

附錄八 倫敦海事仲裁委員會協會條款(英文)(2006)

THE LONDON MARITIME ARBITRATORS ASSOCIATION THE LMAA TERMS (2006) Effective for appointments on and after 1st January 2006

THE LMAA TERMS (2006)

PRELIMINARY

1.

These Terms may be referred to as “the LMAA Terms (2006)”.

2.

In these Terms, unless the context otherwise requires,

(i) “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 he cannot act, such other member of the Committee of the Association as he may designate;

(ii) “tribunal” includes a sole arbitrator, a tribunal of two or more arbitrators, and an umpire;

(iii) “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 his appointor.

APPLICATION

4.

These Terms apply to arbitral proceedings commenced on or after 1st January 2006. Section 14 of the Arbitration Act 1996 (“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.

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 law; 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.

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 10 working 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 chairman 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 chairman shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under paragraph (e).

9.

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 10 working 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 his 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 he were the sole arbitrator.

JURISDICTION

10.

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 subsequently to the commencement of the arbitral proceedings.

TRIBUNAL'S FEES

11.

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

12.

(a) It shall be for the tribunal to decide all procedural and evidential matters subject to the right of the parties to agree any matter. However, the normal procedure to be adopted is as set out in the Second Schedule.

(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 a hearing) or whether there is to be an oral hearing.

INTERLOCUTORY PROCEEDINGS

13.

(a) In all cases the procedure set out in paragraphs 1 to 14 of the Second Schedule should be adopted.

(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 paragraphs 1 to 4 of the Second Schedule, if it has been or is then determined by the tribunal or agreed by the parties 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 seven days requests, and is thereafter granted, leave 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

14.

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 limit the number of expert witnesses to be called by any party or may direct either that no expert be called on any issue(s) or that no expert evidence shall be called save with the leave of the tribunal.

(b) Where two or more arbitrations appear to raise common issues of fact or law, the tribunals may direct that the two or more arbitrations shall be conducted with and 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 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;

(ii) 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

15.

(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 five 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 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.

(e) There is set out in the Third Schedule a guidance document indicating topics which may be appropriate for consideration before and at the preliminary hearing.

SETTLEMENT

16.

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.

17.

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

18.

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

19.

(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 Fourth Schedule shall apply.

THE AWARD

20.

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.

21.

The members of a tribunal need not meet together for the purpose of signing their award or of effecting any corrections thereto.

22.

(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 (referred to in paragraph (c)) may not be relied upon or referred to by either party in any proceedings relating to the award.

23.

As soon as possible after an award has been made it shall be notified to the parties by the tribunal serving on them a notice in writing which shall inform the parties of the amount of the fees and expenses of the tribunal and which shall indicate that the award is available for sending to or collection 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.

24.

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 either party requiring payment of the costs of the award, whereupon such party shall be obliged to pay for and collect the award within fourteen days.

25.

(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 interpretation 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 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 or interpretation of 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.

26.

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

27.

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

28.

Three months after the publication of a final award the tribunal may notify the parties of its intention to dispose of the documents and to close the file, and it will act accordingly unless otherwise requested within 21 days of such notice being given.

29.

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 time*. 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 discretion require payment of his 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 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.

(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 his sole discretion may give written notice to his appointor and to the other parties and arbitrators that he will resign his appointment 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 his fees to date, and shall be under no liability to any party for any consequences of his resignation.

(D) Booking fees

(1) (a) For a hearing of up to ten 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 if both parties ask for the hearing date to be fixed as the case may be 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 seven days of any balance

outstanding.

(b) For hearings over ten 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.

(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 his 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 subparagraphs (a) and (b) above.

(2) An arbitrator or umpire who, following receipt of his booking fee or any part thereof, is for any reason replaced is, upon settlement of his fees for any interlocutory work, responsible for the transfer of his booking fee to the person appointed to act in his place. In the event of death the personal representative shall have corresponding responsibility.

(E) Security for costs of awards

(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. Such security is to 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 (a) in the case of an oral hearing, usually when such hearing is fixed and in any event no later than 28 days before the security must be in place, and (b) in the case of a documents-only arbitration 28 days before the tribunal intends to start reading and/or drafting with a view to producing an award.

