

HKMAG Small Claims Procedure 2021

effective 1st September 2021

*Based substantially on the LMAA Small Claims Procedure 2021,
by kind permission of the London Maritime Arbitrators Association.*

1. INTRODUCTION

a) These provisions shall be known as the HKMAG Small Claims Procedure 2021, effective 1st September 2021. They shall apply to any dispute which parties have agreed should be referred to arbitration under this Procedure. If any such agreement refers to a monetary limit for disputes that may be so referred, such limit shall be deemed to exclude interest and costs unless the parties agree otherwise. In the absence of such an agreed monetary limit, this Procedure shall apply where the total amount of the claimant's claims and the total amount of any counterclaims does not exceed US\$100,000 (with this limit applying separately to claims and counterclaims, and not as an aggregate figure).

(b) In the event that a counterclaim exceeds such small claims limit, either party shall have the right, no later than 14 days after service of the counterclaim, to give notice in writing demanding that both claim and counterclaim be dealt with under the HKMAG Terms 2021. If such a demand is made, the arbitrator shall, if the parties agree, retain jurisdiction over the dispute as sole arbitrator and may order that the reference will proceed under the HKMAG Terms 2021. If the arbitrator does not so order, the reference will proceed under this Procedure.

(c) For the avoidance of doubt, any commencement of arbitration under this Procedure shall be sufficient to interrupt any contractual or statutory time limit.

2. APPOINTMENT OF ARBITRATOR

(a) If a dispute has arisen and the parties have agreed that it should be referred to arbitration under the Small Claims Procedure, then, unless a sole arbitrator has already been agreed on, either party may give notice to the other requiring it to join in appointing a sole arbitrator. If within 14 days the parties have agreed on a sole arbitrator and the intended arbitrator has agreed to act, the claimant shall within a further 14 days send to the arbitrator a remittance in his favour for the Small Claims fee as defined in paragraph 3(b).

(b) If the parties have not within 14 days agreed on a sole arbitrator, either party may apply in writing to HKMAG for the appointment of a sole arbitrator by the President. Such application shall be copied to the other party and shall be accompanied by a remittance for the said Small Claims and HKMAG administration fee, in favour of HKMAG. The application (a) unless accompanied by a letter of claim should provide a concise explanation of the issues which are likely to arise and (b) if appropriate give an indication whether any particular expertise on the part of the arbitrator is thought desirable, but shall not suggest any particular names of potential arbitrators. The President, having considered the nature of the dispute shall appoint an arbitrator and shall give notice to the parties. HKMAG shall send to the arbitrator the said Small Claims fee, and shall retain the balance in respect of administrative expenses.

3. THE ARBITRATOR'S FEE

(a) The Small Claims fee includes the appointment fee, interlocutories, a hearing not exceeding one day (if required by the arbitrator pursuant to paragraph 5(k)), the writing of the award and the assessment of costs (if any). It does not include expenses, such as the hire of an arbitration room, which shall in the first instance be paid by the claimant on demand. However, if there is any challenge to jurisdiction which, or which it is suggested falls to the arbitrator to resolve, the arbitrator shall be entitled to charge on a reasonably appropriate basis for such work, this additional fee being payable in the first instance by the claimant before the arbitrator makes any award, ultimate liability for such additional fee being for the arbitrator to resolve.

(b) The Small Claims fee shall be such standard fee as shall be fixed from time to time by the Committee of HKMAG. Payment of the Small Claims fee shall be a condition precedent to the pursuit of proceedings under the Small Claims Procedure (meaning that proceedings may not be continued until the fee is paid).

(c) In the event of the respondent putting forward a counterclaim which exceeds the amount of the claim, and in circumstances in which the arbitrator retains jurisdiction over the dispute, an additional fixed fee in such amount, as shall be fixed from time to time by the Committee of HKMAG, is payable by the respondent. Payment of such fee within 14 days of service of defence and counterclaim submissions shall be a condition precedent to the respondent's entitlement to pursue any such counterclaim within the proceedings in question.

(d) If the case is settled amicably, or the arbitration is not pursued, or the arbitrator resigns or is unable to continue with the reference, before an award has been written, the arbitrator may retain out of the Small Claims fee a sum sufficient to compensate the arbitrator for services thus far rendered and any balance shall be repaid.

4. RIGHT OF APPEAL EXCLUDED

The right of appeal to the courts is excluded under this procedure. By adopting the Small Claims Procedure, the parties shall be deemed to have agreed to waive all rights of appeal. For the avoidance of doubt, this provision does not apply to any ruling by an arbitrator on the arbitrator's own jurisdiction.

