The Standard

STANDARD BULLETIN

SETTING THE STANDARD FOR SERVICE AND SECURITY

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ARBITRATION SPECIAL EDITION

Kieron Moore: Legal Director
Telephone: +44 20 3320 8855
E-mail: kieron.moore@ctcplc.com

IN THIS EDITION

We believe that the 15th anniversary of the entering into force of the English Arbitration Act of 1996 is a timely juncture to examine dispute resolution, particularly arbitration. The club has significant in-house legal expertise in all forms of dispute resolution options worldwide, coupled with close working relationships with all of the leading maritime law firms. Settlement may be the most attractive method to finalise a claim but, where appropriate, starting proceedings may be necessary to prompt settlement or protect a member, for example by securing proper recourse.

London continues to attract commercial parties who want to resolve their disputes in a neutral and, generally, commercially predictable jurisdiction. However, members are increasingly aware of alternative arbitration or litigation centres. Whether commercial parties choose arbitration or other Alternative Dispute Resolution (ADR) methods (including mediation or expert determination) or court litigation, it is clear that they want certainty of result and a reasonable level of costs.

There are advantages and disadvantages to arbitration/ADR and litigation. Traditionally, arbitration has been seen as being commercially orientated, private, confidential, faster and cheaper than court litigation. Commonly, arbitration tribunals are made up of one or more experienced arbitrators known to the parties. Proponents of court systems have increasingly argued that arbitration is no longer automatically faster or cheaper than court proceedings. Court judgments are public, can set precedents, allow the law to publicly develop, and therefore provide more commercial certainty for users of the court system. Court proceedings can also provide firmer interim or interlocutory measures such as injunctive relief, although senior courts may restrict their use as a means of enforcing compliance with an arbitration agreement.

Both arbitral and court practitioners and providers readily understand the benefits of an efficient dispute resolution process. Commercial entities should ensure that law and jurisdiction clauses within their contracts are clear and balanced. We discuss below several practical issues in relation to the drafting of arbitration clauses. Also, care should be taken to ensure legal costs are budgeted, controlled, justified and proportionate to the work done, time and effort employed, and expertise required.

In the following articles, we review the development of arbitration in England and Wales following the Arbitration Act 1996, and discuss practical issues flowing therefrom. We also consider the drafting of arbitration clauses and discuss the practice of arbitration in several alternative jurisdictions (Australia, China, Ireland, Hong Kong, the Middle East Region, Norway, Singapore and the US) before examining the increasing role of mediation and the EU's approach to injunctive relief in relation to arbitration agreements.