



WANT TO ARBITRATE AT THE SCMA? GET THE CLAUSE RIGHT...

If you wish to have your maritime dispute decided at the SCMA, Singapore's dedicated maritime dispute resolution body, this short article explains how that can be achieved.

THE ARBITRATION CLAUSE

It cannot be repeated often enough: arbitration is consensual. The wording of the arbitration agreement is therefore crucial. Yet, parties sometimes neglect this important clause.

For example, I often see recaps containing very basic clauses such as "*Singapore arbitration English law to apply*". This seems quick and easy, which is what the parties may have wanted. However, if the intention was to arbitrate at the SCMA then it fails to achieve that aim. This is because it has not identified either the SCMA as the place of arbitration, or the SCMA Rules as applying. Accordingly, with this clause the SCMA will have no role to play whatsoever. Rather, Singapore law, by the Singapore International Arbitration Act (Cap 143A), determines that the parties have to agree on a sole arbitrator, and if they fail to agree (which more often than not they will) an application will have to be made to the SIAC to appoint the arbitrator. This is not quick and easy, but risky. It costs money, takes time, and leaves the choice of arbitrator in the hands of an institution/individuals who are likely not familiar with maritime dispute resolution. This enters a potentially dangerous game of pot luck.

On other occasions parties seem satisfied with making crude amendments to existing extensive arbitration clauses. For instance, replacing "*London*" with "*Singapore*" without any consideration for how this might affect the rest of the clause. This is fraught with danger as you may end up in a situation where all arbitrators have to be Baltic Exchange members, involved in the shipping business and carrying on business in Singapore. There are very few arbitrators (only two to my knowledge) who would qualify under those requirements, and your choice is thus limited. What if you have to have a three-person Tribunal?! Alternatively, I have seen clauses calling for arbitration at the "*Singapore Maritime Arbitrators Association*". Although an association by that name does exist, this is not helpful as it appears to have no established rules or panel of arbitrators.

THE SOLUTION

The solution to avoiding the above, and any complications that could follow, is in fact, quick and easy. All you have to do is add a little bit to your recap clause. It would read something like this:

"*Singapore arbitration, English law and SCMA Rules to apply*".

"*Singapore arbitration at the SCMA, English law to apply*".

Adding this change would bring your arbitration safely into the SCMA. It is that simple.

FIND OUT MORE

For further information, please contact:



STEFFEN PEDERSEN
PARTNER
T: +65 8218 8854
E: steffen.pedersen@penningtonslaw.com