
a presentation by
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LMAA & SCMA ARBITRATION – A COMPARATIVE APPROACH

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Singapore Chamber of Maritime Arbitration (SCMA)

Members Evening

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Background to the LMAA and SCMA

(A)



- The London Maritime Arbitrators Association (“LMAA”)
 - Founded on 12th February 1960 by Baltic Exchange Approved Arbitrators. Moved office in September 2010 to the Baltic Exchange.
 - Association of practising maritime arbitrators who are Full Members. 1972 Category Supporting Members added.
 - In 2010, celebrated its 50th Anniversary with a conference and sumptuous dinner at London’s Guildhall.

The Singapore Chamber of Maritime Arbitration (“SCMA”)



- Established in November 2004 as a brand within the Singapore International Arbitration Centre (“SIAC”). Followed the ICC Model of arbitration.
- ICC framework not popular with the Maritime community.
- Re-established in May 2009, outside SIAC.
- New Rules adopted, SCMA Arbitration Rules, 2nd Edition (2009). 2009 Rules changed from institutional arbitration to ad hoc. 3rd Edition October 2015. Similar to LMAA Terms.
- Cases under the SCMA continue to grow.
- Increased application of SCMA Model Clauses (The SCMA BIMCO Arbitration Clause (2013) introduced November 2012. SCMA Bunker Arbitration Clause. The Singapore Ship Sale Form).
- Singapore was included as a third seat for arbitration under SCMA in the latest 2015 edition of the NYPE Time Charter party.


Comparison of the LMAA Terms/ SCMA Rules

- (B) • The applicable legislation
 - LMAA
 - The “Act” is the Arbitration Act 1996.
 - SCMA
 - “Act” means the International Arbitration Act 1995 (Cap 143A) (“IAA”). Applies UNCITRAL Model Law on Arbitration 1985 with certain modifications.
 - Mandatory provisions of the IAA prevail over the Rules (R.2).

Model Clauses

- LMAA: Detailed model clause, recommended for use with or without BIMCO documents. Model law clause incorporates LMAA Small Claims Procedure and LMAA Intermediate Law Clause. Incorporates provisions on mediation.
- SCMA
- Short form SCMA Arbitration Clause. Can be used with other model law clauses: e.g. SCMA Arb-Med-Arb Clause.
- Separate SCMA BIMCO Arbitration Clause (2013) suggested for use with BIMCO documents.


Comment

- Difference in approach between LMAA/SCMA model clauses.
 - Arbitrators - Members of LMAA/SCMA?
 - Not obligatory for arbitrators to be members of the LMAA/SCMA.
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- Number of Arbitrators
 - **LMAA and SCMA:** Freedom to agree - in arbitration clause or subsequently.
 - Default Position.
 - **LMAA:** English Arbitration Act 1996 Section 15(3) presumption of a sole arbitrator. LMAA 2012 (clause 8(a)) new provision. If arbitration agreement is silent, tribunal deemed to be a panel of three arbitrators.
 - **SCMA:** Rule 6.1 – Three Arbitrators shall be appointed.
 - Before 1.1.12 failure to agree a sole arbitrator under LMAA Terms: Application to Commercial Court (Section 18 1996 Act). LMAA 2012: “will avoid the need to apply to Court for the appointment of an arbitrator.”
 - Failure to agree a sole arbitrator or two arbitrators on appointment of a third. President of LMAA makes the appointment (Clause 8). Chairman of SCMA makes the appointment (R.6.2).

Comment

- No longer important differences in terms of default number of arbitrators. LMAA change is intended to reduce the need to apply to Court for appointment of a sole arbitrator.
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Place of the Arbitration – the Juridical Seat/place of hearings and meetings.



- **LMAA and SCMA:** Freedom to choose/agree.
- Default Position
 - **LMAA:** Seat is in England (does not say London), English Law (Cl.6).
 - **SCMA:** Juridical seat is Singapore. Singapore law and the IAA. Award under SCMA Rules deemed made in juridical seat (R22.1 and 22.2). All physical hearings and meetings in Singapore (R.22.3). Tribunal and parties have to agree if the arbitration is to be held in a language other than English (SCMA Rules 2015).
- **Importance of juridical seat:** Under Singapore IAA, no appeal on error of law. The English 1996 Act permits an appeal on such grounds (see below).

Preliminary Meetings



- **LMAA:** Provisions in Clause 15 for the Preliminary Meeting.
- **SCMA:** Rule 35. A short paragraph sets out the purposes of a Preliminary Meeting but nothing further.



