

SHIPPING DISPUTES RESOLUTION

Dispute resolution under the rules of the Piraeus Association of Maritime Arbitration

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How are shipping disputes resolved in Greece?

The Maritime Court of Piraeus has exclusive jurisdiction to resolve maritime disputes in the Attica region. However, extra-judicial/Alternative Dispute Resolution “ADR” methods (Arbitration and recently Mediation) have been introduced into the Greek legal system to resolve maritime and commercial disputes, in order to capitalize on the advantages of ADR over the more complex, slow, money-and-time-consuming litigation. The Piraeus Association of Maritime Arbitration “PAMA” was founded to effectively address disputes in the worldwide shipping and commodity trades. A PAMA arbitration is conducted in accordance with the PAMA Rules for Maritime Arbitration 2007, which are governed in terms of procedure by Law 2735/1999 on International Commercial Arbitration.

What are the advantages of incorporating the PAMA Rules?

Unless the arbitration clause expressly provides that the PAMA Rules shall apply, the arbitration procedure shall be conducted in accordance with Law 2735/1999. By incorporating the PAMA Rules in the arbitration clause, the parties can derive great benefits. The Rules allow a party to consolidate disputes, to force the other party to arbitrate without having to compel arbitration in court, to have more flexibility, shorter time limits and a quicker and less expensive procedure.

Which disputes may be referred to and arbitrated by PAMA?

The contracting parties may, by an arbitration agreement, refer to PAMA any dispute arising in a shipping or commercial transaction. Such agreement may be incorporated in the contract as an arbitration clause or may form a separate agreement. Reference in a contract to another document incorporating an arbitration clause is valid and binding on the parties. An arbitration clause in a Bill of Lading is binding on the carrier, the shipper and the subsequent assignees of the BoL.

What is the wording of a common arbitration clause or agreement?

“Any dispute arising out of, or in connection with this Agreement shall be referred to and resolved by arbitration in Piraeus in accordance with the PAMA Rules in force”. However, it is customary for the parties to describe therein how the arbitration will be initiated, the number of arbitrators, the procedure of their appointment and the consequences of failing to appoint an arbitrator.

What if litigation proceedings have commenced before a court regarding a dispute for which there is an arbitration agreement?

A party, against whom litigation proceedings are brought regarding a dispute, which under an arbitration agreement is to be referred to arbitration, may apply to the court for a stay of proceedings. If the arbitration agreement is valid, the court refers the dispute to arbitration. However, a party is entitled to file before a competent court an application for injunction or security measures to protect its interests before or after the arbitration proceedings have commenced.

Where are the hearings held?

Unless the parties agree otherwise, the place of arbitration is Piraeus, Greece.

What is the language of an arbitration under the PAMA Rules?

The arbitration shall be conducted in the Greek language, unless a party expressly disagrees in writing, in which case the arbitration shall be conducted in the English language.

How is a PAMA arbitration proceeding initiated?

The claimant notifies in writing to the other party that he is invoking the arbitration clause in the contract, stating the factual circumstances giving rise to the claim, the amount claimed and any other demand. This document should be notified to PAMA within 15 business days from its notification to the other party.

Does PAMA charge an administrative fee?

A non-refundable administrative fee, of €500 for a documents-only arbitration and of €2,000 for an oral hearing arbitration is payable within 15 business days from the notification of the document invoking the arbitration clause. If the respondent submits a counter-claim, he shall bear the same obligation to pay the administrative fee.

Who are the members of PAMA and where can one find PAMA arbitrators?

Members of PAMA are commercial people of varied backgrounds and wide-ranging experience in numerous areas of the shipping industry including maritime lawyers, law professors, judges, shipowners, shipbrokers and marine engineers. PAMA publishes a roster of its members containing a description of their background, experience and expertise.

Are PAMA arbitrators impartial?

Under the PAMA Rules and Greek laws, arbitrators are independent and should attend all matters with strict impartiality irrespective of whether they are party-appointed and owe an equal duty to both parties.

In case an issue arises regarding the proposed arbitrator's impartiality, the latter should disclose this immediately to the parties. A party may apply for removal of an appointed arbitrator if there are justifiable doubts as to his impartiality.

