

# Drafting an Effective Maritime Arbitration Clause

Perth - 18 May 2016

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[www.amtac.org](http://www.amtac.org)

# Overview

- What is international arbitration?
- What is an arbitration agreement?
- What are the essentials of an arbitration agreement?
- Model arbitration clauses – AMTAC, LMAA, SCMA
- Multi-tier dispute resolution clauses

# International Arbitration

- Definition
- Hybrid – private process and public effect
- International conventions, model and national laws
  - New York Convention 1958
  - UNCITRAL Model Law 1985/2006
  - Australian International Arbitration Act 1974

# Arbitration Agreement

- “Foundation stone”
- Arbitration clause or submission to arbitration
- “in writing”
- Consent to arbitration

# Arbitration Agreement

- Separability between arbitration agreement and main contract
- Source of powers and jurisdiction of tribunal

# Essentials of Arbitration Agreement

- Institutional or ad hoc
- Arbitration rules and model clauses
- Scope
- Seat/place of arbitration

# Essentials of Arbitration Agreement

- Number of arbitrators
- Selection and replacement of arbitrators
- Language
- Law governing arbitration agreement and law governing main contract

*Sulamerica Cia Nacional de Seguros SA v Enesa Engenharia SA* [2012] EWCA (Civ) 638

# Model Clauses

- Australian Maritime and Transport Arbitration Commission (AMTAC)

“Any dispute, controversy or claim **arising out of, relating to or in connection with** this contract, including any question relating to its existence, validity or termination, shall be resolved by arbitration in accordance with the AMTAC Arbitration Rules. The **seat of the arbitration** shall be Sydney, Australia [*or choose another city*]. The language of the arbitration shall be English [*or choose another language*]”.



# Model Clauses

- London Maritime Arbitrators Association (LMAA)

“...This Contract shall be governed by and construed in accordance with English law and **any dispute arising out of or in connection with** this Contract shall be referred to arbitration **in London** in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

...”

# Model Clauses

- Singapore Chamber of Maritime Arbitration (SCMA)  
“Any and all disputes **arising out of or in connection with** this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration **in Singapore** in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (“SCMA Rules”) for the time being in force at the commencement of the arbitration, which rules are deemed to be incorporated by reference to this clause.”

# Multi-Tier Dispute Resolution Clauses

- Negotiation and /or mediation before arbitration
- Time periods triggered by defined and undisputable event
- Arbitration mandatory
- Definition of disputes in identical terms

*Emirates Trading Agency v Prime Mineral Exports* [2014] EWHC 2104 (Comm)

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