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INFORMATION SHEET on ARBITRATION and GOVERNING LAW CLAUSES JULY 2013

Question - What does AMTAC do?

Answer - AMTAC promotes the conduct of maritime arbitration at Australian places of arbitration in appropriate cases. See www.amtac.org.au

Question - How can this be achieved?

Answer - This can be done by the inclusion in maritime contracts (for example, charterparties, COAs, bills of lading and sea waybills) of an arbitration clause in which an Australian city is named as the place of arbitration (for example, “at Sydney, Australia”).

Question - What are appropriate cases?

Answer – Appropriate cases would include where one or both parties are Australian or has/have Australian operations or an Australian presence, or where it is likely that disputes arising under the maritime contract and its performance would relate to circumstances and events occurring in Australia or the Asia Pacific region, for example at an Australian or Asian Pacific load or discharge port.

Question - What is an arbitration clause?

Answer - It sets out the agreement made between the parties to a maritime contract to arbitrate disputes arising between them under that contract. It is referred to as the arbitration agreement and it is separate from, and independent of, that contract. The clause determines the procedural arbitration law which will apply in the arbitration. If an Australian place of arbitration is named, the Australian procedural arbitration law applies.

Question - What is an example of a model arbitration clause?

Answer - The model clause recommended by AMTAC states:

“Any dispute, controversy or claim arising out of, relating to or in connection with this (*specify the relevant maritime contract*), including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the AMTAC Arbitration Rules.

The seat of the arbitration shall be (*choose a city in Australia*) Australia.

The language of the arbitration will be English.”



Question - What is a governing law clause?

Answer - It is a clause in the maritime contract by which the parties agree which law applies to the merits of disputes arising under that contract.

Question – What is an example of a governing law clause?

Answer - The model clause recommended by the International Bar Association, states:

“This (specify the relevant maritime contract) is governed by, and all disputes arising under or in connection with this (specify the relevant maritime contract) shall be resolved in accordance with the laws of (select the country or in the case of Australia the State or Territory).”

Question - Can the governing law clause and the arbitration clause be combined in the one clause?

Answer - Yes they can and often are, the combined clause being entitled “Law and Arbitration” in the maritime contract.

Question - Does the governing law clause have to provide as the laws governing the maritime contract the laws of the same country as the country of the place of the arbitration named in the arbitration clause, for example, the laws of England where London is the place of arbitration?

Answer - No. However this is very often the case but not always, noting that the governing law chosen is dealt with in an arbitration as a matter of evidence in the same way as that with which the factual matters are dealt. So, it is possible to have the governing law being the laws of a different country from the country whose procedural arbitration law applies, which law is determined by the place of arbitration named in the arbitration clause.

Question - Assuming the governing law chosen are the laws of an Australian State or Territory, would the relevant Australian maritime law be the same or similar to English maritime law?

Answer – Yes, as the Australian maritime law derives from similar sources as English maritime law, it is the same or similar.

This Information Sheet does not constitute, and cannot be treated, as legal advice and parties are recommended to take their own legal advice in respect of its subject matter.