(3) Requests for security hereunder shall be addressed to the party requesting any oral hearing, and to the claimant in the case of a documents-only arbitration. If such party 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 vacate any hearing dates or, in the case of a documents-only arbitration, refrain from reading and/or drafting.

(4) In any case where time does not allow for the periods in sub-paragraphs (1)-(3) 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.

(F) Accounting for payments made on account

Where the case proceeds to an award, or is settled subsequent to 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.

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 current fees as fixed by the LMAA Committee will be found on the LMAA website at www.lmaa.org.uk.

THE SECOND SCHEDULE

ARBITRATION PROCEDURE

1. The normal procedure (which shall apply unless the parties agree otherwise) requires service of claim submissions. If, exceptionally, formal pleadings are thought appropriate (e.g. in more complicated references) special permission must be obtained from the tribunal. Whether claim submissions or points of claim are served, they must set out the position of the claimants in respect of the issues that have arisen between the parties as clearly, concisely and comprehensively as possible, and must always be accompanied by all supporting documentation relevant to the issues between the parties.
2. Except in unusual cases (e.g. applications for interim final awards for sums which are said to be indisputably due and owing) defence submissions or, if the tribunal has permitted formal pleadings, points of defence (and counterclaim, if any) with all documentation relevant to the issues between the parties (other than that disclosed by the claimants) are to be served 28 days after receipt of the claim submissions or points of claim. An allegation that all relevant documentation has not been disclosed with the claim submissions or points of claim will not normally be a reason for allowing additional time for service of defence submissions or points of defence. However a failure to disclose all relevant documentation at an appropriate stage may be penalised in costs.
3. Submissions in reply or, if the tribunal has permitted formal pleadings, points of reply are to be served 14 days after service of submissions or points of defence unless there is also a defence to a counterclaim, in which case the submissions or pleadings are to be served within 28 days from receipt of the submissions or points of defence and counterclaim. Any reply to the defence to counterclaim must be served within 14 days thereafter.
4. A party serving supporting documentation 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.
5. All submissions and pleadings must be set out in numbered paragraphs.
6. Bare denials 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 be considered until after service of defence submissions (or points of defence, if formal pleadings have been permitted). Any application must be accompanied by a justification for it and a breakdown of the costs which it is reasonably anticipated will be incurred up to the stage of the reference for which security is sought. In the light of paragraph (E) of the First Schedule it will not be appropriate for security for costs to include any provision for the fees of a tribunal.
8. 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 at the end of this Schedule within 14 days of the service of the final submissions or pleadings as set out in paragraph 3 above. Every such Questionnaire must contain the declaration set out at the end of the Questionnaire below, which shall be signed by a properly authorized officer of the party on whose behalf it is served. Completed Questionnaires must be served on the tribunal and the other party or 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.

9. Subject to any specific agreement between the parties or ruling from the tribunal, both 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. If a party wishes to obtain disclosure of certain documents prior to service of submissions or a pleading, 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.

11. 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.

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 leave of the tribunal which will only be granted in exceptional circumstances.

13. Any application to a tribunal for directions as to procedural or evidential matters should, save in exceptional circumstances, be made only after the other party has been afforded an opportunity to agree, within three working days, the terms of the directions proposed. Any application that has not previously been discussed with the representatives of such other party 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 three working days (or such other time as may be allowed by the tribunal), the tribunal will not elicit the comments of that party or make orders conditional on objections not being received.

14. Communications regarding procedural matters should be made expeditiously.

15. Tribunals will not acknowledge receipt of correspondence despite any request to that effect unless there is particular reason to do so.

16. 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.

17. If a tribunal considers that unnecessary costs have been incurred at any stage of a reference, it may of its own volition or on the application of a party make rulings as to the liability for the relevant discrete costs. Unnecessary costs may be incurred by, e.g., inappropriate applications having been made or not agreed, excessive photocopying or unnecessary communications being generated by the same message being sent by fax and/or e-mail, and mail and/or courier. Tribunals may order such costs to be assessed and paid immediately.

