



LMAA

THE LONDON **MARITIME**
ARBITRATORS ASSOCIATION

**THE LMAA TERMS
AND
PROCEDURES 2021**

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INTRODUCTION

THE LMAA

The LMAA was founded in 1960 but its roots and traditions extend back over the history of the Baltic Exchange of more than 350 years. Arbitrations were then conducted, often informally, before members of the shipbroking fraternity. However, over the years, Full Membership of the Association has expanded, and the list of practising arbitrators now embraces a variety of disciplines and offers a corresponding breadth of expertise.

In 1972 Supporting Membership was introduced. The list of Supporting Members today, numbering almost 750 and drawn from specialists involved in the many services connected with maritime arbitration, speaks for itself as to the depth of support for the work of the Association.

The importance of professional skill and experience of arbitrators in ad hoc arbitrations has been emphasised by the Arbitration Act 1996 which places on the tribunal the responsibility for adopting suitable procedures which avoid unnecessary delay and expense, the tribunal having power to decide all procedural and evidential matters. This is a challenge to which London arbitration has responded and to which the LMAA will continue to respond by regular reviews of its Terms and Procedures. The LMAA is very conscious that its reputation depends on the ability of its members to provide a service which merits the confidence of those who bring their disputes to London.

THIS HANDBOOK

This handbook sets out for users of London maritime arbitration details of the LMAA's current Terms and Procedures. It begins with the LMAA Terms 2021, their six schedules and a short commentary. Then follows the LMAA Intermediate Claims Procedure 2021, as developed in conjunction with the Baltic Exchange, and a short commentary on this Procedure. Finally there is the LMAA Small Claims Procedure 2021 and its short commentary, followed by the LMAA Arbitration Clause and Arbitration Notice Clause, together with a brief commentary.

While this handbook reflects the Terms and Procedures published in 2021, further details, updates, guidance and related news items may be found on the LMAA website at www.lmaa.london

Previous versions of the Terms and Procedures and other procedural rules published by the LMAA can also be found on the website.

CONTACT US

Correspondence for the President, the Honorary Secretary or the Association should be addressed:

The LMAA
The Baltic Exchange
38 St Mary Axe
London EC3A 8BH

Telephone: + 44 (0)20 7283 7701
E-mail: info@lmaa.london
Website: www.lmaa.london

THE LONDON MARITIME ARBITRATORS ASSOCIATION

PRESIDENT

BRUCE HARRIS

COMMITTEE

MICHAEL ALLEN

IAN GAUNT

MARK HAMSHER

BRUCE HARRIS

SARRA KAY

ALAN OAKLEY

DAVID STEWARD

EX OFFICIO

CLIVE ASTON

PAST PRESIDENTS

MALCOLM T. BROWNE (1960 - 63)

A.S. BUNKER (1963 - 67)

R.A.H. CLYDE (1967 - 70)

J. CHESTERMAN (1970 - 73)

CLIFFORD A.L. CLARK, M.C. (1973 - 75 & 1980 - 83)

CEDRIC BARCLAY (1975 - 77)

RALPH E. KINGSLEY (1977 - 78)

REGINALD P. BISHOP (1978 - 79)

ALBERT E. MORRIS, M.B.E. (1979 - 80)

THE HON. MICHAEL B. SUMMERSKILL (1983 - 85)

GERALD GEDDES (1985 - 87)

HAROLD J. MILLER (1987 - 89)

ALEC J. KAZANTZIS (1989 - 91)

BRUCE HARRIS (1991 - 93)

MICHAEL FERRYMAN (1993 - 95)

MICHAEL BASKERVILLE (1995 - 97)

PATRICK O'DONOVAN (1997 - 99)

MARK HAMSHER (1999 - 2001)

CHRISTOPHER J.W. MOSS (2001 - 03)

MICHAEL BAKER-HARBER (2003 - 06)

ROBERT GAISFORD (2006 - 08)

JOHN TSATSAS (2008 - 11)

CHRISTOPHER FYANS (2011 - 14)

CLIVE ASTON (2014 - 17)

IAN GAUNT (2017-20)

HONORARY SECRETARY

DANIELLA HORTON

EXECUTIVE SECRETARY

MARGARETA SVIGLER



LMAA

THE LONDON **MARITIME**
ARBITRATORS ASSOCIATION

**THE LMAA TERMS
2021**

THE LMAA TERMS 2021

PRELIMINARY

1. These Terms may be referred to as "the LMAA Terms 2021".
2. In these Terms, unless the context otherwise requires,
 - (a) "the Act" means the Arbitration Act 1996;
 - (b) "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 or, where the President cannot act, such other member of the Committee of the Association as the President may designate;
 - (c) "tribunal" includes a sole arbitrator, a tribunal of two or more arbitrators, and an umpire;
 - (d) "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 that arbitrator's appointer.

APPLICATION

4. These Terms apply to arbitral proceedings commenced on or after 1st May 2021. Section 14 of 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;and 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 an agreement between the parties 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 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. (a) If the arbitration agreement provides that these Terms are to apply but contains no provision as to the number of arbitrators, the agreement shall be deemed to provide for a tribunal of three arbitrators as in (b) below.
- (b) Subject to the terms of the arbitration agreement, if the tribunal is to consist of three arbitrators:
- (i) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so;
 - (ii) 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, and if the two said arbitrators do not appoint a third within 14 days of one calling upon the other to do so, the President shall, on the application of either arbitrator or of a party, appoint the third arbitrator;
 - (iii) the third arbitrator shall be the chairperson unless the parties shall agree otherwise;
 - (iv) 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;
 - (v) after the appointment of the third arbitrator decisions, orders or awards shall be made by all or a majority of the arbitrators, and, if any of the original arbitrators subsequently resigns or is no longer able to continue, the remaining two arbitrators, if agreed on any matter, shall have the power to make decisions, orders and awards in relation thereto;
 - (vi) the view of the third arbitrator shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under paragraph (v).
9. Subject to the terms of the arbitration agreement, 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, and if the two said arbitrators do not appoint an umpire within 14 days of one calling upon the other to do so, the President shall, on the application of either arbitrator or of a party, appoint the umpire;
 - (c) the umpire shall attend any substantive hearing and shall following appointment be supplied with the same documents and other materials as are supplied to the other arbitrators;

- (d) the umpire may take part in and, if the original arbitrators so agree, chair 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 the umpire were the sole arbitrator.
10. A party wishing to refer a dispute to arbitration in accordance with paragraph 8(b)(i) or paragraph 9(a) above shall appoint its arbitrator and send notice of such appointment in writing to the other party, requiring the other party to appoint its own arbitrator within 14 calendar days of the notice, and stating that the requesting party will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified in the notice, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator appointed in this manner shall be binding on both parties as if the sole arbitrator had been appointed by agreement.
11. Subject to the terms of the arbitration agreement, where it provides for these Terms to apply and if the tribunal is to consist of a sole arbitrator, if within 14 days of one party calling for arbitration the parties have not agreed upon a sole arbitrator: (a) either party may apply in writing for the appointment of a sole arbitrator by the President of the LMAA; (b) such application shall be accompanied by a remittance in favour of the LMAA for making the appointment (the amount of such remittance being specified from time to time on the LMAA's website); (c) the party applying to the President shall give a concise explanation of the issues likely to arise, and as to whether any particular expertise on the part of the arbitrator is required but shall not suggest any particular names of potential arbitrators; (d) the President, having considered the nature of the dispute, shall appoint a sole arbitrator and give notice of such appointment to the parties.
12. Where:
- (a) an arbitrator resigns, dies or becomes incapable of conducting the proceedings or, where a hearing has been fixed, of attending the hearing (or there are justifiable doubts as to the arbitrator's capacity to conduct the proceedings or attend a hearing);
 - (b) an application is made by a party or parties to the President for the appointment of a substitute arbitrator;
 - (c) notice of the application has been given to the other parties, the affected arbitrator (where appropriate) and other members of the tribunal, and
 - (d) in the opinion of the President:
 - (i) one or more of the parties is unwilling or unable to appoint a substitute arbitrator within a reasonable time, or, where a hearing has been fixed, in time for the hearing to proceed, and
 - (ii) it is, in all the circumstances, appropriate to make a substitute appointment,

the President may appoint such substitute arbitrator, and such appointment shall be binding on the parties.

(For the avoidance of doubt, this provision is not intended to prevent a party from applying to the Court for the removal or substitution of an arbitrator, or for the filling of a vacancy, in accordance with the provisions of the Act.)

JURISDICTION

13. Notwithstanding the terms of any appointment of an arbitrator, unless the parties otherwise agree 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 makes its award (or its last award, if more than one is made in a reference) to refer to the tribunal for determination any further dispute(s) arising after the commencement of the arbitral proceedings. When and how such dispute is dealt with in the reference shall be in the discretion of the tribunal.

TRIBUNAL'S FEES

14. 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. An arbitrator or umpire shall be entitled to resign from a reference in the circumstances set out in paragraph (C) of the First Schedule.

ARBITRATION PROCEDURE

15. (a) It shall be for the tribunal to decide all procedural and evidential matters, but the tribunal will where appropriate have regard to any agreement reached by the parties on such matters. The normal procedure to be adopted is set out in the Second Schedule, subject to the tribunal having power at any time to vary that procedure.
- (b) 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 any oral hearing) or whether there is to be such a hearing.
- (c) For the avoidance of doubt, hearings (which expression for these purposes includes preliminary meetings) pursuant to these Terms include hearings conducted wholly or partly by video conference, telephone conference call, or other means of communication considered appropriate by the tribunal (or by a combination of such methods of conducting a hearing). References in these Terms to hearings should be interpreted accordingly.
- (d) Where a virtual, or part-virtual hearing, is to take place, parties should follow the LMAA Guidelines for the Conduct of Virtual and Semi-Virtual Hearings (as set out in the Sixth Schedule to these Terms, and published on the LMAA website), subject to any modifications to the Guidelines issued by the LMAA or ordered by the Tribunal.

INTERLOCUTORY PROCEEDINGS

16. (a) In all cases parties should be guided by the procedure set out in the Second Schedule.
- (b) Applications for directions should not be necessary but, if required, they should be made in accordance with the Second Schedule.
- (c) ***Arbitrations on documents alone***
Following completion of the steps covered by the Second Schedule, if it has been agreed by the parties or is determined by the tribunal that the case is to be dealt with on documents alone, 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 7 days requests, and is thereafter granted, permission to serve further submissions and/or documents.

