Article

Resolving Maritime Disputes Smartly & Effectively

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Mr Punit Oza, Executive Director and Registrar of Singapore Chamber of Maritime Arbitration (SCMA), shares with SMF six ways to resolve maritime disputes smartly and effectively, from paying attention to the dispute resolution clause in the contract, even before there is a dispute, to using SCMA to resolve those disputes.

Let me start with two quotes, which should set the tone for the rest of article.

> **Conflict is inevitable, combat is optional.**
>
> **- Max Lucado, American author**

"Conflict is neither good nor bad. Properly managed, it is absolutely vital." – Kenneth Kaye, American Psychologist
Disputes are a part and parcel of any contractual dealing, including maritime contracts. The key is knowing how to resolve these disputes. Doing it smartly will save you cost, time, effort and maybe even your business relationships.

1. Paying attention to the dispute resolution clause in your contract

The dispute resolution clause must clearly state the seat of the arbitration along with the chosen forum and a reference to the forum's rules. A simple example would be "Arbitration in Singapore, SCMA Rules to apply". Most of the arbitration forums have model clauses. For SCMA's model clauses, including the SCMA BIMCO Law & Arbitration Clause, these can be found here.

2. Selecting the most suitable dispute resolution method to resolve your disputes

I have seen far too many clauses which are vague and ambiguous, causing parties to end up in expensive and unnecessary litigation that they never intended to have. For resolving commercial disputes, arbitration remains the top choice and I highly recommend this method.

Unlike going to the courts, arbitration is private and confidential, less formal and does not involve rigid procedures. It is also cost-effective, involves one or more arbitrators selected by the parties, who are subject matter expert(s) with a cultural and commercial understanding of the dispute. At the same time, the awards are enforceable in over 160 countries through the New York Convention.

Interestingly, arbitration or some form of dispute resolution has been prevalent in commercial disputes since Ancient Greece, while the court system was primarily developed for criminal cases and subsequently for administrative issues involving colonies.

3. Identifying the most suitable venue to arbitrate

So, you have decided to choose arbitration to resolve your disputes. The next step is to choose the most suitable venue to arbitrate. As an economy grows through trade and maritime, the dispute resolution capabilities of the centre also grow along with it. As the top maritime capital of the world, Singapore is well-positioned to provide a suitable environment for dispute resolutions. In fact, Singapore's maritime arbitration landscape has matured over the years.

In a recent survey by Singapore International Dispute Resolution Agency (SIDRA), Singapore was ranked as the most preferred seat for International Commercial Arbitration. Adoption of the UNCITRAL Model Law, being a part of the New York Convention signatories, having a competent judiciary and access to a rich talent pool in both the legal and commercial fields are some of the reasons why Singapore is the most suitable venue to arbitrate. Additionally, you have the freedom to choose any governing law, local or foreign arbitrators, and access to best-in-class virtual hearing facilities.

Most importantly, Singapore is right at the heart of Asia and a melting pot of business, people, and cultures. This ensures proximity of the parties involved, such as lawyers, arbitrators, and expert witnesses. Resolving disputes is as much about cultural sensitivity as commercial and legal competence, especially in arbitration.

Remember – **Deal Global, Dispute Local**. This means that while you may have contractual relationships around the world, choose your dispute resolution venue closer to your business. For Asian companies, Singapore would thus be the most suitable choice.

4. Deciding on the right arbitration model

After selecting the most suitable venue to arbitrate, you would have to choose an arbitration model that meets your needs and preferences. Remember, it is important that this choice must be clearly reflected in the dispute resolution clause of your contract.

The choices for international arbitration in Singapore are between Singapore Chamber of Maritime Arbitration (SCMA) and Singapore International Arbitration Centre (SIAC). The SCMA model is largely an "un-administered" one, which is adopted by nearly all maritime arbitration centres including London. This model provides greater flexibility and autonomy to the parties and the arbitrator(s). SCMA does not monitor or administer the cases, only providing a framework of rules for parties to resolve their disputes. As for the arbitrators' fees, they are directly negotiated between the parties and arbitrators.

Think of SCMA like a football stadium, which allows teams from any nationality to play a match, bring their own referees and use their own rules in the game. All SCMA does is provide the infrastructure to ensure a fair game. This ensures a lower cost for the parties involved as the model is inherently flexible, with minimum involvement. With that said, the SCMA secretariat is able to provide any assistance if required.

