

THE RULES OF THE SMALL CLAIMS ARBITRATION SCHEME OF **THE MARITIME ARBITRATORS ASSOCIATION of NIGERIA** 2006 1ST EDITION (To apply to applications received on or after 1st May 2006)

This innovative Scheme has been developed to resolve small claims disputes within the maritime industry.

1. Introduction

1.1 The Small Claims Arbitration Scheme for the Maritime Industry ("the Scheme") applies to claims for compensation sought in respect of disputes arising from any contract, agreement or transaction within the Nigerian maritime industry or community such as claims between stevedores and hirers, seafarers and employers, forwarding and freighting companies, ship owners and/or carriers or their agents and cargo owners or their agents, employers and contractors etc.

1.2 These Rules apply to all applications for arbitration received on or after 1 st May 2006 and may be revised from time to time by the Maritime Arbitrators Association of Nigeria ("the Association"), provided that any such revisions shall be published and brought to the notice of the Nigerian maritime industry.

1.3 All claims for compensation under this Scheme must be made in Naira only.

1.4 All claims must be made in writing in English. Where video evidence is submitted any commentary must be in English.

1.5 Under the Scheme:

(a) Claims cannot be made where the amount claimed exceeds N2,000,000 (Two Million Naira);

(b) Counterclaims cannot be made where the amount claimed exceeds N2,000,000 (Two Million Naira);

(c) Any claims arising from the same transaction will be consolidated and the limits set out above will apply.

1.6 The Scheme is designed to deal with claims for general compensation arising from breach of contract and/or negligence and is applicable where both the Claimant and the Respondent agree to settle their disputes in accordance with the Scheme, either before or after the dispute has arisen, or where any professional or industry association in any segment of the Nigerian Maritime Industry subscribes to the Scheme and makes it applicable to its members in the settlement of any disputes arising from their activities.

2. Commencement of Arbitration Proceedings and Arbitration Procedure

2.1 The arbitration starts when the Claimant has signed and submitted to the Association the prescribed application form together with a Statement of Claim containing a schedule of his claim ("the Claim") accompanied by clear copies of all

relevant documents. This is to be in duplicate (or in triplicate where the Claimant has identified two Respondents). The Claim must be accompanied by the appropriate registration fee prescribed in the application form, which shall be fixed from time to time by the Executive Council of the Association. No action will be taken by the Association on any application not accompanied by the appropriate registration fee. A copy of the prescribed application form is available from the Association in hard copy.

2.2 The Claimant's registration fee is charged on the scale set out in the application form and is non-refundable except as provided in these Rules. The registration fee does not include expenses, such as the hiring of an arbitration room where necessary, which shall in the first instance be paid by the Claimant on demand.

2.3 Upon receipt of the Claim from the Claimant, the Association will forward the documentation to the Respondent, giving the Respondent 21 days in which to either settle the claim with the Claimant or to submit to the Association a Defence to the Claim (which may include a Counterclaim), in duplicate, or triplicate if there are two Respondents.

2.4 If a settlement is made within the 21-day period, the Claimant must notify the Association in writing that a full and final settlement has been reached and that the arbitration should be withdrawn.

2.5 If a settlement is made within the period prescribed above, the Claimant shall be entitled to a refund of half of the registration fee paid while the other half shall be retained by the Association as its administrative expenses.

2.6 Upon receipt of the Respondent's Defence to Claim (and Counterclaim, if any) the Association will forward a copy of it to the Claimant, who then has 14 days from date of receipt to submit a Reply on the Defence and a Defence to the Counterclaim, if any. The Reply on the Defence must not include any new claims, but shall simply reply to the Defence to Claim submitted. It shall be submitted in duplicate or triplicate as appropriate. The same provision shall apply to the Respondent where there is a defence to a Counterclaim.

2.7 In the event of the Respondent making a Counterclaim which exceeds the amount of the Claim, he shall pay an additional registration fee based on the amount by which the Counterclaim exceeds the Claim as prescribed in the application form. Payment of such fee within 14 days of service of Defence to Claim and Counterclaim shall be a condition precedent to the Respondent's entitlement to bring any such Counterclaim within the proceedings.

