

Arbitration for Liner Shipping

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Dispute Resolution

- ✧ Various forms and depends on the process
 - ✧ Negotiation
 - ✧ Alternative Dispute Resolution Methods
 - + Mediation
 - + Case Evaluation
 - + Expert Determination
 - + Arbitration
 - ✧ Judicial Dispute Resolution
 - + Litigation

Shipping

Charter party –
where Arbitration is
frequently used to
resolve disputes

Liner – Arbitration
rarely used due to the
perceived imbalance
between the parties. Is
this correct?

Why Arbitrate?

✧ Litigation

- ❖ Differences in the systems of law
- ❖ Knowledge of the judicial participants
- ❖ Public knowledge
- ❖ Procedural issues – should be available under the jurisdiction
- ❖ Enforceability – Hague Choice of Court Convention

Why Arbitrate?

✧ Arbitration

- ❖ Consensual process
- ❖ Confidential
- ❖ Availability of commercial arbitrators
- ❖ Party Representation
- ❖ Enforceability – The New York Convention

Issues with Arbitration

- ✧ Summary Procedure (see Rule 29 of the [SIAC Rules of 2016](#))
- ✧ Joinder / Consolidation (see Rule 7 & 9 of the [SIAC Rules of 2016](#))
- ✧ Seat
- ✧ Costs
- ✧ Time lines
- ✧ Whether Arbitration would fall foul of applicable cargo convention / legislation
 - [Art III Rule 8 of the HV Rules](#)
 - See S 11(2)(b) of the Australian COGSA

Art III R 8 of HV Rules

Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

S 11(2)(b) & 11(3) of the Australian COGSA

11(2)(b)

- An agreement (whether made in Australia or elsewhere) has no effect so far as it purports to preclude or limit the jurisdiction of a court of the Commonwealth or of a State or Territory in respect of a bill of lading or a document mentioned in subsection (1)

11(3)

- An agreement, or a provision of an agreement, that provides for the resolution of a dispute by arbitration is not made ineffective by subsection (2) (despite the fact that it may preclude or limit the jurisdiction of a court) if, under the agreement or provision, the arbitration must be conducted in Australia.

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Arbitration Requirements

1. Contract must be in writing

- [New York Convention](#)
- [UNCITRAL Model Law](#)
- [English Arbitration Act 1996](#)
- [Chinese Arbitration Act](#)

2. Incorporation into the contract

- Bill of Lading only evidence of the contract between the original parties (see The Ardennes)
- Parties should be aware of the Arbitration clause prior to formation of contract

Other Arbitration Requirements

1. Subrogated Action

- Common Law jurisdictions
- Other / Civil Law jurisdictions
 - Requirement of prior knowledge and consent

