

ADJUSTING THE SAILS.....

By

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By way of introduction to our event this afternoon, I should like to say just a few words about the LMAA; about the Association, its Members and its Terms.

I should like to start, if I may, with a quote from the 20th century American writer, William Arthur Ward, which seems to me to fittingly reflect the approach of both the Association and its individual members, namely that they are realists, commercial men, offering a sensible, considered approach to the resolution of all manner of maritime-related disputes, constantly keeping the approach under review (as any prudent master of a vessel would) and making changes to the course, as and when necessary.

The Pessimist complains about the wind;

The Optimist expects it to change;

The Realist adjusts the sails.

THE ASSOCIATION

Looking first at the body itself :

I do not wish to dwell overly long on the history of the Association, as this will be well known to many of you. However, I will touch briefly on its beginnings, as I believe the commercial foundations of the Association and its organic development are as relevant to its continued success today, as these factors were to its formation.

The roots and traditions of London maritime arbitration date back to the famous coffee houses of London, the first of which was opened in 1652, over 360 years ago. By chance, the site of this first coffee house was directly opposite the office where I first practised as a shipping solicitor in London, in St Michael's Alley, off Cornhill.

These coffee houses were the world of merchants, commercial men, doing their business face to face. These coffee houses developed into a mature marketplace where

shipowners, charterers, brokers and cargo interests gathered. Thus came into being the world famous business and financial hub which is the City of London today.

At the heart of this hub, major institutions such as the Lloyds' insurance market and the Baltic Exchange grew up.

Foreign shipowners and merchants alike recognised London as a neutral location. A legacy which continues to this day.

Representatives of all shipping disciplines congregated in the City, creating a large pool of expertise in the fields of law, finance, insurance, ship broking, ship management, commodities, freight, training, engineering, ship design, navigation and other disciplines, all of which remain today and which provide essential support to maritime arbitration in London. The depth and breadth of maritime expertise in London is second to no other maritime cluster.

The Baltic Exchange, in particular, was central to the development of maritime arbitration in London. In the 1960s and 1970s, it was the world's central market for the fixing of ships on charter. Right up until the 1990s, most charter parties in the world were still fixed on the floor of the Baltic Exchange.

Senior members of this international broking centre, the Baltic Exchange, starting offering arbitration services to fellow brokers representing opponent parties, when disputes arose. The Exchange maintained a list of shipping brokers, commercial men in the shipping trade, who were willing to act as arbitrators.

In 1960, the arbitrators on that list decided to form themselves into an association. That association was the LMAA, the London Maritime Arbitrators Association. The office of the LMAA is now located within the Baltic Exchange building. The Baltic is thus the spiritual and physical home of the LMAA.

The LMAA was one of the first of many maritime arbitration associations to be set up worldwide. I do not propose to go through each of the next slides in detail. However, they are in your hand out and you will see that a series of further maritime arbitration associations were set up in the 1980s and 1990s, with a further swathe of associations set up from 2000.

AD HOC ARBITRATION

The origins of the LMAA are steeped in history and in maritime arbitration circles the LMAA is a *veritable institution*. However, it is important to highlight that the LMAA offers ad hoc rather than institutional style arbitration.

The LMAA does not administer or supervise individual arbitrations in any institutional sense. Accordingly, it charges no administrative fees and has no financial interest in disputes conducted by its members. Usually the Association takes no part in the appointment of the tribunal to any particular dispute. The exception to this is where the parties cannot agree on an appointment and the arbitration agreement provides for the appointment of an arbitrator by the President. Similarly, the Association does not oversee the progress or procedure of a dispute conducted under LMAA Terms.

Rather, the LMAA Terms allow for a flexible arbitration procedure which can be tailor-made to the type of dispute in question and allow the tribunal a significant amount of discretion in relation to interlocutory issues, the precise timetable and procedure to be adopted and so on, on a case by case basis. LMAA arbitration increasingly makes use of modern technology, for example, evidence given by video link, to keep costs down.

One notable consequence of this flexibility is that, unlike most other arbitral terms, the LMAA Terms allow an arbitration to proceed to a final award without the need for an oral hearing. In fact, for some time now, the majority of cases which proceed to an award on LMAA Terms, do so on documents alone. I will touch on this later, in relation to the LMAA's annual statistics.

In addition, as you will be hearing more about later, London arbitration benefits from the support of the London courts and its experienced commercial judges. The supervisory role of the courts is used sparingly but a limited right of appeal from an arbitration exists as a safety net, should it be needed.

The limited administrative function of the Association is to support its members and users and the process of LMAA arbitration, rather than administer either.

The administration of the LMAA comprises :

- the President (who is elected annually by the Committee and who usually serves for a term of 2 or 3 years)
- the Committee (consisting of 7 elected full members and 2 past presidents)
- the Honorary Secretary and
- the Executive Secretary (who keeps us all in order).

The LMAA's funds are derived from its membership subscriptions and the other administrative fees, such as appointment fees, where the President is requested by the parties to appoint an arbitrator. The LMAA receives no funding from the state or from any other organisation. It is therefore completely independent of government and of any other interest group.

THE MEMBERS

There are three categories of LMAA membership :

Firstly there are the full members - these are full time arbitrators who come from a wide range of disciplines. In addition to the traditional ship broking expertise of the LMAA, amongst our full members we have the experience of ship operators, ship managers, naval architects, marine engineers and master mariners, as well as solicitors, barristers and industry advisors.