2.8 The Association will send a copy of the Claimant's Reply on the Defence to the Respondent and the Respondent's Reply on the Defence to the Counterclaim to the Claimant, but neither party is permitted to make any further reply without the express approval of the Arbitrator.

2.9 Both the Claimant and the Respondent shall attach clear copies of all the documents including any experts' reports with which they intend to prove their Claim or support their Defence to the Claim.

2.10 Subject to the Association's discretion to refuse to make an appointment in which case the total registration fee paid shall become refundable, a single Arbitrator will then be appointed by the President or Vice-President of the Association. Subject to any Directions given by the Arbitrator, the arbitration procedure will be on documents only. The Arbitrators selected for appointment are generally members of the Association but in appropriate cases a non-member of the Association may be selected where a particular expertise so requires. All appointments are within the Association's exclusive and unfettered control.

2.11 An award shall be made in writing by the Arbitrator giving reasons for the award within 30 days, in a documents only case, from the date when he received all relevant documents and submissions, or, where there is an oral hearing, from the conclusion of the hearing.

2.12 An award cannot be made for an amount in excess of the amount (excluding interest and cost) claimed in the application form or Counterclaim, if any.

2.13 Any payment ordered by an award must be made within 30 days of the date of receipt of the award. Unless the award directs otherwise, payment of a sum awarded must be made directly between the Parties and not through the Arbitrator or the Association. Arbitration awards are directly enforceable through the courts under the provisions of the Arbitration and Conciliation Act, Cap. 19, Laws of the Federation of Nigeria, 1990, or any statutory re-enactment or modification thereof for the time being in force. Enforcement is the responsibility of the party seeking it and the Association is unable to offer any assistance in this regard.

2.14 Original documents where requested by the Arbitrator will be returned to the Parties after 45 days have elapsed from the date of the award.

2.15 Arbitrators may request the provision of any further documents, information or submissions that they consider would assist them in their decision. If any document, information or submission requested is not sent to the Arbitrator or the Association within the time prescribed, the Arbitrator will proceed on the basis only of the documents before him.

2.16 Documents submitted by the Parties other than those contained within the Claim or Counterclaim, the Defence to Claim or Counterclaim or Reply on the Defence will not be admissible as of right but at the Arbitrator's sole discretion. Where a party submits such documents, the Arbitrator will decide whether or not they are admissible. Where the documents are held to be admissible, the other Party will be sent copies and be entitled to comment on them before an award is made.

2.17 If a Respondent does not submit its Defence to Claim within the time allowed and does not send one within 14 days of a reminder by the Association, the Arbitrator will be appointed and, subject to any Arbitrator's Directions given, which may include the submission of the overdue Defence within a specified period of time, the dispute will be decided by reference to the documents submitted by the Claimant.

2.18 If, in the Arbitrator's opinion which shall be final and binding on the parties, the dispute is not capable of proper resolution on documents only, the Arbitrator shall in consultation with the Parties and/or their representatives issue Directions as to the submission of witness statements and/or taking of oral evidence from witnesses or any other steps as may be appropriate to the case.

3. Contents of Submissions for Arbitration

3.1 The Claim shall include:

(a) A description of the Claim made, which should not seek recovery of an amount greater than that stated in these Rules and the arbitration application form

(b) All evidence that is available to support the claim, including, but not limited to, complaints lodged with any body or organization, or photographs or a video recording

(c) All supporting documents including experts' reports and other evidence including photographs and medical evidence shall be submitted in duplicate, or where there are two Respondents, in triplicate. Where videos are submitted the relevant extract shall be in VHS Standard format, shall not exceed 15 minutes running time, but may include a commentary in English. Videos should also be submitted in duplicate or triplicate.

3.2 If the Claimant is unable to submit the documents which provide evidence of the original contract or agreement between the parties, the Respondent shall submit a copy of such documents with the Defence.

3.3 The Defence to Claim shall be in writing in the same form prescribed for the Claim, i.e. in documentary form, in duplicate (triplicate if two Respondents), and forwarded to the Association at its address and shall include:

(a) A copy of the original contract agreement between the parties or any variations made to it if not already submitted by the Claimant

(b) Details of those matters in the Claimant's documents which are accepted or agreed

(c) Details of those matters which are disputed, and the reasons therefor

(d) Any supporting documents relied on as evidence including experts' reports

3.4 Reply on the Defence to Claim or Counterclaim should be submitted in writing in duplicate (triplicate if two Respondents).

