

HONG KONG QUALITY ASSURANCE AGENCY

REGULATIONS

15 OCTOBER 2008

HKQAA
HONG KONG QUALITY ASSURANCE AGENCY
香港品質保證局



REGULATIONS

1. Introduction

- 1.1 The Regulations (defined below) govern the rules for the Scheme (defined below) operated by the HKQAA (defined below) for the certification of companies and businesses with approved Management Systems (defined below) and Products (defined below).

2. Interpretation

- 2.1 For the purpose of these Regulations;

"Appeals Panel"	means a panel established for the purpose of hearing appeals relating to the Scheme. The panel appointed in respect of each appeal shall consist of the Chairman of the Council (or his appointed deputy) and at least two other members drawn from the Council.
"Business"	means a person, firm, body corporate or unincorporate which has applied for but has not yet been granted a Certificate and/or a person, firm, body corporate or unincorporate which has been granted a Certificate, as the context so admits.
"Certificate"	means a certificate issued by the HKQAA endorsed by a director (being one of the Council Members) and the Executive Director of the HKQAA that recognises that having been audited by HKQAA the Management System operated by the Business and/or the Products manufactured and/or supplied by the Business are in accordance with these Regulations.
"Certification Mark"	means the trade mark of HKQAA that a certified Business will be permitted to use to signify certification.
"Council"	means the governing body of the HKQAA.
"Executive Director"	means the member of the permanent staff of HKQAA appointed for the time being by the Council to be in charge of the HKQAA. The Executive Director also takes the role of the secretary of the HKQAA.
"Guide 65"	means the general requirements and standards published by ISO and IEC in relation to the testing and certification of Products by certification bodies.
"HKQAA"	means the Hong Kong Quality Assurance Agency, a non-profit distributing organisation, established for operating the Scheme.
"IEC"	means the International Electrotechnical Commission.
"ISO"	means the International Organisation for Standardization.
"ISO/IEC 17021"	means the general requirements and standards published by ISO and IEC in relation to the audit and certification of Management Systems by certification bodies, the observance of which is intended to ensure that certification bodies operate third-party management systems certification schemes in a competent, consistent and impartial manner, thereby facilitating the recognition of certification bodies and the acceptance of their certification schemes on a national and international basis.
"Management System"	means the organisational structure, responsibilities, procedures, processes and resources for implementing a management system.
"Management System"	means documents setting out the specific practices, resources and

Documents"	sequence of activities relevant to a particular product, service, contract or project in relation to the Management System, which may include a System Manual.
"Management System Standards"	means the various applicable standards that a Business's Management System must comply with in order to be certified under these Regulations, as published by ISO and/or other relevant organisations from time to time.
"Product"	means the products and/or the particular design or specifications of products and/or the process of manufacture of products in respect of which HKQAA is offering certification services to a Business.
"Product Standards"	means the applicable technical and other standards that a Product must comply with in order to be certified under these Regulations as published by ISO and/or other relevant organisations from time to time.
"Regulations"	means the regulations of the Scheme set out herein.
"Sectoral Scheme"	means a scheme which has been established for the certification of organisations operating within certain areas of technology and which require special procedures and regulations to supplement the Regulations.
"System Manual"	means the main document used in drawing up and implementing a Management System; its prime purpose is to describe the Management System adequately while serving as a permanent reference in the implementation and maintenance of that Management System.
"the Scheme"	means a scheme (including a Sectoral Scheme) to be operated by HKQAA for certifying Businesses as having a Management System and/or Products that are in accordance with the Management System Standards and Product Standards respectively.
"TM Guidance Document"	means a trade mark user document setting out the required terms and conditions under which a certified Business may use the Certification Mark.

3. Authority

- 3.1 The HKQAA is recognised by the Government of Hong Kong SAR to operate the Scheme and award certification rights under the Scheme and acts through the Executive Director who, for the purpose of conducting audits and other activities under these Regulations, may from time to time delegate his functions or any of them to individuals whom he may appoint or remove as he may deem necessary, subject to such conditions as the HKQAA may from time to time impose.
- 3.2 The HKQAA shall operate the Scheme under the accreditation of relevant accreditation bodies using normative accreditation guidelines such as ISO/IEC 17021 and Guide 65.

