The London Maritime Arbitrators Association Arbitration Clause

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Charterparties contain a variety of arbitration clauses which identify where and how parties wish their disagreements to be resolved. English arbitration and English law are a popular choice in many shipping contracts. An English arbitrator will invariably accept his or her appointment under the terms of the London Maritime Arbitrators Association (LMAA).

The LMAA is a proactive organisation which regularly reviews and adapts its rules to deal with current issues that arbitrators face in the disputes they handle.

They have recently produced their own arbitration clause for use in contracts, The LMAA Arbitration Clause. They have also prepared a notice clause for one party to send to another under a contract, so as to ensure that the party receiving a notice of arbitration is the right person. The notice clause has been introduced because of

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a small number of cases which have made their way to the English High Court raising issues about whether an arbitration notice has been properly given.

The LMAA Arbitration Clause reads as follows:

“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.”

The clause is similar to the Bimco Arbitration Clause.

The LMAA Arbitration Notice Clause is new. The wording is as follows: –

“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

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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."

This is a useful clause when contracts have been negotiated via brokers.

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