A Guide to Maritime Arbitration in Hong Kong
The Power of Integrity
# table of contents

- what to do when your cargo is lost or damaged
- what if general average has arisen?
- what evidence is required?
- how to claim on policies? 
- who is entitled to sue whom?
- tort / bailment
- any defences available to the carrier?
- can the carrier limit his liability?
- which jurisdiction?
- is there a time limit?
- contact us

This publication is intended to be an outline of the law and procedures on this subject for the purpose of general reference only and cannot be relied upon as legal advice in any particular case. If any advice or assistance is needed, please contact this firm on 2810 1212 or email us at onc@onc.hk.

**ONC Lawyers**

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hong kong at a glance

Hong Kong, officially the Hong Kong Special Administrative Region of the People’s Republic of China (“PRC”), is located on China's south coast on the Pearl River Delta, bordering Guangdong province to the north and facing the South China Sea to the east, west and south.

Beginning as a trading port, Hong Kong became a British colony in 1842, and remained so until the return of its sovereignty to the PRC in 1997. Under the "One Country, Two Systems" policy, Hong Kong retains a high degree of autonomy and maintains a highly capitalist economy.

Hong Kong is one of the world's leading financial capitals and a major business and cultural hub. It is also recognised as one of Asia’s greatest trading and shipping centres. In 2010, the UNCTAD ranked Hong Kong as the eighth largest maritime centre in terms of vessel tonnage it controls. As such, it is a natural venue for international arbitrations involving maritime disputes.

Fact Sheet

- **Official languages**: Chinese, English
- **Geographic coordinates**: 22°15’N, 114°10’E
- **Area Total**: 1,104 km²  •  **Population**: 7 million
- **Currency**: Hong Kong dollar (HKD)  •  **Time zone**: HKT (UTC+8)
- **Calling code**: 852  •  **Climate**: Sub-tropical with long, hot summer
- **Economy**: Free market economy
The Basic Law, which is the “mini-constitution” of Hong Kong, provides the constitutional framework for its legal system. The Basic Law guarantees a high degree of autonomy from the Central Government of the PRC. Hong Kong enjoys its own executive, legislative and independent judicial power, including that of final adjudication.

Under the principle of ‘One Country, Two Systems’, Hong Kong retains the English common law system, supplemented by local legislations. The laws in force immediately prior to the resumption of sovereignty by the PRC have been maintained. National laws of the PRC are not applied in Hong Kong, except for those relating to defence and foreign affairs.

Strict adherence to the principles of the rule of law and judicial independence is widely recognised as the most important attributes of Hong Kong.
maritime arbitration

Reference to arbitration to resolve maritime disputes has long been the conventional practice in most maritime nations. Given its informal and less litigious nature, arbitration is relatively less damaging to the business relationship between the parties to a dispute.

In addition, arbitration has a number of inherent advantages over litigation, e.g.

- **Free choice of Arbitrator(s)** – as maritime disputes may involve issues of a technical nature, the parties may agree to appoint someone with sufficient experience and expertise to determine their disputes.

- **Speed** – unlike the judge of a court of law whose diary is likely to be packed with hearings, an arbitrator is usually less tied up and more ready to take a proactive role in monitoring the progress of a case.

- **Privacy** - the entire arbitration process including the hearing is held privately and is confidential; irrespective of the nature of the dispute, media attention is most unlikely.

- **Finality** – unlike a court judgment, an arbitral award is subject to very limited rights of review by the Court.

- **Cost-effectiveness** – cost of arbitration is generally lower than litigation, especially in case of “documents only” arbitration.
- Enforceability - easily enforceable in foreign courts through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"); this is particularly important in the context of resolving disputes in Hong Kong; as compared to a judgment grant by the courts of Hong Kong, which is enforceable in only a handful of foreign countries, an arbitral award can be enforced in all the Convention countries, including the PRC.
why arbitrate in hong kong?

geographically convenient

Lying at the centre of Asia Pacific, the fastest growing region in the world, Hong Kong is within five hours’ flying time of half of the world's population. Communications, transport, financial services and accommodation are all well served.