4. Application

- 4.1 A Business who desires to be certified under the Scheme must make an application in writing to HKQAA and otherwise complete and submit the required application form requesting certification under the Scheme and provide all information and documents required by HKQAA. In relation to an application for certification of a Product the Business must clearly specify the Product and qualities thereof to be certified.
- 4.2 Following the making of an application for certification, HKQAA shall as soon as practicable

review the application to ensure that all required information has been provided, the requirements for certification have been clearly defined and the Business is prepared and ready to be assessed. HKQAA shall also determine that it has the capability to perform the certification service with respect to the scope of certification sought.

5. Audits

- 5.1 Following the submission of an application for certification, a Business being properly prepared and ready to be assessed and HKQAA determining that it has the required expertise to carry out the certification, HKQAA shall convene an audit team and conduct a full audit and assessment of the Business's Management Systems and/or evaluate the Product(s) of the Business in respect of the applied for certification.
- 5.2 All Businesses that are subsequently certified shall be subject to ongoing monitoring including on-site audits, and certified Businesses acknowledge that surveillance audits will be conducted at least once every year of certification. Prior to the end of each certification period a full recertification audit will be conducted of a Business and HKQAA shall make its decision on renewing certification based on the results of such recertification audit, as well as the results of the monitoring and surveillance that have taken place over the certification period.
- 5.3 All audits and decisions consequent to audits will be carried out by HKQAA in accordance with practices and policies determined and notified by HKQAA from time to time including the practices and policies set out in ISO/IEC 17021 and Guide 65. Businesses hereby acknowledge and agree to such practices and policies including those set out in ISO/IEC 17021 and Guide 65.
- 5.4 Without limitation to Clause 5.3;
 - 5.4.1 All audits and evaluations will be carried out by qualified and experienced personnel, either employed by HKQAA or contracted by HKQAA. HKQAA shall provide a Business with the names of all personnel who will form part of an audit team, and when requested will make available background information on each member of an audit team. Where possible, this will be done in sufficient time to permit a Business to object to any particular personnel, and for HKQAA to reconstitute an audit team in response to any valid objection.
 - 5.4.2 HKQAA agrees that it will in its reasonable judgment audit and evaluate sufficient objective evidence upon which to base a decision on whether to certify or re-certify a Management System.
 - 5.4.3 All Businesses acknowledge that they have the responsibility to ensure that the Management Systems and/or Products conform with the requirements of certification and that HKQAA will merely carry out an objective assessment and evaluation.
 - 5.4.4 HKQAA shall inform a Business of all the required arrangements for the conduct of an audit of a Management System and/or the evaluation of a Product, including provision for examining documentation, the required access to all processes and areas, records and personnel and testing of Products, all for the purposes of assessing certification, as well as in respect of future ongoing surveillance and recertification.
 - 5.4.5 The dates for an audit and/or evaluation shall as far as possible be agreed in advance.
- 5.5 It may be necessary for the HKQAA to conduct audits of certified Businesses or to further evaluate certified Products at short notice to investigate complaints, or in response to changes, or as follow up on Businesses whose certification has been suspended. In such cases;
 - 5.5.1 a Business will allow the audit and/or evaluation to proceed and will cooperate fully;
 - 5.5.2 HKQAA shall describe and make known in advance to the certified Business the conditions under which these short notice visits are to be conducted; and
 - 5.5.3 HKQAA shall exercise additional care in the assignment of the audit team, as a Business acknowledges that it will not have the opportunity to object to audit team members.

5.6 Additionally, in so far as the Management System Standards or Product Standards applicable to a certified Business require periodic unannounced audits or evaluations, then a Business agrees that it will allow such audits and evaluations to take place and will cooperate fully with HKQAA and its audit team at the time of the audit and/or evaluation.

6. Certification

6.1 A Business who satisfies the HKQAA that it is capable of complying with these Regulations and the Scheme and that it carries on a bona fide business, and who gives to the HKQAA such undertakings and proof of the Business's legal status as it may require, shall, subject to the conditions of these Regulations, be entitled to be certified under the Scheme and obtain a Certificate which shall nevertheless remain the property of HKQAA. A separate Certificate will be issued in respect of each certification for which an application is made.

