

THE L.M.A.A. TERMS (1997)

PRELIMINARY

1. These Terms may be referred to as "the L.M.A.A Terms (1997)".
2. In these Terms, unless the context otherwise requires,
 - (i) "The Association" means the London Maritime Arbitrators Association;
"Member of the Association" includes full, retired and supporting members;
"President" means the President for the time being of the Association
 - (ii) "Tribunal" includes a sole arbitrator, a tribunal of two or more arbitrators, and an umpire
 - (iii) "Original arbitrator" means an arbitrator appointed (whether initially or by substitution) by or at the request of a party as its nominee and any arbitrator duly appointed so to act following failure of a party to make its own nomination.
3. The purpose of arbitration according to these Terms is to obtain the fair resolution of maritime and other disputes by an impartial tribunal without unnecessary delay or expense. The arbitrators at all times are under a duty to act fairly and impartially between the parties and an original arbitrator is in no sense to be considered as the representative of his appointer.

APPLICATION

4. These Terms apply to all arbitral proceedings commenced on or after 31 January 1997. Section 14 of the Arbitration Act 1996 ("the Act") shall apply for the purpose of determining on what date arbitral proceedings are to be regarded as having commenced.
5. These Terms shall apply to an arbitration agreement whenever the parties have agreed that they shall apply and the parties shall in particular be taken to have so agreed:
 - (a) whenever the dispute is referred to a sole arbitrator who is a full Member of the Association and whenever both the original arbitrators appointed by the parties are full Members of the Association, unless both parties have agreed or shall agree otherwise;
 - (b) whenever a sole arbitrator or both the original arbitrators have been appointed on the basis that these Terms apply to their appointment.

Whenever a sole arbitrator or both the original arbitrators have been appointed on the basis referred to at (b), such appointments or the conduct of the parties in taking part in the arbitration thereafter shall constitute between the parties an agreement that the arbitration agreement governing their dispute has been made or varied so as to incorporate these Terms and shall further constitute authority to their respective arbitrators so to confirm in writing on

their behalf.

6. In the absence of any agreement to the contrary the parties to all arbitral proceedings to which these Terms apply agree:

- (a) that the law applicable to their arbitration agreement is English law; and
- (b) that the seat of the arbitration is in England.

7. (a) Subject to paragraph (b), the arbitral proceedings and the rights and obligations of the parties in connection therewith shall be in all respects governed by the Act save to the extent that the provisions of the Act are varied, modified or supplemented by these Terms.

(b) Where the seat of the arbitration is outside England and Wales the provisions of these Terms shall nevertheless apply to the arbitral proceedings, save to the extent that any mandatory provisions of the law applicable to the arbitration agreement otherwise provide.

THE ARBITRAL TRIBUNAL

8. If the tribunal is to consist of three arbitrators:

(a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so;

(b) the two so appointed may at any time thereafter appoint a third arbitrator so long as they do so before any substantive hearing or forthwith if they cannot agree on any matter relating to the arbitration;

(c) the third arbitrator shall be the chairman unless the parties shall agree otherwise;

(d) before the third arbitrator has been appointed or if the position has become vacant, the two original arbitrators, if agreed on any matter, shall have the power to make decisions, orders and awards in relation thereto;

(e) after the appointment of the third arbitrator decisions, orders or awards shall be made by all or a majority of the arbitrators;

(f) the view of the chairman shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under paragraph (e).

9. If the tribunal is to consist of two arbitrators and an umpire:

(a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so;

(b) the two so appointed may appoint an umpire at any time after they themselves are appointed and shall do so before any substantive hearing or forthwith if they cannot agree

on any matter relating to the arbitration;

(c) the umpire shall attend any substantive hearing and shall following his appointment be supplied with the same documents and other materials as are supplied to the other arbitrators;

(d) the umpire may take part in the hearing and deliberate with the original arbitrators;

(e) decisions, orders and awards shall be made by the original arbitrators unless and until they cannot agree on a matter relating to the arbitration. In that event they shall forthwith give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the tribunal with power to make decisions, orders and awards as if he were the sole arbitrator.

JURISDICTION

10. The jurisdiction of the tribunal shall extend to determining all disputes arising under or in connection with the transaction the subject of the reference, and each party shall have the right before the tribunal has given notice of its intention to proceed to its award to refer to the tribunal for determination any further dispute(s) arising subsequent to the commencement of the arbitral proceedings.