(d) **Oral hearings**

If it is determined or agreed that there shall be an oral hearing, then following the fixing of the hearing date a booking fee will be payable in accordance with the provisions of the First Schedule.

POWERS OF THE TRIBUNAL

17. 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:

(i) direct either that no expert be called on any issue(s) or that no expert evidence shall be called save with the permission of the tribunal;

(ii) limit the number of expert witnesses to be called by any party or the length of any report to be served by any such witness.

(b) Where two or more arbitrations appear to raise common issues of fact or law, the tribunals may direct that they shall be conducted and, where an oral hearing is directed, 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 time limits for service of submissions may be abbreviated or modified in the interests of saving costs or minimising delay, or otherwise enhancing efficiency;

(ii) 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;

(iii) 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.

(c) If a party fails to comply with a peremptory order of the tribunal to provide security for costs, then without prejudice to the power granted by section 41(6) of the Act, the tribunal shall have power to stay that party's claim or such part of it as the tribunal thinks fit in its sole discretion.

PRELIMINARY MEETINGS

18. (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 5 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 paginated 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.

SETTLEMENT

- 19. 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.
- 20. Any booking fee paid will be dealt with in accordance with the provisions of paragraph (D)(1)(d) 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). Notwithstanding the terms of any settlement between them the parties shall remain jointly and severally responsible for all such fees and expenses of the tribunal until they have been paid in full.

ADJOURNMENT

- 21. 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

- 22. (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 Fifth Schedule shall apply.

THE AWARD

- 23. 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. At the end of the hearing or in the case of an arbitration on documents alone, upon receipt of final submissions the tribunal will, if asked, do its best to indicate when its award will be available.
- 24. The members of a tribunal need not meet together for the purpose of signing their award or of effecting any corrections thereto. Unless the parties agree otherwise, or the tribunal directs otherwise, awards may be signed (or corrections effected) electronically, including by electronic transfer of a scanned signature, and/or in counterparts, and may be notified to the parties by email, or other electronic means. Where a party wishes an award (or correction) to be signed with original handwritten signatures, and/or notified by service of a hard copy of an original signed award (or correction), it is the responsibility of that party to make a request to that effect to the tribunal prior to the production of the award (or prior to the effecting of a correction).

25. (a) An award will contain the reasons for it unless the parties agree otherwise.
- (b) The parties may agree to dispense with reasons in which case notice shall be given to the tribunal 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 may not be relied upon or referred to by either party in any proceedings relating to the award.
26. As soon as possible after an award has been made, the tribunal shall give written notice thereof to the parties which notice will also inform the parties of (a) the amount of the outstanding fees and expenses of the tribunal and (b) that the award will be made available to be sent to or collected 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 shall be entitled thereafter to refuse to deliver the award or any copy thereof to the parties except upon full payment of its fees and expenses.
27. 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 any party requiring payment of the costs of the award, whereupon such party shall be obliged to pay for and collect the award within 14 days.
28. (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 explanation 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 date 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 of or explanation for 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.
29. 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

30. 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

31. Where an award reserves any questions relating to costs and/or interest any application to the tribunal to deal with such matter should be made within three months of the award unless the tribunal agrees a longer period.
32. Three months after the publication of an award the tribunal may dispose of its papers (including materials provided in electronic form) unless either (a) the parties or any of them request it not to do so, or (b) it is notified of an application to a court in England and Wales arising out of the award. In either case the tribunal may dispose of the papers six months after such request or a final decision of the court, unless one of the parties reasonably requests the tribunal to retain the papers for a further period.
33. 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 time¹. Unless otherwise agreed, the appointment fee of an umpire or third arbitrator shall in the first instance be paid by the claimant, and the appointment fee of an agreed sole arbitrator shall be paid by each party in equal shares.

(B) Interim fees

An arbitrator may in his/her discretion require payment of fees to date (which expression shall for these purposes include any expenses) at appropriate intervals (which shall be not less than three months). Any such demand for payment shall be addressed to the arbitrator's appointing party and shall be copied to any other member of the tribunal and other parties. A sole arbitrator, third arbitrator or umpire shall require payment from the parties in equal shares. Any such demand for payment is without prejudice (a) to ultimate liability for the fees in question and (b) to the parties' joint and several liability therefor. Without prejudice to the foregoing, a party may ask an arbitrator to provide an interim account of fees at intervals which shall not be less than three months.

(C) Right to resign for non-payment

If any amount due under (A) or (B) above remains unpaid for more than 28 days after payment has been demanded, the arbitrator, in the arbitrator's sole discretion, may give written notice to his/her appointer and to the other parties and arbitrators that he/she will resign if such amount still remains unpaid 14 days after such notification. Without prejudice to ultimate liability for the fees in question, any other party may prevent such resignation by paying the amount demanded within the said 14 days. Upon any resignation under this paragraph the arbitrator will be entitled to immediate payment of the arbitrator's fees to date, and shall be under no liability to any party for any consequences of resignation.

(D) Booking fees

1. (a) For a hearing of up to 10 days' duration there shall be payable to the tribunal a booking fee of such sum per arbitrator 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 at the discretion of the tribunal and shall become due 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 forthwith without prejudice to its entitlement to be paid the fee in question or the appropriate proportion thereof in accordance with sub-paragraph (d) below. In the event of a cancellation under this provision either party may secure reinstatement of the reservation by payment within 7 days of any balance outstanding.
- (b) For hearings over 10 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.

¹ The current fees as fixed by the LMAA Committee will be found on the LMAA website in the Fees section.

- (c) The booking fee for any third arbitrator or umpire shall be due and payable as above, save that the booking fee due to any third arbitrator or umpire appointed less than six months before the start date shall be due forthwith upon appointment and payable within 14 days thereof.
 - (d) Where, (i) at the request of one or both of the parties, or (ii) by reason of settlement of any dispute, or (iii) by reason of cancellation pursuant to sub-paragraph (a) above or (iv) by reason of the indisposition or death of any arbitrator or umpire 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 (or, if unpaid, shall be payable to) 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 any refund under (ii).
 - (e) Where, at the request of one or both of the parties, or by reason of the indisposition or death of any arbitrator or umpire 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 sub-paragraphs (a) and (b) above.
2. An arbitrator or umpire who, following receipt of the booking fee or any part thereof, is for any reason replaced is, upon settlement of fees for any interlocutory work, responsible for the transfer of the booking fee to the person appointed to act in the arbitrator's place. In the event of death, the personal representative shall have corresponding responsibility.

(E) Security for Tribunal costs

1. Without prejudice to the rights provided for in paragraphs (A), (B) and (D) above, a tribunal is entitled to reasonable security for its estimated costs (including its fees and expenses) up to the making of an award. In calculating such amount credit will be given for any booking fees paid. A tribunal is entitled to request security whenever it considers it appropriate to do so, and may stipulate when such security is to be provided. Where a tribunal has not stipulated for security to be provided at an earlier date, it shall be provided no later than 21 days before the start of any oral hearing intended to lead to an award or, in the case of a documents-only arbitration, no later than immediately before the tribunal starts reading and drafting with a view to producing an award.
2. If a tribunal exercises the right to request security under sub-paragraph (1) above, it shall advise the parties of its total estimated costs no later than 28 days before the security must be in place.
3. Requests for security hereunder shall be addressed to the party requesting any oral hearing, and to the claimant (or to the party requesting an award) in the case of a documents-only arbitration unless a tribunal considers, in the exercise of its discretion, that security should be provided in whole or in part by another party. If a party directed to provide security fails to provide such security within the time set any other party will be given 7 days' notice in which to provide it, failing which the tribunal may suspend its work pending provision of security, and vacate any hearing dates or, in the case of a documents-only arbitration, refrain from reading and/or drafting.
4. For the avoidance of doubt, in any case where time does not allow for the periods in sub-paragraphs (1)-(2) above, the tribunal shall be entitled at its discretion to set such shorter periods as are reasonable in the circumstances.

5. The form of such security shall be in the tribunal's discretion. Normally an undertaking from an appropriate firm of lawyers or a P&I or Defence Association will be acceptable. However, a tribunal may require a cash deposit or bank guarantee. Any undertaking or guarantee must undertake to pay the sum covered no later than 5 weeks after publication of the relevant award and shall not be conditional upon the award being released (unless the costs thereof are wholly covered by the relevant security).
6. No estimate given hereunder shall prejudice the tribunal's entitlement to its reasonable fees and expenses.
7. Any security provided or payment made in accordance with these provisions shall be without prejudice to ultimate liability as between the parties for the fees and expenses in question, and to the parties' joint and several liability to the tribunal until all outstanding fees and expenses have been paid in full.
8. For the avoidance of doubt, (a) a failure to provide security for a tribunal's estimated costs in accordance with an order or direction of a tribunal constitutes, for the purpose of these Terms, a failure to comply with an order or direction which would enable a tribunal to make a peremptory order pursuant to section 41(5) of the Act, and (b) if a claimant fails to comply with a peremptory order to provide such security, a tribunal may make an award dismissing the claimant's claim pursuant to section 41(6) of the Act.

(F) Accounting for payments made on account

Where the case proceeds to an award, or is settled after the start of the hearing, appropriate credit will be given for any amounts paid under paragraphs (B), (D) or (E) above 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.

(G) 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 it thinks fit, request that it be provided with security sufficient to cover its 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 PROCEDURE

1. The normal procedure requires service of submissions by each party as set out below. Whether the submissions are informal or are framed more formally as statements of case, they must:
 - (a) Set out the position of the parties in respect of the issues that have arisen between them as clearly, concisely and comprehensively as possible;
 - (b) be contained in numbered paragraphs;
 - (c) be accompanied by paginated supporting documentation relevant to the issues between the parties, other than documents which accompanied previous submissions. Such documentation shall be served on all other parties.

A party intending to serve supporting documentation upon the tribunal must check with the tribunal whether it wishes to receive copies of all or some of the documentation at that stage. The aim should be for a tribunal to see enough documentation to be able to identify the issues in the case but not to be burdened with, for instance, copy invoices at the commencement of a reference.