expertise

Hong Kong is a world centre of expertise in all aspects of the maritime industry, supported by an enormous pool of experienced professionals. In fact, the largest branch membership of the Chartered Institute of Arbitrators, whose headquarter is in London, is contributed by Hong Kong, with members standing at 1,048 out of 1,221 as at 15 June 2011.

culture

Hong Kong is often described as a place where East meets West, reflecting the cultural mix brought to it during its time as a British colony. Because of the retention of its English common law-based legal system, Hong Kong is generally regarded as a fair and familiar forum with sufficient neutrality for resolving commercial disputes. At the same time, with its proximity in location, parties from the PRC regard Hong Kong as a culturally-friendly venue for dispute resolution.
The Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong) provides the legal framework for arbitration in Hong Kong. It maximizes the authority of arbitral tribunals and minimizes opportunities for court intervention.

The Arbitration Ordinance has recently undergone a substantial overhaul to incorporate the latest international practice. The previous statute (Arbitration Ordinance Chapter 341) was based on a split regime - international arbitration (modelled on the UNCITRAL Model Law) and domestic arbitration. The new Arbitration Ordinance unifies the two regimes. It is more user-friendly as it effectively extends the application of the UNCITRAL Model Law to all types of arbitration in Hong Kong. Meanwhile, most of the amendments to the UNCITRAL Model Law in 2006 have been adopted in the new Arbitration Ordinance. It is anticipated that the new Arbitration Ordinance will further enhance Hong Kong’s position as the international dispute resolution centre.

The HKIAC was established in 1995 by a consortium of leading businessmen and professionals in Hong Kong. Being one of the busiest centres in the world, it is equipped with world-class facilities for dispute resolutions. In 2010, the HKIAC received a total of 175 international arbitration
cases\textsuperscript{1}, which make HKIAC rank second in the Asia Pacific region.

**independence of HKIAC**

Being the world’s freest economy\textsuperscript{2}, Hong Kong is blessed with a clean government with minimal intervention in commercial activities.

Initially funded by the business community and by the Hong Kong Government, the HKIAC is now independent of both and financially self-sufficient.

**language**

The normal working languages of the HKIAC are English and Chinese (including Cantonese and Mandarin). Hong Kong has been benefited from a wealth of legal practitioners and internationally renowned arbitrators who speak these languages fluently.

Parties may also arbitrate in any other language or languages which they choose. The HKIAC is equipped with excellent facilities for simultaneous translation and can arrange for simultaneous translators and translation of documents and transcripts. Arbitral awards may be rendered in any language chosen by the parties.

\textsuperscript{1} Source: Website of the Hong Kong International Arbitration Centre www.hkiac.org.

\textsuperscript{2} 2009 Index of Economic Freedom, The Heritage Foundation
ad hoc arbitration

In an institutional arbitration, parties are normally charged upfront a certain percentage of the amount in dispute. This may not be an attractive option in disputes involving a huge amount of money. The HKIAC provides facilities for “ad hoc” arbitrations upon request and charges only HK$4,000 or about US$513 for appointment of an arbitrator.

open legal representation

While some countries still place restrictions on legal personnel coming to conduct arbitration, Hong Kong allows open legal representation. Anyone from another jurisdiction – who is qualified there – can act as an advocate or arbitrator in Hong Kong.

enforcement

The New York Convention was adopted by Hong Kong on 21st April 1977, by virtue of the United Kingdom’s accession on Hong Kong’s behalf. The PRC is also a signatory to the Convention, and applied it to Hong Kong with effect from 1st July 1997. As such, Hong Kong arbitral awards are enforceable in all countries that are members of the New York Convention.

As Hong Kong is now part of the PRC, there used to be some uncertainty over mutual enforcement after 1997. In 1999, the PRC and Hong Kong signed the Arrangement
Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the Hong Kong Special Administrative Region, by virtue of which it is now established that Hong Kong arbitral awards can be enforced in the PRC and vice versa.

**hong kong maritime arbitration group (“HKMAG”)**

In response to demands from the shipping industry, the HKMAG was formed in February 2000 as a division of the HKIAC. Maintaining a list of arbitrators with commercial or legal experience in maritime fields, it has the specific aim of promoting the use of maritime arbitration in Hong Kong.