What are the arbitrators' fees?

Each arbitrator shall be entitled to a fee calculated on the basis of the value of the amount in dispute and varied depending on whether the arbitration is conducted by an oral

hearing or by documents-only, the time of the procedure and complexity of the dispute. It is based on a published Table of Fees determined and periodically readjusted by PAMA, which sets the upper and lower limits.

How is an arbitrator appointed?

According to the PAMA Rules and unless the parties agree otherwise, if the dispute does not exceed €50,000 a sole arbitrator shall be appointed upon agreement of the parties within 15 business days from the commencement of the arbitration. Should the claim exceed €50,000, the Tribunal shall consist of three arbitrators. Each party shall appoint one and the arbitrator's acceptance should be notified to PAMA within 15 business days. The two appointed arbitrators shall appoint the third and chairman of the Tribunal. Such appointment, together with the appointment of an agent for service within Attica, should be notified in writing to the other party within 15 business days of the commencement of arbitration.

What is the procedure if the other party does not appoint an arbitrator?

Under the PAMA Rules, in case the parties fail to appoint either the sole arbitrator or their own or the two appointed arbitrators fail to appoint the chairman of the Tribunal, such appointment shall be made by the President of PAMA from the Roster of Arbitrators within 5 business days of the submission of a relevant request by any party. If the PAMA Rules have not been incorporated, then the Court of First Instance shall appoint them, upon application of a party.

Following the appointment of arbitrators, what are the next procedural steps in an arbitration conducted by an oral hearing?

The Tribunal shall meet to regulate the arbitration procedure. It may invite the claimant to submit a supplementary description of the claim within 20 business days or It may invite the parties to attend preliminary meetings in order to properly prepare the oral hearing, if the dispute is complicated.

The parties are invited to submit written pleadings and all evidence within 20 business days. The claimant may modify his claim or factual or legal basis with his pleadings at the latest. The respondent may submit a counter-claim with his pleadings.

Within 5 business days of receipt of the parties' pleadings and evidence, the Tribunal invites them to submit a rebuttal within 10 business days or 20 business days if a counter-claim was submitted. The respondent may modify his counter-claim with his rebuttal.

A report by a person possessing special expertise or knowledge may be submitted to the Tribunal and brought to the attention of the parties at least 5 business days before the commencement of the oral hearing. The expert may be requested to be examined and cross-examined during the hearing.

The Tribunal shall fix the hearing date no later than 60 days from the submission of the parties rebuttals and determine the number of witnesses to be examined before it. Each party should inform the Tribunal of the witnesses it intends to examine at least 10 business days before the commencement of the hearing and the Tribunal shall advise the other party of these witnesses at least 5 business days before the hearing. The hearing may also take place by teleconference if need be.

Within 7 business days of the end of the hearing, the parties may submit a memorandum of evaluation of the hearing.

Can an arbitration be conducted without a hearing?

If the claim does not exceed €50,000, the arbitration shall be conducted by documents-only, unless the arbitrator rules otherwise. Should the parties agree, a documents-only arbitration may be conducted even if the claim exceeds €50,000. Regarding the submission of pleadings, evidence and rebuttals the same as above also apply to documents-only cases.

What is the jurisdiction of the Tribunal?

An arbitration clause incorporated in a contract consists a separate agreement and remains valid even if the main contract is void. Thus, the Tribunal shall have jurisdiction to rule on its own jurisdiction and on the existence and validity of the arbitration agreement.

If there are many parties to a dispute, can the various cases be consolidated in one arbitration proceeding under the PAMA Rules?

If upon a request of a party, two or more Tribunals determine that common issues of fact or law arise in the arbitration procedures pending before them, they may decide to hold joint hearings, saving time and expense by providing an efficient and coordinated proceeding.

Can a party apply to the arbitration Tribunal for interim measures?

The Tribunal, upon application, may order interim measures if considered necessary against the other party either conditionally on providing appropriate security or unconditionally.

Should the parties be represented by lawyers before the Tribunal?

