

Commentary on the LMAA FALCA Rules

Introduction

The LMAA has adopted the FALCA Rules ("Fast and Low Cost Arbitration") in order to encourage quicker and cheaper resolution of the middle range of maritime disputes - those which involve neither very large nor very small amounts of money. The new LMAA FALCA Arbitration Clause for insertion in charterparties and other maritime contracts allows the parties to choose for themselves the size of the claim to which the FALCA Rules will apply, but if no figure is inserted the Rules will apply to claims under US\$250,000. Claims under US\$50,000 will be dealt with under the LMAA Small Claims Procedure.

What is "fast" about FALCA Rules is that the dispute is to be decided by a single arbitrator (appointed by the President of the LMAA if not agreed) in accordance with a strict timetable designed to produce an award no later than 8 months after appointment, with no right to appeal to the courts. What is "low cost" is a single arbitrator, rather than a tribunal; no oral hearings, save in very exceptional circumstances; a slimmed down procedure strictly controlled by the arbitrator and accordingly a saving in legal fees.

The individual arbitrators as appointed by the President of the LMAA will be chosen by reference to their qualities to determine the particular issues involved and their ability to proceed to an award within the time scale provided.

FALCA Rules reflect the provisions of the Arbitration Act 1996 which came into force on 31st January 1997. In the case of references commencing prior to 31st January 1997 the parties will, following appointment of the Arbitrator, be required to confirm in writing that they waive the right of appeal to the courts failing which either party shall have the right of appeal.

Commentary on the Rules

Rule 1.

The parties are encouraged to agree upon a sole arbitrator and may only apply to the President of the LMAA for the appointment by him of an arbitrator under Rule 2 if the claimants have first requested the other party to agree upon the appointment of an arbitrator. The procedure we suggest is that upon or shortly after giving notice under Rule 1 the claimants should put forward the names of 2 or 3 arbitrators for agreement.

Rule 2.

If the notice required by Rule 1 has not resulted in agreement on the appointment of a sole arbitrator the claimants can request the President of the LMAA to make an appointment. The request should be addressed to: The President of the LMAA, at the offices of the Association.

Rule 3.

It is to be noted that the commencement of an arbitration for the purposes of any time limit, or otherwise, is the sending of the written notice under Rule 1 by the claimants to the other party, or, in the event of a sole arbitrator already having been agreed prior to that, the time when the agreed arbitrator was appointed. For the time of commencement of any counterclaim see Rule 10.

Rule 4.

If the President of the LMAA is, at any time, unavailable to make appointments, he may nominate another person to do so. The nominee will usually be another officer of the LMAA.

Rule 5.

One of the main objects of the LMAA FALCA Rules is to ensure that the persons appointed are well suited to act as arbitrators, both as regards their qualifications to deal with the particular issues involved and as regards their availability, so that they are able to conclude the arbitration within the timetable laid down. The President of the LMAA will therefore select arbitrators on the basis of their suitability and availability, whether members of the LMAA or not.

Rule 6.

This Rule enables the arbitrators to decide such issues as, for example, whether a contract alleged by one party to have been entered into with the other party ever actually came into existence.

Rule 7.

Under this Rule an arbitrator may, for example, make an order that because of the special circumstances of the dispute, the strict timetable which is otherwise laid down should not apply in that particular case.

Rules 8-10.

Because of the strict timetable for the exchange of written submissions it is not intended that submissions should

be in the form of pleadings or that technical points should be taken on what should or should not have been included in them, provided that, in the arbitrator's view, the respective submissions are fairly presented and do not result in prejudice to one party or the other.

Rules 11-12.

The process of discovery of documents has been found in the past to be a major cause of unnecessary delay and cost and it is intended that in this Rule the requirement of "relevance" should be narrowly defined. But those documents directly and clearly relevant to the issues should always be produced in the first instance. If they are not so produced the arbitrator may take this into account in considering questions as to costs. Rules 12 and 16 give the arbitrator the power to order further specific discovery if the initial discovery is not considered wide enough.

Rules 13-14.

Witness statements and experts' reports, if any, will be prepared on the basis of the parties' own documents and the copy documents obtained initially from the other party. Rule 14 gives the parties the opportunity to obtain comments from witnesses and experts on any further specific discovery and on any statements and reports of the other parties' witnesses and experts. The arbitrator has power under Rule 16 to take account of any statements or reports in reply however informal. Rule 14 anticipates that at this stage the parties will also send copies of the documents they have exchanged to the arbitrator if they have not already done so. Although this is not a requirement of Rule 14 the parties are encouraged to provide the arbitrator with a joint set of documents if possible.

Rule 16.

Since the normal arbitration under these Rules will be on documents only, the arbitrator is given wide powers to decide what weight to give to any evidence and to call for documents, expert advice and witness statements of his own volition.

Rule 17.

It is recognised that in exceptional cases an arbitrator might consider it necessary to hear oral argument and/or to order the oral examination and cross examination of witnesses. An oral hearing will increase the costs of the arbitration and for this reason the arbitrator is given the power to relax the limit for security for costs under Rule 18, in the event of an oral hearing being ordered.

Rule 18.

Experience has shown that the size of a demand for security for costs in cases where the amount of the claim may not be very large has sometimes unfairly deterred a claimant from pursuing an apparently reasonable claim. In limiting demands for security for costs to £7,500 (except in cases where the arbitrator has made an order under Rule 17) this Rule is intended to emphasise that arbitrations under the LMAA FALCA Rules can and should be conducted without incurring heavy costs.

Rule 19.

In order to achieve the objective of the Rules of limiting delay and saving costs the parties under this Rule expressly waive the right to appeal to the courts.

Rule 20.

Owing to the lack of effective sanctions it has been common for cases to suffer delays in respect of timetables not being adhered to. The intention of this Rule is to emphasise to the parties and their advisors that save in exceptional circumstances there will be no divergence from the strict procedure laid down in the Rules and that non-adherence to the timetable laid down is likely to result in real prejudice to the defaulting party.

Rule 21.

This Rule is intended to prevent delay and save costs in multi-party or "chain" arbitrations.

Rule 22.

It is recognised that a claim appropriate to be dealt with on the basis of a sole arbitrator and a strict timetable may turn out to involve sums in excess of the figure in the LMAA FALCA Clause. A counterclaim may exceed that figure or a claim, initially stated below the figure, may be increased above it. In such circumstances either party is given an option to expand the panel to three arbitrators and/or to do away with the strict timetable and the related Rules, provided that the options are exercised within the stated time limits.