Introduction

Maritime commerce is a cornerstone of the global economy, driving international trade and connecting nations. Parties involved will have different contracts between transnational parties and these contracts will have dispute resolution clauses.

Maritime arbitration has emerged as a preferred choice for parties engaged in international maritime contracts due to its neutrality, expertise, and enforceability of awards. This article aims to provide an overview of maritime arbitration.

1. Understanding Maritime Arbitration

1.1 Key Arbitration Centres

There are specialist Arbitration Centres set up for the specific purpose of Maritime Arbitration. The two prominent ones are the London Maritime Arbitration Association (LMAA) [1] and the Singapore Chamber of Maritime Arbitration (SCMA)[2]. Both centres handle a substantial caseload of maritime arbitration cases.

In Malaysia, Asian International Arbitration Centre (AIAC) has the same attributes needed to successfully conduct Maritime Arbitrations[3]. Moreover, Malaysia has a strong Arbitration Act which provides the necessary laws supporting Maritime Arbitration.

This includes arrest of Vessels for intended and ongoing arbitration, provisions for appointment of emergency arbitrator, recognition provisions for awards under the New York Convention, a pro Arbitration Judiciary, a specialist Admiralty Court, a mature Admiralty and Maritime Bar.

1.2 Arbitration clauses

Arbitration clauses are commonly found in maritime contracts[4]. The standard form contracts[5] are often used with parties' adaptation of terms to fit their contracts including the arbitration clauses by way of deletion, addition and rider clauses.

These terms are sometimes incorporated by reference to another contract containing the arbitration clause e.g., where bills of lading are issued pursuant to charterparties, and the terms of the latter are specifically referred and incorporated[6].

2. Maritime Disputes Resolved Through Arbitration

The range of maritime disputes that are typically resolved by arbitration include:

1. Ship building;
2. Sale and Purchase Disputes[7];
3. Charterparty Disputes;
4. Marine Hull Insurance;
5. Salvage and General Average; and
6. International Sales.

Maritime disputes involve unique issues which have no parallel in general commercial disputes. The concepts of the maritime adventure, charter parties, bills of lading[8], transfer of title, maritime liens, marine insurance, bunker disputes (such as ship fuel), ship and sister ship arrests, collisions, salvage, in rem actions against the ship or the law of general average (and not forgetting stowaways, of course) are unique to shipping[9].

Peculiar aspects of maritime law include the principle of no set off against freight[10], general average and salvage[11].

Many of these disputes involve complex factual or technical questions that require not only the application of legal principles, but also deep knowledge of the customs and workings of the international maritime and shipping business[12].

The role of certain parties such as marine surveyors in arriving in factual investigations and findings are amongst the crucial parts in maritime arbitration[13].

2.1 Marine Insurance Disputes

Maritime Arbitration may cover Marine Insurance Disputes. The main cover or terms in Marine Hull Insurance essentially adopt standardized industry policy wordings or clauses issued by the following associations:

- Institute of London Underwriters

- American Clauses
- Nordic Clauses

In many cases, there will be Multiple Insurers involved in the risk on co-insurance basis. The Insurer with the largest share of the risk/insurance called the Lead Underwriter/Insurer will lead in dealing with the claims and disputes, and his decision will bind co-insurers to the extent of their respective shares.

Under maritime law, there will also be situations that arise which parties or contractors appear to offer services in the course of the voyage. For example, salvors and contractors rendering aid in situations that call for salvage of the vessel and cargo or in situations where general average is declared.

3. The Enforceability of Awards under the New York Convention

3.1 Understanding the New York Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention, was adopted by a United Nations diplomatic conference on June 10, 1958 and entered into force on June 7, 1959 created a system where state signatories gave effect to recognition of arbitration awards in countries which acceded to the New York Convention. As of June 2020, there are 165 state signatories, and Malaysia has acceded to the Convention on 5 November 1985.

Signatories to the New York Convention will recognise and enforce an international or foreign arbitral award under the convention if that arbitral award has been rendered by an arbitral tribunal sitting in a country which is also a signatory to the New York Convention.

The enforceability of Arbitration Awards under the New York Convention is easily one of the clearest benefits of arbitration over litigation. Parties are able to arrest a vessel to obtain security for the later enforcement of the arbitral award, wherever the vessel may be found. By way of contrast, decisions and judgements of local courts have limited enforceability outside the jurisdiction of that court as mutual recognition and enforcement of judgements relies on statutes providing for reciprocal recognition and enforcement of judgements which are limited in scope. The Malaysian Reciprocal Enforcement of Judgments Act 1958 shows that Malaysia only recognises very few judgements of countries on a reciprocal basis, e.g., UK, Singapore, Hong Kong and certain states of India.

