

PUBLICATION OF AWARDS

In contrast to other arbitration centres, arbitration awards issued by SMA arbitrators in New York are published and available online and in printed form. This is in keeping with the original guiding idea of the SMA that parties to a dispute are seeking peers to review their actions and the language of their contracts. Accordingly, all persons in the industry benefit by learning how peers interpret the language of commonly used contracts and the actions of persons involved in a maritime dispute or casualty. If, however, the parties wish to keep their dispute and its result confidential, they may agree to do so. More than 4,000 awards are available for review. A panel of arbitrators is not 'bound' to follow the decision of a prior panel.

CONSOLIDATION

If the arbitration agreements in the chain of charters are subject to the SMA Rules, the parties in such a chain have agreed *'to consolidate proceedings relating to contract disputes with other parties which involve common questions of fact or law and/or arise in substantial part from the same maritime transactions or series of related transactions'*. This rule streamlines proceedings and reduces costs.

ALTERNATIVES TO SMA ARBITRATION

While most maritime arbitrations in the US involving international parties occur under the auspices of the SMA, there are other organisations in New York and elsewhere in the US that deal with resolution of maritime disputes. The American Arbitration Association (AAA) (www.adr.org) conducts arbitrations in practically any field. By contrast to the SMA, the arbitrators are typically practicing lawyers, the arbitration is administered, for which a fee must be paid, and the awards are not published. In Houston, the Houston Maritime Arbitrators Association (HMAA) is active (www.hmaatexas.org). Its members include commercial persons as well as practicing attorneys.

CONCLUSION

Arbitration of maritime disputes is alive and well in the US and New York. The arbitrators are skilled and experienced, as is the maritime bar. The procedures are easily tailored to the needs of the particular dispute without needless formality. Consolidation of disputes among parties is available and cost-effective. The prevailing party is awarded its costs, including attorney's fees, and awards are final. Publishing the awards has created a culture of transparency and predictability for users, lawyers and arbitrators. Accordingly, arbitration in the US remains an important option for anyone in the maritime industry to consider.

GROWTH OF ARBITRATION IN SINGAPORE



Edgar Chin:
Telephone:
E-mail:

Claims Director
+65 6506 2867
edgar.chin@ctcplc.com

INTRODUCTION

With the rapid growth of most Asia-Pacific economies, Singapore has continued to see a steady increase in the number of international arbitrations. Apart from the general trend towards alternative dispute resolution, the growth of arbitration in Singapore was encouraged by the Singapore government to promote Singapore as a centre for international arbitration. With further liberalisation of the legal sector in Singapore, it is likely that Singapore will continue to grow as an arbitration hub. As Standard Asia is based in Singapore, with a team of seven claims-handlers, we are well placed to assist our members in any disputes that are referred to arbitration in Singapore.

LEGAL FRAMEWORK

The first major step was the creation of a legal framework within which international arbitration could flourish. Singapore acceded to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards (the New York Convention) on 21 August 1986, making Singapore arbitration awards enforceable in over 140 countries worldwide.

This was followed by the establishment in 1991 of the Singapore International Arbitration Centre (SIAC) as Singapore's main arbitration institution. On 31 October 1994, Singapore adopted the 1985 UNCITRAL Model Law on International Commercial Arbitration (Model Law) when it enacted the International Arbitration Act. In 2004 the Singapore Chamber of Maritime Arbitration (SCMA) was established within the umbrella of the SIAC. It now acts independently from the SIAC. The aim of the SCMA is to provide a framework for maritime arbitration which is responsive to the needs of the maritime community.

SCMA

As of May 2009, the SCMA has been reconstituted as a company separate from the SIAC. This marked a departure from the International Chamber of Commerce (ICC) model, which proved unpopular with the maritime community which prefers a model similar to the London Maritime Arbitrators Association (LMAA), where the arbitration body does not manage the arbitration process.

The advantages of the SCMA:

- It presents an arbitration framework that reflects the needs of users; membership is open to all companies and individuals involved in maritime business or academia.
- It adopts rules familiar to the maritime community; the SCMA rules follow the approach of the LMAA.
- Although the SCMA has a panel of available arbitrators, parties can choose anyone they wish to arbitrate.
- The SCMA does not have a mandatory scale of arbitrator's fees: it is for the parties to agree rates with the arbitrator.

- A claimant commences arbitration by serving the claim on the respondent. There is no need to submit papers to SCMA.
- The SCMA is not involved in the management of the arbitration but is available to facilitate the process and so no management costs are charged by SCMA.
- There is a presumption of a panel of three arbitrators, but parties can agree on a sole arbitrator if they choose.