**hong kong maritime arbitration procedures**

Parties may agree, either before or after the dispute has arisen, that the dispute will be heard under the rules of an arbitral institution, e.g. the rules of the London Maritime Arbitrators Association (“LMAA”) or the UNCITRAL arbitration rules. In addition, parties may also designate the HKIAC to hear and/or administer the arbitration. “Ad-hoc” arbitrations, which follow no particular rules leaving the parties or tribunals to agree on the procedures, are also permissible.
Broadly speaking, there are two categories of maritime arbitrations in Hong Kong: documents-only arbitration and the oral hearing arbitration. The documents-only arbitration is generally cheaper, faster and more suited to small claims or where there is a single issue at stake.

**international arbitration in hong kong under UNCITRAL model law**

appointment of arbitrators

Under UNCITRAL Model Law, the parties are free to determine the number of arbitrators. Where the parties fail to agree on the number arbitrators, three will be appointed.

UNCITRAL Model Law imposes no restrictions on who may be appointed as arbitrator. The parties are therefore free to appoint an arbitrator of their choice. Any special requirement in the arbitration agreement between the parties, e.g. a requirement that the arbitrator must have some special qualifications, should be observed.

The parties are also free to agree on the procedure for appointing the arbitrator(s). Should the parties fail to reach an agreement:-

- in an arbitration with three arbitrators, each party will appoint one and the two arbitrators thus appointed will appoint the third
• in an arbitration with a sole arbitrator, the HKIAC will appoint one upon the request of either party

If a party fails to appoint an arbitrator within 30 days of a request to do so from the other party, the HKIAC will appoint one upon the request of the other party.

**Challenge to jurisdiction of tribunal**

Pursuant to Article 16 of UNCITRAL Model Law, the tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator.

**Rules of procedures, place and language of arbitration**

The parties are free to agree on the rules of procedures, place and language of arbitration. Failing such agreement, these issues will be determined by the Tribunal.

**Exchange of submissions or pleadings**

UNCITRAL Model Law does not impose strict time limits
for the exchange of submissions or pleadings. Parties may agree upon the sequence of pleadings and time limits or the tribunal may exercise its wide discretion to set the time periods.

The Claimant has to communicate a statement of claim stating his case and the relief sought to the Respondent first. Failing to do so without sufficient cause may entitle the Tribunal to terminate the proceedings. The Respondent would then be required to communicate a statement of defence and any counterclaim to the claimant. Default of the Respondent may allow the Tribunal to continue the proceedings and proceed to make an award on the evidence before it.

**Interim Measures**

Pursuant to Article 9 of UNCITRAL Model Law, the tribunal may make orders for interim measures and also require any party to provide security in connection with such measure.

**Hearings and Written Proceedings**

Subject to any contrary agreement between the parties, the Tribunal will decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal must hold such hearings at an appropriate
stage of the proceedings, if so requested by a party.

The parties may decide on the procedures for presenting their case, such as procedures on examining witnesses, exchanging pleadings and documents, etc. For example, the parties may decide to have a limited oral hearing instead of a full hearing so as to reduce costs.

**Award**

The award will be in writing, stating the reasons upon which it is based, unless the parties have agreed that no reasons are to be given. An arbitral award will be final and binding on the parties.

**Appeals**

Arbitrations under UNCITRAL Model law reserve no right of appeal to the Court on a point of law. As such, the Court can only set aside an award on very limited grounds, e.g. party not given proper notice of the appointment of the arbitrator or arbitrators having exceeded their jurisdiction, etc.

**Small claims procedure**

The Small Claims procedure of the HKIAC has been designed primarily to deal with low value shipping disputes of no more than US$50,000 in a timely and cost efficient
manner. It is an attractive option where there are no complex issues and where there is only a single issue in dispute.

Similar to the procedure of the LMAA, the Small Claims procedure is simple and straightforward:

- The parties appoint a sole arbitrator. In default, the HKIAC may make an appointment.