2. An allegation that relevant documentation has not been disclosed with any submissions will not normally be a reason for allowing additional time for service of submissions in response. However, a failure at the appropriate stage to disclose relevant documentation may be penalised in costs.
3. Claim submissions are normally to be served within 28 days after appointment of a sole arbitrator or, if the tribunal is to consist of more than one arbitrator, within 28 days after appointment of the second arbitrator.
4. Save in exceptional cases (e.g. applications for interim or partial final awards for sums which are said to be indisputably due and owing) defence and, if applicable, counterclaim submissions are to be served within 28 days after service of the claim submissions.
5. Submissions in reply are to be served within 14 days after service of defence submissions unless there is also a counterclaim, in which case 28 days shall be allowed for submissions in reply and defence to counterclaim. Any submissions in reply to the defence to counterclaim are to be served within 14 days thereafter. If a party wishes to serve any further submissions, it should apply to the tribunal for permission to do so, explaining why such further submissions are necessary.
6. Bare denials in defence and subsequent submissions in response to an allegation will not be acceptable. If an allegation is denied, reasons must be given and if appropriate a positive contrary case put forward.
7. Applications for security for costs will not normally be considered until after service of defence submission. 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 costs of a tribunal, except in relation to costs already paid to a tribunal (or any member of a tribunal) by the party seeking security for costs, or in relation to costs of a tribunal in respect of which the party seeking security for costs has already provided security.

8. If a party wishes to obtain disclosure of certain documents prior to service of submissions, it must seek the agreement of the other party, failing which it should make an appropriate written application to the tribunal, explaining the rival positions of the parties in question.
9. Subject to any specific agreement between the parties or ruling from the tribunal, the parties are entitled at any stage to ask each other for any documentation that they consider to be relevant which has not previously been disclosed. Parties will not generally be required to provide broader disclosure than is required by the courts. Generally, a party will only be required to disclose the documents on which it relies or which adversely affect its own case, as well as documents which either support or affect the other party's case.
10. In appropriate cases the tribunal may order the service of a statement of truth signed by an officer or by the legal representative of a party confirming the accuracy of any submissions or of any declarations that a reasonable search for relevant documentation has been carried out.
11. (a) Unless the parties agree that the reference is ready to proceed to an award on the exclusive basis of the written submissions that have already been served, both parties must complete the Questionnaire set out in the Third Schedule within 14 days of the service of the final submissions as set out in paragraph 5 above. Every such Questionnaire must contain the declaration set out at the end thereof, which shall be signed by a properly authorised officer of the party on whose behalf it is served. Completed Questionnaires must be served on the tribunal and all other parties. Unless the parties agree, the tribunal will then establish the future procedural course of the reference, either on the basis of the Questionnaires and any other applications made to it in writing or, if appropriate, after a preliminary meeting.

(b) In order to avoid uncertainty and minimise delay following an exchange of Questionnaires, a tribunal will normally allow the parties 21 days from the date of such exchange to agree future procedural directions, or to make submissions regarding such directions, following which period a tribunal will make such directions, or take such action regarding the future conduct of the proceedings, as it considers appropriate on the basis of the material before it, including the Questionnaires.
12. Subject to contrary agreement of the parties or an appropriate ruling by the tribunal, the parties will be required to exchange statements of evidence of fact (whether to be adduced in evidence under the Civil Evidence Acts or to stand as evidence in chief) as well as expert evidence covering areas agreed by the parties or ordered by the tribunal within a time scale agreed by the parties or ordered by the tribunal. Statements of evidence of fact or expert evidence that have not been exchanged in accordance with these provisions will not be admissible at a hearing without permission of the tribunal.
13. Parties and tribunals should actively consider ways in which to make the arbitral process as cost-effective and efficient as possible. In doing so, they should take account of the guidelines set out in the Checklist at the Fourth Schedule, in relation to matters such as: the preparation of factual and expert evidence; the use of documents; skeleton arguments, and transcripts.
14. Any application to a tribunal for directions as to procedural or evidential matters should, save in exceptional circumstances, be made only after the other parties have been afforded an opportunity to agree, within 3 working days, the terms of the directions proposed. Any application that has not previously been discussed with the representatives of such other parties and that does not fully record the rival positions of the parties will normally simply be rejected by a tribunal. If a party has been requested by another party to discuss and agree any application, but has failed to respond within 3 working days (or such other time as may be allowed by the tribunal), the tribunal will not seek to elicit the comments of that party or make orders conditional on objections not being received.

15. Parties should not routinely copy to the tribunal exchanges between them unless and until a ruling is required or there is other good reason to keep it informed.
16. Communications regarding procedural matters should be made expeditiously.
17. Tribunals will not acknowledge receipt of correspondence despite any request to that effect unless there is particular reason to do so.
18. Only in the most exceptional circumstances can it be appropriate for a party to question the terms of any procedural order made or seek a review of it by the tribunal.
19. (a) If a tribunal considers that unnecessary costs have been incurred at any stage of a reference, it may on the application of a party or, after giving the parties the opportunity to comment, of its own volition make rulings as to the liability for the relevant discrete costs. Unnecessary costs may be incurred by, e.g., inappropriate applications or appropriate applications inappropriately resisted, unnecessary communications, excessive photocopying or duplicated communications. Tribunals may order such costs to be assessed and paid immediately.

(b) A tribunal will be entitled, in exercising its discretion as to liability for costs, and in assessing costs, to take account of unreasonable or inefficient conduct by a party, including a failure to comply with the Checklist at the Fourth Schedule, and to take account of offers made without prejudice save as to costs. A tribunal may also take into account the costs estimates provided by both parties in the LMAA Questionnaire.

(For the avoidance of doubt, the English High Court procedure as to Part 36 offers is not applicable to arbitrations conducted under these Terms, and paragraph (b) above is not intended to limit the matters which may be considered by a tribunal in the exercise of its discretion.)
20. A party should give prompt notice to other parties and to a tribunal of its instruction of lawyers or other representatives to represent it in an arbitration, and of any change in its representation. In the absence of exceptional circumstances, late instruction of legal or other representatives, or a change in representation, will not be considered as a valid ground for delaying the progress of an arbitration, nor as a valid ground for the adjournment of a hearing.
21. Where parties agree that an order or direction which is agreed between them shall be deemed to be an order of the tribunal, they must notify the tribunal of such agreement, and, unless otherwise directed by the tribunal, the agreed order or direction shall take effect as an order or direction of the tribunal, and shall be an order or direction of the tribunal for the purpose of section 41 of the Act (which deals with the powers of a tribunal in the case of a party's default).
22. Parties are at liberty to apply to a tribunal for directions which differ from those contemplated above, but any such application should clearly explain why it is appropriate for some different course to be followed.

THE THIRD SCHEDULE

QUESTIONNAIRE

(Information to be provided as required in paragraph 11 of the Second Schedule to the LMAA Terms)

Note: The Questionnaire is an important document in the arbitration process. It provides an opportunity to consider the issues that have been raised in the submissions, and the most appropriate way of progressing an arbitration.

The following requirements regarding the Questionnaire should be observed: (a) where more than one question is raised in a section of the Questionnaire, separate answers should be provided for each question; (b) when responding to Question 13 (as to witnesses of fact and experts), parties should state whether it is considered necessary for all factual witnesses and experts to give evidence in person, or whether it would be necessary or desirable for some witnesses to give evidence by video link or similar means; (c) when responding to Question 16(a) (as to the estimated costs of each party), a breakdown of the figures should be provided, identifying separately, amongst other things the actual or estimated fees of: solicitors/consultants (and the number anticipated to be required), Counsel (and specifying whether senior or junior Counsel will be involved), and experts, including relevant charge out rates.

As many as possible of the procedural issues should be agreed by the parties. If agreement has been possible, then please make that clear in the answers to the Questionnaire.

1. What, briefly, is the nature of the claim (e.g. "unsafe port" or "balance of accounts dispute")?
2. What is the approximate quantum of the claim?
3. What is the approximate quantum of any counterclaim?
4. What are the principal outstanding issues requiring determination raised by the claim and any counterclaim?
5. Are any amendments to the submissions required?
6. Are any of the issues in the reference suitable for determination as a preliminary issue?
7. Are there any areas of disclosure that remain to be dealt with?
8. Would a preliminary meeting be useful, and if so at what stage?
9. What statement evidence is it intended to adduce, from whom and when? Which issues will be addressed by statement evidence? Is it possible to limit the length of statements or to avoid duplication of evidence? If there is to be a hearing what oral evidence will be adduced?
10. What expert evidence is it intended to adduce by way of reports and/or oral testimony and by when will experts' reports be exchanged? Which issues will be addressed by expert evidence? Can the length of experts' reports be limited? Unless the parties agree or the tribunal rules that a meeting between experts would not be appropriate, when should the meeting take place and when should a record of that meeting be provided?

11. What is the suggested timetable for the close of submissions if the case is to go ahead on documents alone or for a hearing if that is appropriate?
12. What is the estimated length of the hearing, if any?
13. Which witnesses of fact and experts is it anticipated will be called at the hearing, if there is to be one? Will interpreters be required at the hearing for any witnesses?
14. Is it appropriate for a hearing date to be fixed now? (Save in exceptional circumstances, a hearing date will not be fixed until the preparation of the case is sufficiently advanced to enable the duration of the hearing to be properly estimated; this will normally be after disclosure of documents has been substantially completed.)
15. Is it contemplated that the hearing should take the form of a virtual, or semi-virtual hearing (e.g. being conducted wholly or partially by video conference)? If so, what arrangements are contemplated?
16. (a) What are the estimated costs of each party
 - (i) up to completion of this Questionnaire; and
 - (ii) through to the end of the reference?

Note: a breakdown should be given, identifying separately, among other things, the actual/estimated fees of solicitors/consultants (and the number anticipated to be required), Counsel (and specifying whether senior or junior Counsel will be involved), and experts, including relevant charge out rates.
- (b) Is this an appropriate case for the tribunal to cap costs, and if so why and at what level?
17. Does any party consider that it is entitled to security for costs and, if so, in what amount?
18. Are there any orders which are now sought?
19. Have the parties considered whether mediation might be worthwhile?

