

IS ARBITRATION YOUR BEST ALTERNATIVE FOR DISPUTE RESOLUTION?

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ALTERNATIVE DISPUTE RESOLUTION (ADR)

- Defined
 - Any method of resolving disagreements other than by litigation

TYPES OF ADR

- Negotiation
 - Formal discussion between people who are trying to reach an agreement. (Merriam-Webster)
- Mediation
 - The attempt to settle a legal dispute through active participation of a third party (mediator) who works to find common ground and encourage an agreed resolution. (Legal Information Institute of Cornell Law School)
- Arbitration
 - Simplified version of trial involving limited discovery and simplified rules of evidence. Outcome decided by third party or panel. (Legal Information Institute of Cornell Law School)

NEGOTIATION

- Dictated by the parties' needs.
- As formal or informal as desired by the parties.



MEDIATION

- General Information
 - No formal rules
 - Open discussion of facts and issues
 - Parties, not mediator, decide the outcome
 - Beneficial for multi-party disputes
 - Commercial face saving opportunity
 - High settlement rates (various types settle between 75-85% in mediation)*Boston Law Collaborative
- Voluntary
 - Parties agree to mediate or it is requested by either party
 - Litigation tactic to better understand opponent's case and narrow issues
 - Quicker disposition (average time between filing complaint and ultimate disposition by Federal District Court is over two years and almost one in six cases are over three years)*U.S. District Court-Judicial Caseload Profile
- Mandatory
 - Court Ordered Mediation
 - Required to take place before trial date can be scheduled or proceedings continued
 - Process is non-binding and settlement is not forced on the parties
 - Means by which Courts narrow issues to be litigated, expedite resolution of cases and clear dockets
 - Majority of states (if not all) require/order mediation of sorts in some types of disputes

ARBITRATION

- General Information
 - Submission of a dispute to one or more impartial persons for a final and binding decision/award
 - Alternative to civil litigation
 - Majority of form charter parties, COAs, ship sale and purchase contracts and commodity contracts provide for resolution of disputes by arbitration
 - Hearings not required; "documents only" is an available option
 - Sole arbitrator (agreed or appointed) or panel
 - Object is to obtain fair resolution of dispute by impartial third party (or panel) without unnecessary expense or delay
 - Contractually based
 - Choice of decision maker, and choice of applicable law and procedure.

NEW YORK ARBITRATION (UNDER SMA RULES)

- Efficient and economical compared to civil litigation and/or London Arbitration (Award issued within 120 days from close of proceedings in 87% of SMA arbitrations) No appointments fees. No administrative fees.
- Transparency: Awards published routinely (parties can opt out)
- Pre-Award security can be ordered
- Discovery subpoenas can be ordered
- Informal and flexible
- Disputes decided by commercial peers drawn from the shipping industry
- Guided, though not bound, by precedent
- Finality (virtually not appealable)
- Final awards can be reduced to a judgement and made an order of the court
- Fees and expenses are routinely awarded in full or part to the winning party
- Over 4300 published awards (SMA Award Service) covering a myriad of issues

LONDON ARBITRATION (UNDER LMAA RULES)

- 75-80% of form charter party, coa, ship sale & purchase and commodity contract disputes are referred to arbitration in London
- Over 3500 LMAA appointments and more than 584 awards were published in 2014. More maritime disputes are referred to arbitration in London than any other place where arbitration is offered.
- LMAA has instituted a Small Claims Procedure for smaller disputes
- Use of English Law based on history of shipping. With global nature of maritime industry, London considered a neutral jurisdiction
- Simpler and (usually) quicker to commence arbitration in London than to initiate civil suit
- Less formal process than court proceedings
- Finality (with some limited exceptions)
- Worldwide enforceability

OTHER ARBITRATION JURISDICTIONS

- Singapore
 - Singapore launched Singapore Chamber of Maritime Arbitration in 2004 with stated aim to win larger share of global maritime legal business given its proximity to Asian markets
- Germany
 - In 1983 Members of the shipping trade and lawyers from Hamburg and Bremen set up the German Maritime Arbitration Association



BENEFITS OF ADR

- Disputes resolved sooner
- Savings in time and expense
- Creative solutions explored
- Even if the dispute is not resolved, the process narrows the issues
- Lays potential groundwork for future settlement





**ANY
QUESTIONS?**