QUESTIONNAIRE

(Information to be provided as required in paragraph 8 of the Second Schedule to the LMAA Terms)

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. A brief note of the nature of the claim (e.g. “unsafe port” or “balance of accounts dispute”).
2. Approximate quantum of the claim.
3. Approximate quantum of any counterclaim.
4. The principal outstanding issues requiring determination raised by the claim and any counterclaim.
5. Are any amendments to the claim, defence or counterclaim 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 and by when; and (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? Generally a meeting of experts will be useful. Unless the parties agree or the tribunal rules that such a meeting would not be appropriate, when should the meeting take place?
11. Suggested timetable for preparation for the close of submissions if the case is to go ahead on documents alone or for a hearing if that is appropriate.
12. 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?
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. Estimated costs of each party
(i) up to completion of this Questionnaire; and

(ii) through to the end of the reference.

16. Does either party consider that it is entitled to security for costs and, if so, in what amount?

17. 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 PARA. 8 ABOVE):

On behalf of the [claimants/respondents] I, the undersigned [name] being [state position in organization] and being fully authorised to make this declaration, confirm that I have read and understood, and agree to, the answers given above.

Signed Dated

THE THIRD SCHEDULE

PRELIMINARY MEETINGS

This Schedule sets out, in check-list form, the topics which may be appropriate for consideration when a preliminary meeting is to be held in accordance with paragraph 15 of the Terms.

The circumstances in which a preliminary meeting may be held vary very considerably. In some cases (including the more complex arbitrations and most cases involving a hearing of more than five days) a preliminary meeting is necessary and will be held on the initiative of the tribunal or at the request of the parties, after much of the preparatory work has been done, to review the progress of the case and to enable directions to be made or agreed for further preparation for, and the conduct of, the hearing. In other cases a dispute may have arisen as to some procedural matter (e.g. a failure to serve submissions or a pleading or to give adequate disclosure of documents) and a party may seek to persuade the tribunal to give appropriate directions (including, in a proper case, a peremptory order under Section 41(5) of the Act) so as to resolve the matter.

Whatever the occasion for a preliminary meeting with the arbitrators, two general principles apply; first, that an application to the arbitrators for a particular order should normally be made only after the other party has been afforded a reasonable opportunity to agree the terms of the directions proposed (see paragraph 13 of the Second Schedule); second, that, wherever possible, a preliminary meeting should be preceded by a discussion between the parties' representatives as to the future conduct of the case along the lines indicated in paragraph 15 of the Terms. The check-list sets out some of the most important matters for consideration. However, many of the points mentioned will not arise unless the parties have agreed or the tribunal has ordered some procedure other than that contemplated by the Second Schedule. Such points, which are marked *, are included to cover cases of this kind.

The check-list cannot attempt to be comprehensive. Inevitably, certain matters must be left to the discretion of the tribunal and the parties' advisers. The opportunity is taken to list the procedural matters which may need to be considered in a logical order from the commencement of the arbitration. It should however be possible in cases where, for whatever reason, the Second Schedule is not followed, for the directions relating to at least the earlier stages of the arbitration to be agreed with the other party, or failing agreement to be dealt with on a written application to the arbitrators and without the need for a preliminary meeting (see paragraph 8 of the Second Schedule).

1. Can the arbitration be decided on documents only?

The parties and their advisers should consider at the outset whether the case is suitable to be decided without an oral hearing (see paragraph 13(c) of the Terms).

2. Submissions and pleadings *

- (i) A time-table should be ordered or agreed for the service of submissions or pleadings.
- (ii) Once an initial exchange has taken place, it should be considered whether a reply is

necessary and whether requests for further details (including particulars) of the other party's case are necessary and if made whether all such requests have been properly dealt with.

(iii) As the case proceeds and further documents become available, the submissions or pleadings should be reviewed to see:

- (a) whether amendments are required;
- (b) whether all issues are still alive.

3. Disclosure of documents *

(i) A time-table should be ordered or agreed either for the disclosure of all relevant documents or for the initial disclosure of such specified categories of documents as may be ordered or agreed.

(ii) Applications for further disclosure should initially be made to the opposing party, and if not complied with, by application to the tribunal.

(iii) Disputes as to outstanding disclosure should not normally require a specific meeting with the arbitrators and applications can often best be reserved until a preliminary meeting is to take place in any event.

(iv) Consideration should always be given to whether it can be ordered or agreed that the ambit of disclosure be limited so as to avoid unnecessary delay and expense.

4. Factual evidence

(i) Can some facts/figures be agreed or admitted?

(ii) A time-table should be ordered or agreed for the exchange of statements (or affidavits) of witnesses of fact.

