

Arbitration for Liner Bills of Lading

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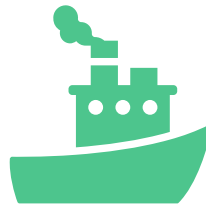
Member, Singapore Maritime Arbitrators Association



Background



**Arbitration preferred choice of DR
for CP and which includes Bs/L
issued pursuant to a CP**



Different in the case of Liner Bs/L



**Contractual differences
Difference in bargaining powers
Boilerplate contract**

Top 5 Container Lines

- **MSC** – 18.2% - English Law & High Court of London + (US jurisdiction for US shipments + entitlement of Carrier to pursue in another jurisdiction)
- **Maersk** – 15.8% - English Law & High Court of London + (US jurisdiction for US shipments + entitlement of Carrier to pursue in another jurisdiction)
- **CMA CGM** – 12.8% - French Law & Tribunal de Commerce de Marseille + entitlement of Carrier to pursue in another jurisdiction
- **Cosco** – 10.9% - PRC Law & Shanghai Maritime Court + (US jurisdiction for US shipments + entitlement of Carrier to pursue in another jurisdiction)
- **Hapag Lloyd** – 6.8% - German Law & Hamburg Court + entitlement of Carrier to pursue in another jurisdiction



Top 10 Container Lines

English Law & London
Jurisdiction – 43%

Singapore Law &
Jurisdiction – 5.8%

Other Carriers – Law and
jurisdiction where they
are registered (civil law
countries)

Reserve their rights to
pursue in the jurisdiction
where the cargo
interests are based at



Liner Bs/L - Dispute Resolution Clause

- **Specific law & jurisdiction**
- **Most provide for US jurisdiction for US Shipments**
- **Carriers generally reserve their rights to pursue in the jurisdiction where the cargo interests are based at**



Common claims

- Cargo related – Damage, Mis and Non-Delivery
- Damage to Carrying Vessel and 3rd party due to improper stowage / misdeclaration of cargo
- Container detention and demurrage.
- Delay
- General Average
- Salvage
- Customs and other penalties which may be imposed by authorities.



Quantum of Claims

70 % of disputes –
below USD
100,000

25% of disputes -
USD 100,000 to
USD 300,000 (say
25%)

5% exceeding USD
300,000

Prevailing Issues



DRC may conflict with the provisions of the domestic law



Asymmetric DRC and may be struck off...

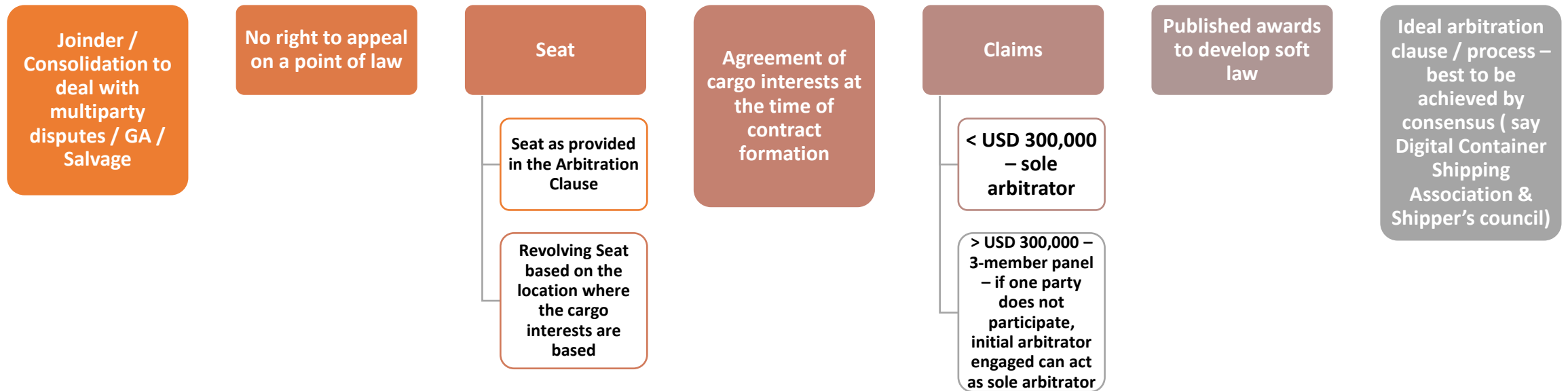
Why arbitrate?

**Quick effective processes
keeping in mind the
amounts in dispute (small
claims procedure /
abridged or full
procedure)**

**Court processes may not
be the best fit
(requirement of
knowledge and resources)**

**Easy enforceability *vis-à-vis*
court judgements**

Arbitration for Liner Bs/L



Suggested Arbitration Clause

“Any and all disputes arising out of or in connection with this Bill of Lading contract shall be referred to and finally resolved by arbitration seated in the location where the cargo interests are based or pursued) in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration ("SCMA Rules") current at the commencement of the arbitration/ in accordance with the London Maritime Arbitrators Association (LMAA) Terms, including the Small Claims Procedure for claims and counterclaims below USD 100,000 current at the commencement of the arbitration time (choose either SCMA or LMMA by striking out the other), which rules/terms are deemed to be incorporated by reference in this clause. Parties agree to waive both their rights to any right of appeal and inherent confidentiality or otherwise permitting for the details of the dispute to be provided to interested third parties including publishing of awards”.



Liner arbitration - Benefits

Enlarge the pie for
maritime
arbitration

Young arbitrators
experience

Deal with disputes
which are not
considered....

Conclusion



Prevailing drc's not the best fit



**Arbitration can be considered
and which is of benefit to all**



**Positive spin offs by having
arbitration as the DRP for
liner bills of lading**



Any Questions



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