On the other hand, the SIAC model is an administered one. They have very specific rules and processes and the arbitrator(s) are much more involved in the case, which requires greater manpower and higher administrative costs. At the same time, under the SIAC model, the arbitrators' fees are charged as a percentage of the amount in disputes and thus, the higher the disputed amount, the greater the fees payable.

Each model has its pros and cons, however, as mentioned, most maritime arbitration models are based on the "un-administered model", given the global scope of operations and the need for greater flexibility and cost-effectiveness.

5. Choosing SCMA to resolve your maritime disputes

Now that you have understood the two models available, allow me to share why SCMA should be your choice for resolving maritime disputes. SCMA was set up on 22nd May 2009 as a specialist forum and framework for maritime disputes. It gives parties considerable autonomy, offering a panel of over 100 experienced arbitrators to choose from and the ability to nominate arbitrators outside the panel as well. Such diversity and choice is critical for parties.

Being a "not for profit" organisation and funded by a public-private partnership, SCMA is free from any "special interest" or "lobby" groups. It mirrors the independence, trust, and neutrality of Singapore as a venue. Essentially, the SCMA model is flexible, well-established and cost-effective.

i. One of both parties are based in Asia
ii. The execution of the contract is based in Asia (thereby ensuring proximity of experts and witnesses in case of dispute).
iii. There is a clear need to use the legal & commercial eco-system of Singapore and Asia.
iv. The nature of the underlying contract is maritime, or trade-related.
v. In case of ad-hoc cases, where there is no clear choice of SCMA or SIAC made by the parties, and the case is maritime, or trade-related.
vi. There is a clear need to understand the Asian culture of the case and the parties involved.

The presence of any of the above indicators makes SCMA the recommended choice for the parties. Remember, this choice must be specified at the time of agreeing to the contract.

6. Using SCMA strategically to resolve maritime disputes

If you choose SCMA to resolve your disputes, here are some key things to remember:

i. Commence an SCMA arbitration to force a response from a non-responsive party. Majority of arbitrations never reach the final award stage and are settled during the arbitration itself. This is common in Asian businesses, where arbitration is another tool to push the "non-responsive" party, who has defaulted, to come to the table. SCMA has made it very easy for a party to commence arbitration by either sending a mail or filling up an easy electronic form.
ii. Use specialised SCMA procedures to resolve disputes in the most efficient manner. If your claim is below USD 150,000, you will auto-qualify for the SCMA Small Claims Procedure, which allows for a single arbitrator, efficient timelines and capped fees of the arbitrator and capped recoverable legal costs. There is a dedicated arbitration procedure for bunker-related claims, and similarly, there is an expedited procedure, SEADOCC, for determination of collision claims. Some of these procedures are unique to SCMA and must be used strategically to save costs and time and get access to experts in the subject-matter of your case.
iii. It is ok to change your mind in the middle of an arbitration and consider mediation. Mediation is another form of dispute resolution, where the parties seek a common ground and eventually settle their disputes, if they can attain such common ground. After commencing arbitration, parties may see the case in a different light and seek mediation to resolve the dispute instead of continuing with arbitration. SCMA provides for such an eventuality and has an Arbitration-Mediation-Arbitration (Arb-Med-Arb) clause. This has several benefits. Firstly, by suggesting mediation using the agreed clause, the party suggesting mediation does not appear as "weak" or "conceding any ground". Secondly, if a settlement does take place, SCMA can enter it as an arbitration award if need be. If mediation fails, the parties can recommence arbitration. Lastly, the SCMA model, being a low-cost one, does not involve frontloading of costs and this makes the detour to mediation cost-effective and practical, where suitable. With a heavy-handed administered model, this would be more challenging.
iv. Enforce the award around the globe. Once you have received the award or settlement, enforce it using the New York Convention and against the counterparty through local courts and institutions.

Remember that the genesis of the dispute resolution clause is during the contract negotiation stage. Once you have a clear and workable dispute resolution clause, even if a dispute does arise, you will not be caught unawares. To ensure a right clause, you need to choose the right dispute resolution method and venue to arbitrate.

In Singapore, SCMA, as a specialist maritime arbitration forum, offers a good model for maritime disputes. Keep in mind the mantra – **Deal Global, Dispute Local**.

I leave you with a quote from Dalai Lama, "Don't let a little dispute injure a great relationship." Disputes are roadblocks on the great business relationship path, it is up to you to navigate them or crash into them!

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