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**Arbitration of maritime disputes:
arbitration agreements**

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The arbitration agreement

- Fundamental importance of an arbitration agreement cannot be overstated. It is the foundation for any arbitration.
- Under Qatari law, Article 7 of the Arbitration Law sets out the requirements for an arbitration agreement as follows:
 - the arbitration agreement must be in writing;
 - the arbitration agreement must set out the subject matter of the dispute;
 - the parties must have full legal capacity; and
 - the dispute must be arbitrable.
- Important that the correct forum is sufficiently clear to avoid the risk that disputes are ultimately determined by court litigation.

The arbitration agreement: getting it wrong (1)

In a GENCON charter:

“25. Law and Arbitration (state 19 (a)), 19 (b) or 19 (c) of Cl.19; if 19 (c) agreed also state Place of Arbitration (if not filled in 19 (a) shall apply) (Cl. 19)

QATAR LAW”

The arbitration agreement: getting it wrong (2)

“25. Law and Arbitration (~~state 19 (a)), 19 (b) or 19 (c) of Cl.19; if 19 (c) agreed also state Place of Arbitration (if not filled in 19 (a) shall apply) (Cl. 19)~~

***GA & Arbitration in Qatar and Qatari Law to apply
See Rider Clause 61***

50. Arbitration as per English Law procedure. LMAA procedure venue London.

61. General Average and Arbitration in Qatar and Qatari Law to apply.

(1) The two parties have agreed to settle any dispute arising from this contract or what it entails by seeking arbitration as compulsory alternative to lawsuit, and both sides reserve the right to seek arbitration.

(2) Arbitration is conducted in accordance with the regulations and formalities by the Qatar International Center Mediation and Arbitration (QICMA).”

The arbitration agreement: getting it wrong (3)

“Law and Arbitration.

Any disputes arising or happening during the period of shipment should be referred to the Qatari Law Courts as the ultimate solution for arbitration or jurisdiction.”

The arbitration agreement: getting it right

- The leading institutional arbitrations issue their own model clauses which can be used or amended.
- If drafting your own arbitration agreement, ensure it:
 - 1) Stipulates what disputes are covered, i.e. any and all, or specific only.
 - 2) Will the arbitration be governed by any specific rules.
 - 3) The number of arbitrators, i.e. one or three.
 - 4) What the seat, or legal place, of arbitration is to be.
 - 5) The language to be used in the arbitration.
 - 6) Whether the governing law of the actual contract differs from the arbitration agreement.
- Think about costs!

Arbitral seat

- The place or 'seat' of the arbitration determines the legal jurisdiction to which the arbitration is subject.
- It is different from the law of the contract and determines the procedure or rules which govern the arbitration. It will also determine which national court supervises the arbitration and the extent of any intervention powers.
- The choice of 'seat' means that country's domestic laws will apply to the arbitration. This can be significant given the differences between the nature and extent of court intervention.
- A particular consideration is the degree to which an arbitration award can be challenged and whether that effectively involves a rehearing of the merits.
- The arbitration's administrative law can therefore be different to the law of the contract.

Take home points

- Critically important to ensure that there is a valid and binding arbitration agreement.
- Make sure that the key details of any arbitration such as the 'seat', governing law and any procedural rules are clearly stipulated.
- Ensure that the signatories are all duly authorised to sign the arbitration agreement or any contract within which it is incorporated.

390

Partners

2000

Legal
professionals

3600

Total staff

50+

Offices and associated
offices in 24 countries

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