Oral Hearing



- SCMA specifically provides that a party may be represented by a person of their choice (R.27).
- LMAA not limited to legal representation (reference to “lawyer or agent in LMAA terms).
- **LMAA:** Under Clauses 12(b) and 13: for the parties to agree or Tribunal to determine whether an oral hearing is necessary.
- **SCMA:** Rule 28. Unless the parties have agreed on a documents only arbitration or that no hearing should be held, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

Procedure


LMAA 2012 Clause 10

- Now explicitly reserves to the arbitrators the discretion as to how to deal with new issues (“issues” not “disputes”) raised after commencement of proceedings.

LMAA 2012: Clause 12(a)

- Tribunal will be the arbiter in deciding procedure (Second schedule provides guidance on the usual procedure which will be followed).
- Same approach in SCMA paragraph 12(a). Tribunal will “where appropriate” have regard to agreement reached between the parties.

LMAA 2012

- Parties and their lawyers should refrain from copying to the tribunal routine correspondence between them.
 - Welcome addition. But no express penalty in the Rules if one party insists upon copying in the tribunal on all correspondence.
 - No such provision in SCMA Rules.
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Expert witnesses


SCMA

- No party shall adduce expert evidence without the leave of the Tribunal (R.30.2). Unless otherwise agreed by the parties the Tribunal may appoint one or more experts to respond to the Tribunal on specific issues (R.31).

LMAA

- Tribunal may direct either that no expert be called, or limit the number of expert witnesses or the length of any expert report.

Comment

- Under the LMAA, no power given to the Tribunal to appoint an expert.
 - LMAA 2012 Questionnaire: Requires the parties to give consideration to limiting experts' reports.
 - Slightly different approach between SCMA and LMAA.
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The costs of the Tribunal

LMAA and SCMA: No fixed scale of fees linked to the amount(s) in dispute (Cf SIAC). SCMA: Requirement that arbitrators shall disclose hourly rate, number of hours and purpose.



- **LMAA**

- Tribunal's fees and security for such fees are set out in the First Schedule to LMAA Terms. Current LMAA appointment fee is GBP 200. Booking fees: GBP 1,000 per day for hearings of up to 10 days duration.
- LMAA 2012, Paragraph (B) First Schedule. A party may request an arbitrator to render invoices (not more frequently than every three months).



- **SCMA**

- Tribunal's right to invoice for interim fees (and to resign if they are not paid) are set out in Rule 12. Follows the FIRST SCHEDULE to the LMAA 2012 Rules. Under Article 13 the Tribunal can request security for their fees. Under the 2015 revisions the Tribunal has increased discretion on when and the form of such security.
 - The SCMA booking fee for the Tribunal is S\$1,500 per day and should be paid to the arbitrator. If the matter is settled beforehand, parties may request a partial refund from the arbitrator but this is discretionary.
- The tribunal's hourly rates? LMAA full members between GBP 300 – 350 per hour. London Counsel may charge more. Comparisons currently have to take into account "the BREXIT effect".



Intermediate Claims

LMAA

- LMAA Intermediate Claims Procedure 2012.
- Applies where the parties have agreed it will apply (not compulsory). Other alternative is the “FALCA” procedure. Fast and Low Cost Arbitration.
- Applies where total claim or counterclaim exceeds USD 100,000 or agreed upper limit under Small Claims Procedure (Possible upper limit of USD 400,000).
- Absence of agreement, panel of three arbitrators. Right to serve statements of evidence of witnesses of fact, but no expert evidence without the leave of the tribunal. No right to an oral hearing and only exceptionally will one be held. Recoverable costs capped at 30% of monetary claim/counterclaim.

SCMA

- Currently no provisions relating to “Intermediate Claims”.
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Small Claims

LMAA

- Separate set of Rules, the LMAA Small Claims Procedure 2012. Applies if incorporated into the arbitration clause or agreed to apply to the dispute.
- Will not apply automatically.

SCMA

- Small Claims Procedure incorporated into the Rules (R.46).
- Expedited procedure shall apply if aggregate claim/ counterclaim less or unlikely to exceed USD150,000 (excluding interest and costs) (2015 revision).
- Freedom to expressly agree it will not apply/will apply to larger claims (R.46.2 and 46.3) or that Rule 46 will not apply at all (R. 46.3).
- Summary determination: sole arbitrator/documents only/no discovery/no reasoned award/limited costs recovery by successful party.
- Cap on recoverable costs (R.44.13). Arbitrators' fees capped at USD 5,000 (or USD 8,000 if there is a counterclaim). Recoverable costs at USD 7,000 (USD 10,000 if a counterclaim).

Comment

- Difference in approach as to whether the Small Claims Procedure applies.
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Mediation



LMAA

- LMAA Model Arbitration Clause provides for either party to elect to refer the dispute to mediation. One party serves upon the other a “Mediation Notice”. If a party does not agree to mediate this fact may be brought to the attention of the Tribunal when allocating costs. Arbitration continues during mediation.
- LMAA Questionnaire: Last question – “Have the parties considered whether mediation might be worthwhile?”