DECLARATION (TO BE SIGNED BY A PROPERLY AUTHORISED OFFICER OF THE PARTY COMPLETING THE QUESTIONNAIRE: SEE SECOND SCHEDULE, PARA. 11 (a)):

On behalf of the *[claimant/respondent]* I, the undersigned *[name]* being *[state position in organisation]* and being fully authorised to make this declaration, confirm that I have read and understood, and agree to, the answers given above. I also understand that in the event of the arbitration settling or being otherwise terminated, I will immediately notify the tribunal.

Signed Dated

THE FOURTH SCHEDULE

CHECKLIST

The following guidelines are issued with a view to making the decision-making process as cost-effective and efficient as possible. Those objectives should be borne in mind in applying them.

Where a virtual, or semi-virtual, hearing is to take place, parties should follow the LMAA Guidelines for the Conduct of Virtual and Semi-Virtual Hearings (as set out in the Sixth Schedule, and published on the LMAA website), subject to any modifications issued by the LMAA or ordered by the tribunal.

1. Arbitrations on documents alone

- (a) The parties should consider at the outset whether the case is suitable to be decided without an oral hearing (see Second Schedule paragraph 11(a)).
- (b) If the arbitration is to be decided on documents alone, the parties should consider how best to present the case to the tribunal. In particular, they should consider amalgamating the documents which each party has provided into a single chronological bundle. They should also take into account such matters referred to in paragraphs 2-4 below as may be relevant in the particular case.

2. Factual evidence

- (a) A witness statement should ideally be in the witness's own words. It should only contain evidence as to matters of fact which need to be proved by the evidence of the witness in relation to one or more issues of fact to be decided, and about which the witness has personal knowledge or recollection. A witness statement should never be used to argue a case.
- (b) Witness statements should always be in numbered paragraphs, and should contain margin cross-references to where documents appear in other bundles.
- (c) Consideration should be given to supplementary witness statements picking up the paragraph numbering from the initial statement, so that the two can be read as one continuous document.
- (d) The parties should seek to agree well in advance of any hearing whether or not the witness should be required to give oral evidence.
- (e) The parties should seek to agree whether all or some of a witness' statement may stand as evidence in chief. Unless otherwise agreed or ordered by the tribunal, the witness statement shall stand as evidence in chief.
- (f) If a witness is to give oral evidence through or with the assistance of an interpreter, a copy of that witness' statement in his or her own language should be available. (The same applies to any critical document upon which the witness may be examined). Parties are expected to deal with arrangements for interpreters, and to seek to agree the identity of interpreters, well in advance of a hearing.
- (g) In a substantial case involving a number of witnesses, it makes sense to have separate bundles of the claimant's and respondent's witness statements respectively.

3. Expert evidence

- (a) Paragraphs 2(a)-(e) above are repeated.
- (b) The reports of the claimant's and respondent's respective experts should normally be in separate bundles, unless they are not voluminous.
- (c) If the reports annex documents (and this practice is to be discouraged, save as to documents adduced by experts themselves), documents that appear elsewhere should not be duplicated here.
- (d) Experts should be instructed that, when giving evidence, they should ensure that the version of any report or document to which they may wish to refer bears the same numbering as that before the tribunal. Reports should contain margin cross-references to where documents appear in other bundles.
- (e) Without prejudice to the tribunal's power to require experts to give evidence simultaneously ("hot-tubbing"), the parties should seek to agree whether this would be appropriate.

4. Documents for hearing

- (a) Serious effort must be made to ensuring the elimination of unnecessary documents and the inclusion of only one copy of any document (with particular attention to emails). Only documents relevant to the issues (as distinct from loosely touching on the case) should be included.
- (b) Where documentation is at all substantial, a core bundle should normally be produced, containing the documents essential to the disputes. Sufficient space should be allowed for the insertion of as many pages again as it presently contains. Normally it will be appropriate for documents in the core bundle to have the same page numbering as in the main bundle sequence where such documents appear.
- (c) Consideration must be given to the orderly presentation of documents, e.g. by topic or chronologically. The default position is that documents should be presented chronologically. Repetition of emails in bundles is to be avoided, so far as possible. Thus, email "chains" should either be broken up into separate messages, paginated individually and in time order, or should incorporate a series of exchanges that do not occur elsewhere.
- (d) Bundles should be paginated consecutively. Although flags or dividers can be useful in moderation, they should not replace or interrupt consecutive pagination and individual documents should not be separated by dividers unless they are very substantial. No A4 ring binder should contain more than 300 sheets.
- (e) Bundles should be clearly marked with a large letter or number on both the spine and the left-hand inside cover. Each bundle should have its own unique letter or number, i.e. wherever possible avoid A(1), A(2) etc., although such denominations may be appropriate where, e.g., what is effectively one bundle is divided because of size.
- (f) Photographs should be reproduced to the highest possible quality in the bundles, and originals should be available at a hearing whenever possible.
- (g) In a substantial case, consideration should be given to the tribunal receiving bundles in A5 rather than A4 format, but the tribunal must be consulted on any such proposal.

- (h) Where an unstructured document is liable to be subject to close analysis, thought should be given to adding line or paragraph numbers.
- (i) There should be no bundles of solicitors' correspondence unless it is certain that such correspondence is going to be referred to at the hearing, in which event only what is relevant should be included.

5. Skeleton arguments

- (a) The parties should seek to agree whether skeleton arguments are to be exchanged consecutively or concurrently.
- (b) Skeleton arguments should be in numbered paragraphs.
- (c) The skeleton argument of the party who is opening the proceedings should (a) contain sufficient detail that no more than a brief oral presentation will be required; (b) be accompanied by a *dramatis personae*, chronology and agreed timetable for the presentation of argument and the calling of witnesses; (c) identify any documents or authorities which it is desired that the tribunal read in advance of the hearing and (d) give an estimate of the amount of time which pre-reading is likely to involve.
- (d) Assuming that the skeleton arguments and other documents relevant to the tribunal's understanding (a) reach the tribunal no later than two working days before the hearing and (b) do not involve an inordinate amount of time to absorb, the parties are entitled to assume that such have been read by the tribunal.

6. Transcripts

- (a) Transcripts should be paginated consecutively, with dividers for each separate day.
- (b) See para. 4(g) above.

THE FIFTH 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 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 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 that arbitrator's 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 the umpire or third arbitrator may 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:

- (a) be entitled to immediate payment of fees and expenses incurred up to the date of retirement; and
- (b) incur no liability to any party by reason thereof.

THE SIXTH SCHEDULE

GUIDELINES FOR THE CONDUCT OF VIRTUAL AND SEMI-VIRTUAL HEARINGS

1. Early preparation for the hearing

The parties' representatives are asked to confirm the following in advance of the hearing:

- 1.1 Counsel, solicitors or legal representatives, all witnesses, interpreters and transcribers have tested the technology to be employed for the hearing and practised using it, in advance of the hearing. It is suggested that a "practice run" should be conducted shortly before the hearing with all these participants and the tribunal, to ensure that the relevant technological requirements for the hearing can be met.
- 1.2 The platform and technologies to be used are adequate and have been satisfactorily tested by all participants.
- 1.3 For a suitable case, arrangements have been made for an appropriate level of IT support for the hearing (e.g. from the solicitors' firms or from a third party) to provide services such as hosting the meeting and arranging for participants to be sent to "break out" rooms, but also to assist if technical problems arise during the hearing.
- 1.4 All witnesses and interpreters have received hard copy or electronic bundles well in advance of the hearing.
- 1.5 Consideration has been given to contingency measures in case of outages and other technical failures. The parties shall ensure that there are adequate backups in place in the event that the virtual hearing fails. At a minimum, these shall include teleconferencing, or alternative methods of video/audio conferencing.
- 1.6 All participants, including any third-party technical support, agree to be bound by the traditional confidentiality undertaking in the usual way, and that any other confidentiality issues (by reason of the hearing being conducted virtually) will be raised promptly, but in any event in advance of the hearing.
- 1.7 No participant shall record the hearing unless otherwise approved by the tribunal in advance. (Arrangements may be made for, and the tribunal may direct recording if agreed or ordered, as part of the organisation of the virtual hearing.)
- 1.8 A decision should be taken well in advance of the hearing as to whether the hearing bundles will be prepared in hard copy or electronically (or both). If the bundles are to be produced electronically, suggestions as to how these should be produced are set out below.

2. In advance of the hearing day

The claimant's legal representatives are to:

- 2.1 Circulate a contact sheet that lists all the participants (including witnesses, interpreters and transcribers) by name, organisation, time-zone indicated by reference to GMT and, except for witnesses, interpreters and transcribers, email addresses and telephone numbers to enable ready contact. The contact sheet should provide a telephone number and email address that should be contacted by any person who is having technical or connection issues during the hearing. Contact details (telephone number and email address) for any IT support should also be included on the contact sheet.
- 2.2 Arrange for all relevant participants to receive an invitation (link, meeting i.d., password) to the hearing each day well in advance of the agreed start-time.
- 2.3 Provide the tribunal with a detailed hearing schedule (to be agreed so far as possible), taking account of the need to (i) co-ordinate the participants in the hearing; (ii) provide for appropriate breaks during hearing days, and (iii) allow for possible technical problems during the hearing.

3. Etiquette in-hearing

- 3.1 At the start of the hearing each day, every participant will be asked to identify themselves to the host of the meeting and confirm the names of any person in the room with them. Any person not listed on the contact sheet will only be allowed into the meeting if the host receives confirmation from one of the parties that that person is permitted to join. (Any disagreement as to whether a participant is permitted to join should be raised promptly with the tribunal). Once permission is given to attend, their name will be added to the contact sheet by the claimant. The claimant will re-circulate it in updated form.
- 3.2 Only participants with speaking roles should be visible and audible but should self-mute when not speaking.
- 3.3 Connection issues (such as the screen freezing or if there is a deterioration in the quality of the connection because the video feed has been on for a sustained period of time) can sometimes be simply resolved by the affected participant disconnecting and re-connecting. This should be borne in mind as a practical matter.
- 3.4 During cross-examination, the tribunal might require all the party's legal representatives to be visible (but muted).
- 3.5 All participants with non-speaking roles will be muted by the host (and should ensure they are self-muted in any case) and may be asked to switch off their video (or the host may do it for them) to avoid distraction and using too much bandwidth. Participants should take steps in advance so as to avoid or at least minimise disruptions that can interfere with the smooth-running of the hearing (such as barking dogs). Please note that any participant who is muted and has their video switched off can still see and hear what is going on in the hearing room.
- 3.6 Any participant, other than the speaker who wishes to speak, should either put up their hand (physically) and/or utilise the virtual "raise hand" feature (if implemented) to alert the meeting host/tribunal, and wait to be invited to speak. Interruptions that do not comply with these requirements will be muted by the host.