TRIBUNAL'S FEES

11. Provisions regulating fees payable to the tribunal and other related matters are set out in the First Schedule. Save as therein or herein otherwise provided, payment of the tribunal's fees and expenses is the joint and several responsibility of the parties.

ARBITRATION PROCEDURE

12. (a) It shall be for the tribunal to decide all procedural and evidential matters subject to the right of the parties to agree any matter.

(b) An application to the tribunal for directions as to procedural or evidential matters should, as a general rule, be made only after the other party has been afforded a reasonable opportunity to agree the terms of the directions proposed.

(c) In the absence of agreement it shall be for the tribunal to decide whether and to what extent there should be oral or written evidence or submissions in the arbitration. The parties should however attempt to agree at an early stage whether the arbitration is to be on documents alone (i.e. without a hearing) or whether there is to be an oral hearing.

(d) If agreement is not reached, the applicant should apply to the tribunal, setting out the terms of the directions proposed. The application must be copied to the other party, who must respond to the tribunal (copy to the applicant) stating the grounds of objection. The

response must be made within three working days, or such further time as the tribunal may allow on the application of the respondent party.

(e) Unless either party has requested a meeting with the arbitrators (see paragraph 16 relating to preliminary meetings), the tribunal will make its order following receipt of the response or, in default of response within the time allowed, upon expiry of that time.

(f) Communications regarding procedural matters should be made expeditiously.

ARBITRATION ON DOCUMENTS

13. (a) If it is determined by the tribunal or agreed by the parties that an arbitration is to be on documents alone (i.e. without an oral hearing) it is the responsibility of the parties to agree the procedure to be followed and to inform the tribunal of the agreement reached. The procedure set out in the Second Schedule should normally be adopted, with any such modifications as may be appropriate: and in default of agreement the tribunal will give appropriate directions.

(b) Applications for directions should not be necessary but, if required, they should be made in accordance with paragraph 12.

PREPARATION OF CASES INVOLVING ORAL HEARINGS

14. (a) A time-table for preparation of the case for hearing should, wherever possible, be agreed between the parties and the tribunal should then be informed by the claimant of the agreement reached. In default of agreement, an application for directions should be made in accordance with paragraph 12.

(b) A hearing date will not be fixed, save in exceptional circumstances, until the preparation of a case is sufficiently advanced to enable the duration of the hearing to be properly estimated; this will normally be after discovery has been substantially completed.

(c) Unless the case calls for a preliminary meeting with the tribunal (see paragraph 16), it is the duty of the parties or their advisers, prior to application for a hearing date, to consult together (i) to assess the expected readiness and the likely duration of the hearing, (ii) to plan the preparatory work still to be done, and (iii) to consider whether any other directions are required from the tribunal when the hearing date is requested.

(d) Following such consultation, application for a hearing date must be made in writing, indicating the expected date of readiness and likely duration of the hearing.

(e) Following fixture of the hearing date a booking fee will be payable in accordance with the provisions of the Second Schedule.

POWERS OF THE TRIBUNAL

15. In addition to the powers set out in the Act, the tribunal shall have the following specific powers to be exercised in a suitable case so as to avoid unnecessary delay or expense, and so as to provide a fair means for the resolution of the matters falling to be determined:

(a) The tribunal may limit the number of expert witnesses to be called by any party or may direct either that no expert be called on any issue(s) or that no expert evidence shall be called save with the leave of the tribunal.

(b) Where two or more arbitrations appear to raise common issues of fact or law, the tribunals may direct that the two or more arbitrations shall be heard concurrently. Where such an order is made, the tribunals may give such directions as the interests of fairness, economy and expedition require including:

(i) that the documents disclosed by the parties in one arbitration shall be made available to the parties to the other arbitration upon such conditions as the tribunals may determine;

(ii) that the evidence given in one arbitration shall be received and admitted in the other arbitration, subject to all parties being given a reasonable opportunity to comment upon it and subject to such other conditions as the tribunals may determine.

PRELIMINARY MEETINGS

16. (a) The tribunal may decide at any stage that the circumstances of the arbitration require that there should be a preliminary meeting to enable the parties and the tribunal to review the progress of the case; to reach agreement so far as possible upon further preparation for, and the conduct of the hearing; and, where agreement is not reached, to enable the tribunal to give such directions as it thinks fit.

(b) A preliminary meeting should be held in complex cases including most cases involving a hearing of more than five days' duration. Exceptionally more than one preliminary meeting may be required.