5. PROCEDURE

(a) Submission letters referred to below must:

(i) identify and set out the position of the parties in respect of the issues that have arisen between them as clearly, concisely and comprehensively as possible;

(ii) be contained in numbered paragraphs;

(iii) be accompanied by paginated supporting documentation relevant to the issues between the parties ('relevant supporting documents'), except that, in the case of submission letters referred to in sub-paragraphs (d) and (e) below, documents shall only be included with the prior approval of the arbitrator.

(b) Within 14 days of receiving confirmation or notice of the appointment of the arbitrator, the claimant will deliver to the respondent a letter of claim not exceeding 2,500 words accompanied by relevant supporting documents

(c) A letter of defence and of counterclaim (if any) not exceeding 2,500 words for each, accompanied in each case by copies of relevant documents, shall be delivered by the respondent to the claimant within 28 days from receipt of the letter of claim or from the date of the confirmation or appointment of the arbitrator, should the letter of claim and relevant documents have been sent in advance of such appointment. For the purpose of the word limit in this sub-paragraph, and in sub-paragraphs (d) and (e) below, the term counterclaim shall only apply to counterclaims arising independently of the claim and not to counterclaims arising from the same facts as the claim where, depending on the arbitrator's findings, an amount may be due to one party or the other.

(d) A letter of reply (if any) not exceeding 1,000 words or of reply and defence to counterclaim not exceeding 2,500 words shall be delivered by the claimant to the respondent within a further 21 days. Additional evidence or supporting documents shall only be included with a letter of reply with the prior approval of the arbitrator. Where an additional fee is payable under paragraph 3(c) hereof in respect of the counterclaim, the 21 days shall run only from receipt by the arbitrator of the additional fee.

(e) The respondent shall, if he so wishes, deliver to the claimant a letter of reply to defence to any counterclaim not exceeding 1,000 words within a further 14 days (except where the arbitrator rules that the counterclaim does not raise any new issues independent of those raised in the claim). Additional evidence or supporting documents shall only be included with a letter of reply to defence to counterclaim with the prior approval of the arbitrator.

(f) The arbitrator may require letters of submission that do not comply with these requirements to be re-submitted in a form that complies with the requirements of the Procedure. In cases where in the opinion of the arbitrator a claim, defence, counterclaim or reply is insufficiently or excessively pleaded the arbitrator may order the relevant party to re-serve a letter of submission that complies with the requirements of this paragraph, and time for service of any responsive submissions will not begin to count until such letter of submission has been served. Where, in the opinion of the arbitrator, costs are increased because a letter of submission was inadequately or excessively pleaded, or was not supported by relevant documents, any additional costs incurred in consequence may be awarded against the party whose letter of submission was deficient, regardless of the outcome of the case.

(g) Any extension to the above time limits set out in paragraphs 5 (b), (c), (d) and (e) above must be applied for before expiry of the existing time limit. If an application for extension of time is made before expiry of the relevant time limit, the arbitrator may grant such extension as appears appropriate, taking account of the circumstances of the case and the need for expedition under this Procedure. If a party fails to deliver the appropriate letter of submission within the time limit set out in paragraphs 5 (b), (c), (d) and (e) above, or within the time extended by the arbitrator pursuant to an application made before the expiry of the original time limit, the arbitrator, on the application of the other party or of the arbitrator's own motion, will notify the defaulting party that unless the outstanding communication is received within a fixed period (maximum 14 days) the arbitrator will proceed to the award on the basis of the submissions and documents before the arbitrator unless the arbitrator in his/her absolute discretion permits or requires the party not in default to adduce further material. In the case of failure to serve a letter of claim the arbitrator may make an award dismissing the claim. The time allowed by the arbitrator's notice, added to any extension of time previously agreed between the parties in respect of the same letter, shall not in total exceed 28 days. Any letter of submission submitted by the defaulting party subsequent to expiry of the time limit set by the arbitrator's notice shall not be admissible.

(h) Following delivery of the letter of reply, or, where there is a counterclaim, following delivery of the letter of reply to defence to counterclaim, the arbitrator may declare to the parties that submissions have closed. No further submissions shall be considered by the arbitrator following such a declaration.

(i) Copies of all the above letters and documents shall be sent to the arbitrator and to the other party, or if the other party is acting through a solicitor or representative, to that solicitor or representative.

(j) Experts' reports shall only be admissible with the permission and subject to the directions of the arbitrator. Experts' reports must not exceed 2,500 words.

(k) There shall be no hearing unless, in exceptional circumstances, the arbitrator requires this.

