

**THE LONDON MARITIME ARBITRATORS ASSOCIATION**



**THE LMAA SMALL CLAIMS  
PROCEDURE  
and COMMENTARY**

(Revised 1st January 2006)

# THE LMAA SMALL CLAIMS PROCEDURE

## 1. INTRODUCTION

These provisions shall be known as the LMAA Small Claims Procedure 2006 effective 1st January 2006. They shall apply to any dispute which parties have agreed should be referred to arbitration under this Procedure. If any such agreement refers to a monetary limit for disputes that may be so referred, such limit shall be deemed to exclude interest and costs unless the parties agree otherwise.

## 2. APPOINTMENT OF ARBITRATOR

- (a) If a dispute has arisen and the parties have agreed that it should be referred to arbitration under the Small Claims Procedure, then, unless a sole arbitrator has already been agreed on, either party may give notice to the other requiring him to join in appointing a sole arbitrator. If within fourteen days the parties have agreed on a sole arbitrator and the intended arbitrator has agreed to act, the Claimant shall within a further fourteen days send to the Respondent (with copies to the arbitrator) a letter of claim accompanied by copies of all relevant documents including experts' reports and shall also send to the arbitrator a remittance in his favour for the Small Claims fee as defined in para 3(b).
- (b) If the parties have not within fourteen days agreed on a sole arbitrator, either party may apply in writing to the Honorary Secretary, London Maritime Arbitrators Association for the appointment of a sole arbitrator by the President. Such application shall be copied to the other party and shall be accompanied by a copy of the letter of claim together with copies of all said relevant documents and a remittance for the said Small Claims fee plus £100, plus VAT where applicable, in favour of the LMAA. Where appropriate a party applying to the President should provide a concise explanation of the issues which are likely to arise and an indication as to whether any particular expertise on the part of the arbitrator is required. The President, having considered the nature of the dispute shall appoint an appropriate arbitrator and shall give notice to the parties. The LMAA shall send to the arbitrator the letter of claim and the documents together with the said Small Claims fee, and shall retain the balance in respect of administrative expenses.

## 3. THE ARBITRATOR'S FEE

- (a) The Small Claims fee includes the appointment fee, interlocutorys, a hearing not exceeding one day (if required by the arbitrator pursuant to para 5 (g)), the writing of the Award and the assessment of costs (if any). It does not include expenses, such as the hire of an arbitration room, which shall in the first instance be paid by the Claimant on demand. However if there is any challenge to jurisdiction which, or which it is suggested falls to the arbitrator to resolve, the arbitrator shall be entitled to charge on a reasonably appropriate basis for such work, his additional fees being payable in the first instance by the Claimant before he makes any award, ultimate liability for such additional fees being for the arbitrator to resolve.
- (b) The Small Claims fee shall be such standard fee as shall be fixed from time to time by the Committee of the LMAA\*: VAT shall be payable where applicable. For all purposes, including time limits, payment of the Small Claims fee within 14 days of agreement being reached upon a sole arbitrator under paragraph 2(a) shall be a condition precedent to the valid commencement of proceedings under the Small Claims Procedure.
- (c) In the event of the Respondent putting forward a counterclaim which exceeds the amount of the claim an additional fixed fee in such amount (plus VAT where applicable), as shall be fixed from time to time by the Committee of the LMAA\*, is payable by the Respondent. Payment of such fee within fourteen days of service of defence and counterclaim submissions shall, for all purposes including time limits, be a condition precedent to the Respondent's entitlement to bring any such counterclaim within the proceedings in question.

- (d) If the case is settled amicably before an award has been written, the arbitrator may retain out of the Small Claims fee a sum sufficient to compensate him for services thus far rendered and any balance shall be repaid.

#### **4. RIGHT OF APPEAL EXCLUDED**

The right of appeal to the Courts is excluded under this procedure. By adopting the Small Claims Procedure the parties shall be deemed to have agreed to waive all rights of appeal. For the avoidance of doubt, this provision does not apply to any ruling by an arbitrator on his own jurisdiction.

