

The Singapore maritime cluster: Arbitrate, mediate, or settle?



John Martin, member of the Singapore Chamber of Maritime Arbitration's Promotion Committee and Managing Director, Gard Singapore explains why Singapore has the tools and

structure to help the regional and global shipping industry resolve the inevitable disputes that occur in this dynamic sector



In recent years Singapore has emerged as a major global maritime centre. Singapore has the considerable benefit of “strategic geography”, located at the base of the Straits of Malacca, and has for more than acentury also served a gateway to Asia.

Many other locations can boast favourable geography, but Singapore’s early planners recognised that to leverage on Singapore’s location, they needed farsighted policies designed to promote the long-term development of the maritime sector.

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STRONG INSTITUTIONS

Singapore's Maritime and Port Authority, or MPA, is charged with development of Singapore's maritime cluster through its International Maritime Centre and its vision could not be clearer: "To develop and promote Singapore as a premier global hub port and an international maritime centre, and to advance and safeguard Singapore's strategic maritime interests".

As a government agency the MPA recognised that it needed a bridge to the private sector and in 2004 founded the Singapore Maritime Foundation (SMF). Together these institutions have been the key drivers in the development of

the Singapore maritime hub.

The success of this strategy is proven by the growing shipping and trading sector. The offshore oil and gas sector has also been an integral part of this development. Singapore has emerged as a center for oil companies, drilling and other contractors and related industry services. Singapore's technologically advanced shipyards and other services to industry have naturally complemented this growth.

CRITICAL SUPPORT SERVICES

The Singapore hub also depends on strong and well-regulated support services in the form of financing, legal, shipbroking and all the other myriad services that support a healthy maritime sector, not least for insurance.

When Gard Singapore was established in 2014, less than half of the international group (IG) P&I clubs were represented in Singapore. Today with the imminent arrival of the Swedish Club, 11 of the 13 IG P&I Clubs will be represented in Singapore.

Add to this hull & machinery and marine property insurers, insurance brokers, English and other foreign law firms, as well as shipbroking houses; all are well represented here.

This is a testament to Singapore's planning, marketing and implementation of policies that support the maritime industries, aided by a solid legal system and a stable political environment.

ADDRESSING RISK

We all know that shipping is a tough commercial business in which those involved take on excessive risk at their peril. This not only relates to risks associated with the physical operation of ships, but also counterparty risk, and wordings of contracts and commercial agreements.

Ideally these are founded in law and established wordings, but even the best risk officers and engineers cannot anticipate the myriad of complexities in international trade

and the potential for disagreements that can arise even from the most innocuous of cargoes and destinations.

How then to settle these disputes? The title to this article provides a signpost to the options available to parties.

Although we in the P&I Clubs are providing legal liability insurance, we understand that it is nearly always in the best interests of the parties to reach compromise settlements that reflect the strengths of the parties' respective cases.

In practice, this is nearly always what happens. However occasionally it is not possible to reach a negotiated settlement and the parties must commit to a more formal process.

MEDIATION IN SINGAPORE

When parties are in serious dispute, and negotiations have not worked, the parties can consider a formal mediation as a next step. Singapore's institutions provide a strong framework in the form of the Singapore Mediation Centre, or SMC, that includes an experienced maritime panel.

We at Gard have been directly involved in mediations under the auspices of these institutions and can attest to their effectiveness both from a time and cost perspective.

Mediation originated in its modern form in Australia for the settlement of family disputes. It then became popular in the construction trades, in which often commercial parties would need help from trained mediators to resolve highly entrenched positions. However, if mediation should then fail, the next option prior to court proceedings is arbitration.

ARBITRATION IN SINGAPORE

Arbitration has been around for centuries and the pre-eminent forum for maritime disputes since 1960 has been the London Maritime Arbitration Association, or LMAA.

This is because of its flexibility, the experience of its panel of arbitrators, and the longstanding and well understood rules. It also reflects the longstanding tendency for shipping contracts to incorporate English law, given its depth and substantial body of maritime case law.

However, LMAA is located in London, and distance can often translate to added administration and cost.

Singapore recognised that parties based in Asia may prefer an Asian based service, and in 2009 established the Singapore Chamber of Maritime Arbitration, or SCMA.

SCMA is emerging as an attractive alternative to LMAA and is designed to be flexible, modern and cost-effective in its approach. The principal advantages include:

- > Geography: The parties are based in Asia, so the evidence usually resides here too, which is fundamental in formal arbitration;
- > Panel: An experienced panel of arbitrators encompassing all the maritime charter parties, commodities, offshore oil and gas, bunker disputes and shipsale/build/repair disputes, and that reflects the diversity inherent in the international shipping industry;

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- > Rules: Regularly updated after extensive industry consultation, most recently in January 2022. The rules also have a clear and user-friendly layout, along with a do-it-yourself manual to the process. This equips the parties with the tools to manage arbitration as cost effectively as possible;

- > Various recent improvements including a new provision to ensure that there is no delay in appointment of the tribunal because of a non-responsive respondent (a common issue), plus additional expedited procedures for small claims, Singapore bunker claims, and smaller collision claims; and,

- > The SCMA Arbitration-Mediation-Arbitration Protocol allows the parties the flexibility to change their mind midway through the arbitration and pause it to mediate. The parties can simply restart the paused arbitration if required.

ALIVE AND KICKING

The maritime hub of Singapore is alive and kicking and we recommend that commercial parties, particularly with a base in Asia, consider Singapore as a venue for settlement of the maritime related disputes through Singapore's strong institutions.

The world is increasingly diverse and there is room for more than one system. The huge challenges that face the maritime world mean that solid and proven institutions for dispute resolution will be all the more important as we progress in the 21st century.