(c) All preliminary meetings (whether required by the tribunal or held on the application of the parties) should be preceded by a discussion between the parties' representatives who should attempt to identify matters for discussion with the tribunal, attempt to reach agreement so far as possible on the directions to be given, and prepare for submission to the tribunal an agenda of matters for approval or determination by it.

(d) Before the preliminary meeting takes place the parties should provide the tribunal with a bundle of appropriate documents, together with information sheets setting out the steps taken and to be taken in the arbitration, a list of any proposed directions whether agreed or not and an agenda of matters for discussion at the hearing. The information sheets should include estimates of readiness for the hearing and the likely duration of the hearing.

(e) There is set out in the Third Schedule a guidance document indicating topics which may be appropriate for consideration before and at the preliminary hearing.

SETTLEMENT

17. It is the duty of the parties (a) to notify the tribunal immediately if the arbitration is settled or otherwise terminated (b) to make provision in any settlement for payment of the fees and expenses of the tribunal and (c) to inform the tribunal of the parties' agreement as to the manner in which payment will be made of any outstanding fees and expenses of the tribunal, e.g. for interlocutory work not covered by any booking fee paid. The same duty arises if the settlement takes place after an interim award has been made. Upon being notified of the settlement or termination of any matter the tribunal may dispose of the documents relating to it.

18. Any booking fee paid will be dealt with in accordance with the provisions of the paragraph (B)(1)(c) of the First Schedule. Any other fees and expenses of the tribunal shall be settled promptly and at latest within 28 days of presentation of the relevant account(s). The parties shall be jointly and severally responsible for such fees and expenses.

ADJOURNMENT

19. If a case is for any reason adjourned part-heard, the tribunal will be entitled to an interim payment, payable in equal shares or otherwise as the tribunal may direct, in respect of fees and expenses already incurred, appropriate credit being given for the booking fee.

AVAILABILITY OF ARBITRATORS

20. (a) In cases where it is known at the outset that an early hearing is essential, the parties should consult and ensure the availability of the arbitrator(s) to be appointed by them.

(b) If, in cases when the tribunal has already been constituted, the fixture of an acceptable hearing date is precluded by the commitments of the original appointee(s) the provisions of the Fourth Schedule shall apply.

THE AWARD

21. The time required for preparation of an award must vary with the circumstances of the case. The award should normally be available within not more than six weeks from the close of the proceedings. In many cases, and in particular where the matter is one of urgency, the interval should be substantially shorter.

22. The members of a tribunal need not meet together for the purpose of signing their award or of effecting any corrections thereto.

23. (a) If before the award is made one or more parties to the reference shall give notice to the tribunal that a reasoned award is required, the award shall contain the reasons for the

award.

(b) The parties agree to dispense with reasons in all cases where no notice shall have been given to the tribunal under paragraph (a) before the award is made. [Note: the effect of such agreement is to exclude the court's jurisdiction under Section 69 of the Act to determine an appeal on a question of law arising out of the award; see Section 69(1).]

(c) Where in accordance with paragraph (b) the parties have agreed to dispense with reasons the tribunal will issue an award without reasons together with a document which does not form part of the award but which gives, on a confidential basis, an outline of the reasons for the tribunal's decision (hereafter called "privileged reasons").

(d) Unless the court shall otherwise determine, the document containing privileged reasons (referred to in paragraph (c)) may not be relied upon or referred to by either party in any proceedings relating to the award.

24. As soon as possible after an award has been made it shall be notified to the parties by the tribunal serving on them a notice in writing which shall inform the parties of the amount of the fees and expenses of the tribunal and which shall indicate that the award is available for sending to or collection by the parties upon full payment of such amount. At the stage of notification neither the award nor any copy thereof need be served on the parties and the tribunal may thereafter refuse to deliver the award or any copy thereof to the parties except upon full payment of its fees and expenses.

25. If any award has not been paid for and collected within one month of the date of publication, the tribunal may give written notice to either party requiring payment of the costs of the award, whereupon such party shall be obliged to pay for and collect the award within fourteen days.

26. (a) In addition to the powers set out in Section 57 of the Act, the tribunal shall have the following powers to correct an award or to make an additional award:

(i) The tribunal may on its own initiative or on the application of a party correct any accidental mistake, omission or error of calculation in its award.

(ii) The tribunal may on the application of a party give an interpretation of a specific point or part of the award.

