

## **Guidelines on Procedure under the LMAA Terms 2012**

In order to control the spiralling delays and costs that can occur during the course of arbitration references, LMAA arbitrators will, unless the parties specifically agree otherwise, apply the following procedural rules in all but exceptional cases.

### **Paragraph 11 of the Second Schedule of the LMAA Terms 2012**

In order to avoid uncertainty and minimise delay after LMAA Questionnaires have been exchanged, the tribunal will allow the parties 21 days from the date of such exchange to agree the future procedural course of the reference or make appropriate submissions to the tribunal in relation thereto failing which the tribunal will make such directions as it considers appropriate on the basis of the Questionnaires.

### **The Third Schedule of the LMAA Terms 2012 – the LMAA Questionnaire**

The LMAA Questionnaire is an important document in the arbitration process. It provides an opportunity for the parties to consider in detail the issues raised in the submissions that have been exchanged and, consequently, the most appropriate way of progressing the case to its conclusion. In order to gain the maximum benefit from the LMAA Questionnaire the following requirements for completion of the Questionnaire should be noted:

- (i) Where more than one question is raised in any section of the LMAA Questionnaire separate responses shall be provided for each question (for example, 3 separate responses shall be provided to Question 9).
- (ii) When responding to Question 13 it should be stated whether it is considered necessary for all witnesses of fact and experts to give evidence in person at the hearing or by video, or other similar, link.
- (iii) When responding to Question 15(a) a breakdown of the figures shall be provided identifying individually, among other things, the fees of solicitors/consultants (and number of each it is anticipated will be required), counsel (specifying whether senior or

junior) and experts, including the charge out rates applied by each.

The following should also be noted.

**Paragraph 7 of the Second Schedule of the LMAA Terms 2012** provides as follows:

“Applications for security for costs will not normally be considered until after service of defence submissions. Any application must be accompanied by a justification for it and a breakdown of the costs which it is reasonably anticipated will be incurred up to the stage of the reference for which security is sought. In the light of paragraph (E) of the First Schedule it will not be appropriate for security for costs to include any provision for the fees of a tribunal.”

This provision is intended to avoid the inclusion of a separate element in any security for costs requested that is ring-fenced and held only as security for the tribunal’s fees where the tribunal has the power itself in Paragraph E of the First Schedule to request such security. Occasionally, though, it is suggested that the provision may have the unintended effect of preventing a party from seeking security for fees of the tribunal already paid or which the party seeking security for costs may themselves have secured. Paragraph 7 should be construed as if it included the words “with the exception of fees already paid to a tribunal, or any member of a tribunal, or for which the party seeking security for costs has already been ordered to provide, and has provided, security.”