These are all people from the real, commercial, working world of shipping, with substantial experience in maritime arbitration. They understand what a dispute is about and the importance of a fair and timely resolution to the commercial entities involved.

In addition to the full members, there is a category of aspiring full members, who have solid experience in their field and who are in the process of building their careers as arbitrators.

Then there are the supporting members, who support the Association and who are vital in assisting the LMAA to maintain its commercial links. We now have almost 750 supporting members, who come from an increasingly diverse geographic and professional background. Indeed, although its roots are in maritime arbitration, LMAA arbitration is becoming increasingly popular within the international trade world, in commodities which do not have their own trade bodies to assist them in relation to dispute resolution.

As the LMAA grew as a body, the need for an interface between the users of London Maritime Arbitration and the members of the LMAA became apparent. In answer to these calls, the LMAA set up a Supporting Members Liaison Committee in London. As a similar need started to emerge in the Asia Pacific market, so the LMAA reassessed its approach and set up a second liaison committee here in 2012, specifically to cater for its Asia Pacific users. Each committee meets twice a year and is designed to offer a conduit for feedback from the wider shipping community, through the supporting members who sit on the committee, to the LMAA members.

You can find details of all our members and committees on the LMAA website.

THE TERMS

As I have mentioned, the LMAA is not an arbitration institution which administers arbitrations. However, it does produce, now a series of, terms to assist its users. When the Association first formed in 1960, arbitrations tended to take the form of informal face-to-face meetings between the parties and their chosen arbitrator, more often than

not in a meeting room in the Baltic Exchange. As the Association and the breadth of users of LMAA arbitration expanded far beyond the Baltic, and indeed London, there was a growing feeling that it would be helpful if a set of ground rules were available. Thus the Terms were established, and a handbook produced containing details of the Association's members and the current Terms of the Association.

I have with me a copy of the first handbook and set of LMAA Terms which I could find in the LMAA office, back at the Baltic. This contains the 1987 version of the Terms. I remember this style of handbook well, from my first days in shipping as a newly qualified.

Since the first set of Terms were drafted in the 1980s, there have been regular reviews of the Terms and since the 1990s a revised set of terms has generally been produced every four to five years. The current Terms are the 2012 Terms and work is currently underway on a further revision of the Terms. These are what one might call the 'full' terms, intended to be used in relation to a substantial dispute.

In parallel, the LMAA recognises that there can often be a need or a desire to obtain determination of a dispute, by way of arbitration award, where the amount of money in issue is relatively small, but where the particular claim is either sufficiently complex to require formal dispute resolution or where the parties simply cannot resolve the matter themselves. To respond to this reality, in 1989 the LMAA first produced a set of terms aimed specifically at small claims, namely the Small Claims Procedure. The most recent revision of these terms was in 2012.

You will hear a little more about the Small Claims Procedure later but, in summary, it is intended to be a quick, cheap means of determining a dispute before an arbitrator. It provides for a limited exchange of submissions and evidence before a sole arbitrator, with limits on the costs of the tribunal and the recoverable costs of the parties.

These terms are designed to be used in cases where the sums in dispute are under US\$50,000. However, it is open to the parties to vary this amount. Indeed, we are becoming aware of that \$50,000 limit increasingly being raised to US\$100,000, such that an increase of the recommended limit to US\$100,000 will no doubt be considered during the next revision of these terms.

Following the creation of the 'full' Terms and the Small Claims Procedure Rules in the 1980s, the LMAA identified a further need to increase the range of its terms available, to give parties a wider choice of method of arbitration. In response the LMAA produced the Intermediate Claims Procedure, intended to deal with disputes where the amount in dispute falls between US\$100,000 and US\$400,000. Again, these terms were most recently revised in 2012. You will also find our mediation terms on the website.

More recently, in response to a growing interest in and usage of LMAA Terms in the Peoples Republic of China, the LMAA Terms and the Small Claims Procedure Rules now both appear in Chinese translation on the LMAA website.

Again, you can find all the Association's Terms and translations on our website.

THE CURRENT COURSE

Finally, I should like to take a quick look at the current course of the Association. In broad figures, over the last 20 years there have regularly been on average 3,000 appointments, approximately 2000 references and between 500-600 awards per annum under LMAA Terms. The Association's most recently published figures reflect the continuation of this general trend, despite the reduced level of trading activity worldwide.

In 2015 3,160 appointments on LMAA terms were reported to the Association. This represents more than 2,000 new arbitration references conducted on LMAA Terms last year. Of these, 128 were under the Small Claims Procedure. Of the arbitrations which did not settle and proceeded to a determination, 553 awards were reported to the Association for 2015. Of these awards only 93 (just over 15%) required an oral hearing. This is reflective of the trend the LMAA has seen over recent years, with the vast majority of disputes being dealt with on a documents only basis, offering very substantial savings to the parties.

As set out in a recent research report, the continuing popularity of London arbitration is attributed to a number of factors including :

- Extensive maritime law experience and expertise
- Specific arbitration expertise
- Presence of complementary maritime professionals
- Reputation for independence and integrity
- Support of the English Commercial Court

In summary, the LMAA is constantly checking its course, seeking to identify how it can best serve the maritime arbitration community and adjusting its sails accordingly.

This extends to our means of communication. In my professional lifetime, I have seen communications by telex, fax and even telegram. The LMAA is currently looking at new ways of communicating with its many international supporting members and users; we hope that you will soon be able to 'LinkIn' with us, chat to us on Skype and read our messages on WeChat.

In the meantime, it is our pleasure to be with you here in Singapore and to speak with you in person.