For institutional arbitrations such as those conducted by the International Chamber of Commerce (ICC, www.iccwbo.org) or the London Court of International Arbitration (LCIA, www.lcia.org), the supervising institution will administer the arbitral process and assist with certain procedural issues in accordance with its rules. The role of the institution, the cost and the level of administrative control will differ from one institution to the other. The institutional fees may make the use of such institutions prohibitive.

Contractual partners can agree to resolve their disputes on an ad hoc basis subject to a particular set of arbitral rules, for example: UNCITRAL, the London Maritime Arbitrators Association (LMAA, www.lmaa.org.uk) or the Singapore International Arbitration Centre (SIAC, www.siac.org.sg). Such ad hoc arbitrations are generally cheaper and more flexible because the proceedings are administered by the tribunal rather than by a supervisory institution, and the parties can devise the ideal procedure to settle their dispute. However, the flexibility is also a potential weakness for it depends on co-operation between the parties and their lawyers. When problems arise, the intervention of the local court may be necessary, which may then increase the legal costs incurred in resolving the dispute.

HOW IS THE TRIBUNAL COMPOSED?

The parties may want to decide whether they want their dispute to be heard by a sole arbitrator (to be agreed between the parties or chosen by reference to the arbitral rules) or by three arbitrators (each party appointing one arbitrator, the third one being designated by the first two or as directed by the relevant rules). A larger tribunal may improve the quality of assessment and increase the parties' confidence in the arbitration process. A tribunal of several arbitrators would increase costs, but finalisation of the award (with reasons, if requested) should be faster.

IS AN ORAL HEARING NECESSARY OR CAN WE USE 'DOCUMENTS ONLY'?

Several sets of arbitral rules set up specific 'documents only' mechanisms. For simple disputes (which may not necessarily be limited to relatively small sums), these can lead to significant cost savings, particularly if the parties are diligent in the timely production of papers. Certain disputes lend themselves more to oral hearings. For example, it may be appropriate to test witness evidence by cross-examination or the parties may feel that their case may be more attractive to commercial arbitrators if they are able to contextualise the commercial relationship by appearing before the tribunal.

DOES THE CHOICE OF LAW OR THE DISPUTE RESOLUTION CLAUSE AFFECT MY CLUB COVER?

No. Neither our rules nor the pooling agreement requires a contract to be governed by, or be subject to, any specific law or jurisdiction. The parties are free to structure their dispute resolution clauses as needed, including the choice of arbitral or court proceedings.

PRACTICAL AND PROCEDURAL ASPECTS TO THE ARBITRATION ACT 1996

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STARTING ARBITRATION IN ENGLAND

The Arbitration Act 1996 (the Act) emphasises party autonomy; the parties to an arbitration agreement have a wide (but not unfettered) ability to design bespoke arbitration provisions. However, in the absence of agreement, the Act imposes a default framework. For example, section 14 of the Act explains the various ways in which arbitration can be commenced:

a) Parties can agree amongst themselves when proceedings are to be considered commenced.
b) If an arbitrator is named in the arbitration agreement, proceedings are considered commenced when one party serves notice on the other party requiring that party to submit the matter to the said arbitrator.
c) Where the parties are free to appoint an arbitrator of their choosing, proceedings are considered to be commenced when one party serves notice on the other party requiring that party to appoint an arbitrator or to agree to the appointment of an arbitrator.
d) If a person who is not a party to the proceedings is to appoint an arbitrator, proceedings are considered to be commenced when one party gives notice to that person requesting him/her to make the appointment.

Arbitration clauses often state how many arbitrators should be appointed and the relevant time limits for responding to notices of arbitration. It is crucial to adhere to any such time limits to ensure that any potential claims are not time barred. When considering how and when to start arbitration proceedings, care should be taken to closely follow the requirements of the relevant arbitration clause.

LONDON MARITIME ARBITRATORS ASSOCIATION

When considering contracts of carriage, the club often sees standard arbitration clauses (such as the BIMCO/London Maritime Arbitrators Association (the LMAA) clause or the LMAA Fast and Low Cost Arbitration (FALCA) clause) and has experience of advising members in relation to London arbitrations. Charterparties often provide for arbitrations in accordance with terms of the LMAA. The LMAA terms can be found on their website (www.lmaa.org.uk). There are several different sets of terms, however, the majority of arbitrations would fall within LMAA Terms (1996) unless the charterparty provides for other terms to apply. For example, if the claim is for less than $50,000, this would be governed by the Small Claims Procedure (2006). The Terms are supplemented by schedules, which set out further procedural and practical issues of note.