- 3.7 If a party's connection is interrupted, the person who has disconnected should email everyone, or telephone a number that will be made available at the start of the hearing and listed on the contact sheet for people to call in the event of such issues and if it is not possible to re-connect promptly, await instructions. The tribunal will give instructions.
- 3.8 The tribunal may terminate the virtual hearing at any time if the tribunal deems the hearing so unsatisfactory that it is unfair to either party to continue.

4. Oral testimony from witnesses

It is to be noted that:

- 4.1 Witnesses, while giving evidence, must not communicate with third parties or be prompted in any way and must not consult documents other than those in the agreed bundles. If an e-bundle is being used, it may be useful for the witness to have two screens (one for the video conference, and one for documents).
- 4.2 Throughout the time witnesses are giving evidence, in addition to the other participants being able to see the witness, arrangements must be made for the room in which the witness is situated to be visible (e.g. by positioning a camera behind the witness if the witness has 2 cameras or for the witness at the start of giving evidence and if required by the tribunal at intervals, to turn the camera 360° to show the whole room) so that it is possible to see anyone else in the room with the witness. Arrangements must also be made to ensure that the witness has no electronic devices, or other potential prompts, visible apart from the screen that displays the virtual hearing. It may also be appropriate for a camera behind the witness to be positioned so that a check can be made that the screen used for the virtual hearing is not also being used to prompt the witness. The witness will be asked to confirm compliance with all of these rules at the start of each session.
- 4.3 The chain of interactions from counsel-interpreter-witness-interpreter and back to counsel again is the area most likely to result in over-speaking and repetition. The parties are required to devise, if necessary, a practical protocol that seeks to minimise this problem (such as requiring short sentences and short questions).
- 4.4 Witnesses will be asked to leave their mobile 'phones and other devices outside the room when they are giving evidence.

5. Electronic bundles

- 5.1 (a) If possible, the bundles should be contained in a single PDF, but where that is not practical (because of the number of documents) any PDF should consist of a maximum of 1,000 pages.
- (b) If possible, the PDF should be capable of being word-searched.
- (c) PDFs should contain index entries and (for an appropriate case) bookmarks to allow for ease of navigation of the documents contained within those PDFs.
- (d) The index or bookmarks inserted into the PDF should be given descriptions that correspond with the tabs inserted into hard copy bundles. Each case will be different, but for most cases it will probably be appropriate to give a description such as Mr X's witness statement, contract etc, rather than be described as Tab 1, Tab 2 etc.
- (e) The electronic bundle should be paginated from first to last.

- (f) The electronic bundle and any hard copy bundle must have identical pagination. PDFs should have internal numbering which is displayed on the PDF viewer at the top of the PDF page. That number needs to match the pagination number in the hard copy bundle, so that one can type in the page number in the PDF viewer and go straight to the correct paginated page. This can be achieved by, for example, paginating hard copy files so that each tab starts at 1; or, by using a PDF editing programme (e.g. Nuance or Adobe Acrobat Pro) which allows one to edit the internal number displayed in the PDF viewer so that the PDF, when edited, matches the pagination.
 - (g) The PDF file should have a table of contents at the start (but if it is given a page number in the PDF viewer which throws out the pagination, the hard copy pagination will need to be modified so as to match this).
 - (h) Hyperlinks and bookmarks should, if possible, be used. The contents page should contain hyperlinks to particularly relevant documents (e.g. the contract). The "bookmark" function can also be used to locate certain documents within the PDF file and labelled appropriately if they are not already identified as being particular "tabs". If the bundle and skeleton arguments are part of the same PDF, it might be useful to use hyperlinks between the skeleton arguments and the bundle. In that case, the parties would need to consider earlier preparation of the bundles.
 - (i) For some cases, a separate non-PDF electronic bundle might be necessary. This is likely to be limited to cases where it is necessary to refer to metadata or other embedded data or to include videos.
- 5.2 During the hearing, advocates should be particularly conscious of the need to refer only to documents in electronic bundles where necessary and should aim to minimise the number of PDFs open at the same time.
- 5.3 The parties are normally to prepare and use a core bundle where electronic bundles are being used, unless the number of documents in the bundles makes this unnecessary.
- 5.4 It may be appropriate in some cases to have a document management provider (e.g. one of the solicitor's firms or a third party) to display any document to which reference is made during the hearing on each participant's screen.
- 5.5 Where new documents are introduced during the hearing (and these can be "handed up", electronically in a variety of ways such as through the "chat" function of Zoom or by email), consideration will need to be given as to how they are to be absorbed into the existing hearing bundles. In some cases, it might be possible to absorb them immediately (e.g. print them out and create a hard copy "inserts" folder, or, with the use of functions such as Adobe Acrobat Pro, absorb them then and there into the electronic bundles) but on other occasions it will probably be necessary to create either a separate electronic bundle for inserts that have been provided that day, or one single electronic file into which all inserts that are "handed-up" throughout the hearing are inserted. It is not likely to be appropriate simply for a complete, new bundle incorporating inserts to be produced as it is likely that participants will have marked-up their existing bundles.

6. Screens

- 6.1 Participants will need to consider the number of screens they may require for the hearing. Not every case requires multiple screens, it will depend on a number of factors, such as whether there is a document management provider or a real-time transcript. It may not be necessary to have one screen for each of the requirements that are listed here but it probably will be required for most of them. Screens will be required for:

- (a) Connecting the participant to the video feed;
- (b) Accessing and viewing real-time transcripts;
- (c) The document management provider, so as to display documents to be viewed during the hearing (either on a separate screen from the other screens in use or sharing the screen which has the video feed);
- (d) Viewing documents referred to during the hearing.

COMMENTARY ON THE LMAA TERMS 2021

INTRODUCTION

1. This commentary identifies the main changes to the LMAA Terms 2017 which have been made in the LMAA Terms 2021, due to come into effect for appointments on or after 1st May 2021.
2. The committee responsible for revising the Terms has been much assisted by suggestions received from users of LMAA arbitration about possible revisions. The committee has taken account of all such suggestions in preparing this updated version of the Terms. It is gratifying to note that suggestions have mainly been as to “fine tuning” of the Terms; however, the committee has been conscious of the need to ensure that LMAA arbitration remains as effective and as cost-efficient as possible. The committee’s approach has been pragmatic and practical – updating wording to reflect changing procedures (including the increased use of virtual hearings), and to address specific issues which have arisen in recent years, whilst retaining the flexibility and “light touch” approaches which are characteristic of LMAA arbitration. There have been numerous minor changes of wording, by way of update and improvement, in this revision. The commentary below will focus on some of the more significant points.

LMAA TERMS 2021

3. *Paragraph 10:* The appointment procedure for a sole arbitrator now adopts the procedure in the LMAA Arbitration Clause (as now revised and set out at the end of this booklet), which is simpler and speedier than the procedure set out in the Arbitration Act 1996.
4. *Paragraph 12:* Concerns have been expressed by users about the difficulties, and waste of time and costs caused, where it becomes apparent shortly before a hearing that an arbitrator is unable to conduct the hearing, and where the original appointing party is unwilling or unable to appoint a substitute, and it is also impractical to get a substitute appointed in time by means of a Court application. The revised terms therefore now give the President power to appoint a substitute arbitrator where it becomes apparent that the original arbitrator is incapable of conducting the proceedings or attending the hearing (or there are justifiable doubts as to this point). It will be for the President in such cases to decide whether it is appropriate to make an appointment. It is anticipated that the power will be used rarely, and it is not intended to prevent a party from making a Court application for a substitute appointment, but it will provide an additional tool to ensure that LMAA arbitrations are conducted efficiently and effectively.
5. *Paragraph 15(c) and (d):* The Terms now expressly recognise that hearings may take place virtually, and provide for flexibility as to the manner in which hearings are conducted. The LMAA has taken an important initiative in publishing its Guidelines for the Conduct of Virtual and Semi-Virtual Hearings, and the Terms provide for the Guidelines to be used subject to any modifications issued by the LMAA or ordered by a tribunal. For ease of reference, the Guidelines appear at the Sixth Schedule to the revised Terms.
6. *Paragraph 24:* The Terms now expressly provide that awards may be signed electronically, and in counterparts, and may be notified to parties by electronic means. This gives greater flexibility as to the preparation and publication of awards, particularly in circumstances in which it may be difficult to obtain handwritten signatures from arbitrators. However, parties and their lawyers should keep in mind that it is possible that enforcement issues could arise in relation to an electronically signed award. The Terms therefore stipulate that parties are responsible for informing the tribunal, prior to issue of the award, if they would like the award to be signed with original handwritten signatures. Furthermore, given the uncertainties as to enforcement, it is suggested that tribunals continue with the practice of obtaining handwritten signatures to an award, whenever possible, so that, even if an award is notified to the parties electronically, an original award, with handwritten signatures, can be made available if subsequently required.

SCHEDULES TO THE LMAA TERMS 2021

7. *Third Schedule:* The LMAA Questionnaire continues to be an important part of case management of arbitrations under the Terms. A new question has been inserted regarding arrangements for virtual, or semi-virtual, hearings. New text has also been included in paragraph 16 regarding breakdowns of costs which must be provided.
8. *Fourth Schedule:* The Checklist now requires the parties, in the case of virtual, or semi-virtual, hearings, to follow the guidance in the LMAA Guidelines for such hearings. It also contains in paragraph 2 important new wording aimed at ensuring that witness statements are, so far as possible, expressed in the witness's own words, and confined to relevant issues of fact.
9. *Sixth Schedule:* A new schedule contains the LMAA Guidelines for the Conduct of Virtual and Semi-Virtual Hearings.



