LMAA 2017 Terms

The London Maritime Arbitrators Association ('LMAA') has published a new set of terms that will come into effect for appointments made after 1st May, 2017.

The new terms seek to update the LMAA procedures to reflect best practice and allow for more efficient resolution of disputes referred to LMAA arbitration.

A key consideration for the LMAA in the revision of the terms was that they have historically provided for a "light touch" approach, which has arguably contributed to the popularity of this forum as a dispute resolution measure. The LMAA is seeking to maintain this approach rather than add a proliferation of new rules and guidelines. That said, this approach shows a degree of caution.

Changes to existing terms

Appointment of sole arbitrators

Specific reference is now made to Section 17 of the Arbitration Act 1996 (the 'Act') under which an arbitrator appointed by one party can become sole arbitrator in circumstances where the other party fails to appoint an arbitrator. The President of the LMAA is now able to appoint a sole arbitrator where the parties fail to agree, which can occur when one party is being deliberately obstructive. This also shifts the traditional position whereby the parties had to apply to the High Court in order to appoint a sole arbitrator in such circumstances.

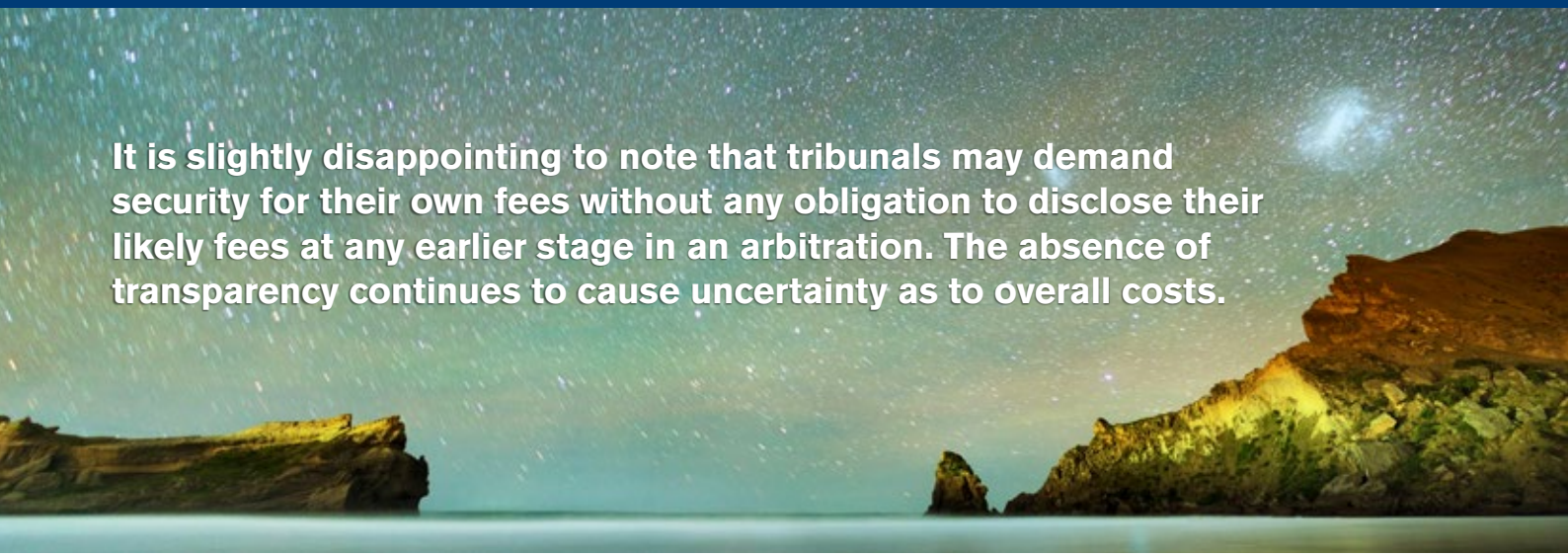
Security for tribunal's fees

A clarification has been made with respect to the tribunal's power to request security for its own fees. The tribunal now has the power to request security for its fees from either party at any time, but not less than 21 days before the start of the hearing. The tribunal may suspend work as well as vacating hearing dates, if security is not provided.