6.2 HKQAA shall certify a Business under the Scheme for an initial period of 3 years from the date of acceptance and thereafter certification under the Scheme shall be renewable (subject to compliance with these Regulations) every 3 years.

6.3 Certification is subject to the terms of these Regulations and HKQAA's rights hereunder. If a Business does not intend to renew its certification under the Scheme in respect of a certification pursuant to Clause 6.2 above, it must notify HKQAA in writing four months in advance of the end of the relevant 3 year term. If a Business wishes to terminate certification, it must give HKQAA at least 4 months notice in writing.

6.4 From the date of application, a Business shall be given a period of three years to put in place Management Systems and/or Products that are in accordance with the Scheme. A Business must submit a new application if the Business has not been certified within the said period unless otherwise agreed by HKQAA.

7. Information

7.1 HKQAA confirms that it will provide all interested parties with full information about the Scheme including the criteria for certification and the audit and certification process. Without limitation to the foregoing HKQAA shall on request provide a Business details or copies of all Management System Standards and Product Standards at reasonable charges and on reasonable terms to be decided by HKQAA from time to time. HKQAA shall also on request provide Businesses with all information reasonably requested relating to certification including information relating to the application process and the initial auditing of a Business, as well as information regarding the granting, maintenance, renewal, extension, suspension, reduction of and/or withdrawal of certification under the Scheme.

7.2 In addition, but subject always to Clause 13, HKQAA agrees to provide Businesses and other interested parties information regarding specific audits, including audits conducted in response to complaints.

7.3 HKQAA shall make available information about certifications granted, suspended or withdrawn in response to requests for such information from members of the public, and a Business acknowledges that its certification status will be publicly available information. HKQAA shall maintain a directory of certified Businesses that shall show amongst other things the name, scope and territory of each certified Business.

8. Impartiality

8.1 HKQAA recognises the importance of impartiality, the active management of conflicts and objectivity in operating the Scheme and HKQAA agrees to use all reasonable efforts to run the Scheme in a fair and impartial manner. Without limitation HKQAA shall not;

8.1.1 provide and shall not offer consultancy services as to how to achieve certification under the Scheme;

- 8.1.2 provide and shall not offer information or internal audits to a Business;
- 8.1.3 contract out or outsource audits to any entity that provides consultancy services in relation to certification under the Scheme.

9. Assignment and Subcontracting

- 9.1 A Business may not sub-licence nor assign or otherwise transfer the right to use the Certificate or its certification under the Scheme without the prior written permission of the HKQAA.
- 9.2 HKQAA may sub-contract out or outsource the auditing of a Business, the evaluation of a Product or other certification activities provided under the Scheme to a third party provided always;
 - 9.2.1 the ultimate decision as to whether to grant, renew, suspend or withdraw certification shall remain with HKQAA;
 - 9.2.2 HKQAA shall be fully responsible for all activities outsourced and such outsourced activities shall be provided in accordance with these Regulations.

10. Obligations of a Business

- 10.1 A Business warrants that it shall:
 - 10.1.1 at all times comply with these Regulations;
 - 10.1.2 claim compliance with the Scheme and certification rights with respect only to those activities and Products which are the subject of a Business's certification under the Scheme.
 - 10.1.3 establish, document and at all times maintain a Management System in accordance with the appropriate Management System Standards and/or other normative documents as agreed with HKQAA from time to time in respect of all business activities certified, and make available copies of all or any part of the Management System Documents on the request of HKQAA and/or if required lodge copies of the same with the HKQAA for reference purposes;
 - 10.1.4 manufacture and/or supply certified Products in accordance with the appropriate Product Standards and/or other normative documents as agreed with HKQAA from time to time.
 - 10.1.5 notify the HKQAA promptly of any intended changes to the Management System or Products or other changes which may affect conformity with a Business's certification pursuant to the Scheme.
 - 10.1.6 not use its certification in such a manner as to bring the HKQAA into disrepute, and a Business shall not make any statement regarding its certification which the HKQAA may consider misleading or unauthorized.
 - 10.1.7 ensure that its certification documents including the Certificate, or any report, or any part thereof, and the Certification Mark and the trade marks and trade names of HKQAA are not used in a misleading manner.
 - 10.1.8 give the representatives of HKQAA access (without prior notice if required by HKQAA) during normal working hours (including shift operating hours) to the premises or sites in which work or services the subject of the certification under the Scheme is being carried out or provided and/or Certified Products are being manufactured or stored, for the purpose of, inter alia;
 - (a) examining materials, processes, finished articles, methods of testing, methods of operation, records and systems, Management System Documents, verifying that the Management System in place and/or certified Products being produced or