LMAA

THE LONDON **MARITIME**
ARBITRATORS ASSOCIATION

**THE LMAA
INTERMEDIATE CLAIMS PROCEDURE
2021**

THE LMAA INTERMEDIATE CLAIMS PROCEDURE 2021

INTRODUCTION

1. These provisions shall be known as the LMAA Intermediate Claims Procedure 2021 (hereinafter called “this Procedure”), effective 1st May 2021. They shall apply to any dispute which parties have agreed should be referred to arbitration under this Procedure. Any agreed monetary limit for disputes that may be so referred shall be deemed to exclude interest and costs unless the parties agree otherwise. In the absence of such agreed monetary limit, this Procedure shall apply where the total amount of the claimant’s claims or the total amount of any counterclaims exceed:

(a) any applicable agreed upper limit under the LMAA Small Claims Procedure; or

(b) US\$100,000

but where neither the total amount of the claimant’s claims nor the total amount of any counterclaims exceed US\$400,000, or such other sum as the parties may agree, (exclusive of interest and costs). In the event that either party at any time advances claims or counterclaims which in total exceed that amount, 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 2021. If such a demand is made, the tribunal may order that the reference will proceed under the LMAA Terms 2021. If the tribunal does not so order, the reference will proceed under this Procedure.

APPOINTMENT OF TRIBUNAL

2. The parties are free to agree on the composition of the tribunal but, in the absence of agreement, the tribunal is to consist of three arbitrators as set out in paragraph 3 below.

3. Subject to the terms of the arbitration agreement, 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, and if the two said arbitrators do not appoint a third within 14 days of one calling upon the other to do so, the President shall, on the application of either arbitrator or of a party, appoint the third arbitrator;

(c) the third arbitrator shall be the chairperson 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 chairperson shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under paragraph (e).

4. Subject to the terms of the arbitration agreement, 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, and if the two said arbitrators do not appoint an umpire within 14 days of one calling upon the other to do so, the President shall, on the written application of either arbitrator or of a party, appoint the umpire;
 - (c) the umpire shall attend any substantive hearing and shall following 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 the umpire were the sole arbitrator.
5. A party wishing to refer a dispute to arbitration in accordance with paragraph 3(a) or paragraph 4(a) above shall appoint its arbitrator and send notice of such appointment in writing to the other party, requiring the other party to appoint its own arbitrator within 14 calendar days of the notice, and stating that the requesting party will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified in the notice, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator appointed in this manner shall be binding on both parties as if the sole arbitrator had been appointed by agreement.
6. Subject to the terms of the arbitration agreement, if the tribunal is to consist of a sole arbitrator and if within 14 days of one party calling for arbitration the parties have not agreed upon a sole arbitrator:
 - (a) either party may apply in writing for the appointment of a sole arbitrator by the President;
 - (b) such application shall be copied to the other party and shall be accompanied by a remittance in favour of the LMAA for its fee¹ for making the appointment (“the LMAA fee”);
 - (c) a party applying to the President shall provide a concise explanation of the issues which are likely to arise and an indication as to whether any particular expertise on the part of the arbitrator is required but shall not suggest any particular names of potential arbitrators;
 - (d) the President having considered the nature of the dispute, shall appoint a sole arbitrator and give notice of such appointment to the parties.

¹ The current fees as fixed by the LMAA Committee will be found on the LMAA website in the Fees section.

OPENING SUBMISSIONS

7. (a) The submissions referred to hereunder shall comprise the opening submissions and shall be copied to the tribunal as and when served. The submissions must:
 - (i) identify and set out the position of the parties in respect of the issues that have arisen between them as clearly, concisely and comprehensively as possible;
 - (ii) be contained in numbered paragraphs;
 - (iii) be accompanied by copies of relevant documents (as defined in paragraph 8(b)).
- (b) Claim submissions shall be served by the claimant within 14 days of the appointment of the second member of the tribunal or the appointment of a sole arbitrator, as appropriate.
- (c) Defence submissions, together with any counterclaim, shall be served by the respondent on the claimant within 28 days from receipt of the claim submissions.
- (d) Reply submissions, together with any defence to counterclaim, shall be served by the claimant on the respondent within a further 21 days.
- (e) The respondent shall, if it so wishes, serve on the claimant reply to defence to counterclaim submissions within a further 21 days.
- (f) Following service of the reply submissions, or, where there is a counterclaim, following service of the reply to defence to counterclaim submissions, or following expiry of the time for service of the same, the opening submissions shall be deemed completed and no further opening submissions may be served by either party, except with the prior permission of the tribunal.

DISCLOSURE OF DOCUMENTS

8. (a) There will be no formal stage of disclosure, each party being obliged to produce relevant documents with its opening submissions. Following service of claim submissions, the parties shall include in their opening submissions any specific request for disclosure of any relevant documents. If such documents are not disclosed by the other party within 14 days of completion of the opening submissions the tribunal may draw adverse inferences in its award, should it consider that other party to be in default of its disclosure obligations.
- (b) The expression “relevant documents” includes all documents relevant to the dispute, whether or not favourable to the party having power, possession or control of them, but does not include documents which are privileged and not therefore legally disclosable.

STATEMENTS OF WITNESSES OF FACT

9. Any party wishing to adduce in evidence statements of witnesses of fact (“witness statements”) must give notice of such intention within 14 days after completion of opening submissions (see paragraph 7 above). Any such witness statements are to be served/exchanged within 28 days after the completion of opening submissions. Neither party may serve any supplementary witness statement unless the permission of the tribunal has first been obtained and any terms imposed by the tribunal complied with. Any request for such permission must be made by the party wishing to adduce such evidence within 14 days of service/exchange of witness statements, failing which no supplementary witness statement shall be adduced in evidence by that party.

A witness statement should ideally be in the witness's own words. It should only contain evidence as to matters of fact which need to be proved by the evidence of the witness in relation to one or more issues of fact to be decided, and about which the witness has personal knowledge or recollection. A witness statement should never be used to argue a case.

EXPERT EVIDENCE

10. (a) No expert evidence may be adduced by either party unless the permission of the tribunal has first been obtained. Any request for such permission must be made within 14 days after completion of opening submissions or exchange of witness statements (whichever is the later) and must indicate the precise nature of the issues to which the expert evidence is directed and identify the precise field of expertise of the expert witness(es), who will, if permitted, give such evidence.
- (b) Any expert evidence is to be served/exchanged within 21 days after the date on which the tribunal gives permission for such evidence to be adduced.
- (c) Neither party may serve any supplementary expert evidence unless the permission of the tribunal has first been obtained and any terms imposed by the tribunal complied with. Any request for such permission must be made by the party wishing to adduce such evidence within 14 days of service/exchange of experts' reports, failing which no supplementary expert evidence shall be adduced in evidence by that party.
- (d) Without permission of the tribunal, an expert's initial report shall be limited to 3,500 words and any supplementary report to 1,000 words.

ORAL HEARING

11. (a) There is no automatic right to an oral hearing and only exceptionally will one be held.
- (b) Either party may apply to the tribunal for an oral hearing within, but no later than, 21 days after (i) completion of opening submissions, or (ii) 14 days after (aa) service/exchange of witness statements or (bb) the determination of the tribunal of any application to adduce expert evidence or (cc) the time permitted for service/exchange of expert evidence, whichever is the later.
- (c) If an oral hearing is permitted:
 - (i) each party shall serve a skeleton argument, together with a statement of agreed facts, in advance of the hearing;
 - (ii) except with the permission of the tribunal (sought and obtained no less than 14 days prior to the commencement of the hearing), the oral hearing shall be limited to one working day of five hours;
 - (iii) each party shall be allocated a maximum of two hours in which to present its case either in the form of evidence or argument or both, as that party may see fit, and the remaining hour shall be allocated by the tribunal in such a way as it considers fair and appropriate in the circumstances of the particular case. Time for cross-examination of the other party's witnesses is included in each party's two-hour allocation;

- (iv) following the conclusion of the oral hearing, each party shall have the right (but not the obligation) to serve one set only of closing submissions. Such submissions shall be served sequentially with the respondent first serving its submissions within 7 days of the end of the oral hearing and the claimant serving its closing submissions within 7 days thereafter. The closing submissions must not adduce new evidence.

CLOSING SUBMISSIONS IF NO ORAL HEARING

12. If an oral hearing is not permitted (see paragraph 11 above) and there has been no further disclosure beyond that accompanying the opening submissions, and no witness or expert evidence has been adduced in accordance with the preceding paragraphs, neither party shall be entitled to serve any further submissions beyond those provided for in paragraph 7 above. In a case where there is no oral hearing but there has been disclosure and/or witness and/or expert evidence, each party shall be entitled to serve one set of closing submissions. Any such closing submissions shall be served sequentially with the respondent first serving its closing submissions within 14 days after the last of the said steps in the procedural timetable for the reference has been performed (see paragraphs 8, 9 and 10 hereof) and the claimant serving its closing submissions within 7 days thereafter. However, if witness statements are served (pursuant to paragraph 9 above), and no application is made to adduce expert evidence (pursuant to paragraph 10 above) or for an oral hearing (pursuant to paragraph 11 above), the 14-day period for the respondent's submissions shall run from 14 days after the service of witness statements. The closing submissions must not adduce new evidence.

EXTENSION OF TIME

13. Any extension of the time limits set forth in this Procedure shall be applied for before expiry of the existing time limit. If a party fails to comply with the relevant step in the proceedings within the time limit set for the performance thereof, the tribunal, on the application of the other party or of its own motion, shall notify the defaulting party that unless it complies within a fixed period (maximum 21 days) it will proceed to its award on the basis of the submissions and documents before it unless the tribunal in its absolute discretion permits or requires the party not in default to adduce further material. In the case of a failure to serve claim submissions, the tribunal may make an award dismissing the claim. Any submissions, documents, witness statements, or expert evidence submitted by the defaulting party subsequent to expiry of the time limit set by the tribunal's notice shall not be admissible.

THE AWARD

14. (a) The tribunal will make every effort to publish its award within 6 weeks of service of the last submissions served by the parties.
- (b) In addition to the powers set out in section 57 of the Arbitration Act 1996 ("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 or omission or error of calculation in its award;
 - (ii) The tribunal may on the application of a party give an explanation of a specific point or part of the award.
- (c) 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 time.

- (d) Such powers shall not be exercised without the tribunal first affording the other party (or, where it is acting on its own initiative, the parties) a reasonable opportunity to make representations to the tribunal.
- (e) Any correction or explanation of an award may be effected in writing on the original award or in a separate memorandum or supplementary award which shall become part of the award. It shall be effected within 56 days of the date of the original award or such longer period as the parties may agree.

