

BIMCO Law and Arbitration Clause 2020

HONG KONG / ENGLISH LAW | HONG KONG ARBITRATION

(a) 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 exclusively to arbitration in Hong Kong in accordance with the Arbitration Ordinance (Cap.609) or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause. The seat of arbitration shall be Hong Kong even where any hearing takes place in another jurisdiction.

*Delete whichever does not apply. If neither or both are deleted, Hong Kong law shall apply.

(b) The reference shall be to three (3) arbitrators unless the parties agree otherwise.

(c) The arbitration shall be conducted in accordance with the Hong Kong Maritime Arbitration Group Terms.

(d) In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Hong Kong Maritime Arbitration Group Small Claims Procedure.

(e) The terms and procedures referred to in subclauses (c) and (d) shall be those current at the time when the arbitration proceedings are commenced.

(f) Any and all notices and communications in relation to any arbitration proceedings under this clause, including commencement notices and appointment of arbitrators, shall be treated as effectively served from the date and time the e-mail was sent if sent by e-mail to the e-mail addresses below:

Name of party to this contract:

E-mail address(es) for receipt of notices and communications on behalf of the above party: [insert]

Name of other party to this contract:

E-mail address(es) for receipt of notices and communications on behalf of the above party: [insert]

Either party shall be entitled to change and/or add to the e-mail addresses above by sending notice of change to the other party at the above address (or, if previously amended by notice, the relevant amended addresses).

Nothing in this clause shall prevent any notice and communication in relation to any arbitration proceedings in connection with this contract being served by other effective means.

EXPLANATORY NOTES

Subclause (a) determines the governing law; the place of arbitration; the applicable arbitration legislation; and the seat of arbitration (where the arbitration takes place in a jurisdiction other than the agreed place of arbitration). It is an “exclusive” arbitration agreement. This is emphasised by the addition of the phrase “referred exclusively to arbitration”.

Subclause (b) requires the parties to appoint three arbitrators but allows for a different number of arbitrators to be agreed.

Subclause (c) applies the terms (or rules) of the chosen arbitration association to the conduct of the arbitration. An appointment procedure is no longer included in the clause because the terms of the named arbitration venue contain a procedure to which parties should refer when making appointments of arbitrators.

Subclause (d) provides for the small claims procedures offered by the named arbitration association. Parties are free to decide on the maximum applicable sum for small claims, but otherwise the clause will display the default amount used by each of the named venues. If the London arbitration version of the clause is chosen then an additional “intermediate claims procedure” provision will apply optionally.

Subclause (e) applies the terms, rules procedures of the chosen arbitration association current at the time that arbitration proceedings are commenced. This is the common approach for arbitration in London, Singapore and Hong Kong. In New York the rules are different and it is those current at the time the contract was concluded that will apply.

Subclause (f) is an entirely new provision designed to address concerns about the correct service of arbitration notices and communications. Parties are free to serve notices by whatever effective means they choose, but if they choose email then they must provide the email address of someone authorised to receive arbitration notices (and advise the other party of any change of address during the period of the agreement). Notices are considered effectively served immediately on sending by email.