LEGAL PROFESSION ACT

Restrictions on foreign lawyers representing parties in arbitration in Singapore were removed in 2004 under the Legal Profession Act. Previously, foreign lawyers could only participate in arbitration proceedings in Singapore where the applicable law of the contract was not the law of Singapore. Foreign lawyers now have unrestricted representation in arbitration proceedings in Singapore. Members who arbitrate in Singapore are therefore free to engage lawyers of any nationality.

Law Minister Mr K. Shanmugam recently reiterated Singapore's commitment to arbitration and said that Singapore will constantly re-examine its legal regime to ensure that it is arbitration friendly. He pointed out that Singapore has ensured that the legislative framework is "supportive of arbitration" and "has adopted international best practices".

ATTITUDE OF THE COURTS

These developments have been reflected in a judiciary that is supportive of arbitration and generally loath to interfere. According to the SIAC, courts in Singapore 'offer maximum judicial support of arbitration and minimum intervention granting parties full and consistent support in the conduct of international arbitration'.

The court generally will not usurp the role of the tribunal and will only intervene sparingly and in very narrow circumstances, for example where the arbitral tribunal has no jurisdiction to grant the relief sought (Court of Appeal decision in *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] SGCA 5).

Furthermore, the courts generally have no discretion and must grant a stay of court proceedings in favour of arbitration unless 'the arbitration agreement is null and void, inoperative or incapable of being performed'.

Once an award has been made it is readily enforceable by the Singapore courts. Enforcement of an arbitration award in Singapore by way of execution proceedings requires the leave of court, and such leave is often granted without notice.

The grounds for setting aside an award are limited. If an application to set aside an award has been made, the court has no power to investigate the merits of the dispute or to review any decision of law or fact made by the tribunal.

OPENING OF MAXWELL CHAMBERS

The pro-arbitration movement culminated with the formal opening of the Maxwell Chambers on 21 January 2010. It is the world's first integrated dispute resolution complex, which houses state-of-the-art facilities for arbitration hearings, boasting 14 custom-designed and fully equipped hearing rooms, with a full suite of recording, translation, transcription and video-link systems for overseas witnesses. There are a further 12 preparation rooms secured by a private lift lobby not accessible to the public.

Apart from the SCMA and SIAC, various other international arbitration institutions are also housed in Maxwell Chambers, including the Permanent Court of Arbitration, the American Arbitration Association, the International Court of Arbitration of the International Chamber of Commerce and the Arbitration and Mediation Centre of the World Intellectual Property Organisation.

ARBITRATION IN THE PEOPLE'S REPUBLIC OF CHINA



Nick Sansom
Telephone:
E-mail:

Director and General Manager
+65 6506 2889
nick.sansom@ctcplc.com

Arbitration proceedings are governed by the Arbitration Law 1995 and the Civil Procedure Law 1991, which are not based on the UNCITRAL Model Law, but are similar in scope.

Maritime arbitration is usually conducted under the Rules of the China Maritime Arbitration Commission (CMAC). The Commission is based in Beijing, but has branches in a number of locations throughout China, including Shanghai.

CMAC is an 'administered arbitration' scheme and arbitration is commenced by notice to the CMAC. Generally ad hoc arbitrations held in China are invalid, but it is possible to enforce the awards of foreign ad hoc arbitrations in China. China has ratified the New York Convention.

There is a scale of fees for commencing and thereafter continuing the arbitration. The arbitrators must be chosen from a panel of arbitrators numbering over 200. The parties can choose from the panel or ask the chair of CMAC to appoint. Normally three arbitrators are appointed, with one chosen by each party and the presiding arbitrator jointly appointed, but a sole arbitrator is appointed for cases below Yuan 1 million. The scale of fees is a percentage of the sum in dispute and includes the cost of the arbitrators, but there is facility for an increase in costs for arbitrators' special remuneration, experts and expenses. The losing party is liable for the arbitration costs and the Tribunal can award legal costs against the losing party. The arbitral award is required to be issued within six months of the establishment of the Tribunal, unless a special request for an extension is made to CMAC. The award is final.

If one of the parties to the contract is foreign, the contract can be subject to a foreign law. Foreign lawyers may also appear in a CMAC arbitration. Under the UNCITRAL Model Law, the Tribunal has the power to order interim measures such as freezing assets or preserving evidence. Under Chinese law, interim measures must be ordered by the Courts. Therefore, a party must apply to the Tribunal for an interim measure and, if approved, the CMAC may apply to the Court. However, the Chinese courts often require counter security from the applicant and these can sometimes be equivalent to the amount of the claim.