, actions and costs of whatsoever nature and howsoever and whenever arising, whether in Singapore or any other jurisdiction, from or out of any proceedings in relation to this Agreement or fund holding service.

## **9. Governing Law & Dispute Resolution**

- 9.1 The governing law of this Agreement is the laws of Singapore.
- 9.2 Any dispute arising from or out of this Agreement and/or the fund holding service shall be subject to the exclusive jurisdiction of the Singapore Courts.

**10. Signature Page**

10.1. By signing of this Agreement, we agree to be bound by all the terms and conditions as set out in this Agreement.

| <b>Claimant</b>                           | <b>Respondent</b>                         |
|---|---|
| <hr/> <b>Name of Authorized Signatory</b> | <hr/> <b>Name of Authorized Signatory</b> |
| <hr/> <b>Company / Firm</b>               | <hr/> <b>Company / Firm</b>               |
| <hr/> <b>Designation</b>                  | <hr/> <b>Designation</b>                  |
| <hr/> <b>Date</b>                         | <hr/> <b>Date</b>                         |

*By providing any personal information in connection with this Agreement, the Parties consent to the SCMA using their respective personal information for the purpose of carrying out services under this Agreement and to maintain statistics on arbitration. Such information shall be kept confidential and will not be shared with any third parties.*