(b) An application for the exercise of the powers set out above and in Section 57 of the Act must be made within 28 days of the award unless the tribunal shall think fit to extend the time.

(c) The powers set out above shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal.

(d) Any correction or interpretation of an award may be effected in writing on the original award or in a separate memorandum which shall become part of the award. It shall be effected within 90 days of the date of the original award unless all parties shall agree a longer period.

27. If the tribunal considers that an arbitration decision merits publication and gives notice to the parties of its intention to release the award for publication, then unless either or both parties inform the tribunal of its or their objection to publication within 21 days of the notice, the award may be publicised under such arrangements as the Association may effect from time to time. The publication will be so drafted as to preserve anonymity as regards the identity of the parties, of their legal or other representatives, and of the tribunal.

SERVICE OF DOCUMENTS

28. Where a party is represented by a lawyer or other agent in connection with any arbitral proceedings, all notices or other documents required to be given or served for the purposes of the arbitral proceedings together with all decisions, orders and awards made or issued by the tribunal shall be treated as effectively served if served on that lawyer or agent.

GENERAL

29. Three months after the publication of a final award the tribunal may notify the parties of its intention to dispose of the documents and to close the file, and it will act accordingly unless otherwise requested within 21 days of such notice being given.

30. In relation to any matters not expressly provided for herein the tribunal shall act in accordance with the tenor of these Terms.

THE FIRST SCHEDULE

TRIBUNAL'S FEES

(A) Appointment fee

An appointment fee is payable on appointment by the appointing party or by the party at whose request the appointment is made. The appointment fee shall be a standard fee fixed by the Committee of the Association from time to time. Unless otherwise agreed, the appointment fee of an umpire or third arbitrator shall in the first instance be paid by the claimant.

(B) Booking fee

(1) (a) For a hearing of up to ten days' duration there shall be payable to the tribunal a booking fee of £250 per person or such other sum as the Committee of the Association may from time to time decide, for each day reserved. The booking fee will be invoiced to the party asking for the hearing date to be fixed or to the parties in equal shares if both parties ask for

the hearing date to be fixed as the case may be and shall be paid within 14 days of confirmation of the reservation or six months in advance of the first day reserved ("the start date"), whichever date be the later. If the fee is not paid in full by the due date the tribunal will be entitled to cancel the reservation but either party may secure reinstatement of the reservation by payment within seven days of any balance outstanding.

(b) For hearings over ten days' duration the booking fee in sub-paragraph (1)(a) above shall for each day reserved be increased by 30% in the case of a hearing of up to 15 days and 60% in the case of a hearing of up to 20 days and may, at the discretion of the tribunal, be subscribed in non-returnable instalment payments. For hearings in excess of 20 days the booking fee shall be at the rate for a hearing of 20 days plus such additional sum as may be agreed with the parties in the light of the length of the proposed hearing.

(c) Where the case proceeds to an award, or is settled subsequent to the start of the hearing, appropriate credit will be given for the booking fee in calculating the amount to be paid in order to collect the award, or as the case may be, the amount payable to the tribunal upon settlement of the case.

(d) Where, at the request of one or both of the parties, a hearing is adjourned or a hearing date vacated prior to or on or after the start date, then, unless non-returnable instalment or other payments have been agreed, the booking fee will be retained by the tribunal (i) in full if the date is adjourned or vacated less than three months before the start date or on or after that date, (ii) as to 50 per cent if the date is adjourned or vacated three months or more before the start date. Any interlocutory fees and expenses incurred will also be payable or, as the case may be, deductible from the refund under (ii).

(e) Where, at the request of one or both of the parties, a hearing is adjourned or a hearing date is vacated and a new hearing date is fixed, a further booking fee will be payable in accordance with paragraphs (a) and (b) above.

(2) An arbitrator or umpire who, following receipt of his booking fee or any part thereof, is for any reason replaced is, upon settlement of his fees for any interlocutory work, responsible for transfer of his booking fee to the person appointed to act in his place. In the event of death the personal representative shall have corresponding responsibility.

ACCOMMODATION

(1) If accommodation and/or catering is arranged by the tribunal, the cost will normally be recovered as part of the cost of the award, but where a case is adjourned part-heard or in other special circumstances, the tribunal reserves the right to direct that the cost shall be provisionally paid by the parties in equal shares (or as the tribunal may direct) promptly upon issue of the relevant account. Prior to booking accommodation and/or catering the tribunal may, if they think fit, request that they be provided with security sufficient to cover their prospective liabilities in respect thereof.