It is now made expressly clear that failure to comply with this request allows the tribunal to make a peremptory order pursuant to Section 41 of the Act. Non-compliance with such an order can lead to the dismissal of the claim. In practical terms a claimant faced by a recalcitrant defendant now faces the prospect of having to issue security for the tribunal's costs in full. The new terms do not specifically address the issue of increased costs necessarily incurred by claimants in dealing with this issue.

It is slightly disappointing to note that tribunals may demand security for their own fees without any obligation to disclose their

continued overleaf



likely fees at any earlier stage in an arbitration. The absence of transparency continues to cause uncertainty as to overall costs.

Streamlining procedures and documentation

The new terms state that a claimant's documents are to be provided to the other side with its statement of case. To avoid unnecessary submissions, the amended terms now state that the tribunal's permission must be sought for the service of any further pleadings after a reply.

Previous guidance issued in relation to the 2012 LMAA terms has now been formalised and incorporated into the new terms for ease of reference and to highlight its importance. A failure to comply with this guidance may now have adverse costs consequences.

Tribunals may now make procedural directions if the parties fail to agree on directions within 21 days after the exchange of LMAA questionnaires. The new terms also include a provision that the parties and tribunals should actively consider ways to make the arbitral process as cost-effective and efficient as possible. By way of further incentive to the parties in this regard, it is now made clear that the tribunal can take into account unreasonable or inefficient conduct when dealing with costs, in particular any offers made 'without prejudice save as to costs'. The new terms require parties to give prompt notification of any changes to their legal representation and set out that late instruction or changes in representatives will not be regarded as a valid ground for either delaying the progress of an arbitration or for an adjournment.

Small Claims Procedure

The Small Claims Procedure ('SCP') has been amended such that these terms, in the absence of the parties' express agreement, will now apply to claims up to $100,000 for both claims and counter-claims. If a claim subsequently exceeds this limit the terms make it clear that the originally appointed arbitrator will retain jurisdiction and will decide which regime of LMAA rules should then apply.

The terms now also confirm that the commencement of an arbitration under the SCP will be sufficient to interrupt any time limit. A small but important change has been made in relation to the time for the service of a letter of claim. Previously the SCP envisaged that the arbitrator must dismiss a claim when there was a failure to serve a letter of claim within a specified time period. The new terms state that the arbitrator has the discretion as to whether or not to dismiss the claim in these circumstances. The LMAA advise that this was done in light of cases in which arbitration was commenced to protect time or to prompt settlement discussions and which did not then need to be progressed within the specified time period. In those circumstances it may not then be appropriate to dismiss the claim where a letter of claim is not served. The new terms may open up the possibility of delays and uncertainty in small claims which will then lead to increased and irrecoverable costs.

Intermediate Claims Procedure

Minor changes have been made to the Intermediate Claims Procedure ('ICP'). Arbitrators are now given the power to dismiss a claim in the event that the claimant fails to serve a letter of claim in a timely fashion, in line with the similar SCP provision. Under the ICP the parties' recoverable costs are capped so that neither party can recover more than 30% of the claimant's monetary claim. This provision has been amended to make it clear that the relevant costs cap is calculated by reference to the monetary claims/counter-claims as originally advanced, rather than such claims as subsequently amended. This may discourage the subsequent inflation of claimed amounts but equally it may not encourage a sufficiently robust and early calculation of the appropriate quantum of claims.

Conclusion

The terms are in no way a radical change from the previous 2012 terms. They are instead a conservative tightening of specific procedures which in certain areas may lead to uncertainty as to overall costs, particularly in relation to tribunals' own fees. The new terms do not refresh issues such as the publication of awards, the transparency of tribunals' fees, the speed of publication of awards or the application by tribunals of their extant powers to move arbitrations along swiftly and with minimal costs.

If Members have any queries, please contact your usual contact at the Managers' offices.

The UK Defence Club
Thomas Miller Defence Ltd, 90 Fenchurch Street, London, EC3M 4ST
tel: +44 207 283 4646 fax: +44 207 204 2131
email: tmdefence@thomasmiller.com web: www.ukdefence.com