

## **The HKIAC Small Claims Procedure**

Effective 4<sup>th</sup> July 2003

### **1. Introduction**

These provisions shall be known as the HKIAC Small Claims Procedure. The procedure is suitable for use in arbitrations where neither the claim nor any counterclaim exceeds the sum of US\$ 50,000. It is not suitable for use where there are complex issues or where there is likely to be examination of witnesses, but may be suitable for handling larger claims where there is a single issue at stake.

### **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 start the arbitration by giving notice to the other requiring him to join in appointing a sole arbitrator. If within fourteen days the parties have agreed on a sole arbitrator and the intended arbitrator has accepted the appointment, the Claimant shall within a further fourteen days send to the Respondent (with copies to the arbitrator) a letter of claim accompanied by copies of all relevant documents including experts' reports and shall further 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 fourteen days agreed on a sole arbitrator, either party may apply in writing to the Hong Kong International Arbitration Centre (HKIAC), for the appointment of a sole arbitrator. Such application shall be copied to the other party and shall be accompanied by a copy of the letter of claim together with copies of all said relevant documents and a remittance for the said small claims fee plus HK\$ 1,500 where applicable in favour of the HKIAC. Where appropriate a party applying to the HKIAC should provide a concise explanation of the issues which are likely to arise and an indication as to whether any particular expertise on the part of the arbitrator is required. The HKIAC, having considered the nature of the dispute shall appoint an appropriate arbitrator and shall give notice to the parties. The HKIAC shall send to the arbitrator the letter of claim and the documents together with the said small claims fee, and shall retain the balance in respect of administrative expenses.

### **3. The Arbitrator's fee**

- (a) The fixed fee includes the appointment fee, interlocutories, a hearing not exceeding one day (if required by the arbitrator pursuant to para 5(g)), 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.
- (b) The Small Claims fee shall be HK\$ 15,000 or such standard fee as shall be fixed from time to time by the Council of the HKIAC. Payment of the Small Claims fee shall be a condition precedent to the valid commencement of proceedings under the Small Claims Procedure.

- (c) In the event of the Respondents putting forward a counterclaim which exceeds the amount of the claim an additional fixed fee in the amount of HK\$ 7,500 is payable by the Respondents. Such fee is to be paid within fourteen days of service of defence and counterclaim submissions failing which the arbitrator may, at his discretion, stay the counterclaim and proceed with the original claim.
- (d) If the case is settled amicably before an award has been written, the arbitrator may retain out of the Small Claims fee a sum sufficient to compensate him 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.

#### **5. Procedure**

- (a) A letter of defence and details of counterclaim (if any) accompanied in each case by copies of all relevant documents including any experts' reports shall be delivered to the Claimant within twenty-eight days from receipt of the letter of claim or from the date of appointment of the arbitrator, whichever shall be the later.
- (b) Letter of reply and defence to counterclaim (if any) shall be delivered to the Respondent within a further twenty-one days. The arbitrator shall be entitled to refuse to admit evidence submitted at the stage of reply and defence to counterclaim (if any) if it should properly have been served with the letter of claim.
- (c) Where there is a counterclaim, the Respondent shall deliver a letter of reply to defence to counterclaim (if he wishes to do so) within a further fourteen days.
- (d) Any extension to the above time limits must be applied for before expiry of the existing time limit. If a party fails to serve its pleading within the time limit set, the arbitrator, on the application of the other party or of his own motion, will notify the defaulting party that unless the outstanding communication is received within a fixed period (maximum 14 days) he will proceed to the award on the basis of the submissions and documents before him to the exclusion of all others. Any pleading submitted by the defaulting party subsequent to expiry of the time limit set by the arbitrator's notice shall not be admissible. The time allowed by the arbitrator's notice, added to any extension of time previously allowed in respect of the same pleading shall not in total exceed 28 days.
- (e) Following service of the letter of reply, or, where there is a counterclaim, following service of the letter of reply to defence to counterclaim, the arbitrator may declare to the parties that pleadings have closed. No further pleadings shall be considered by the arbitrator following such a declaration.

- (f) 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.
- (g) There shall be no hearing unless, in exceptional circumstances, the arbitrator requires this.
- (h) In the case of an oral hearing the arbitrator shall have the power to allocate the time available (which shall be limited to one working day) between the parties in such manner that each party has a reasonable opportunity in which to present his case.
- (i) All communications or notifications under this procedure may be by letter, telex, telefax or e-mail.

## **6. Disclosure of Documents**

- (a) There shall be no Discovery, but, if in the opinion of the arbitrator a party has failed to produce any relevant document(s), he 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 he fails to produce the document(s), the arbitrator may proceed on the assumption that the contents of the 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. It includes witness statements, experts' reports and the like on which he intends to rely, 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 only case, from the date when the arbitrator has received all relevant documents and submissions, or, where there is an oral hearing, from the close of the hearing.

## **8. Costs**

The power of an arbitrator to award costs has been retained as an important feature of Hong Kong arbitration. Such assessment shall be on a commercial basis having regard to the nature of the reference. 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 discretion up to HK\$ 30,000, or such other maximum figure as shall be fixed from time to time by the Council of the HKIAC. A party seeking to have its costs assessed must provide a breakdown of such costs. The successful party will normally be awarded the Small Claims fee (including the fee of HK\$ 1,500 payable to the HKIAC in cases where the HKIAC is requested to appoint an arbitrator) in addition to any legal costs which he has incurred, provided always that any award of costs shall be in the sole discretion of the arbitrator.

## **9. General**

The arbitrator may in exceptional cases depart from or vary the above provisions at his entire discretion, save that he shall not be entitled to vary the maximum figure which can be awarded under the Small Claims Procedure in respect of legal costs.