(2) If accommodation is reserved and paid for by the parties and it is desired that the cost incurred be the subject of directions in the award, the information necessary for that purpose must be furnished promptly to the tribunal.

THE SECOND SCHEDULE

ARBITRATION ON DOCUMENTS

Recommended Procedure

If it is determined by the tribunal or agreed by the parties that the dispute is to be decided without an oral hearing the procedure set out in paragraphs 1-5 below is recommended for adoption by agreement.

When this procedure (or any modification) has been agreed, the tribunal should be so informed. The tribunal must be promptly advised if, at a later stage, the parties or either of them wish to apply for an oral hearing.

The exchange of submissions, etc., will take place directly between the parties unless the case is being handled by others (e.g. by lawyers or a Club) on their behalf.

Copies of all submissions, comments and documents must be supplied simultaneously to the tribunal, and all communications with the tribunal must be copied to the other party.

All documents relied on must be legibly copied and translations supplied as necessary.

(1) Within 28 days of agreement by the parties to adopt the procedure or of the order of the tribunal, the claimants shall send to the respondents, with copies to the tribunal, their written claim submissions, together with copies of supporting documents.

(2) Within 28 days of the service of the claim submissions, the respondents shall send to the claimants, with copies to the tribunal, their written submissions (including those relating to any counterclaim) together with copies of the documents relied on additional to those already provided by the claimants.

(3) If there is no counterclaim, the claimants' final submissions (if any) on the claim shall be provided to the respondents and the tribunal within 21 days after receipt of the respondents' submissions and documents.

(4) If there is a counterclaim:

(a) The claimants shall furnish submissions and any additional documents relative to the counterclaim within 28 days after receipt of the respondents' submissions and documents;

(b) The respondents' final submissions (if any) on the counterclaim shall be provided within 21 days after receipt of the claimants' submissions and additional documents (if any).

(5) The tribunal will then give notice to the parties of its intention to proceed to its award

and will so proceed unless either party within seven days requests, and is thereafter granted, leave to serve further submissions and/or documents.

THE THIRD SCHEDULE

PRELIMINARY MEETINGS

This Schedule sets out, in check-list form, the topics which may be appropriate for consideration when a preliminary meeting is to be held in accordance with paragraph 16 of the Terms.

The circumstances in which a preliminary meeting may be held vary very considerably. In some cases (including the more complex arbitrations and most cases involving a hearing of more than five days) a preliminary meeting is necessary and will be held on the initiative of the tribunal or at the request of the parties, after much of the preparatory work has been done, to review the progress of the case and to enable directions to be made or agreed for further preparation for, and the conduct of, the hearing. In other cases a dispute may have arisen as to some procedural matter (e.g. a failure to serve a pleading or to give adequate disclosure of documents) and a party may seek to persuade the tribunal to give appropriate directions (including, in a proper case, a peremptory order under Section 41(5) of the Act) so as to resolve the matter.

Whatever the occasion for a preliminary meeting with the arbitrators, two general principles apply; first, that an application to the arbitrators for a particular order should as a general rule be made only after the other party has been afforded a reasonable opportunity to agree the terms of the directions proposed (see paragraph 12(b) of the Terms); second, that, wherever possible, a preliminary meeting should be preceded by a discussion between the parties' representatives as to the future conduct of the case along the lines indicated in paragraph 16(c) and (d) of the Terms.

The check-list sets out some of the most important matters for consideration. It cannot attempt to be comprehensive. Inevitably, certain matters must be left to the discretion of the tribunal and the parties' advisers. The opportunity is taken to list the procedural matters which may need to be considered in a logical order from the commencement of the arbitration. It should however be possible in the majority of cases for the directions relating to at least the earlier stages of the arbitration to be agreed with the other party, or failing agreement to be dealt with on a written application to the arbitrators and without the need for a preliminary meeting (see paragraph 12 of the Terms).

1. Can the arbitration be decided on documents only?

The parties and their advisers should consider at the outset whether the case is suitable to be decided without an oral hearing (see paragraph 12(c) of the Terms) and whether the procedure set out in the Second Schedule is appropriate.

2. Pleadings and statements of cases

- (i) A time-table should be ordered or agreed for the service of pleadings or statements (including letters) of claim and defence.