4. Powers of the Arbitrator

4.1 Any Arbitrator appointed shall be, and remain at all times throughout the arbitration impartial and independent of the Parties, and shall decide the case in accordance with the relevant law.

4.2 Any Arbitrator should also act reasonably and expeditiously, and in a way that provide a fair means of resolving the dispute.

4.3 The Arbitrator may, in his/her absolute discretion, refuse to consider documents or evidence that are not submitted within the timescales set down by these Rules and/or any Directions made by the Arbitrator.

4.4 Where the Arbitrator considers that a claim made on behalf of the Claimant and others should be the subject of two or more separate arbitrations, he may in his absolute discretion refuse to deal with multiple claims in the single reference.

4.5 When deciding on liability and amount of award, the Arbitrator must not take into account any offers of settlement that have been made by either Party, but it shall be open to the Arbitrator to have regard to such offers when awarding to any Party the reimbursement of the registration fee under Rule 5.1.

4.6 The Arbitrator shall have full jurisdiction to consider whether any claim made falls within his/her powers to determine, and, assuming that such course is reasonable having regard to all the circumstances of the case, and having regard to cost, to request legal or expert assistance provided that the Parties have had a full opportunity to comment upon such assistance.

4.7 Upon the application of the Claimant, within the time set out in Rule 2.3, or of the Respondent, a Second Respondent can be joined to the claim.

4.8 The Arbitrator shall direct the procedure of the arbitration including the amendment of time limits and other procedural matters and shall have power to:

(a) Allow submission of further evidence and the amendment of the Statement of Claim or Defence to Claim

(b) Order the Parties to produce goods, documents or property for inspection

(c) Conduct such enquiries at such places as may be desirable

(d) Receive and take into account any relevant oral or written evidence

(e) Proceed with the arbitration if either Party:-

i Fails to comply with these Rules or with any Directions or

ii Fails, after receiving due notice, to attend any meeting ordered by the Arbitrator.

5. Costs

5.1 Subject to the limitation in Rule 5.2 below, the Arbitrator has the power to make such orders for costs as in his absolute discretion he thinks fair, including the power to apportion costs payable or recoverable as between multiple Respondents. The successful party will normally be awarded his costs of the arbitration subject to the maximum sum mentioned below.

5.2 The maximum amount that may be awarded to either Party as recompense for costs expended in the arbitration shall be an amount equal to the Claimant's registration fee for the arbitration.

5.3 In exercising his discretion, the Arbitrator may have regard to only offers made to settle the dispute prior to the commencement of the arbitration.

5.4 The Arbitrator shall not have power to order the provision of security for costs of the arbitration.

5.5 Each Party shall bear its own costs of preparing and submitting its case.

6. Finality of Award

6.1 The Award of the Arbitrator is final and binding on the Parties, and any payments that the Arbitrator directs to be paid must be paid within 30 days of the date of receipt of the award.

7. Confidentiality

7.1 No party involved in any arbitration under the Rules, the Association or the Arbitrator, shall disclose explicit details of the proceedings unless it is necessary to do so in order to enforce or challenge the Award.

8. General

8.1 The applicable law of the Arbitration shall be determined by the Arbitrator if the Parties fail to agree.

8.2 The Association reserves the right to appoint a substitute Arbitrator if the Arbitrator originally appointed dies, is incapacitated or is for any reason unable to deal expeditiously with the dispute. The Parties shall be duly notified of any substitution.

8.3 Subject to the right of either Party to request the Association to draw the Arbitrator's attention to any accidental slip or omission which he has power to correct by law, neither the Association nor the Arbitrator can enter into correspondence regarding an Award made under the Scheme.

Neither the Association nor the Arbitrator shall be liable to any Party for any act or omission in connection with any arbitration conducted under these Rules or the Scheme, save that the Arbitrator (but not the Association) shall be liable for any wrongdoing on his own part arising from bad faith.