supplied are in accordance with the Business's certification under the Scheme;
and

- (b) undertaking audits or establishing that a Business has carried out its obligations on withdrawal of certification under the Scheme as described in Clause 20.

10.1.9 provide the HKQAA on request samples of brochures and promotional materials and samples of goods (including certified Products) which may be tested by an accredited laboratory to confirm conformance to standards claimed directly or by inference by a Business in its Management System Documents.

10.1.10 nominate a management representative and one or more deputies authorised to act in the nominee's absence and replacement nominees as may be necessary (such nominations to be subject to HKQAA's approval) who shall be responsible for all matters in connection with the requirements of a Business's certification under the Scheme.

10.1.11 maintain the required Management System Documents and operate its Management System in accordance with the Management System Documents, and in all respects to the standards applicable to the particular trade or industry of a Business.

10.1.12 use certification only to indicate that the Business's Management Systems and/or Products are in conformity with the appropriate Management System Standards and/or Product Standards and/or other normative documents, and not use the Business's certification to imply that a product or service is approved or certified by the HKQAA when it is not.

10.1.13 make available to the HKQAA, when requested, the records of all complaints and corrective action taken in accordance with the appropriate Management System Standards and/or Product Standards and/or other normative documents.

10.1.14 ensure that all its goods (including any certified Products) of the Business are of merchantable quality and fit for their proper purpose and that all its services are provided to customers and clients with all reasonable care and skill.

10.2 A Business acknowledges that the certification of its Management System and/or Products by HKQAA in accordance with the Scheme and any continuing certification has or will in part be based upon documentation, records and samples which the Business has or will provide HKQAA, and the Business hereby warrants that all such documents and records have in the past and will in the future be entirely accurate and genuine and all samples have in the past and will in the future be properly representative of Products and will not in any way be amended or created for the purposes of certification and that the Business's continuing certification hereunder is conditional on the Business complying strictly with this warranty.

10.3 A Business warrants that any English or Chinese translation provided of its official name in the application for certification is true and accurate and solely indicates and represents the Business and not any non-certified entity.

10.4 A Business warrants that it shall only use its certification in relation to its own business and will not imply that any parent, subsidiary, affiliate, partner or other entity is certified when this is not the case including by the use of any misleading English, Chinese or other translation or version of the name of the certified company specified in the certified companies application and proof of legal status as provided under Clause 4.

11. Charges

11.1 The HKQAA shall charge and a Business shall pay;

11.1.1 an application and documentation assessment fee;

11.1.2 a fee for each Certificate granted payable annually. The first annual fee shall be payable by a Business upon award of a Certificate and subsequent annual fees shall be due on the anniversary of certification. There shall be no refund of the annual fee

notwithstanding that a Business has its certification rights suspended or withdrawn or upon a Business terminating certification;

11.1.3 audit fees for first stage assessment, pre-audit (optional), certification audit visit, Product evaluation, follow up visit, surveillance visit and renewal audit and/or evaluation shall be charged according to the actual mandays and the prevailing manday unit rate agreed by both parties;

11.1.4 other fees for any use of any additional accreditation marks permitted by HKQAA from time to time. Overseas travelling expenses including meals, transportation and accommodation costs as may be incurred by HKQAA in respect of a Business shall be subject to mutually agreement between HKQAA and a Business; and

11.1.5 any additional costs incurred by HKQAA due to a Business's non-compliance with these Regulations, and activities related to Clause 10.1.8.

