

International Arbitration Newsletter

Hammonds' Commercial & Dispute Resolution Group presents the third in a series of introductions to the various alternative options available for arbitrating disputes for Chinese enterprises.

Grain and Feed Trade Association (Gafta)

With roots stemming back to 1878, when the London Corn Trade Association commenced its operations, Gafta is an international organisation concerned with the provision of standard contracts for use in the sale and supply of grain, animal feedstuffs, pulses, and rice and other soft commodities.

Gafta offers arbitration services in London for disputes arising under the Gafta standard form contracts. As well as providing arbitration rules (under Gafta 125), a dedicated venue at Gafta House, and a panel of approved arbitrators, Gafta also offers mediation services in accordance with Gafta 128: Mediation Rules & Agreement.

In addition, Gafta provide guidelines on issues relevant to the industry, such as the appropriation of cargo, arbitration proceedings, letters of credit, and insurance terms.

The contracts and other material published by Gafta is available to members on its website: www.Gafta.com.

In total, Gafta has over 80 different contracts covering all manner of soft commodities. The Association also provides various rules which provide a universal standard in the industry, for example:

- Weighing Rules
- Sampling Rules
- UK Loading Port Terms
- Register of Analysis Methods.

Gafta Arbitration

Gafta provides a two-tier arbitration structure used for most claims (see 'Arbitration Rules' below), and a simple dispute service for disputes of less complexity, which are described under the 'Simple Disputes' heading below.

Arbitration Rules

The arbitration may be conducted by oral hearing or by examination of written statements. If the parties elect to hold an oral hearing, they may be represented by an agent involved in the trade, but not by a legal representative unless these are expressly agreed.

In practice this is rare, although at Hammonds we do have experience within our arbitration team members of both first and second tier references proceeding to live hearings, and with legal representation agreed by both parties.

(1) Appointment of Arbitrators

Arbitrations are heard by a tribunal consisting of three arbitrators. Each party appoints their own arbitrator from a panel of Gafta approved personnel. Gafta will then appoint a third arbitrator. Alternatively, both parties can agree to refer the dispute to a sole arbitrator to be appointed by Gafta in accordance with clause 3.1 of the Rules.

(2) Appeals

Each party has the right to appeal an arbitrators' award within 30 days from the date of the award. Gafta then appoint a five-man Appeal Board where the appeal concerns an award made by three arbitrators, and a three-man Appeal Board where the award in question was made by a sole arbitrator.

The parties may adduce new evidence for the purposes of appeal, which can be useful, for example, if further expert evidence is required on a particular issue.

The appeal may be conducted by oral hearing or by examination of written submissions and relevant documentary evidence. However, if the parties elect to hold an oral hearing, they may be represented either by one of their own employee, or by a Gafta qualified arbitrator, but not by a legal representative unless expressly agreed by both parties.

The appeal is final and binding on all parties.

(3) Costs

Where the parties have agreed that legal representation is permitted in an oral hearing, the Tribunal will decide the extent of legal costs that are recoverable.

If, however, the hearing proceeds on the basis of documents alone, then whilst those may be drafted by solicitors, the costs incurred in the preparation of the submissions are not themselves recoverable, even in the event that a party is successful. This can be both an advantage and a disadvantage: it is an advantage if one is on the losing side as it is not possible to be liable for the other party's costs; however, if successful, the sums recovered will be diminished by the cost of preparation of the case.

In addition to fees incurred by lawyers and appropriate experts in the preparation of the case (and any oral hearing that may follow), Gafta and its arbitrators may request deposits on account of their costs or fees. Gafta also charge an administration fee, which is not fixed, but which tends to range between £2,500 and £10,000, depending on the nature and complexity of the case.

(4) Sanctions

If a party against whom an arbitrators' award is made fails to honour the award, the other party is entitled to inform Gafta, who will then circulate details of this to its members.

Simple Dispute Arbitration Rules

The Simple Dispute Rules are available where both parties agree to submit to a sole arbitrator appointed by Gafta. The arbitration may be conducted by oral hearing or by examination of written statements. If the parties elect to hold an oral hearing, they may be represented by an agent involved in the trade, but not by a legal representative. They

are also prohibited from having their case prepared by a legal representative. Importantly, there is no right of appeal against an award made under the Simple Dispute Arbitration Rules.

Gafta has a strong presence internationally, regularly appearing at trade conferences and hosting its own events. In addition, Gafta have a number of committees focussed on areas relevant to the membership. These committees include:

- The International Contracts Policy Committee
- The Contracts Committee
- The Arbitration Committee
- The Superintendents Committee
- The China Trade Committee
- UK Trade Section Committee

Note: all fees quoted above were correct at the time of writing. In addition, VAT may be payable at a rate of 17.5%. Further details can be provided on request.

Hammonds is a full service multidisciplinary law firm. Our dedicated dispute resolution team comprises 250 lawyers in seven countries dealing with disputes around the world. We have extensive experience of all forms of dispute resolution and alternative dispute resolution including all forms of arbitrations. Our Asia dispute resolution team is based out of our Hong Kong and Beijing offices and has worked closely with our London office on a range of LCIA Arbitrations.

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Keith is a Senior Partner of Hammonds Hong Kong and Chief Representative, Beijing Representative Office. He is extremely experienced in international arbitration both in Europe and China, with particular emphasis on the energy and financial services sector. His expertise also covers high court /commercial court litigation, expert determinations, mediations and other forms of ADR.

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