The LMAA website is a useful tool for members' insurance managers/in-house legal representatives. It sets out the parameters and procedural steps for arbitrations from start to finish. It also explains in unequivocal language frequently asked questions and those that would practically play on the minds of claims-handlers within an owner's or charterer's operating department. The website lists all full and supporting LMAA members, setting out their experience and qualifications. It also covers issues in relation to fees and costs, interest rates and time limitations.

COSTS AND DELAYS

Arbitration has traditionally been thought of as a cheaper and quicker method of dispute resolution than litigation. In reality, however, arbitration can still result in significant delays and expense. An arbitrator is not powerless in the face of delay by parties and can easily and quickly give directions. Parties who initially fail to comply with directions are generally safe from sanction in the absence of '*inordinate and inexcusable delay*'. However, arbitrators can order compliance, and a party's delay or non-co-operation could lead to a direction that part or all of their claim/defence is struck out or that certain evidence should not be taken into account.

Further, an arbitrator can limit recoverable costs. An arbitrator cannot be capricious and must take the nature of the circumstances of the dispute into account. However, he may direct that there should be a cap on the costs that may be recovered by the winning party and that the losing party will only be asked to pay up to the amount of the cap.

Often an arbitrator will direct the parties to declare how they intend to run an action so that he can limit costs to a specified amount sufficiently in advance of the incurring of costs. An arbitrator also needs this information in order to meet his responsibilities of '*avoiding unnecessary delay*'.

PRACTICAL TIPS

When a charterparty is being negotiated, the parties are often concentrating on how their future co-operation will be to their mutual advantage. Often they do not concentrate on dispute resolution provisions as they do not plan to have disputes. However, arbitration clauses in the charterparty are clearly significant and care should be taken when the charterparty is being negotiated and drafted. It is normally advisable to use the standard arbitration clauses to ensure that any future disputes are expeditiously dealt with at a reasonable and predictable cost, in a jurisdiction that provides sufficient experienced and impartial arbitrators. It is prudent to seek assistance either from the club or members' preferred lawyers regarding the drafting of arbitration clauses, and also at the stage of serving notice of arbitration, to ensure that any potential claims are fully protected and are not jeopardised from the outset.

MARITIME ARBITRATION IN THE UNITED STATES

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INTRODUCTION

Arbitration of maritime disputes in New York has a long history. In 1826, arbitrators in New York decided a shipbuilding dispute between New York financiers and the Government of Greece in Exile, then residing in London. In 1914, the New York Produce Exchange Time Charter Party form was issued with an arbitration clause. Following World War II, the US merchant fleet transported materials around the world to rebuild the world's economy. Disputes arose and multiplied. To avoid the costs and delay of court proceedings in such a specialised industry, it became common to ask persons in the industry to decide the disputes on an ad hoc and informal basis.

In 1963, several commercial persons formed the Society of Maritime Arbitrators, Inc. (SMA) (www.smany.org) in the belief that persons in the industry are in the best position to decide maritime disputes correctly, promptly and inexpensively. During the period after World War II and the early years of the SMA, persons with disputes met with trusted peers at lunch or after work, showed them the documents, explained their cases and received a decision. This occurred often, but not always, with the assistance of a maritime lawyer.

Inevitably, the process became more formal. Parties presented more and more complex disputes to arbitrators. Lawyers became increasingly indispensable in compiling and presenting a case. Losing parties were less accepting of an adverse result. Rules were adopted (the text of the present SMA Rules can be found at www.smany.org/sma/about6-1.html). Today, many arbitrators hear cases in all-day and consecutive day sessions. Nevertheless, the commercial, informal, consensual and flexible origins of maritime arbitration in New York ripple to this day through the conduct of maritime arbitrations in New York. As formulated by recent past president David Martowski, the SMA's mission is to "get it right, expeditiously and at reasonable cost".

COMMERCIAL ARBITRATORS

The notion that maritime disputes are best resolved by one's commercial peers remains an essential component of SMA arbitrations. SMA membership includes persons who have worked in-house for shipowners, charterers and commodity houses. Most SMA members do not have formal legal training. They are shipping executives, mariners, engineers, accountants, architects and risk managers. Lawyers in private practice are not allowed to be members of the SMA (a roster of members can be found at www.smany.org/sma/members.html).