#### **5. PROCEDURE**

- (a) A letter of defence and details of counterclaim (if any) accompanied in each case by copies of all relevant documents including any experts' reports shall be delivered by the Respondent to the Claimant within twenty-eight days from receipt of the letter of claim or from the date of the appointment of the arbitrator, whichever shall be the later.
- (b) A letter of reply and defence to counterclaim (if any) shall be delivered by the Claimant to the Respondent within a further twenty-one days. Where an additional fee is payable under paragraph 3(c) hereof in respect of the counterclaim, the twenty-one days shall run only from receipt by the arbitrator of the additional fee. The arbitrator shall be entitled to refuse to admit evidence submitted at the stage of reply and defence to counterclaim (if any) if it should properly have been served with the letter of claim.
- (c) The Respondent shall, if he so wishes, deliver to the Claimant a letter of reply to defence to any counterclaim within a further fourteen days.
- (d) Any extension to the above time limits (including that for the service of a letter of claim set out in paragraph 2(a) above) must be applied for before expiry of the existing time limit. If a party fails to serve its pleading within the time limit set, the arbitrator, on the application of the other party or of his own motion, will notify the defaulting party that unless the outstanding communication is received within a fixed period (maximum 14 days) he will proceed to the award on the basis of the submissions and documents before him to the exclusion of all others. (In the case of failure to serve a letter of claim the arbitrator shall make an award dismissing the claim.) The time allowed by the arbitrator's notice, added to any extension of time previously agreed between the parties in respect of the same pleading, shall not in total exceed 28 days. Any pleading submitted by the defaulting party subsequent to expiry of the time limit set by the arbitrator's notice shall not be admissible.
- (e) Following the service of the letter of reply, or, where there is a counterclaim, following service of the letter of reply to defence to counterclaim, the arbitrator may declare to the parties that pleadings have closed. No further pleadings shall be considered by the arbitrator following such a declaration.
- (f) Copies of all the above letters and documents shall be sent to the arbitrator and to the other party, or if the other party is acting through a solicitor or representative, to that solicitor or representative.
- (g) There shall be no hearing unless, in exceptional circumstances, the arbitrator requires this.
- (h) In the case of an oral hearing the arbitrator shall have power to allocate the time available (which shall be limited to one working day) between the parties in such manner that each party has an equal opportunity in which to present his case.
- (i) All communications or notifications under this procedure may be by letter, telex, telefax or e-mail.

## **6. DISCLOSURE OF DOCUMENTS**

- (a) There shall be no disclosure, but if in the opinion of the arbitrator a party has failed to produce any relevant document(s), he may order the production of such document(s) and may indicate to the party to whom the order is directed that, if without adequate explanation that party fails to produce the document(s), he may proceed on the assumption that the contents of such document(s) do not favour that party's case.
- (b) The expression "relevant documents" includes all documents relevant to the dispute, whether or not favourable to the party holding them. It includes witness statements, experts' reports and the like on which a party intends to rely, but does not include documents which are not legally disclosable.

## **7. THE AWARD**

The arbitrator will make every effort to publish the award within one month, in a documents-only case, from the date when he has received all relevant documents and submissions, or, where there is an oral hearing, from the close of the hearing.

## **8. COSTS**

The arbitrator shall assess and award costs on a commercial basis having regard to the nature of the reference. Unless the parties otherwise agree, the amount which one party may be ordered to pay to the other in respect of legal costs (including disbursements) shall be assessed at a sum in the arbitrator's absolute discretion up to such maximum figure as shall be fixed and published from time to time by the Committee of the LMAA\*. Where there is a counterclaim in respect of which an additional fixed fee is payable to the arbitrator pursuant to para (c) hereof, this amount (after striking any necessary balance between costs orders where there is more than one) shall not exceed such other maximum figure as shall be fixed and published from time to time by the Committee of the LMAA\*. No breakdowns of such costs are to be provided unless the parties agree otherwise or the arbitrator so requires, in which event they must be provided within 7 days of the service of the last pleading as in para 5(e) above or the arbitrator's direction, whichever is later. The successful party will normally be awarded the Small Claims fee (including the fee of £100.00 payable to the LMAA. in cases where the President is requested to appoint an arbitrator) in addition to any legal costs which he has incurred (subject to the limits mentioned above), provided always that any award of costs shall be in the sole discretion of the arbitrator.

## **9. GENERAL**

The arbitrator may in any case which, in his discretion, he considers exceptional depart from or vary the above provisions as he considers appropriate, save that he shall not be entitled to vary the maximum figure which can be awarded under the Small Claims Procedure in respect of legal costs unless the parties agree otherwise.