11.2 All fees to be charged to and payable by a Business in accordance with Clause 11.1 shall be those fees that the HKQAA believe in its discretion to be fair and reasonable, and the rate or amount of such fees may be increased from time to time by the HKQAA without notice to a Business. HKQAA shall provide a Business full details and information concerning all relevant fees relating to the Scheme on request.

11.3 The application and documentation assessment fee (non-refundable) shall be payable by a Business upon submission of an application for certification. Fees for first stage assessments, pre-audits (optional), certification audits and Product evaluations and follow up visits shall be payable in advance before the required work is undertaken by the HKQAA. Surveillance visits, renewal audits and evaluations, overseas travelling expenses reimbursement and annual fees (non-refundable) shall be payable within 30 days from date of invoice. All fees paid shall be non-refundable and shall not be subject to set-off, deduction or refund.

11.4 If a Business fails to pay any fees on their respective due dates the HKQAA shall be entitled to charge a Business interest on the outstanding fee at the rate of 4% per annum above the Hong Kong and Shanghai Banking Corporation Limited's Prime Rate in force from time to time from the date the payment became due until actual payment is made.

12. Obligations of HKQAA

12.1 Without prejudice to Clause 5 the HKQAA shall use its best endeavours to send a representative to a Business not less than twice in any 12 month period in which a Business is manufacturing Products or operating processes or rendering services for which it is certified for the purpose of verifying that the obligations imposed by the certification under the Scheme and these Regulations are being carried out.

13. Confidentiality

13.1 All information of a technical or business nature disclosed by a Business to HKQAA in the certification process shall be regarded as confidential and shall only be disclosed by HKQAA to its employees and sub-contractors as is necessary and HKQAA shall ensure that such personnel treat such information as confidential. Such information shall only be used by HKQAA for the purposes of auditing and certification and shall not without the prior written consent of the disclosing entity be disclosed by HKQAA to any third party, provided always the foregoing obligations of confidence shall not apply to information which is;

13.1.1 in the public domain;

13.1.2 already in the possession of the HKQAA or later comes into the possession of the HKQAA without any obligations of confidence from an independent third party who has not derived it from the Business in question;

13.1.3 disclosed to a third party pursuant to the written consent of the Business in question;

13.1.4 disclosed to a third party pursuant to statutory, regulatory or other legal requirements including any Order of court; or

13.1.5 disclosed for the purpose of accreditation or recognition assessment.

13.2 HKQAA shall prior to disclosure of information under Clause 13.1.4 or 13.1.5 above inform the Business of the intended disclosure (unless prohibited by law).

13.3 HKQAA may disclose confidential information of a Business to its subcontractors and auditors. HKQAA confirms that it shall inform all of its employees (including committee members) and all sub-contractors acting on its behalf of the confidentiality obligations of HKQAA as specified above, and HKQAA shall be responsible for ensuring that such employees and subcontractors keep all relevant information confidential.

13.4 For the purposes of Clause 13.1 confidential information of a Business shall include information concerning a Business received from third party sources, under conditions of confidentiality.

14. Exclusion of liability

14.1 Subject to the Control of Exemption Clauses Ordinance (Cap.71) HKQAA shall not be liable to a Business for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the certification of a Business or its Products under the Scheme or the sale of goods (including certified Products) or rendering of services to the public by a Business (whether or not by reference to the Certification Mark), and notwithstanding the generality of the foregoing the HKQAA expressly excludes liability for consequential loss or damage suffered by a Business including any loss or damage resulting from claims brought by any clients or customers of a Business, or for loss of profit, business, revenue, goodwill or anticipated savings.

14.2 Subject to Clause 14.1 above all conditions and warranties on the part of the HKQAA implied by statute, common law or otherwise are expressly excluded.

14.3 Without prejudice to Clauses 14.1 and 14.2, and in the event that the courts of Hong Kong consider a complete exclusion of liability hereunder to be unreasonable, HKQAA's liability in contract, tort or otherwise to a Business with respect to any claim arising in connection with its acts or omissions in assessing and/or certifying a Business and/or operating the Scheme shall be limited to no more than ten times the fees received by HKQAA from a Business in the year in which the alleged liability arose or HK\$200,000 whichever is less.