(ii) Once an initial exchange has taken place, it should be considered whether a reply is necessary and whether requests for further details (including particulars) of the other party's case are necessary and if made whether all such requests have been properly dealt with.

(iii) As the case proceeds and further documents become available, the pleadings or statements of case should be reviewed to see:

- (a) whether amendments are required;
- (b) whether all issues are still alive.

3. Disclosure of documents

(i) A time-table should be ordered or agreed either for the disclosure of all relevant documents or for the initial disclosure of such specified categories of documents as may be ordered or agreed.

(ii) Applications for further discovery should initially be made to the opposing party, and if not complied with, by application to the tribunal.

(iii) Disputes as to outstanding discovery should not normally require a specific meeting with the arbitrators and applications can often best be reserved until a preliminary meeting is to take place in any event.

(iv) Consideration should always be given to whether it can be ordered or agreed that the ambit of discovery be limited so as avoid unnecessary delay and expense.

4. Factual evidence

(i) Can some facts/figures be agreed or admitted?

(ii) A time-table should be ordered or agreed for the exchange of statements (or affidavits) of witnesses of fact.

(iii) It should be ordered or agreed:

(a) whether the statements or affidavits are to be admitted without calling the maker to give oral evidence at the hearing or

(b) whether the statements are to stand as the evidence in chief of the witnesses subject to their attending to give oral evidence; and

(c) whether the evidence of any witness is to be taken in advance or by means of a live telephone or video link or by use of a video recording.

(iv) In any case where it may be desired to seek the assistance of a Court (whether within or outside the United Kingdom) to secure the attendance of witnesses at the hearing, to

obtain documentary or other evidence, to record oral testimony for presentation to the tribunal or to exercise other powers in support of the arbitral proceedings, the party intending to invoke the assistance of the Court should first where practicable seek the agreement of the other parties to the making of the application to the Court or, if agreement cannot be reached, should apply to the tribunal for permission to make the application (see Sections 43 and 44 of the Act) and for directions as to when and how it is to be made.

5. Expert evidence

(i) It should be ordered or agreed whether or not the case requires expert evidence to be adduced and, if so, the subjects on which expert evidence is necessary and the number and disciplines of the experts.

(ii) If it is ordered or agreed that the case is one requiring expert evidence the order or agreement should provide

(a) whether each party is to adduce expert evidence; and/or

(b) whether the tribunal should appoint experts or assessors to assist it on technical matters (see Section 37 of the Act).

(iii) Where expert evidence is to be adduced by the parties a time-table should be ordered or agreed for the following:

(a) the exchange of experts' reports;

(b) any "without prejudice" meeting of experts held to agree or narrow the issues;

(c) the drawing up of a memorandum by the experts setting out what has been agreed and what remains in issue;

(d) the service of supplementary experts' reports;

(iv) It should be ordered or agreed whether the tribunal will deal with the technical issues on the basis of the experts' reports, without the need for the authors to give oral evidence.

6. Preliminary Issues/Interim Awards

Both the tribunal and the parties should consider at any preliminary meeting:

(i) what are the important matters in issue between the parties;

(ii) how are those issues best decided;

(iii) whether time and expense will be saved if one or more issues (e.g. interpretation

of contract) are decided as preliminary issues;

(iv) whether liability and damages should be decided at one hearing or separately.

7. Questions to the parties

It may be considered whether one of the parties (or the tribunal) should put questions to a party and in what form this should be done.

8. Procedure at the hearing

Directions may be given as to:

(i) what if any rules of evidence will apply and generally as to the manner and form in which the evidence is to be presented at the hearing;

(ii) the length of time available for witnesses to give their evidence or for parties or their representatives to present their arguments;

(iii) whether arguments are to be in written or oral form or a combination of the two.

9. Investigations by the Tribunal

Would any investigations by the tribunal assist in ascertaining the facts?

10. Inspection

Would the tribunal be assisted by attending trials or experiments, or inspecting any object featuring in the dispute?

11. Documents

(i) If possible provide agreed chronology and dramatis personae;

(ii) arrangements of documents (e.g. different bundles for different topics, or as appropriate) and dates by which bundles to be produced;

(iii) unnecessary inclusion of documents to be avoided;

(iv) when documents are voluminous, consider copying only key bundles and providing a core bundle.

12. Advance reading

(i) Provision of pleadings and other suitable material (e.g. experts' reports) to the tribunal as far in advance of the hearing as possible.

