

LMAA 2017 Terms

EXPLANATORY NOTE

1 February 2017

THE SMALL CLAIMS PROCEDURE (“SCP”) 2017

1. *Paragraph 1(a)*: express provision has been made for a financial limit of US\$100,000 (applicable separately to claims and counterclaims), where a limit has not been agreed by the parties.
2. *Paragraph 1(b)*: Where, due to a counterclaim exceeding the relevant financial limit, a demand is made for the claim and counterclaim to be dealt with under the LMAA Terms or ICP, it is now made clear that, if the parties agree, the arbitrator originally appointed retains jurisdiction over the dispute, and may decide which regime of LMAA rules should apply.
3. *Paragraph 11(c)*: For the avoidance of doubt, it is stipulated that any commencement of arbitration under the Small Claims Procedure shall be sufficient to interrupt any statutory or contractual time limit.
4. *Paragraph 5*: There has been some tidying up and clarification of provisions regarding letters of submission. It is provided that for the purpose of the word limit applicable to a letter of defence and counterclaim, a counterclaim must arise independently of the claim. It is made clear that additional evidence may only be included with a letter of reply (or reply to defence to counterclaim) with the permission of the arbitrator. An arbitrator may require letters of submission which are inadequately or excessively pleaded to be re-submitted in a compliant form.
5. In relation to time limits, it is now provided that an arbitrator “may” make an award dismissing the claim, where there is a failure to serve a letter of claim in time. Previously it was provided that the arbitrator “shall” dismiss the claim. The committee decided that it was appropriate to make it clear that the arbitrator has a discretion whether or not to dismiss the claim. For example, if an arbitration is commenced and settlement discussions follow, it may not necessarily be appropriate to dismiss the claim where a letter of claim is not served in time.

6. *Paragraph 9:* In paragraph 9(a) there have been some minor changes regarding the incorporation of terms from the LMAA Terms and Second Schedule. In paragraph 9(b), it is made clear that where an arbitrator decides, in exceptional circumstances, to depart from the provisions of the SCP in some respect, the arbitrator retains jurisdiction over the dispute. Similarly, in paragraph 9(c), where it is determined or agreed that the SCP is inappropriate, it is provided that the arbitrator retains jurisdiction, and may decide under which regime of LMAA rules the arbitration should proceed. Paragraph 9(d) makes it clear that if an arbitration no longer proceeds under the SCP, the arbitrator is entitled to retain the Small Claims fee as payment on account of fees in the reference.