London Maritime Arbitrators Association “LMAA ” Arbitration

AUTHOR / KEY CONTACT

Linda Jacques
Partner

Linda.jacques@LA-law.com
01202 702611

Arbitration is used by shipping and logistics companies worldwide, to have their disputes resolved. Aside from having the advantage of being a private and confidential process, it is often less adversarial than court proceedings. One of the greatest benefits though is that an arbitration is easy to start and arbitration awards can be enforced relatively easy in many parts of the world.

Court cases are on the other hand are often not a private affair. There can be issues in serving legal proceedings issued in one country on a defendant in another country and some considerable challenges, in trying to enforce a court order, issued by a court in one country, on a company in another country.

Across the globe many countries have their own designated arbitration services and there is a considerable range of options to companies, in the choice of arbitration forums.

In the UK, there are many specialised arbitration bodies, which deal with particular types of specialised disputes. The London Maritime Arbitrators Association, “LMAA” is one of them. It has been up and running since the 1960s and there are a considerable number of arbitrators drawn from all walks of life in the shipping and logistics sector, on their books. It is probably one of the best known maritime and logistics arbitration forums. As maritime and logistics lawyers, we see their name in a whole raft of contracts, entered into across the world.

The parties to a contract must agree to use an arbitration process to resolve disputes in their contract. The agreement has to be in writing. Companies are free to agree which country’s law they want to use in their contracts. When it comes to arbitration many contracts will also specify the rules of which arbitration organisation they want to use. Many shipping contracts specify the LMAA and which set of rules operated by that organisation are going to be used. Increasingly, logistics providers are also inserting the LMAA rules into their contracts, although the choice of whether to use arbitration, is often decided by one of the parties, rather than both parties.

The LMAA runs three types of arbitration:

1. The London Maritime Arbitration Small Claims Procedure.

2. The Intermediate Procedure.

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3. An arbitration under the LMAA Rules which does not fall into either the Small Claims Procedure of the Intermediate Procedure

The Small Claims Procedure

1. The parties must expressly agree to this procedure in their contract document, unless they decide to follow it voluntarily by agreement.
2. It is used for claims under USD 100,000.
3. The parties agree on a single arbitrator. If they cannot agree the, LMAA will appoint an arbitrator.
4. The arbitrator is paid a fixed fee when he is appointed. At the moment that fee is GBP 4,000. The party who starts the arbitration pays this fee. If that party wins the arbitration the losing party will reimburse this fee to the winning party.
5. There is a strict and limited timetable in which to serve submissions. Claim Submissions must be served 28 days after the arbitrator is appointed attaching all the evidence, a Defence must be served within 28 days with evidence and then the party who started the arbitration has the final say by serving Reply Submissions. The Defendant only has one opportunity to explain its case. If there is a counterclaim the timetable is adjusted.
6. Witness evidence and expert evidence is not allowed, unless the arbitrator agrees. This is very rare.
7. That is then the end of the arbitration. There is a right to ask the arbitrator for an oral hearing, but this is unusual and is discouraged.
8. The arbitration award is then issued.
9. There is no right of appeal.
10. The winning party will generally be able to recover the arbitrator's fee (if that party paid the arbitrators' fee) and its legal costs up to GBP5, 000 from the losing party.
11. Generally, these arbitrations take 2-3 months from start to finish.

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Intermediate Procedure

1. This is for claims between USD 100,000 to USD 400,000.
2. The parties' contracts must specify that they agree to use this procedure.
3. Arbitration is started by appointing an arbitrator and giving notice of the appointment to the other party.
4. Arbitration submissions are exchanged according to a strict timetable, although the parties can agree to give time extensions to each other.
5. The use of witness evidence and expert evidence is not encouraged and the arbitrator's permission is required.
6. The parties can ask for an oral hearing but, generally an exchange of written submissions will complete the arbitration.
7. When the submissions have been served the arbitrators will issue their award. When the award is ready the arbitrators will require their fees to be paid before they release the arbitration award.
8. There is a right of appeal on restricted grounds, but permission to appeal has to be obtained from the English High Court.
9. The arbitrator's fees can be recovered by the successful party if they paid the arbitrators to release the award. The successful party can recover its legal costs from the losing party on a "commercial bias". Previous editions of the rules fixed the costs up to 30% of the claim amount and in exceptional cases up to 50% of the claim amount.
10. Generally, these arbitrations take 4-5 months from start to finish.

LMAA Arbitration Rules 2017

If the parties to a contract have specified that they agree to the LMAA Rules, but they do not mention the Small Claims Procedure or the Intermediate Procedure then the arbitration will be dealt with under the LMAA Rules 2017

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1. The parties must specify in their contract how many arbitrators will be appointed. If they do not identify the number, the default position is one arbitrator. Most parties specify three arbitrators or two arbitrators and an umpire. Each party will appoint an arbitrator, the costs of the appointment is less than GBP300. It is quite common for the two arbitrators who are appointed to run the arbitration and only appoint a third arbitrator or umpire if they are in dispute, or an oral hearing takes place.

2. An arbitrator is appointed by sending an arbitration notice to the other after appointing an arbitrator, inviting it to appoint an arbitrator, usually with 14 days. If they refuse to do that there is a default mechanism to have the first parties arbitrator appointed as the sole arbitrator.

3. The parties are generally in charge of the timetable of the arbitration.

4. Submissions are served, there is then an exchange of documents, witness statements and expert evidence (if appropriate).

5. The parties decide whether they want an oral hearing or if they are happy to serve a set of Final Submissions in writing.

6. Once the arbitration is finished by exchanging written submissions or an oral hearing the arbitrators will write their award.

7. Once the award is ready the parties will be told how much it will cost to have the award released.

8. Once the arbitrators are paid, the award is released to both parties.

9. There is a right to appeal on limited grounds, but permission must be obtained from the English High Court.

10. The winning party would expect to recover the majority of its reasonable legal costs and will be reimbursed for the arbitration tribunal costs for writing the award if that was paid by the wining party.

The amount of time these arbitrations take is up to the parties, but generally we would expect the process to be completed with 7-10 months from start to finish.

If you would like more information from our marine solicitors, please call us on 01202 786161 or email linda.jacques@la-law.com.

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