(iii) It should be ordered or agreed:

(a) whether the statements or affidavits are to be admitted without calling the maker to give oral evidence at the hearing or

(b) whether the statements are to stand as the evidence in chief of the witnesses subject to their attending to give oral evidence; and

(c) whether the evidence of any witness is to be taken in advance or by means of a live telephone or video link or by use of a video recording.

(iv) In any case where it may be desired to seek the assistance of a Court (whether within or outside the United Kingdom) to secure the attendance of witnesses at the hearing, to obtain documentary or other evidence, to record oral testimony for presentation to the tribunal or to exercise other powers in support of the arbitral proceedings, the party intending to invoke the assistance of the Court should first where practicable seek the agreement of the other parties to the making of the application to the Court or, if agreement cannot be reached, should apply to the tribunal for permission to make the application (see Sections 43 and 44 of the Act) and for directions as to when and how it is to be made.

5. Expert evidence

(i) It should be ordered or agreed whether or not the case requires expert evidence to be adduced and, if so, the subjects on which expert evidence is necessary and the number and disciplines of the experts.

(ii) If it is ordered or agreed that the case is one requiring expert evidence the order or agreement should provide

(a) whether each party is to adduce expert evidence; and/or

(b) whether the tribunal should appoint experts or assessors to assist it on technical matters

(see Section 37 of the Act);

(iii) Where expert evidence is to be adduced by the parties a time-table should be ordered or agreed for the following:

(a) the exchange of experts' reports;

(b) any "without prejudice" meeting of experts held to agree or narrow the issues;

(c) the drawing up of a memorandum by the experts setting out what has been agreed and what remains in issue;

(d) the service of supplementary experts' reports;

(iv) It should be ordered or agreed whether the tribunal will deal with the technical issues on the basis of the experts' reports, without the need for the authors to give oral evidence.

6. Preliminary Issues/Interim Awards

Both the tribunal and the parties should consider at any preliminary meeting:

(i) what are the important matters in issue between the parties;

(ii) how are those issues best decided;

(iii) whether time and expense will be saved if one or more issues (e.g. interpretation of contract) are decided as preliminary issues;

(iv) whether liability and damages should be decided at one hearing or separately.

7. Questions to the parties

It may be considered whether one of the parties (or the tribunal) should put questions to a party and in what form this should be done.

8. Procedure at the hearing

Directions may be given as to:

(i) what if any rules of evidence will apply and generally as to the manner and form in which the evidence is to be presented at the hearing;

(ii) the length of time available for witnesses to give their evidence or for parties or their representatives to present their arguments;

(iii) whether arguments are to be in written or oral form or a combination of the two.

9. Investigations by the Tribunal

Would any investigations by the tribunal assist in ascertaining the facts?

10. Inspection

Would the tribunal be assisted by attending trials or experiments, or inspecting any object featuring in the dispute?

11. Documents

(i) If possible provide agreed chronology and dramatis personae;

(ii) arrangements of documents (e.g. different bundles for different topics, or as appropriate) and dates by which bundles to be produced;

(iii) unnecessary inclusion of documents to be avoided;

(iv) when documents are voluminous, consider copying only key bundles and providing a core bundle.

12. Advance reading

(i) Provision of pleadings and other suitable material (e.g. experts' reports) to the tribunal as far in advance of the hearing as possible.

(ii) Should time be set aside during the hearing, after appropriate opening, for private reading of any documents by tribunal (to reduce time otherwise involved in reading documents out)?

13. Multi-party disputes

(i) Concurrent or consecutive hearings (see paragraph 14 (b) of the Terms);

(ii) procedure generally.

14. Representation

Level of representation at the hearing to be appropriate to the case.

15. Hearing dates

(The fixing of dates will, in the majority of cases, be most usefully considered after discovery has been substantially completed. An application for a date to be fixed should not, however, be made until the parties are able to make a realistic estimate of how long the hearing is likely to last, and when the parties will be ready.)

(i) Estimated duration of hearing.

(ii) When can parties realistically be expected to be ready?

(iii) Any problems re availability of witnesses? (If so, can these be mitigated by taking evidence in advance, using proofs/affidavits at the hearing, by means of a live telephone or video link, or by use of a video recording?)

