

Soundings

New LMAA Clauses

The London Maritime Arbitrators Association ('LMAA') has recently published a 'LMAA Arbitration Clause' and a 'LMAA Arbitration Notice Clause'. Given the potential importance of issues relating to jurisdiction, these are worth considering.

Reference is regularly made in contracts to the 'LMAA Arbitration Clause'. However, until recently there has been no arbitration clause published by the LMAA itself. This is therefore usually thought to be a reference to the BIMCO/LMAA Arbitration Clause. The LMAA has now addressed this and produced a clause bearing the name 'LMAA Arbitration Clause'. Accompanying this, it has also produced a 'Notice Clause' which seeks to avoid issues relating to the validity of arbitration notices.

The clauses themselves are set out below, but firstly, the following points are worth noting.

The LMAA's own LMAA Arbitration Clause is largely identical to the BIMCO/LMAA Arbitration clause, save for the following points:

(i) It acknowledges that hearings may, in appropriate cases, take place outside the UK without affecting

the seat of the arbitration, which has indeed been the case for some time; and

(ii) It allows parties to "opt in" to arbitration under the LMAA Intermediate Claims Procedure in cases involving claims between \$100,000 and \$400,000, or such other sums as the parties may agree.

The 'LMAA Arbitration Notice Clause', on the other hand, is a new clause. It has been drafted in response to a series of recent cases in the English courts where issues have arisen as to the validity of notices sent to commence arbitration (for example, *Glencore Agriculture B.V. v Conqueror Holding Ltd* [2017] EWHC 2893 (Comm)) – see our [November 2017 Soundings article](#).

The clause provides for the parties to designate e-mail addresses for the service of arbitration notices and communications, which should be completed by the parties when concluding a contract.

The Clauses

LMAA Arbitration Clause

This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 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 the arbitration shall be England, even where any hearing takes place outside England.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators, one to be appointed by each party and the third, subject to the provisions of the LMAA Terms, by the two so appointed. 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 own 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 the 14 days specified in the notice, 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 the sole 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 US\$100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of US\$400,000 (or such other sum as the parties may

agree) the parties may further agree that the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced. Where the reference is to three arbitrators the procedure for making appointments shall be in accordance with the procedure for full arbitration stated above.

LMAA Arbitration Notice Clause

Any and all notices and communications in relation to any arbitration proceedings arising in connection with this contract (including any communications giving notice of the commencement of such proceedings and/or appointment of an arbitrator) shall be treated as effectively served if sent by e-mail to the e-mail addresses as provided for in this clause (it is strongly recommended that at least one individual, together with their individual e-mail address, is named for service purposes but a general e-mail address may also be included or used in the alternative):

E-mail address for Owners [insert]

E-mail address for Charterers [insert]

Either party shall be entitled to change and/or add to the e-mail addresses to which notices and communications may be sent for purposes of this clause by sending notice of change to the other party at the e-mail address provided for in this clause (or, if previously amended by notice, the relevant amended address).

Any notice and communication sent by e-mail pursuant to this clause shall be deemed to have been served, and become effective, from the date and time the e-mail was sent.

If a party retains solicitors or representatives with authority to accept service of notices and communications in relation to arbitration proceedings, the other party should be advised of the appointment and new service details in accordance with the terms of this clause; future service and communications should then be sent to the nominated solicitors or representatives only (unless otherwise directed). In the event the solicitors or other representatives cease to act and notice is given of this to the other party, the provisions contained herein shall re-apply.

If Members have any queries relating to this Soundings, please contact the Managers.

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