(l) In the case of an oral hearing the arbitrator shall have power to allocate the time available (which shall be limited to one working day of 5 hours) between the parties in such manner that each party has an equal opportunity in which to present his case.

(m) All communications or notifications under this Procedure may be by letter or e-mail.

6. DISCLOSURE OF DOCUMENTS

(a) There shall be no disclosure, but if in the opinion of the arbitrator a party has failed to produce any relevant document(s), the arbitrator may order the production of such document(s) and may indicate to the party to whom the order is directed that, if without adequate explanation that party fails to produce the document(s), the arbitrator may proceed on the assumption that the contents of such document(s) do not favour that party's case.

(b) The expression '*relevant documents*' includes all documents relevant to the dispute, whether or not favourable to the party holding them but does not include documents which are not legally disclosable.

7. THE AWARD

The arbitrator will make every effort to publish the award within one month, in a documents alone case, from the date when he has received all relevant documents and submissions, or, where there is an oral hearing, from the close of the hearing.

In cases governed by the Small Claims Procedure, awards will be reasoned, unless otherwise agreed by the parties, but always subject to the exclusion of the right of appeal as set out in paragraph 4 above.

In addition to the powers set out in section 69 of the Hong Kong Arbitration Ordinance (Cap.609) (the 'Ordinance'), the arbitrator shall have the following powers to correct an award or to make an additional award:

(a) The arbitrator may on his/her own initiative or on the application of a party correct any accidental mistake or omission or error of calculation in the award.

(b) The arbitrator may on the application of a party clarify a specific point or part of the award.

An application for the exercise of the powers set out above and in section 69 of the Ordinance must be made within 30 days of the handing down of the award, unless the arbitrator shall think fit to extend time.

Such powers shall not be exercised without the arbitrator first affording the other party (or, where the arbitrator is acting on his/her own initiative, the parties) a reasonable opportunity to make representations to the arbitrator.

Any correction or explanation of an award may be endorsed on the original award or contained in a separate memorandum or supplementary award which shall form part of the award. It shall be effected within 56 days of the date of the original award or such longer period as the parties may agree.

8. COSTS

The arbitrator shall assess and award costs on a commercial basis having regard to the nature of the reference. Any breakdowns or explanations regarding such costs (limited to 500 words) are to be provided within 7 days of the service of the last submission as referred to in paragraph 5 above, failing which the arbitrator shall proceed as he or she thinks fit. Unless the parties otherwise agree, the amount which one party may be ordered to pay to the other in respect of legal costs (including disbursements) shall be assessed at a sum in the arbitrator's absolute discretion up to such maximum figure as shall be fixed and published from time to time by the Committee of HKMAG. Where there is a counterclaim in respect of which an additional fixed fee is payable to the arbitrator pursuant to paragraph 3(c) hereof, this amount (after striking any necessary balance between costs orders where there is more than one) shall not exceed such other maximum figure as shall be fixed and published from time to time by the Committee of HKMAG. The successful party will normally be awarded the Small Claims fee (including the fee payable to HKMAG in cases where the President is requested to appoint an arbitrator) in addition to any legal costs which he has incurred (subject to the limits mentioned above), provided always that any award of costs shall be in the sole discretion of the arbitrator.

9. GENERAL

(a) The following provisions are incorporated:

- HKMAG Terms 2021, paragraphs 2 (a) and (b), 3, 6, 27, 31 and 32.
- The Second Schedule to the HKMAG Terms 2021, paragraphs 6 and 14-21.

(b) The arbitrator may, in any case which, in the arbitrator's discretion, the arbitrator considers exceptional, depart from or vary the provisions of this Procedure as the arbitrator considers appropriate, save that the arbitrator shall not be entitled to vary the maximum figure which can be awarded under the Small Claims Procedure in respect of legal costs unless the parties agree otherwise. Where the arbitrator does depart from or vary the provisions of this Procedure, the arbitrator shall retain jurisdiction as sole arbitrator over the dispute.

(c) In any case where it is determined or agreed that, because of the nature and/or weight of a case, the Small Claims Procedure is inappropriate and shall not be applicable, then (subject to any contrary agreement by the parties) the arbitrator shall retain jurisdiction as sole arbitrator over the dispute, and may order that the reference will proceed under the HKMAG Terms 2021.

(d) Where an arbitration no longer continues under the Procedure, and the arbitrator retains jurisdiction as sole arbitrator over the dispute, the arbitrator may retain the Small Claims fee as payment on account of the arbitrator's fees relating to the reference.

The fees fixed by the HKMAG Committee are found on the HKMAG website at www.hkmaq.org.hk

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