(ii) Should time be set aside during the hearing, after appropriate opening, for private reading of any documents by tribunal (to reduce time otherwise involved in reading documents out)?

13. Multi-party disputes

(i) Concurrent or consecutive hearings (see para 15(b) of the Terms);

(ii) procedure generally.

14. Representation

Level of representation at the hearing to be appropriate to the case.

15. Hearing dates

(The fixing of dates will, in the majority of cases, be most usefully considered after discovery has been substantially completed. An application for a date to be fixed should not, however, be made until the parties are able to make a realistic estimate of how long the hearing is likely to last, and when the parties will be ready.)

(i) Estimated duration of hearing.

(ii) When can parties realistically be expected to be ready?

(iii) Any problems re availability of witnesses? (If so, can these be mitigated by taking evidence in advance, using proofs/affidavits at the hearing, by means of a live telephone or video link, or by use of a video recording?)

(iv) Availability of tribunal (see paragraph 20 of the Terms and the Fourth Schedule).

(v) Accommodation required and numbers attending.

(vi) Any special facilities (e.g. transcripts, interpreters, etc.)

(vii) Arrangements for accommodation, etc.: who to book/pay for?

THE FOURTH SCHEDULE

RECONSTITUTION OF THE TRIBUNAL

The following provisions are directed to avoiding delay which the parties or either of them consider unacceptable, but if both parties prefer to retain a tribunal as already constituted they remain free to so to agree.

1. The governing factor will be the ability of the tribunal to fix a hearing date within a reasonable time of the expected readiness date as notified by the parties on application for a date (see paragraph 14(d) of the Terms) or, if they are not agreed as to the expected readiness date, within a reasonable time of whichever forecast date the tribunal considers more realistic.
2. For hearings of up to 10 days' estimated duration, what constitutes a reasonable time will (unless the parties apply for a date further ahead) be determined by reference to the estimated length of hearing as follows:

ESTIMATED DURATION REASONABLE TIME

| | | |
|-------|--------------|-----------|
| (i) | Up to 2 days | 3 months |
| (ii) | 3-5 days | 6 months |
| (iii) | 6-10 days | 10 months |

"Relevant time-scale" is used below to mean whichever of the foregoing periods is applicable and, in cases of more than 10 days' duration, such corresponding time-scale as the tribunal may consider appropriate.

3. A sole arbitrator who is unable to offer a date within the relevant time-scale will offer to retire and, if so requested by the parties or either of them, will retire upon being satisfied that an appropriate substitute appointment has been effected by the parties; in event of their disagreement, either party may request the President to make the necessary substitute appointment.
4. In all other cases, unless all members of the tribunal are able to offer a matching date within the relevant time-scale:
 - (A) the tribunal will have regard to any agreed preference of the parties, but if there is no agreed preference the tribunal will fix:
 - (i) the earliest hearing date that can be given by any member(s) able to offer a guaranteed date within the relevant time-scale;
 - (ii) if a guaranteed date within the relevant time-scale cannot be offered by any member of the tribunal, the earliest date thereafter which can be guaranteed by any

member(s) of the tribunal; on the basis, in either case, that any member then unable (by reason of a prior commitment) to guarantee the date so fixed will (unless that prior commitment has meanwhile cleared) retire by notice given six clear weeks prior to the start date.

(B) Upon notification of any such retirement an appropriate substitution will be effected as follows:-

(i) If an original arbitrator retires the substitute shall be promptly appointed by his appointer; or failing such appointment at least 21 days prior to the start date the substitute will then be appointed by the umpire or third arbitrator or, if an umpire or third arbitrator has not yet been appointed, the substitute will be appointed by the President;

(ii) If an umpire or third arbitrator retires the substitute will be appointed by the original arbitrators.

5. For the purpose of Paragraph (4):-

(a) "appropriate substitution" means appointment of a substitute able to match the hearing date established in accordance with sub-paragraph (A);

(b) "start date" means the first date reserved for the hearing;

(c) An umpire or third arbitrator will retain power to make any necessary substitution under sub-paragraph (B)(i) notwithstanding that he may himself have given notice of retirement under sub-paragraph (A) and an original arbitrator will retain the like power under sub-paragraph (B)(ii).

6. An arbitrator or umpire who retires as mentioned above shall:-

(i) be entitled to immediate payment of his fees and expenses incurred up to the date of his retirement; and

(ii) incur no liability to any party by reason thereof.