- Strict time limits are imposed on exchange of submissions and pleadings. The Tribunal reserves limited power to extend time for service of pleadings.
  ~ The Claimant sends out a statement of claim and relevant documents, e.g. witness statements, expert’s report, legal submissions, etc. within 14 days.
  ~ The Respondent delivers its defence and counterclaim within 28 days.
  ~ The Claimant delivers its reply and defence to counterclaim in 21 days.
  ~ The Respondent delivers reply to defence to counterclaim within 14 days.

- The arbitrator makes an award within one month from any hearing, or from receiving all relevant documents and submissions.
costs of small claims procedure

The Small Claims procedure radically limits the fees payable to the arbitrator:

- The claimant must pay the arbitrator a fixed fee of HK$15,000, which covers the arbitrator's appointment fee, the costs of dealing with interlocutory exchanges, a hearing limited to one day, the preparation of the award, and the assessment of any costs. Expenses are charged extra.

- If there is a counterclaim, and it exceeds the amount of the claim, the respondent must pay an additional fee of HK$7,500.

- HKIAC charges HK$1,500 to appoint an arbitrator.

- The arbitrator has power to direct which party must bear the ultimate responsibility for the small claims fee and the tribunal's expenses, and for the legal costs incurred by the successful party. The assessment of recoverable costs is to be done on a "commercial basis", but the amount may not exceed HK$30,000.

"documents only" procedure

Where there is no need for an oral hearing, the parties may choose the “Documents Only” Procedure, which is similar to that of LMAA. The Document Only Procedure has proven to be a popular option for shipping disputes.
Strict time limits are imposed on exchange of submissions and pleadings:

- The Claimant delivers written claim submissions and supporting documents within 28 days of agreeing to adopt this procedure or of the order of the tribunal.
- Defence and Counterclaim submissions within 28 days afterwards.
- The Claimant’s Reply to Defence and Counterclaim within 28 days afterwards.
- The Respondent’s final submissions within 21 days afterwards.
- Award.

**hong kong maritime arbitration clause**

To submit a maritime dispute to arbitration at the HKIAC, the HKIAC recommends the incorporation of the following Hong Kong Maritime Arbitration Clause into a contract. Legal advice should, however, be sought where there is doubt as to the suitability of any of the recommended clause.
recommended 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. A similar 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.
Our shipping & logistics practice

We provide comprehensive services in both contentious and non-contentious aspects of shipping and transport law.

We are particularly experienced in 'dry' shipping work, including such matters as bills of lading, charter parties and international sale of goods. Examples of the matters with which we regularly deal are: cargo claims, bunker disputes, laytime and demurrage disputes, hire and off-hire claims, ship repair claims, performance warranties, commodity disputes, CIF and FOB contracts, trade finance and documentary credits, cargo policies, haulage and freight forwarding contracts; cross-border courier business as well as claims for loss of life/personal injury sustained on board vessels.

We work closely with the leading experts, surveyors and adjusters dealing with the loss of or damage to cargo and related insurance problems.

Our clients include shipowners and charterers, cargo insurers, tug companies, ship-repairers, banks, marine engineering companies, ship and chartering brokers, oil companies, and government agencies.

Members of the team are frequently called upon to deal with matters requiring an urgent response, such as the application for or dismissal of an injunction, the exercise of a lien or the arrest of a ship.
Prior to joining ONC Lawyers, Sherman practised with an international law firm in its Hong Kong office, handling a wide range of shipping and logistics related cases including rendering advice on bills of lading; advising insurers on cargo policies; handling cargo claims, mortgagee actions, collision cases, bunkering disputes and charter party disputes. At ONC Lawyers, Sherman is the Head of Litigation & Dispute Resolution Department handling a wide range of commercial disputes especially disputes among shareholders and contentious matters concerning the Securities and Futures Ordinance, in addition to his shipping and logistics practice.
ONC Lawyers is a professional and dynamic legal practice based in Hong Kong. We have been growing continuously since our establishment in 1992, and have now become one of the largest local law firms with more than 90 members of legally-qualified and supporting staff.

We offer a full range of legal services to both corporate and individual clients, including:-

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If you have any enquires, please feel free to contact us at (852) 2810 1212 or onc@onc.hk.
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