RIGHT OF APPEAL

- 15. The parties are deemed to have agreed that any right of appeal to the courts shall be confined to instances where it is alleged that the award gives rise to an issue (a) of general interest or (b) of importance to the trade or industry in question, and as to (b), no application may be made to the court unless the tribunal certifies that the issue is indeed of importance to such trade or industry. Any right of appeal is otherwise excluded. For the avoidance of doubt this provision does not apply to any ruling by a tribunal in relation to its own jurisdiction.

PARTIES' COSTS

- 16. (a) Costs will be awarded on a commercial basis and in such manner and amount as the tribunal shall in its absolute discretion consider fair, reasonable and proportionate to the matters in dispute.
- (b) The parties' recoverable costs are to be capped so that neither party shall be entitled to recover more than a sum equivalent to 30% of the claimant's monetary claim (excluding interest and costs) as originally advanced or, if greater, as subsequently amended, plus, should there be a counterclaim and should the tribunal consider it to be distinct from the claimant's claim, a sum equivalent to 30% of such monetary counterclaim (excluding interest and costs) as originally advanced or, if greater, as subsequently amended. These percentages shall be increased from 30% to 50% if there is an oral hearing, and in that event expenses such as hiring a venue for the hearing and/or associated catering costs shall be recoverable in addition to, and shall not be included in, the said 50%. These percentages are maximum figures and the tribunal may at any time, and in its absolute discretion, cap the parties' future costs so that the total cap amounts to some lesser percentage than is here stated.
- (c) If declaratory or other non-monetary relief is sought the tribunal will, following completion of opening submissions and in its sole discretion, decide what overall cap on future costs to apply.
- (d) To enable the tribunal to assess costs, each party will provide a summary or breakdown of those costs (limited to 500 words) as soon as the tribunal is in a position to proceed to its award.

SECURITY FOR COSTS

- 17. Applications for security for costs will not 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 no circumstances will security for costs be granted in a sum above the amount at which the parties' respective costs have been capped.

TRIBUNAL'S COSTS

18. (a) Every arbitrator appointed under this Procedure shall be entitled to charge an appointment fee.
- (b) Save in exceptional circumstances, the tribunal's costs (for payment of which the parties are jointly and severally liable) shall not exceed a sum equivalent to one-third of the total at which a party's costs are capped under paragraph 16 above, excluding the appointment fee, in respect of a sole arbitrator or two-thirds thereof in respect of a two or three-member tribunal.
- (c) The tribunal's said costs do not include expenses such as hiring a venue for the hearing and/or associated catering costs which shall, in the first instance, be paid on demand by the party requesting an oral hearing.
- (d) Should there be a challenge to the jurisdiction of the tribunal which, or which it is suggested, falls to the tribunal to resolve, the tribunal shall be entitled to charge a reasonable fee for such work, its additional fee being payable in the first instance by the claimant before the tribunal makes any award, ultimate liability for such additional fee being for the tribunal to determine.
- (e) An arbitrator may require payment of outstanding fees, and any expenses incurred, at appropriate intervals. Any such demand for payment shall be addressed to the arbitrator's appointing party and shall be copied to any other member of the tribunal and other parties. A sole arbitrator, third arbitrator or umpire shall require payment from the parties in equal shares. Any such demand for payment is without prejudice to (i) ultimate liability for the fees in question and (ii) the parties' joint and several liability therefor. The cost of any award shall be paid upon collection of it.
- (f) If any amount due under (a) or (e) above remains unpaid for more than 14 days after payment has been demanded, the arbitrator may give written notice to the appointer and to the other parties and arbitrators that the arbitrator will resign if such amount still remains unpaid 7 days after such notification. Without prejudice to ultimate liability for the fees in question, any other party may prevent such resignation by paying the amount demanded within the said 7 days. Upon any resignation under this paragraph the resigning arbitrator will be entitled to immediate payment of fees to date, and shall be under no liability to any party for any consequences of resignation.

CONCURRENCY

19. Where two or more arbitrations conducted under this Procedure appear to raise common issues of fact or law, the tribunals may direct that those arbitrations shall be conducted and any hearing take place concurrently. Where such an order is made, the tribunals may give such directions as the interests of fairness, economy and expedition require including:
- (a) that time limits for service of submissions may be abbreviated or modified in the interests of saving costs or minimising delay, or otherwise enhancing efficiency;
- (b) 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;
- (c) 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.

GENERAL

20. (a) The tribunal may in any case which, in its discretion, it considers exceptional depart from or vary the above provisions as it considers appropriate, save that it shall not be entitled to vary the maximum figure which can be awarded to the parties in respect of their legal costs, unless the parties agree otherwise.
- (b) The appointment fee and the LMAA fee shall be such amounts as the Committee of the LMAA shall from time to time decide.
- (c) All references to costs herein are exclusive of VAT and VAT is to be added thereto where applicable.
- (d) In calculating costs for the purposes of paragraphs 16, 17 and 18 hereof, where claimed in a currency other than US Dollars, the tribunal will adopt the mid buying and selling exchange rate between the two currencies prevailing on the date of commencement of the arbitration proceedings.
- (e) For all purposes, including time limits, arbitration proceedings shall be deemed to be commenced under this Procedure upon one of the parties appointing an arbitrator or upon one of the parties calling upon the other party to agree on the appointment of a sole arbitrator.
- (f) In the absence of any agreement to the contrary, the parties to all arbitral proceedings to which this Procedure applies agree:
- (i) that the law applicable to their arbitration agreement is English law; and
 - (ii) that the seat of the arbitration is in England.
21. The following provisions are incorporated:
- LMAA Terms 2021, paragraph 2(a), 2(b), 3,6, 25, 29 and 30.
 - The Second Schedule to the LMAA Terms 2021, paragraphs 2, 6, 10 and 14-21

COMMENTARY ON THE LMAA INTERMEDIATE CLAIMS PROCEDURE 2021

1. *Paragraph 5:* In this revision, the procedure set out in the LMAA Arbitration Clause for the appointment of a sole arbitrator has been adopted. It is simpler and speedier than the procedure set out in the Arbitration Act 1996.
2. *Paragraph 12:* Clarification has been provided as to the timing of the respondent's submissions under this Procedure.
3. *Paragraph 13:* The wording has been clarified to indicate that, in a situation where the tribunal is proceeding following a default by one of the parties, the tribunal has a discretion to permit or require the party not in default to provide further material to the tribunal.
4. *Paragraph 16:* The wording now makes clear that the cap applicable to the parties' recoverable costs is to be calculated without including claims for interest and costs.



LMAA

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**THE LMAA
SMALL CLAIMS PROCEDURE
2021**

THE LMAA SMALL CLAIMS PROCEDURE 2021

1. INTRODUCTION

- (a) These provisions shall be known as the LMAA Small Claims Procedure 2021 effective 1st May 2021. 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 absence of such an agreed monetary limit, this Procedure shall apply where the total amount of the claimant's claims and the total amount of any counterclaims does not exceed US\$100,000 (with this limit applying separately to claims and counterclaims, and not as an aggregate figure).
- (b) 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 2021 or the LMAA Intermediate Claims Procedure 2021, as the case may be. If such a demand is made, the arbitrator shall, if the parties agree, retain jurisdiction over the dispute as sole arbitrator and may order that the reference will proceed under the LMAA Terms 2021 or the LMAA Intermediate Claims Procedure 2021, as the case may be. If the arbitrator does not so order, the reference will proceed under this Procedure.
- (c) For the avoidance of doubt, any commencement of arbitration under this Procedure shall be sufficient to interrupt any contractual or statutory time limit.

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 it 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 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 of the 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, but shall not suggest any particular names of potential arbitrators. 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(k)), 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, this additional fee being payable in the first instance by the claimant before the arbitrator 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 shall be a condition precedent to the continuance of proceedings under the Small Claims Procedure (meaning that proceedings may not be continued until the fee is paid).
- (c) In the event of the respondent putting forward a counterclaim which exceeds the amount of the claim, and in circumstances in which the arbitrator retains jurisdiction over the dispute, 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 case is settled amicably, or the arbitration is not pursued, or the arbitrator resigns or is unable to continue with the reference, before an award has been written, the arbitrator may retain out of the Small Claims fee a sum sufficient to compensate the arbitrator 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 the arbitrator's own jurisdiction.

5. PROCEDURE

- (a) Submission letters referred to below must:
 - (i) identify and set out the position of the parties in respect of the issues that have arisen between them as clearly, concisely and comprehensively as possible;
 - (ii) be contained in numbered paragraphs;
 - (iii) be accompanied by paginated supporting documentation relevant to the issues between the parties ("relevant supporting documents"), except that, in the case of submission letters referred to in sub-paragraphs (d) and (e) below, documents shall only be included with the prior approval of the arbitrator.
- (b) 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 supporting documents.
- (c) A letter of defence and of counterclaim (if any) not exceeding 2,500 words for each, 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. For the purpose of the word limit in this sub-paragraph, and in sub-paragraphs (d) and (e) below, the term counterclaim shall only apply to counterclaims arising independently of the claim and not to counterclaims arising from the same facts as the claim where, depending on the arbitrator's findings, an amount may be due to one party or the other.

