

A SHORT GUIDE TO LMAA ARBITRATION

INTRODUCTION

The London Maritime Arbitrators Association ('LMAA') has three main arbitration procedures and terms that may be chosen by parties agreeing to arbitrate, these are:

1. The LMAA Small Claims Procedure (2006);
2. The LMAA Intermediate Claims Procedure (2009);
3. The LMAA Terms (2006);

It is important to consider each set of terms carefully when considering whether to specifically refer to one of the procedures when entering into an agreement. It is possible to incorporate more than one procedure and set the parameters where either one of them should apply.

SMALL CLAIMS PROCEDURE ("SCP")

It may be agreed by the parties in contract that the SCP shall be used with smaller claims, typically less than \$50,000 (excluding interest and costs), although parties may set their own financial limits as to when the SCP shall be used.

The main advantage of the SCP is the use of a sole arbitrator and a set claim fee (currently fixed at £2,500) that includes the appointment fee, interlocutories, a hearing not exceeding 1 day, the writing of an award and an assessment

of costs. This fee must be paid within 14 days of the sole arbitrator being appointed. If a settlement is reached at an early stage it is likely that the majority of the claim fee shall be returned with a deduction that represents the work carried out by the arbitrator.

There is no formal disclosure procedure, this is with the aim of speeding up the procedure and reducing costs, relevant documents are to be attached with the submissions and a specific request may be made by a party.

The award is usually published within a month of the final submission which again helps to identify the speed of the SCP. Costs are capped by an upper limit presently set at £3,500 plus the claim fee and other fees associated with the cost of an oral hearing.

However, it should be noted that where the SCP is used there is no right of appeal to the courts unless it relates to an arbitrator's ruling on his own jurisdiction.

INTERMEDIATE CLAIMS PROCEDURE ("ICP")

This procedure may be incorporated by the parties to apply to disputes within an agreed monetary range, however, in the absence of agreement it will typically apply to claims in excess of the upper limit for the SCP or above \$100,000 but less than \$400,000 (exclusive of

interest and costs). Ultimately the tribunal can decide whether the ICP is suitable to the claim before them.

In the absence of an agreement to the contrary, a tribunal under the ICP will consist of 3 arbitrators, one appointed by each party and a third appointed by those two arbitrators as a chairman. Tribunals may also consist of two arbitrators and an umpire or a sole arbitrator depending on any agreement between the parties. A fee is payable on the appointment of an arbitrator by the appointing party (currently fixed in the sum of £250.00).

There is no automatic right to a hearing; however, one may exceptionally be ordered following a request from a party. Costs are awarded at the complete discretion of the tribunal in what they consider is fair and proportionate but which will be capped at a sum representing 30% of the claim. This may be increased to 50% in certain circumstances.

An appeal to the courts from the ICP may only be made where the tribunal certifies that the dispute between the parties involves a question of law that is of general interest or importance to trade and industry.

THE LONDON MARITIME ARBITRATORS ASSOCIATION TERMS 2006

The LMAA terms are the main arbitration terms setting out the procedure for arbitrations referred to the LMAA. This procedure provides for a number of options in relation to the composition of a tribunal. A full procedure is set out in the Second Schedule, although this may be varied by the tribunal and/or parties on

agreement. A fee is payable on the appointment of an arbitrator by the appointing party (currently fixed in the sum of £200.00).

This procedure is designed to apply to any dispute regardless of the value of the claim or the complexity of the issues where the parties have agreed on its application. With this procedure the tribunal will determine the manner in which the arbitration progresses through the use of questionnaires and/or preliminary meetings. Full rights of appeal as set out in the Arbitration Act 1996 apply to this procedure.

CONCLUSION

The above arbitration procedures vary depending on the complexity and value of the claim. If the applicable arbitration clause does not refer to a specific procedure to be used in certain circumstances, e.g. specific monetary limits then it may be possible to agree with the other party which procedure should be used.

The advantage of agreeing to use the SCP is the speed of the procedure and the certainty in relation to costs (the claim fee and maximum recoverable costs). However, due to the lack of right of appeal and the use of a sole arbitrator this procedure is only suitable for low value and less complex claims.

The ICP provides for more flexibility in relation to the constitution of the tribunal and the arbitration procedure making it more adaptable to the size and complexity of the claim whilst trying to keep the costs proportionate, fair and predictable.

It is important to ensure that arbitration is commenced well within the time limit so that, in the absence of a procedure being set out in the applicable arbitration clause, the parties may negotiate and agree on the procedure to be used depending on the claim.

This article is intended only to give general guidance and you should always consult a lawyer with any particular problem you may have.

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