

THE LONDON MARITIME ARBITRATORS ASSOCIATION



THE SMALL CLAIMS PROCEDURE (2012)

Effective for appointments on or after 1 January 2012

THE LMAA SMALL CLAIMS PROCEDURE 2012

1. INTRODUCTION

(a) These provisions shall be known as the LMAA Small Claims Procedure 2012 effective 1st January 2012. 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. In the event that a counterclaim exceeds such small claims limit, either party shall have the right, no later than 14 days after service of the counterclaim, to give notice in writing demanding that both claim and counterclaim be dealt with under the LMAA Terms 2012 or the LMAA Intermediate Claims Procedure 2012, as the case may be.

(b) If such a demand is made, the arbitrator may order that the reference will proceed under the LMAA Terms 2012 or the LMAA Intermediate Claims Procedure 2012, as the case may be. If the arbitrator does not so order, the reference will proceed under this Procedure.

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 14 days the parties have agreed on a sole arbitrator and the intended arbitrator has agreed to act, the claimant shall within a further 14 days send to the arbitrator a remittance in his favour for the Small Claims fee as defined in paragraph 3(b).

(b) If the parties have not within 14 days agreed on a sole arbitrator, either party may apply in writing to the Honorary Secretary, LMAA 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 remittance for the said Small Claims and LMAA administration fee, plus VAT where applicable, in favour of the LMAA. The application (a) unless accompanied by a letter of claim should provide a concise explanation of the issues which are likely to arise and (b) if appropriate give an indication whether any particular expertise on the part of the arbitrator is thought desirable. The President, having considered the nature of the dispute shall appoint an arbitrator and shall give notice to the parties. The LMAA shall send to the arbitrator 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, interlocutories, a hearing not exceeding one day (if required by the arbitrator pursuant to paragraph 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 fee being payable in the first instance by the claimant before he makes any award, ultimate liability for such additional fee 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. 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 pursuit 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 14 days of service of defence and counterclaim submissions shall be a condition precedent to the respondent's entitlement to pursue any such counterclaim within the proceedings in question.

(d) If the arbitrator resigns under paragraph 1(b) above or 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) Within 14 days of receiving confirmation or notice of the appointment of the arbitrator, the claimant will deliver to the respondent, a letter of claim not exceeding 2,500 words accompanied by relevant documents.

(b) A letter of defence and of counterclaim (if any) not exceeding 2,500 words accompanied in each case by copies of relevant documents shall be delivered by the respondent to the claimant within 28 days from receipt of the letter of claim or from the date of the confirmation or appointment of the arbitrator, should the letter of claim and relevant documents have been sent in advance of such appointment.

(c) A letter of reply (if any) not exceeding 1,000 words or of reply and defence to counterclaim not exceeding 2,500 words shall be delivered by the claimant to the respondent within a further 21 days. Where an additional fee is payable under paragraph 3(c) hereof in respect of the counterclaim, the 21 days shall run only from receipt by the arbitrator of the additional fee.

(d) The respondent shall, if he so wishes, deliver to the claimant a letter of reply to defence to any counterclaim not exceeding 1,000 words within a further 14 days.

(e) Any extension to the above time limits must be applied for before expiry of the existing time limit. If a party fails to deliver the appropriate letter 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 letter, shall not in total exceed 28 days. Any letter submitted by the defaulting party subsequent to expiry of the time limit set by the arbitrator's notice shall not be admissible.

(f) Following delivery of the letter of reply, or, where there is a counterclaim, following delivery of the letter of reply to defence to counterclaim, the arbitrator may declare to the parties that submissions have closed. No further submissions shall be considered by the arbitrator following such a declaration.

(g) 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.

(h) Experts' reports shall only be admissible with the permission and subject to the directions of the arbitrator. Experts' reports must not exceed 2,500 words.

(i) There shall be no hearing unless, in exceptional circumstances, the arbitrator requires this.

(j) 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 of 5 hours) between the parties in such manner that each party has an equal opportunity in which to present his case.

(k) 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 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 paragraph 3(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*. Breakdowns or explanations regarding such costs (limited to 500 words) are only to be provided where the parties agree or the arbitrator so requires, in which event they must be provided within 7 days of the service of the last submission as in paragraph 5 above or the arbitrator's direction, whichever is later. The successful party will normally be awarded the Small Claims fee (including the fee 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

(a) The following provisions are incorporated:

-- LMAA Terms 2012, paragraph 2 (a) and (b).

-- The Second Schedule to the LMAA Terms 2012, paragraphs 2, 6 and 14-18.

(b) 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.

(c) In any case where it is determined or agreed that, because of the nature and/or weight of a case, 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/notes-on-fees.aspx.*