

You are used to receive our regular service letters dealing about relevant legal and claims issues. We had a lot of positive reactions to these letters and we will continue to deliver this service to our clients in 2011.

The first issue of this year deals about law and arbitration clauses. And we are expanding our claims team.

NEW APPOINTMENT

Per 1st of February Dantonia Jongmans-Fermin Torres (dantonia.fermin@charterama.com) has joined our claims team. Dantonia is lawyer and studied in Dominican Republic and Rotterdam. She is fluent in Spanish, English and French. We are happy to have her on board and we are sure that you will be too.

LAW AND ARBITRATION CLAUSE

Although of secondary importance to parties when they are negotiating a contract it is good practice to agree upon the governing law and forum at an early stage of the negotiations.

This can be done by reference to a standard clause (f.e. a LMAA/BIMCO Arbitration clause) or by referring to a pro-forma C/P or a set of standard terms including a proper “choice of law” clause.

Not all standard C/P forms contain a Law and Arbitration clause. For example there is no such clause in a Gencon 1976 C/P.

If no express choice of law has been made, it may become quite difficult to establish

which law is most closely connected with the contract. Much time and costs will already have been consumed whereas the actual dispute still has to be resolved.

The benefit of agreeing upon such a clause at an early stage may become clear in case for example one of the parties denies the existence of a contract (fixture). The question whether there is a contract or not can be answered in accordance with the law of the country already agreed.

A proper “choice of law” clause often will provide for the applicable forum as well, so whether a dispute has to be determined by court proceedings or by arbitration. The combination should be logical, f.e. English law goes together with London Arbitration or English Courts.

For example the following provision regularly slips into a C/P:
“This Charter Party shall be governed by English law and any dispute arising out of this Charter Party shall be referred to Arbitration in London.”

Similarly, frequently a fixture recap states *“London Arbitration, English law to apply.”*

However this may also create a problem. In the absence of an appointment procedure of the Arbitrators, parties will have to agree upon a Sole Arbitrator. If parties fail to agree upon a Sole Arbitrator for whatever reason that may be, an application should be made to the High Court. This may be the beginning of a complicated, lengthy and costly legal procedure, only to establish a Tribunal consisting of a Sole Arbitrator.

If the Arbitration clause provides for an appointment procedure, this has to be followed and problems as mentioned above will be avoided.

A typical example of such procedure is the following:
“Unless the parties agree upon a Sole Arbitrator, one Arbitrator shall be appointed by each party with power to appoint an Umpire. On the receipt by one party of the nomination in writing of the other party’s Arbitrator, that party shall appoint their Arbitrator within 14 days, failing which the award of the Sole Arbitrator shall be binding on both parties as if he had been appointed by agreement.” >>>>

Furthermore frequently a reference is made to the Arbitration Act currently in force and parties may also want to include a reference to the current terms of the London Maritime Arbitrators Association (LMAA), f.e. along the following lines:

“The Arbitration shall be conducted in accordance with the Arbitration Act and LMAA terms, both being in force at the time when the Arbitration Proceedings are commenced”.

The above issues are most essential. If parties wish they can extend the Law and Arbitration clause by agreeing upon various procedures such as:

- The LMAA Small Claims Procedure upto a certain limit, f.e. Usd. 50,000.00.
- The LMAA Intermediate Claims Procedure upto a certain limit, f.e. Usd. 400,000.00.
- Mediation.

There are of course many choices of law and forums possible. We have used respectively English law and London Arbitration as an example because this is what we come across in most C/P's.

Summary

It is important to agree upon a proper Law and Arbitration clause at an early stage of the negotiations. It is advisable that in essence such clause should refer to the following issues (see also here above) or should be of the same tenor:

This Charter Party shall be governed by English law and any dispute arising out of this Charter Party shall be referred to Arbitration in London in accordance with the Arbitration Act and LMAA terms, both being in force at the time when the Arbitration Proceedings are commenced.

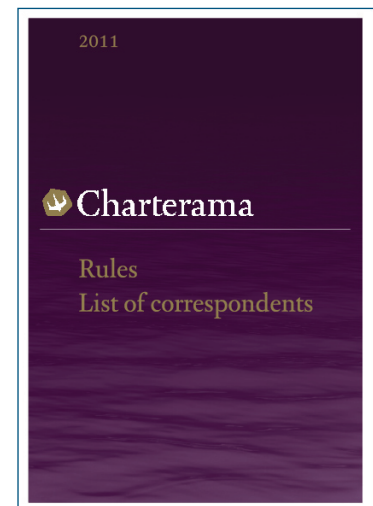
Unless the parties agree upon a Sole Arbitrator, one Arbitrator shall be appointed by each party with power to appoint an Umpire. On the receipt by one party of the nomination in writing of the other party's Arbitrator, that party shall appoint their Arbitrator within 14 days, failing which the award of the Sole Arbitrator shall be binding on both parties as if he had been appointed by agreement.

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Don't you have our Rule Book 2011 yet?

Please send us an email to charterama@charterama.com with reference to RULE BOOK stating how many copies you require. And don't forget to state your full style address!

This letter has been drafted with the utmost care on basis of information which is believed to be correct but which cannot be guaranteed by Charterama.