- (d) 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. Additional evidence or supporting documents shall only be included with a letter of reply with the prior approval of the arbitrator. 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.
- (e) The respondent shall, if it 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 (except where the arbitrator rules that the counterclaim does not raise any new issues independent of those raised in the claim). Additional evidence or supporting documents shall only be included with a letter of reply to defence to counterclaim with the prior approval of the arbitrator.
- (f) The arbitrator may require letters of submission that do not comply with these requirements to be re-submitted in a form that complies with the requirements of the Procedure. In cases where in the opinion of the arbitrator a claim, defence, counterclaim or reply is insufficiently or excessively pleaded the arbitrator may order the relevant party to re-serve a letter of submission that complies with the requirements of this paragraph, and time for service of any responsive submissions will not begin to count until such letter of submission has been served. Where, in the opinion of the arbitrator, costs are increased because a letter of submission was inadequately or excessively pleaded, or was not supported by relevant documents, any additional costs incurred in consequence may be awarded against the party whose letter of submission was deficient, regardless of the outcome of the case.
- (g) Any extension to the time limits set out in paragraphs 5(b), (c), (d) and (e) above must be applied for before expiry of the existing time limit. If an application for extension of time is made before expiry of the relevant time limit, the arbitrator may grant such extension as appears appropriate, taking account of the circumstances of the case and the need for expedition under this Procedure. If a party fails to deliver the appropriate letter of submission within the time limits set out in paragraphs 5(b), (c), (d) and (e) above, or within the time extended by the arbitrator pursuant to an application made before expiry of the original time limit, the arbitrator, on the application of the other party or of the arbitrator's own motion, will notify the defaulting party that unless the outstanding communication is received within a fixed period (maximum 14 days) the arbitrator will proceed to the award on the basis of the submissions and documents before the arbitrator unless the arbitrator in his/her absolute discretion permits or requires the party not in default to adduce further material. In the case of failure to serve a letter of claim the arbitrator may 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 of submission submitted by the defaulting party subsequent to expiry of the time limit set by the arbitrator's notice shall not be admissible.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) There shall be no hearing unless, in exceptional circumstances, the arbitrator requires this.

(l) 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 its case.

(m) All communications or notifications under this Procedure may be by letter 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), the arbitrator 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), the arbitrator 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 of receipt of all relevant documents and submissions, or, where there is an oral hearing, from the close of the hearing.

In cases governed by the Small Claims Procedure, awards will be reasoned, unless otherwise agreed by the parties, but always subject to the exclusion of the right of appeal as set out in paragraph 4 above.

In addition to the powers set out in section 57 of the Arbitration Act 1996 ("the Act"), the arbitrator shall have the following powers to correct an award or to make an additional award:

(a) The arbitrator may on his/her own initiative or on the application of a party correct any accidental mistake or omission or error of calculation in the award.

(b) The arbitrator may on the application of a party give an explanation of a specific point or part of the award.

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 arbitrator shall think fit to extend time.

Such powers shall not be exercised without the arbitrator first affording the other party (or, where the arbitrator is acting on his/her own initiative, the parties) a reasonable opportunity to make representations to the arbitrator.

Any correction or explanation of an award may be effected in writing on the original award or in a separate memorandum or supplementary award which shall become part of the award. It shall be effected within 56 days of the date of the original award or such longer period as the parties may agree.

8. COSTS

The arbitrator shall assess and award costs on a commercial basis having regard to the nature of the reference. Any breakdowns or explanations regarding such costs (limited to 500 words) are to be provided within 7 days of the service of the last submission as referred to in paragraph 5 above, failing which the arbitrator shall proceed as he or she sees fit. 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 LMAA¹. 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. 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 have been incurred by that party (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 2021, paragraphs 2 (a) and (b), 3, 6, 25, 29 and 30.
- The Second Schedule to the LMAA Terms 2021, paragraphs 6 and 14-21.

(b) The arbitrator may, in any case which, in the arbitrator's discretion, the arbitrator considers exceptional, depart from or vary the provisions of this Procedure as the arbitrator considers appropriate, save that the arbitrator 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. Where the arbitrator does depart from or vary the provisions of this Procedure, the arbitrator shall retain jurisdiction as sole arbitrator over the dispute.

(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, then (subject to any contrary agreement by the parties) the arbitrator shall retain jurisdiction as sole arbitrator over the dispute, and may order that the reference will proceed under the LMAA Terms 2021 or the LMAA Intermediate Claims Procedure 2021, as the case may be.

(d) Where an arbitration no longer continues under the Procedure, and the arbitrator retains jurisdiction as sole arbitrator over the dispute, the arbitrator may retain the Small Claims fee as payment on account of the arbitrator's fees relating to the reference.

¹ The current fees as fixed by the LMAA Committee will be found on the LMAA website in the Fees section.

COMMENTARY ON THE LMAA SMALL CLAIMS PROCEDURE

Generally: Having regard to the limits on costs and fees and the nature of this Procedure, it is not appropriate for partial final awards which leave aspects of disputes unresolved. Therefore any award made under this Procedure should, save in the most exceptional cases, finally dispose of all issues referred, including costs (as to which see the commentary below on paragraph 8).

1. *Paragraph 1(b)*: The wording has been amended to make clear that, where an arbitrator retains jurisdiction, in circumstances in which a demand is made for a claim and counterclaim to be dealt with under the Terms or the Intermediate Claims Procedure rather than under this Procedure, the arbitrator is to continue as a sole arbitrator.
2. *Paragraph 3(b)*: There has been some uncertainty in the past as to the effect of a party failing to pay the Small Claims fee within the time limit specified in Paragraph 2(a). The revised wording makes it clear that the proceedings may not be continued until the fee is paid.
3. *Paragraph 3(d)*: This paragraph has been revised in order to clarify the circumstances in which an arbitrator may retain an amount from the Small Claims fee, to compensate for services rendered, when an award is not produced.
4. *Paragraph 5(g)*: This paragraph clarifies the regime as to the granting of extensions of time under the Small Claims Procedure. The wording has also been revised to indicate that, in a situation where the tribunal is proceeding following a default by one of the parties, the tribunal has a discretion to permit or require the party not in default to provide further material to the tribunal.
5. *Paragraph 7*: There have been differences of view in the past as to whether, under the Small Claims Procedure, arbitrators should be producing awards containing reasons. The revised wording makes clear that reasoned awards should be produced (unless the parties agree otherwise), but that the exclusion of the right of appeal, provided by paragraph 4 of the Small Claims Procedure, remains applicable to all such awards. As a matter of practice, it is suggested that tribunal should, within the award, state expressly that, pursuant to paragraph 4 of the Procedure, rights of appeal have been excluded. Provision has also now been made for the correction of awards produced under the Small Claims Procedure.
6. *Paragraph 8*: Arbitrators and parties have adopted different practices in the past under the Small Claims Procedure as to submissions on costs, and as to whether a costs award should be issued following the main award. Wherever possible, there should be one award under the Procedure, which deals with any relevant rulings as to costs, rather than a separate, second costs award. With this point in mind, the wording of paragraph 8 has been revised so as to provide for any breakdowns or explanations regarding costs (limited to 500 words) to be provided within 7 days of service of the last submission under the Procedure.
7. *Paragraph 9(a)*: Provisions incorporated from the LMAA Terms have been revised, to take account of the point that reasoned awards are to be produced under the Small Claims Procedure.
8. *Paragraphs 9(b) - (d)*: The wording has been modified to clarify that, where an arbitrator retains jurisdiction under these paragraphs, the arbitrator continues to act as a sole arbitrator.

LMAA ARBITRATION CLAUSE

Parties may wish to consider the use of an arbitration clause which expressly provides for the proceedings to be subject to the LMAA Terms and Procedures.

A suggested form of clause, the LMAA Arbitration Clause, is set out below. It provides for the constitution of a tribunal if the parties do not agree upon a sole arbitrator. The clause can be readily modified if the preference is for a tribunal composed of two arbitrators, with power to appoint an umpire if they disagree.

Agreement upon a sole arbitrator can have economic attractions, particularly in the case of arbitrations on documents alone, or where the amount at stake is modest.

LMAA ARBITRATION CLAUSE

This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The seat of the arbitration shall be England, even where the hearing takes place outside England.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators, one to be appointed by each party and the third, subject to the provisions of the LMAA Terms, by the two so appointed. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified in the notice, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if the arbitrator had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor the counterclaim exceeds the sum of US\$400,000 (or such other sum as the parties may agree) the parties may further agree that the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings and commenced. Where the reference is to three arbitrators the procedure for making appointments shall be in accordance with the procedure for full arbitration stated above.

LMAA ARBITRATION NOTICE CLAUSE

Parties may also wish to consider using the following clause, drafted by the LMAA, which expressly deals with the service of notices:

Any and all notices and communications in relation to any arbitration proceedings arising in connection with this contract (including any communications giving notice of the commencement of such proceedings and/or appointment of an arbitrator) shall be treated as effectively served if sent by e-mail to the e-mail addresses as provided for in this clause (it is strongly recommended that at least one individual, together with their individual e-mail address, is named for service purposes but a general e-mail address may also be included or used in the alternative):

Name of party to this contract:

- *E-mail address for this party: [insert]*

Name of other party to this contract:

- *E-mail address for this other party [insert]*

Either party shall be entitled to change and/or add to the e-mail addresses to which notices and communications may be sent for purposes of this clause by sending notice of change to the other party at the e-mail address provided for in this clause (or, if previously amended by notice, the relevant amended address).

Any notice and communication sent by e-mail pursuant to this clause shall be deemed to have been served, and become effective, from the date and time the e-mail was sent.

Nothing in this clause shall prevent any notice or communication in relation to any arbitration proceedings in connection with this contract being served by other valid and effective means.

If a party retains solicitors or representatives with authority to accept service of notices and communications in relation to arbitration proceedings, the other party should be advised of the appointment and new service details in accordance with the terms of this clause; future service and communications should then be sent to the nominated solicitors or representatives only (unless otherwise directed). In the event the solicitors or other representatives cease to act and notice is given of this to the other party, the provisions contained herein shall re-apply.

Provided always that nothing in this clause shall prevent any notice and communication in relation to any arbitration proceedings in connection with this contract being sent by other effective means.

COMMENTARY ON THE LMAA ARBITRATION AND LMAA ARBITRATION NOTICE CLAUSES

1. No change has been made to the LMAA Arbitration Clause. The appointment procedure for a sole arbitrator is now reflected in paragraph 10 of the LMAA Terms.

2. Issues relating to the adequacy of service of notice of arbitration continue to be raised with increasing frequency. The LMAA Arbitration Notice Clause requires the parties to list e-mail addresses for service of notices of arbitration. Similar provisions have long been included and effectively adopted in shipbuilding contracts and the adoption of the clause is encouraged as a way of avoiding disputes as to whether notice of arbitration has been served effectively. The latest version of the LMAA Arbitration Notice Clause is no longer limited to disputes involving only owners and charterers but is open to the parties to any form of contract. Provision is also made for the possibility of notice of arbitration being served by other effective means. It is, in this respect, the responsibility of the party serving notice of arbitration to satisfy themselves of the adequacy of the method of service adopted for purposes of possible eventual enforcement of any award.