In any case where it is determined or agreed, because of the nature and/or weight of a case, that the Small Claims Procedure is inappropriate and shall not be applicable, it shall cease to apply in its entirety.

\* *The current sums, as fixed by the LMAA Committee, may be found on the LMAA website at [www.lmaa.org.uk](http://www.lmaa.org.uk).*

## COMMENTARY ON THE LMAA SMALL CLAIMS PROCEDURE (2006)

*(Note: Attention is particularly drawn to the passages in bold type below. These indicate substantial changes to the Commentary made at the time of the 2006 Revision of the Procedure.)*

### 1. INTRODUCTION

The Small Claims Procedure has been introduced to provide a simplified, quick and inexpensive procedure for the resolution of small claims. It is supplementary to the Documents Only procedure contained in the Third Schedule to the LMAA Terms (2006).

It is suggested that it should be used where neither the claim nor any counterclaim exceeds the sum of \$50,000 (**excluding interest and costs**). It is not suitable for use where there are complex issues or where there is likely to be examination of witnesses. On the other hand, the Procedure may be suitable for handling larger claims where there is a single issue at stake.

There has been a regrettable tendency to apply the Procedure regardless of the complexity of the issues involved in a particular dispute (and occasionally, regardless of the amounts involved). This is likely to lead to dissatisfaction with and criticism of the Procedure since the constraints on the arbitrator and the parties imposed by the limited financial remuneration for their services (which is an essential part of the Procedure) may mean that a particular dispute is not dealt with as the parties envisage. Parties proposing to use the Procedure are therefore encouraged to consider at the outset whether it is appropriate to vary the terms of the Procedure (for example, by mutually agreeing to increase the maximum amount of recoverable costs). The position of the arbitrator is dealt with further in the context of discretion at paragraph 9 below.

Attention is drawn to the following features:

### 2. REFERENCE TO A SOLE ARBITRATOR

This will provide a saving both in time and expense. It is expected and hoped that in most cases the parties will be able to agree on the sole arbitrator. Where they cannot agree, application may be made to the L.M.A.A. and the President will then make the appointment. There will be a charge of £100 to cover the administrative expenses. The attention of the parties is drawn to the fact that payment of the fixed fee in full (including the additional element when the appointment is made by the President) is a condition precedent to the commencement of proceedings. In requesting the President to make an appointment under the Procedure, the appointing party should provide as full an explanation as is practicable of the issues which he expects to arise. He should also draw the attention of the President to the fact that particular expertise on the part of the arbitrator may be desirable (for example, engineering expertise in the case of a performance dispute). Parties should also be aware that it is the practice of the President not to consider for appointment in a particular case any arbitrator whose name he knows has been put forward by **either** party. The objective of this practice is to avoid any perception on the part of the other party that a party has secured an advantage by having the President appoint as arbitrator one of the individuals whom he has proposed. A party asking the President to make an appointment should therefore disclose the names of the arbitrators proposed **by either** party.

**Claimants must also note that by virtue of paragraph 3(b), payment of the Small Claims fee is a condition precedent to the commencement of arbitration, including for the purposes of any time bar. Similarly under sub-paragraph (c), a counterclaim may not be brought until any relevant fee has been paid by the respondent. (Further, by paragraph 5(b), the claimant's time for responding to a counterclaim does not run until any fee relevant to the counterclaim has been paid.)**

### **3. ARBITRATOR TO RECEIVE A FIXED FEE**

So that the parties know where they stand at an early stage it is provided that the arbitrator will receive a fixed fee. In the case of a counterclaim which exceeds the amount of the claim there is an additional fixed fee. This additional fee is charged because a counterclaim that exceeds the claim will normally involve different issues. No additional charge is made in respect of counterclaims which do not in total exceed the amount of the claim. Members of the LMAA have agreed to deal with disputes under the LMAA Small Claims Procedure as a service to the industry, though it will be appreciated that, having regard to current rates of remuneration, it may in many cases involve some financial sacrifice. Any expenses must be paid in addition.

