

HKMAG Procedures for the Administration of Arbitration under the HKMAG Terms

effective 14th October 2022

INTRODUCTION

These Procedures have been adopted by the Committee of the Hong Kong Maritime Arbitration Group (HKMAG) for use by parties who seek the benefits of an administered arbitration while maintaining the flexibility afforded by the HKMAG Terms.

These Procedures may be adopted wholly or partially by the parties before or after a dispute has arisen.

A request for administration by HKMAG of an Arbitration under the HKMAG Terms will be construed as a designation of HKMAG as the appointing authority and administrator pursuant to these Procedures.

1. SCOPE OF APPLICATION

1.1 These Procedures shall come into effect on 1 May 2017 and, unless the parties have agreed otherwise, shall apply to all arbitrations in which the Notice for Arbitration is submitted on or after that date and a request for administration under the Procedures has been received by HKMAG.

1.2 Nothing in these Procedures shall prevent the parties to a dispute from naming HKMAG as the appointing authority or requesting certain administrative services from HKMAG without subjecting the arbitration to the provisions contained in these Procedures.

1.3 Where these Procedures are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall apply.

2. INTERPRETATION OF THE PROCEDURES

2.1. HKMAG shall have the power to interpret all provisions of these Procedures.

2.2. If the circumstances of the case so justify, HKMAG may amend the time limits provided for in the Procedures, as well as any time limits that it has set. HKMAG shall not amend any time limits set by the arbitral tribunal unless the arbitral tribunal directs otherwise.

2.3. HKMAG has no obligation to give reasons for any decision it makes. All decisions made by HKMAG are final and, to the extent permitted by any applicable law, not subject to appeal.

2.4. References to HKMAG are to the Committee of HKMAG or any Sub-Committee or person specifically designated by the Committee to perform the functions referred to herein.

2.5. All communication with HKMAG shall be to its email address.

2.6. English is the original language of these Procedures. In the event of any discrepancy or inconsistency between the English version and the version in any other language, the English version shall prevail.

3. NOTICE OF ARBITRATION

3.1. 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 (as provided for in the Terms) with copy to HKMAG.

3.2. If the Tribunal is to consist of a sole arbitrator, the party wishing to refer a dispute to arbitration shall send notice of arbitration to the other party with copy to HKMAG.

3.3. The party sending such notice shall notify HKMAG, with the appropriate documentation, evidence of the date of receipt of the notice by the other party.

4. RESPONSE TO THE NOTICE OF ARBITRATION

4.1. Within the time period provided in the Terms, the Respondent shall give notice of the appointment of its arbitrator in writing to the other party with copy to HKMAG.

4.2. If the Tribunal is to consist of a sole arbitrator, the parties shall send notice of the appointment of the sole arbitrator to HKMAG.

4.3. As provided for by the provisions of the Terms, in the event of default of the Respondent the other party shall send notice of the appointment of its arbitrator as sole arbitrator to the Respondent with copy to HKMAG.

5. COMPOSITION OF THE ARBITRAL TRIBUNAL

5.1. Where HKMAG is to appoint a sole or third arbitrator in accordance with the Terms, such appointment shall be made taking into account any particular requirements of each case and any conditions agreed upon by the parties.

6. COMMUNICATIONS

6.1. All communications, notices, documents, orders, decisions and awards shall be copied to HKMAG.

7. ARBITRAL PROCEEDINGS

7.1. If a question arises as to the existence, validity or scope of the arbitration agreement or to the competence of HKMAG to administer the arbitration, HKMAG may decide whether and to what extent the arbitration shall proceed. The arbitration shall proceed if and to the extent that HKMAG is satisfied, prima facie, that an arbitration agreement under these procedures may exist. Any question as to the jurisdiction or admissibility of the claim or counterclaim, if any, shall be decided by the Tribunal.

7.2. HKMAG will assist the arbitral tribunal and the parties in fixing the time limits for the arbitration, as well as establishing the date, time and place of meetings, hearings or otherwise, as requested.

8. COSTS AND AWARDS

8.1. When submitting a Notice of Arbitration, the Claimant shall pay a registration fee in the amount set by HKMAG, as set out on the HKMAG website. If the Claimant fails to pay the registration fee, HKMAG may not proceed with the arbitration. The registration fee is not refundable.

8.2. For an arbitration conducted under these procedures, Arbitrators will be remunerated according to their hourly or daily rate for all work reasonably carried out in connection with the arbitration, unless the parties agree otherwise. Upon the parties' request, HKMAG will consult with the arbitral tribunal to establish the rates applicable to the arbitration. The arbitral tribunal shall be reimbursed for its reasonable expenses. The expenses of the arbitral tribunal will not be included in the arbitral tribunal's fees.

8.3. The costs of the arbitration shall include all fees charged by HKMAG for the administration of the arbitration, as set by the Committee from time to time and set out on the HKMAG website.

8.4. HKMAG's administrative fees do not cover the costs of hearing rooms, transcription, translation, interpretation and costs of any other facilities or services which are not covered in these procedures. However, HKMAG can, at the request of the parties, assist with the making of necessary arrangements for the provision of such services.

8.5. During the course of the arbitration, HKMAG may request the parties to make deposits with HKMAG after consulting with the arbitral tribunal.

8.6. If the required deposits are not paid in full to HKMAG within 30 days of the receipt of the request, HKMAG shall so inform the parties in order that one or the other of them may make the required payment. If such payment is not made, the arbitral tribunal, after consultation with HKMAG, may order the suspension or termination of the arbitration.

8.7. HKMAG shall place the deposits in deposit account(s) at a reputable licensed Hong Kong deposit-taking institution.

8.8. Payments to the arbitral tribunal shall generally be made by HKMAG from funds deposited by the parties. HKMAG may direct the parties to make one or more interim or final payments to the arbitral tribunal.

8.9. The parties are jointly and severally liable for the fees and expenses of an arbitrator, irrespective of which party appointed the arbitrator. In addition, the parties are jointly and severally liable for HKMAG's administrative fees.

8.10. HKMAG and the arbitral tribunal shall have a lien over any awards issued by the tribunal to secure the payment of their outstanding fees and expenses, and may accordingly refuse to release any such awards to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties.

8.11. Subject to any lien, originals of the awards signed by the arbitral tribunal and affixed with the seal of HKMAG shall be communicated to the parties by the arbitral tribunal. HKMAG shall be supplied with an original copy of the award.

8.12. Upon request by any party, HKMAG will assist in the filing or registration of the arbitral award(s) in countries where such filing or registration is required by law. The cost of such filing or registration shall not be included in HKMAG's administrative fees and shall be paid by the requesting party to HKMAG.

9. EXCLUSION OF LIABILITY

9.1. None of the Committee of HKMAG nor any sub-committee or other body or person specifically designated by it to perform the functions referred to in these Procedures, nor the arbitral tribunal, any tribunal appointed expert or secretary of the arbitral tribunal shall be liable for any act or omission in connection with the arbitration, save where such act was done or omitted to be done dishonestly.

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