15. Indemnity

15.1 A Business shall be liable for and will indemnify the HKQAA against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the HKQAA whether direct or consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of any dispute or contractual, tortious or other claims or proceedings brought against the HKQAA by a third party claiming relief against the HKQAA by reason of;

15.1.1 the certification of a Business under the Scheme and/or the breach of these Regulations by a Business;

15.1.2 the manufacture, use or sale of any goods (including certified Products) or the provision of any services by reference to the Certification Mark or a Business's certification under the Scheme.

16. Records

16.1 HKQAA shall maintain full records on the audit and other certification activities for all Businesses.

16.2 Businesses recognise that records on Businesses shall without limitation include the following;

- 16.2.1 application information and initial audit, evaluation, surveillance and recertification reports;
- 16.2.2 records of complaints and appeals, and any subsequent correction or corrective actions;
- 16.2.3 documentation of certification decisions;
- 16.2.4 certification documents, including the scope of certification with respect to Products, processes or services, as applicable;
- 16.2.5 related records necessary to establish the credibility of certification, such as evidence of the competence of auditors and technical experts.

16.3 HKQAA shall keep the records on Businesses secure to ensure that the information is kept confidential. Records shall be transported, transmitted or transferred in a way that ensures that confidentiality is maintained.

17. Ownership and use of Certification Mark

- 17.1 The HKQAA is the beneficial owner of the Certification Mark and is not aware that the use of the Certification Mark will infringe the rights of any third party in Hong Kong or elsewhere but gives no warranty as to whether any such third party rights will be infringed in Hong Kong or elsewhere.
- 17.2 A Business will not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of the Certification Mark except under the terms of its certification under the Scheme, and acknowledges that nothing contained in these Regulations shall give a Business any right, title or interest in or to the Certification Mark save as granted hereby.
- 17.3 Upon certification a Business may use the Certification Mark. A Business undertakes only to use the Certification Mark in accordance with the TM Guidance Document, that will be provided to a Business on or before certification. A Business will on request give to the HKQAA any information as to its use of the Certification Mark.

18. Temporarily suspending or amending certification rights

- 18.1 If a Business is temporarily unable to comply with the requirements of certification and/or fails to comply with these Regulations including any failure to permit surveillance or recertification audits, the HKQAA may require the Business in question to discontinue use of the Certification Mark or any claim to certification under the Scheme with immediate effect until it is satisfied that the conditions of certification are again achieved, and the Business in question has remedied any breach of these Regulations.
- 18.2 Alternatively HKQAA may temporarily amend the scope of certification in circumstances where a Business is unable to comply with these Regulations in respect of the full scope of its original certification.
- 18.3 HKQAA will on the request of a Business suspend a Business's certification.

19. Reducing and withdrawing certification rights

- 19.1 The HKQAA may forthwith withdraw a Business's certification under the Scheme or permanently reduce the scope of such certification or refuse to grant or renew certification or extend its scope by notice in writing if a Business;
 - 19.1.1 is unable to comply with the requirements of certification and/or commits a breach of these Regulations including any failure to permit surveillance or recertification audits, provided that if the breach is capable of remedy the notice shall only be given if a Business shall not have remedied the same within one month of having been given notice in writing specifying the breach and requiring it to be remedied.

19.1.2 is subject to a suspension order or an amendment order under Clause 18 for more than 6 months.

19.1.3 becomes subject to the bankruptcy laws or makes any arrangements or composition with its creditors, or enters into liquidation, whether compulsory or voluntary (but not including liquidation for the purpose of reconstruction), or has a Receiver of its business appointed, or an officer of a Business is convicted of an offence tending to discredit the reputation and good faith of the Business as a trader.

19.2 The decision to withdraw or reduce the certification rights of a Business shall (subject to Clause 23) be at HKQAA's absolute discretion and such decisions or grounds shall be notified to a Business in writing.

20. Consequence of Suspension or Withdrawal

20.1 Upon suspension or withdrawal of a Business's certification under the Scheme (for whatever reason) a Business agrees and warrants that it shall forthwith;

20.1.1 cease using the Certificate and/or Certification Mark in any manner whatsoever and shall cease using any advertising or other material that may imply that a Business and/or its Products are certified under the Scheme.