(iv) Availability of tribunal (see paragraph 19 of the Terms and the Fourth Schedule).

(v) Accommodation required and numbers attending.

(vi) Any special facilities (e.g. transcripts, interpreters, etc.).

(vii) Arrangements for accommodation, etc.: who to book/pay for?

16. Costs

Estimates should be given of the parties' respective costs up to the date of the meeting, and through to the end of the hearing.

THE FOURTH 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 his 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 he may himself have given notice of retirement under sub-paragraph (A) and an original arbitrator will retain the like power under subparagraph (B)(ii).

6. An arbitrator or umpire who retires as mentioned above shall:

(i) be entitled to immediate payment of his fees and expenses incurred up to the date of his retirement; and

(ii) incur no liability to any party by reason thereof.

THE LMAA TERMS (2006)

COMMENTARY

This new revision of the LMAA Terms, the LMAA Terms (2006), applies to all references commenced on or after 1st January, 2006. It is designed to meet needs which have become apparent since the Terms were last amended in 2002.

* * *

The most important change is to paragraph 22. Whereas since 1996, the Terms provided (contrary to the default provisions of the Arbitration Act 1996) that reasoned awards would only be made when requested, now – in line with trends in other fields and actual practice in LMAA arbitrations – a reasoned award will be made unless the parties agree otherwise.

The other important change is to paragraph 8 of the Second Schedule, which now requires each Questionnaire to be signed by a properly authorized officer of the party on whose behalf the Questionnaire is completed. In other areas of arbitral activity preliminary meetings are commonly held, at which the presence of representatives of the parties themselves, as distinct from their advisers, is often found to be useful. Whilst the LMAA does not consider that such a course is desirable in London maritime arbitrations, it is felt that having parties themselves sign off Questionnaires will go some way to achieving a similar effect.

Paragraphs 8(b) and 9(b) have been amended so as to allow the President to appoint a third arbitrator or umpire if the first two arbitrators cannot agree, thus avoiding the need for an expensive application to the Court.

Further, the definition of “President” in paragraph 1 has been enlarged to allow the actual President to designate a substitute where he cannot act, e.g. because of absence or sickness, or a conflict of interest.

Paragraph 10 has been amended to overcome arguments advanced in one case which, if right, would have prohibited a tribunal from accepting jurisdiction in respect of new claims.

Apart from these changes, two erroneous references have been corrected; one in paragraph 8 of the Second Schedule and the other in paragraph 1 of the checklist in the Third Schedule.

ARBITRATION CLAUSE

Parties may wish to consider the use of an arbitration clause which expressly provides for the proceedings to be subject to the L.M.A.A. Terms.

A suggested form of clause, The BIMCO/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 should be for a tribunal composed of two arbitrators, with power to appoint an umpire if they disagree.

Agreement upon a sole arbitrator has obvious economic attractions, particularly in the case of arbitrations on documents alone, or where the amount at stake is modest. Parties are of course free to appoint who they like, but it is normally in their interests to appoint persons who are resident in the UK and thus readily available to participate in a London arbitration.

BIMCO/LMAA Arbitration Clause

After consultation with the LMAA, BIMCO have adopted and are recommending the following amended arbitration clause, which the LMAA recommends for future use in place of the present LMAA Clause.

"(a) 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 reenactment thereof save to the extent necessary to give effect to the provisions of this Clause. 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. 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 give 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, 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 he 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\$50,000 (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.

(b) Notwithstanding (a) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.

In the case of a dispute in respect of which arbitration has been commenced under (a), above, the following shall apply:-

- (i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.
- (ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.
- (iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.
- (iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.
- (v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.
- (vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.
- (vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration. "

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits)

FALCA Rules

The BIMCO/LMAA Arbitration Clause set out above includes a provision incorporating the Small Claims Procedure for appropriate cases. The LMAA has also co-operated in the promotion of FALCA (Fast and Low Cost Arbitration), a procedure suitable for cases more substantial than those for which the Small Claims Procedure is designed, but in which the parties do not want a full-scale arbitration.

If parties wish to apply the Small Claims Procedure and FALCA to appropriate cases, they may prefer to adopt the FALCA clause, to be found on page 39 of the LMAA Handbook 2006 and on the LMAA website at www.lmaa.org.uk under page 1 of the Commentary on LMAA FALCA Rules.