SCMA

- Neither the SCMA Model Clause or the SCMA BIMCO Arbitration Clause (2013) for use with BIMCO Documents makes a reference to mediation.
- SCMA Questionnaire similar to LMAA Questionnaire.

Comment

- Different approach between LMAA and SCMA to whether mediation applies following the model clauses. SCMA focusses upon Arb-Med-Arb.

Arbitration-Mediation-Arbitration Clause

- SCMA Arb-Med-Arb Clause
 - Parties agree following commencement of arbitration they will attempt in good faith to resolve disputes through mediation (emphasis added).
 - Through SMC or SIMC (or other recognised mediation institution).
 - In accordance with SCMA AMA Protocol C. Relevant Mediation Centre Rules apply. Arbitration stayed pending outcome of mediation. LMAA model law clause; the arbitration continues during arbitration.
 - SCMA 2015 Rules: New Rule 41.4 provides the Tribunal with powers to penalise parties for unreasonably refusing to participate in mediation. Primarily for use with SCMA arb-med-arb model clause. No express power under SCMA Rules to order mediation.

Delay: The Tribunal is too busy

- **LMAA:** Clause 19 and the Fourth Schedule sets out when, depending upon the length of the estimated hearing date, a hearing should take place.
- **SCMA:** No such detailed provisions. Under Rule 25, the Tribunal has the widest discretion to “ensure the just, expeditious, economical and final determination of the dispute”.
- **LMAA 2012:** Arbitrators should give an estimate of the time expected to produce an award when requested to do so at the end of a hearing.
- **Complaints of delay in awards:** but does this provision lack teeth? Not mandatory and no penalty for non-compliance.



Appeals

- Possibly the biggest difference between LMAA and SCMA Arbitration.
- **England:** Arbitration Act 1996, appeal on error of law with the leave of the Court.
- **IAA:** No appeal on error of law.
- If the parties do wish under SCMA Rules to have an appeal on error of law, two possibilities:
 - (1) Agree to juridical seat as England; or
 - (2) Agree that the arbitration shall be subject to the Arbitration Act of Singapore (Cap 10). Parties can agree it shall apply where the parties to the arbitration are international.

Reasoned Awards/Publication of Awards

Under SCMA Rules (Rule 36.1), unless the parties agree otherwise the Tribunal shall make a reasoned Award in writing within 3 months from the date that proceedings are closed. No penalty for non-compliance specified in Rule 36. SCMA 2015 revisions: SCMA now has the right to publicise a redacted award unless one of the parties objects.

- **Multiple Arbitrations:** For example, Charterparty disputes with the common issues of fact or law. What happens?
 - **Both LMAA and SCMA:** Same powers for Tribunals to direct that two or more arbitrations are heard concurrently and documents/evidence in one arbitration are made available in the other arbitration.
 - **SCMA:** If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award (Rule 32.2). No corresponding provision in the LMAA Terms.

Challenging the appointment of an Arbitrator



- **LMAA:** No express obligation on arbitrator to make disclosure of interests. If such an issue is not resolved by agreement, an application to the English Commercial Court is necessary.
- **SCMA:**
 - Express obligation to disclose any circumstance which may give rise to justifiable doubts as to impartiality or independence (Rules 15.2 and 15.3).
 - Procedure and Decision on challenge set out in Rules 16 and 17. Chairman of the SCMA to decide on any challenge.



Drawing it all together: Conclusions

(C)

- LMAA Terms and SCMA Rules are similar in many respects. Both provide for “ad hoc” arbitration.
- LMAA Terms and SCMA Rules both emphasise the parties’ freedom to choose/decide and provide a wide discretion to the arbitral panel.
- LMAA places a greater reliance upon the provisions in the standard model law arbitration clause (for example inclusion of Small Claims/ Intermediate Claims Procedures).
- Default number of arbitrators now the same.
- Rights of appeal from awards are materially different where the arbitration is “International”.

Drawing it all together: Conclusions

- LMAA has provisions specifically for Intermediate claims.
- LMAA model law clause incorporates provisions relating to mediation taking place during the arbitration. SCMA model clause relates to the arb-med-arb model with differences in approach.
- Costs comparisons affected by exchange rate and fluctuations.



And Finally,

CLIENT: Can you tell me what your fees are?

LAWYER: Well, I charge GBP 100 to answer three questions.

CLIENT: That's rather steep, isn't it?

LAWYER: Yes, now what's your final question?



Questions?



THANK YOU
SCMA Members Evening
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Comparative Approach

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