20.1.2 cease carrying on business or operating in a manner which may imply that a Business and/or its Products are certified under the Scheme and cease holding out any present connection or association with the HKQAA.

20.1.3 at HKQAA's option either deliver up to the HKQAA or destroy in the presence of a representative of the HKQAA (if HKQAA wish a representative to be present) the Certificate, all materials and items bearing the Certification Mark and other material contemplated by sub-clause 20.1.1

20.1.4 notify all customers of the suspension or termination of certification rights where certification is a condition of contract with a customer and where business is active or likely to be active with that customer within one year of suspension or termination.

20.2 In circumstances where a certification is amended, a Business shall only claim certification in its reduced form and shall amend all use of the Certification Mark and advertising material accordingly.

21. Duration

21.1 These Regulations (as amended from time to time) shall remain in force for so long as any Business is certified under the Scheme.

22. Complaints

22.1 HKQAA agrees to investigate in its reasonable discretion all complaints received in respect of the Scheme including in respect of the audit and certification process and the certification of Businesses.

22.2 Upon receipt of a complaint, HKQAA shall confirm whether the complaint relates to the Scheme and, if so, HKQAA shall use reasonable efforts appropriately to address and resolve the same. Such complaints shall be addressed and investigated in accordance with the HKQAA documented complaint handling procedure.

22.3 Without limitation a Business acknowledges that if a complaint relates to its certification, the examination of the complaint shall consider the effectiveness of its certified Management System and/or the quality of its certified Products, as appropriate.

23. Appeal

- 23.1 In the event of a Business wishing to appeal against any decision of the HKQAA under these Regulations it shall within 21 clear days after having been officially informed of such a decision give notice in writing to the secretary of the HKQAA of its desire to appeal against that decision. A meeting of the Appeals Panel shall be held within 30 clear days of receipt of such notice and the appellant shall be given at least 7 clear days notice of the time and place of such a meeting. The original decision of the HKQAA shall stand (and its effect take place) pending any meeting of the Appeals Panel. At such a meeting both the appellant and the HKQAA executives shall be entitled to be heard in confidence. The decision of the majority of the Appeals Panel as declared by its chairman shall be final. The chairman may exercise a casting vote. The chairman shall provide the appellant a written statement of the appeal findings; including the reason for the decision reached, within 21 clear days after the decision of the Appeals Panel is made.
- 23.2 No member of an Appeals Panel may have any direct interest in the subject of the appeal. Nevertheless, an appellant shall have the right to state objections to the constitution of the Appeals Panel. Following receipt of any objection the Council shall consider the objection and decide whether to change or retain the constitution of the Appeals Panel. The Council's decision in relation to the objection and constitution of the Appeals Panels shall be final.

24. Alterations

- 24.1 These Regulations and/or Scheme may from time to time be altered by the HKQAA. No such alterations shall affect the right of a Business to use the Certification Mark or claim to be certified under the Scheme unless or until it shall have been given notice in writing of such alterations by the HKQAA who will notify a Business of the date by which it must comply with the altered Regulations and/or Scheme, which shall not normally be less than six months from the date of notification of the alteration. Following the date of effectiveness of the altered Regulations and/or Scheme HKQAA shall use its best efforts to verify that each Business carries out any necessary adjustments to its procedures and/or Management System and/or Products within such time as HKQAA considers reasonable.

25. Notice

- 25.1 Any notice given under these Regulations shall be in writing and signed by or on behalf of the party giving it and may be served by leaving it or sending it by post, in the case of HKQAA or a Business, at or to its address for the time being (registered office where applicable). Any notice so served by post shall (unless the contrary is proved) be deemed to have been served forty eight hours from the time of posting; and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted in accordance with this clause.

26. Waiver

- 26.1 No failure or delay on the part of the HKQAA to exercise any right or remedy under these Regulations shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided under these Regulations are cumulative and are not exclusive of any rights or remedies provided by law.

27. Governing Law

- 27.1 The Regulations shall be construed in accordance with the laws of Hong Kong and shall be subject to the exclusive jurisdiction of the courts of Hong Kong.
