Early Neutral Evaluation and Arbitration Proceedings

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The City UK Report of 2021 highlights that the UK continues to be regarded as a world-leading centre of legal excellence and the destination of choice for the provision of legal services and the resolution of legal disputes, for parties across the world. Arbitration, which is carried out a number of different rules run by UK based organisations, continues to be a pivotal part of that centre of excellence.

In shipping cases, the London Maritime Arbitrators Association continues to keep its place as the world's busiest arbitration service. Part of the reason for that continuing success is no doubt in part due to its ability to develop its rules to adapt to changes in parties requirements when using the service.

There has been an increasing desire by some parties to have the ability to obtain an early neutral evaluation of the merits of a dispute is becoming immersed in a full-blown arbitration procedure. Basically, this means appointing an individual who might potentially be one of the parties arbitrator or an independent third party to work with the parties to express an opinion on the merits and try to mediate the dispute –with a view to reaching a settlement, without the need for arbitration. No party can have an Early Neutral Evaluation imposed on them and there will be many parties for one reason or another, who will have no interest in one. There is still a fair amount of preparatory work required in order to put the process in place, as well as the time spent setting out details of each parties case ahead of an early neutral evaluation.

This is a service already offered by independent companies within the London maritime market, but the London Maritime Arbitrators Association has now amended its standard BIMCO Arbitration and Mediation clause to incorporate a procedure for an early neutral evaluation.

The revised clause

1. In the event of a dispute or difference arising under, out of or in connection with this contract either party may at any time, either prior or subsequent to the commencement of any proceedings, invite the other to participate in an alternative dispute resolution (ADR) procedure including (but not limited to) mediation, early neutral evaluation and/or early intervention by written notice to the other party.

2. The other party shall within fourteen (14) calendar days of receipt of such notice reply in writing either

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agreeing to participate or declining to participate, giving reasons for declining.

3. If the parties agree to participate in an ADR procedure, they shall both take such steps as are necessary to progress the ADR procedure in good faith and without undue delay.

4. The parties' participation in the ADR procedure shall not affect the rights of either party to seek such relief or take such steps as it considers necessary to protect its interests.

5. Subject to subclause (g), the ADR procedure shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to any Tribunal and/or Court in any subsequent or ongoing proceedings except to the extent that they are disclosable under the law and procedure governing the relevant proceedings.

6. Unless otherwise agreed, each party shall bear its own costs incurred in the ADR procedure and the parties shall share equally any third party costs and expenses.

7. If the other party does not agree to participate in any ADR procedure under this Clause, that fact may be brought to the attention of the competent Tribunal and/or Court and may be taken into account by such Tribunal and/or Court when allocating the costs of the proceedings as between the parties.

For further information, please contact our specialist shipping and logistics lawyers by emailing online.enquiries@la-law.com.

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