

Ref:2024/1

TO: ALL MEMBERS

January, 2024

APPEALING AN ARBITRATION AWARD – A NOTE OF CAUTION

Historically the aim of arbitration was to bring finality to disputes between commercial parties in a relatively quick and cost effective manner. Unfortunately those ideals are not always met. In addition, in certain circumstances the outcome is not one which was anticipated. In these situations one does expect to have some ability for such an outcome to be challenged however, in some jurisdictions that ability to challenge or appeal is restricted or, in some instances, strictly precluded.

The Arbitration Act in England allows for appeals from arbitration awards in limited circumstances, and is subject to the Court giving permission to appeal. Some arbitration venues, however, preclude rights of appeal entirely. The rules of the Singapore maritime body, SIAC, are one such example.

With an increasing push for arbitrations to be held in other regional locations Members should be aware of such restrictions. If Members are asked to agree alternative jurisdictions for resolution of disputes then consideration could be given to the “seat” of the arbitration being held locally with English law and arbitration under LMAA terms to apply. This would preserve appeal rights and maintain the ability to challenge an award where such a challenge might be appropriate. Set out below is a suggested clause. This relates to Singapore however could of course be amended to apply to other jurisdictions.

- “1. This contract shall be governed by and construed exclusively in accordance with English law. Any dispute or difference arising out of or in connection with this contract shall be referred exclusively to London arbitration. Without prejudice to the Tribunal’s power to order hearings to be online or hybrid, the venue for any “in person” arbitration hearings is agreed to be Singapore, but the juridical seat of the arbitration is agreed to be London, England, and the arbitration shall be subject to the Arbitration Act 1996 of England and Wales (“the Act”) (including without limitation the rights in ss.67-69 to challenge, or to appeal, if permission is obtained from the Court, any award, in the High Court in London), or any statutory modification or re-enactment thereof. The arbitration is to be conducted in accordance with the terms and rules of the London Maritime Arbitrators’ Association (as current on the date when that arbitration is commenced) (“the LMAA terms”). The chosen venue for in person arbitration hearings shall not in any way affect or displace the provisions of the Act or the LMAA Terms.*”

2. *All disputes shall be referred to three arbitrators unless the parties agree otherwise, with one arbitrator to be appointed by each party, and the third to be appointed when convenient by the two arbitrators so chosen.*
3. *All arbitrators appointed by the parties (or by the arbitrators when appointing a third arbitrator) shall be members of the London Maritime Arbitrators Association.”*

Should you have any questions please feel free to contact your usual Club contact.

Yours faithfully
THOMAS MILLER DEFENCE LTD.
Managers

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