**The amounts of these fees are determined from time to time by the LMAA Committee and will be found in the LMAA Newsletter and on the website at [www.lmaa.org.uk](http://www.lmaa.org.uk)**

**Challenges to jurisdiction can involve a great deal of work additional to that required to resolve the merits of a dispute. Accordingly it seems appropriate that such work should be paid for on a quantum meruit basis before the arbitrator resolves the challenge, and that such fees should be borne – in the first instance only – by the claimant.**

### **4. EXCLUSION OF APPEAL**

Under the Arbitration Act 1996 there is no restriction on the parties to exclude the right of appeal. An agreement to arbitrate under the LMAA Small Claims Procedure will automatically be treated as an agreement to exclude the right of appeal. In view of this, while a Reasoned Award will be given, it will be expected that reasons will be relatively brief. **This exclusion does not, by virtue of the Arbitration Act 1996, apply to challenges to jurisdiction.**

### **5. INFORMAL PROCEDURE**

There will be no formal pleadings and no disclosure as such. Each party will be informed of the case against him by a simple exchange of letters accompanied by copies of all relevant documents, including witness statements. A strict but reasonable timetable is imposed, and, if a party fails to comply with a final time limit set by the arbitrator, the arbitrator will proceed to his award on the basis of the documents already received. There is substituted for disclosure (a procedure frequently used to gain time) an obligation on the parties to disclose all relevant documents with their letters of claim or defence. Should a party fail in this obligation, the arbitrator is given power to order production of any missing documents and to give warning to that party that, if he fails to produce them without adequate explanation, the arbitrator may proceed on the basis that those documents do not favour that party's case. Claimants should note that any attempt to secure a tactical advantage by withholding production of evidence which should properly accompany the claim submissions until the stage of a reply may be met with a refusal on the part of the arbitrator to admit such further evidence.

### **6. LEGAL REPRESENTATION**

The use of lawyers is not excluded, though it is thought that in many cases they will not be necessary. But it should be borne in mind that advice from a lawyer can often indicate to a party the strength or weakness of his case and can assist in reaching an amicable settlement; also, if settlement cannot be reached, the case may be presented by a lawyer in a more orderly and concise manner.

### **7. THE AWARD**

The arbitrator will normally make his Award within one month from the date on which he has received all the papers.

## 8. THE COSTS

The power of an arbitrator to award costs has been retained as an important feature of London arbitration. It operates to deter spurious claims or defences and may assist in promoting an amicable settlement. The arbitrator is given power to tax or assess legal costs, but on a commercial basis. The amount recoverable will be assessed at a sum in the arbitrator's discretion not to exceed **such sum as may be fixed by the Committee of the LMAA. Where there is a counterclaim that attracts an additional fee for the arbitrator under paragraph 3(c), again this fee is fixed by the Committee from time to time.** Although the arbitrator has a discretion to vary or depart from the provisions of the Procedure in exceptional cases (see paragraph 9 below) this discretion does not extend to varying the amount of legal costs recoverable under this Procedure. It is regarded as being of fundamental importance so far as the Procedure is concerned that a party agreeing to arbitrate disputes according to the Procedure can be certain at the outset of his maximum liability in terms of costs.

**Unless otherwise agreed or requested by the arbitrator, parties are not required to present schedules of the costs claimed: the amount is to be left to the arbitrator's discretion.**

## 9. DISCRETION

It is expected that in the great majority of cases the strict timetable and provisions of the Procedure will be observed and enforced, but in exceptional cases there is discretion for the arbitrator to vary or depart from them. The success of the Procedure in promoting cost-effective arbitration in London has led to a regrettable number of cases in which disputes have been referred to arbitration according to the Procedure which are not appropriate for determination in accordance with the spirit, if not the letter, of that Procedure. Such situations can arise simply as the result of the fact that parties to a contract agreed in that contract to apply the Procedure to all disputes involving less than a certain sum of money, regardless of the nature of such disputes. In such cases the parties should be aware that the arbitrator may at the outset or at any time thereafter inform them that in his opinion the dispute referred to him cannot be dealt with satisfactorily according to the Procedure. He will then be entitled to invite the parties either to agree to an appropriate variation of the Procedure or, alternatively, to agree to his continuing to act on the basis of the LMAA Terms in force for the time being. In the event of a refusal by the parties so to agree the arbitrator shall be entitled to resign from the reference whilst retaining out of the Small Claims fee a sum sufficient to remunerate him for services thus far rendered. **An amendment to paragraph 9 makes it clear that where the Small Claims Procedure is deemed inappropriate, it shall cease to apply in all respects.**