It is not mandatory to be represented by lawyers. However, the parties should carefully consider proceeding without an attorney at law or a legal counsel whenever substantial sums of money or complex points of law are in issue.

What if a party fails to attend an oral hearing or fails to submit its pleadings or evidence?

If, without proving sufficient cause, a party fails to attend or be represented at a hearing of which due notice was given, or fails after due notice to submit written pleadings or evidence, the Tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written submissions or evidence on his behalf, and may issue an award on the basis of the evidence before it.

Can the parties choose the substantive law to apply to their dispute?

The Tribunal shall apply the substantive law agreed by the parties. In the absence of an express or implied choice of applicable law, the Tribunal shall apply the law it deems more appropriate for the particular case.

What if the three arbitrators do not agree?

If the Tribunal consists of more than one arbitrator, the decision is issued by simple majority. If the decision of the arbitrators is unanimous, they may issue an award on any issue of the arbitration. If however a majority is not achieved, the vote of the chairman of the Tribunal renders the award final.

When will the Tribunal issue the award?

The Tribunal shall issue the final award within 60 days of the submission of the memoranda of evaluation of the hearing or the expiration of the time limit provided for such submission. Then, it shall notify the award to the parties.

Are the arbitration awards reasoned?

All awards are issued with reasons. An award may be issued without reasons if the parties have previously and expressly agreed. However, it may be accompanied by a separate unofficial and confidential document which briefly states the reasons.

Can PAMA arbitrators issue awards in a foreign currency?

PAMA arbitrators can award sums in a foreign currency.

Are arbitration awards published?

Arbitration awards are confidential and are not published in case-law reviews or legal journals. However, an award may be published, without disclosing the names of the parties, arbitrators, legal counsels or ship concerned, if the parties agree and it is considered to be of general interest or particular significance.

Are PAMA arbitration awards enforceable in court?

An award made by the Tribunal pursuant to an arbitration agreement is final and binding on both parties and enforceable according to the provisions of article 904 of the Greek Code of Civil Procedure. An award made by the Tribunal pursuant to an arbitration agreement may be enforced in Greece in the same manner and to the same effect as a judgment or order of the court, after filing it with the Clerk of the competent Court of First Instance, pursuant to article 918 of CCP.

Are PAMA arbitration awards appealable?

The award is not-appealable. An award may be corrected or interpreted upon motion of a party within 30 days from the notification of the award. However, the award can be challenged, exclusively for narrowly defined legal issues arising out of the award, by filing an annulment application with the Piraeus Court of Appeal. The Court may revoke an award only if it is proven that the arbitration agreement was null and void or for lack of substantive jurisdiction, or for a serious irregularity in the appointment of arbitrators or the arbitration procedure or the award or if the award is against Greek public policy. The annulment application should be filed within 3 months of the date of notification of the award to the applicant and does not suspend the award's enforceability effect. The applicant may apply to the Court for suspension of its enforceability effect, which the Court may grant if it considers that the application for annulment would probably succeed. The judgment of the Court of Appeal may be challenged by an appeal in cassation to the Supreme Court.

How will the arbitration costs be allocated?

Upon issuing the final arbitration award, the Tribunal advises the parties of the fees and expenses of each arbitrator and the arbitration and allocates the costs upon consideration of all the circumstances of the arbitration and especially the extent of success and defeat of

each party. The Tribunal may ask the parties for an advance payment against the estimated total fees of the arbitration and it may refrain from communicating the award to the parties until all fees have been fully paid.

What if the parties have settled their dispute before the issuance of the award?

If the parties have reached a settlement agreement before the issuance of the award, upon request of the parties, the Tribunal shall record the settlement reached and agreed by the parties in the form of an award, which shall have the same status and effect as any other arbitration award.

Is there any other type of ADR for maritime disputes?

Mediation is a non-binding process which can result in an amicable settlement of a maritime or any other commercial dispute in a quick, confidential and cost-effective way while preserving long-term business relationships. Although PAMA has not formulated terms for the resolution of disputes by mediation, a new legislation passed in Greece enables the parties to submit a dispute to mediation at any stage. More on mediation can be found in chapter 1.5.

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