

Maritime Arbitration Guide

How do you select an Arbitrator?

If you have agreed that the dispute will be heard under the rules of an arbitral institution, then application to that institution will start the arbitrator appointment procedure. For an 'ad-hoc' arbitration, the terms of your arbitration agreement may specify the qualifications required to be held by the arbitrator and whether a tribunal of one, two or three arbitrators should be appointed. It is not necessary that you use a lawyer but it is common to do so. The law firm will normally recommend an appropriate arbitrator holding the required qualifications but, if you do not wish to use a law firm, then the Hong Kong International Arbitration Centre (HKIAC) maintains a panel of maritime arbitrators of experience and distinction and is willing to recommend suitable arbitrators for your selection. In cases where the parties have not agreed on a mechanism for making appointments or the agreed mechanism has broken down, the [Arbitration Ordinance](#) has, since 27th June 1997, given the HKIAC the exclusive statutory authority to appoint arbitrators. This new power means that in Hong Kong the parties do not have to go through lengthy and expensive court proceedings to form their tribunal, unlike arbitrations in London where the parties may have to apply to the High Court to appoint arbitrators. In international arbitrations, the HKIAC can decide the number of arbitrators if the parties have not agreed.

How does the Maritime Arbitration Procedure work?

You may agree, either before or after the dispute has arisen, that the dispute will be heard under the rules of an arbitral institution, such as the rules of the London Maritime Arbitrators Association (LMAA) or the UNCITRAL Rules. Although the dispute resolution process will follow these rules, you may also agree that the dispute will be heard at and/or administered by the HKIAC. Most 'ad-hoc' arbitrations, however, follow no rules and it is up to the parties or the tribunal to agree on the procedures to be followed. The only overriding requirement is that the arbitrator must always abide by the principle of 'natural justice', meaning that each party must be given the opportunity to argue its case, and to answer the case that is being argued against it. 'Ad-hoc' arbitrations can be divided into two broad categories; the documents-only arbitration and the oral hearing arbitration. The documents-only arbitration is generally cheaper and faster and is usually, although not necessarily, suited to small claims or where there is a single issue at stake.

Introduction to the Hong Kong Maritime Arbitration Clause

The clause has been introduced with the purpose of encouraging and promoting arbitration in Hong Kong, in particular maritime and trading arbitrations.

The wording of the clause has been drafted to be of a format similar to that of the standard clause adopted by the London Maritime Arbitrators Association (the LMAA).

Arbitration in Hong Kong is generally governed by the Arbitration Ordinance, which has two regimes, one domestic and one international. Maritime arbitrations are normally governed by the international regime which is based on the UNCITRAL Model Law plus other provisions adapted from a number of sources including the English Arbitration Act 1996.

1. The clause contains an option for the parties to choose either Hong Kong law or English law, although the law in Hong Kong is to a very large extent based upon English law in any event.
2. The clause provides specifically for the appointment of one arbitrator by each party with a third arbitrator appointed by the two so chosen. In the absence of this provision, and also absent agreement between the parties, it would normally be necessary to make an application to the Hong Kong International Arbitration Centre (the HKIAC) for a decision to be made firstly on the number of arbitrators and secondly, if a sole arbitrator is determined to be appropriate, for that sole arbitrator to be appointed. This can cause some delay and additional expense. The clause also specifically provides that if the Respondent does not appoint their arbitrator within 14 days, then the Claimants' arbitrator can be appointed as sole arbitrator. It is of course always open to the parties to agree on a sole arbitrator in any event.
3. There is an option to insert a sentence providing for the arbitrators to be ordinarily resident in Hong Kong. One purpose of this is to encourage the appointment of arbitrators who are familiar with the Hong Kong legal and procedural system. Perhaps more importantly, appointment of arbitrators resident outside Hong Kong is likely to lead to delay and additional expense.

4. The clause makes specific reference to the Small Claims Procedure, which is suitable where the claim and counterclaim is less than US\$50,000. The parties can also adopt the Small Claims Procedure where (e.g.) the issues are simple and little or no oral evidence is required.

Hong Kong Maritime Arbitration Clause

This Contract shall be governed by and construed in accordance with Hong Kong/English* law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in Hong Kong in accordance with the Arbitration Ordinance (Cap.341) or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The reference shall be to three arbitrators, [#], one to be appointed by each of the parties hereto and the third by the two so chosen, and their decision or that of any two of them shall be final and binding. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if that arbitrator had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Hong Kong International Arbitration Centre Small Claims Procedure current at the time when the arbitration proceedings are commenced.

(*Delete as appropriate. If no deletion is made, Hong Kong law shall apply).

(#The words "who shall ordinarily be resident in Hong Kong" may be inserted here. The appointment of an arbitrator resident outside Hong Kong may substantially increase the costs and result in delay).

N.B. The above clause can be incorporated into a contract using one of the following short form alternatives:-

(a) Arbitration in Hong Kong in accordance with the "Hong Kong Maritime Arbitration Clause", Hong Kong law to apply.

(b) Arbitration in Hong Kong in accordance with the "Hong Kong Maritime Arbitration Clause", English law to apply.