Arbitral Awards are not appealable. However, pursuant to Section 36 and Section 37 of the Arbitration Act 2005, the finality of Arbitral Awards mean that the awards can be set aside on limited grounds. Further, Malaysian courts generally adhere to a non-interventionist approach towards Arbitral Awards.

3.2 Malaysia's Commitment to the New York Convention

In *Innotec Asia Pacific Sdn Bhd v Innotec GmbH* [2007] 3 AMR 67, the Malaysian High Court recognised the necessity to grant a stay of Malaysian Court proceedings in favour of arbitration in Germany, to honour Malaysia's treaty obligations under the New York Convention:

"*... Being the court of the country it is the duty of this court to interpret our laws so as to comply with such Convention where Malaysia is a party, unless expressly prohibited by law.*

Be it under s 10 of the Arbitration Act 2005 or under the New York Convention 1958, a stay of proceedings is mandatory in order to refer the parties or the dispute to arbitration. This is also in line with the judiciary's efforts to refer disputes to arbitration or other mediation process before the matter is dealt with by the court."[14]

4. The Arbitration Process

4.1 Arbitral Seat

Section 2 of the Arbitration Act 2005 provides the definition of "seat of arbitration" where it means the place where the arbitration is based as determined in accordance with Section 22:

"*22. Seat of Arbitration*
1) The parties are free to agree on the seat of arbitration.
2) Where the parties fail to agree under subsection (1), the seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties."

The Seat of the Arbitral Tribunal is the judicial seat of the arbitration, rather than a geographical location or venue where the hearing is conducted. The seat designates the applicable law, procedure and international competence of a national court for the challenge of the award.

Most arbitration statutes and institutional rules recognise the distinction between the seat of the arbitration and the venue in which hearings may be held. It is not necessary for the seat of arbitration and the venue of the arbitration to be the same location (though often they are) and even when hearings take place during the course of the arbitration in several different countries, the chosen seat of arbitration will remain unaffected.

Conclusion

Maritime arbitration offers a robust and reliable mechanism for resolving maritime, resolving

the competing interests of parties involved in international maritime contracts.

The country's pro-arbitration legal framework, specialized arbitration centres, and commitment to the New York Convention make it an ideal destination for neutral, efficient, and enforceable resolutions.

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1. London Maritime Arbitration Association, <https://lmaa.london/>.
2. Singapore Chamber of Maritime Arbitration, <https://www.scma.org.sg/>; our Partner and Head of Practice, Mr Philip Teoh is an accredited and registered Arbitrator with both LMAA and SCMA.
3. See AIAC Annual Report for 2019 & 2020 at <https://admin.aiac.world/uploads/ckupload/ckupload_20210727102858_34.pdf>.
4. Norwegian Shipbrokers Association SALEFORM 2012, BIMCO Baltime Uniform Time Charter 1939 Revised 2001, ExxonMobilvoy 2012.
5. The forms published by BIMCO are the most commonly used in the Industry.
6. See Charter Parties and Bills of Lading, Roman T. Keenan, Marquette Law Review, Volume 106, Issue 2 (2022) Winter.
7. In the Ship Sale 2022 the Memorandum of Sale and Purchase adopts the BIMCO Law and Arbitration Clause 2020 providing for arbitration under the London Maritime Arbitration Association LMAA.
8. See Mr Philip Teoh's article, 'Carriage of Goods by Sea'at:https://maritimeexecutive.com/article/carriage-of-goods-by-sea.
9. See Mr Philip Teoh's article, 'The Risk of Cargo Liquefaction' at: https://maritime-executive.com/editorials/the-risk-of-cargo-liquefaction.
10. See also 'When can you set-off claims against freight?' at: https://www.incegd.com/en/newsinsights/maritime-legal-update-english-law-whencan-you-set-claims-against-freight.
11. See below. These establish common law liens unique to maritime law.
12. Global Arbitration Review, "Singapore Chamber of Maritime Arbitration" (GAR, 24 May 2019) <https://globalarbitrationreview.com/review/theasia-pacific-arbitration-review/2020/article/singapore-chamber-of-maritime-arbitration>.
13. See Mr Philip Teoh's article, 'The Role of Marine Surveyors to the Judicial Process' at: https://maritimefairtrade.org/importance-of-marinesurveyors-to-judicial-process/
14. [2007] 3 AMR 67, [48]-[49].

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