2. Type of Arbitration

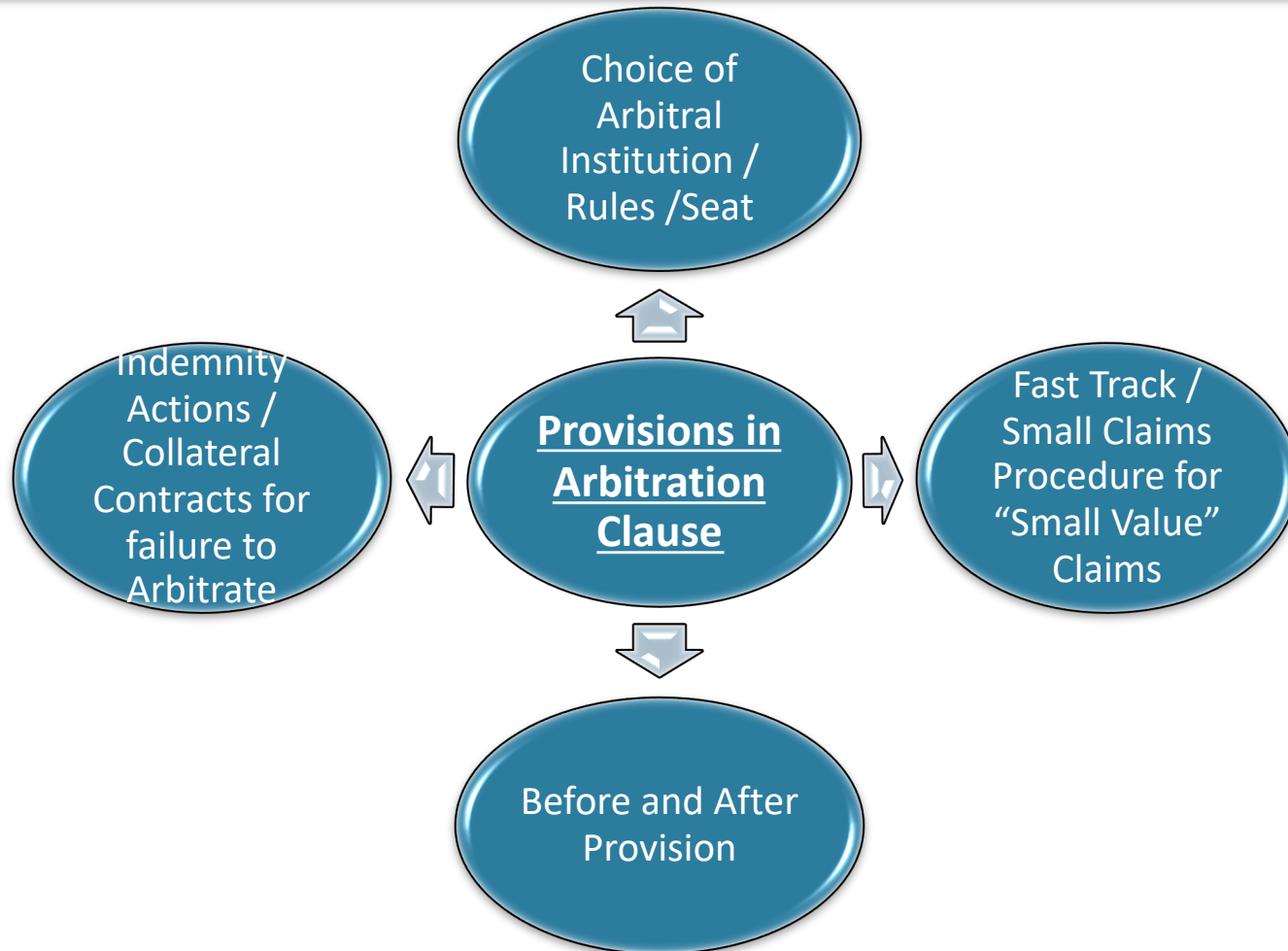
- Institutional
- Ad Hoc

Other Arbitration Requirements

3. Seat of Arbitration

- Australian COGSA and similar legislation
- Rotterdam Rules

4. The Indian MTGA 1993



DUBAI DEVELOPMENTS

◆ Dual Jurisdiction

- Civil Law Courts
- Common Law Courts – DIFC
 - ✓ Court of First Instance > AED 100,000
 - ✓ Small Claims Tribunal < AED 100,000
 - ✓ Court of Appeal

DUBAI DEVELOPMENTS

- ◆ Jurisdiction of DIFC: Law No. 16 of 2011 ("Law 16"): extended to include claims in which parties agreed in writing (before or after the disputes were raised)

- ◆ Arbitration:
 - Dubai International Arbitration Centre
 - Emirates Arbitration
 - Issues: Authority of party to enter into arbitration agreements
 - Whether this could be circumvented using the jurisdiction of common law courts of DIFC?
 - If yes, submitted that use of Arbitration Clause with Exclusive jurisdiction of DIFC courts would resolve this.

Conclusion

1. Arbitration would reduce costs / time
2. Fairer resolution
3. Tactical choices would be reduced
4. Focus will be on resolving claims
5. Processes can be tailor made
6. Can include other ADR processes such as Mediation