



VANCOUVER MARITIME ARBITRATORS ASSOCIATION

ARBITRATION RULES 2016

A. RULES A PART OF THE ARBITRATION AGREEMENT

1. (a) The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration under the rules of the Vancouver Maritime Arbitrators Association ("VMAA"). These Rules and any amendment thereof shall apply in the form existing at the time any dispute which may be arbitrated arises.
- (b) The **Commercial Arbitration Code**, excluding Article 1(1), (the "Code") attached as the Schedule to the Commercial Arbitration Act, R.S., 1985, c. 17 of Canada shall form part of these Rules. In the event of a conflict between these Rules and the Code, these Rules shall prevail.
2. The object of these Rules is to provide a framework for the determination of a dispute submitted for arbitration in a confidential, fair, efficient and cost-effective manner. The parties are free to modify these Rules as they see fit but any such agreement to modify must be confirmed to the VMAA prior to the appointment of an arbitral tribunal, and thereafter the arbitral tribunal once constituted.
3. All procedures contemplated by these Rules are confidential. Any documents disclosed or produced during the course of these procedures and not in the public domain shall remain confidential, except where disclosure may be required by a legal duty, to protect or enforce a legal right, or to enforce or challenge an arbitral award in legal proceedings.

B. COMMUNICATIONS

4. All means of communication allowing for a written record of the transmission are acceptable.
5. Communications between the parties may be made in accordance with (a) their contract; (b) by any method in which there is proof in writing of receipt; (c) if it is physically delivered to the intended recipient; or (d) it is physically delivered to the habitual place of business or mailing address of the intended recipient.
6. Computations of time provided for by these Rules shall run from the day following receipt of the communication unless such day is an official holiday or non-business day at the place of receipt, in which case the communication is deemed received on the next business day which follows.

C. TRIBUNAL

7. A tribunal appointed in accordance with these Rules for the settlement of a dispute by arbitration shall consist of a single arbitrator or a panel of three arbitrators and shall be called the "Tribunal".
- 8.. VMAA shall establish and maintain lists of persons whose qualifications have been accepted by the VMAA as able to act as arbitrators in maritime and transportation issue disputes and parties may appoint the Tribunal therefrom in the manner prescribed in these Rules.



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9. The VMAA may enter into a reciprocal arrangement with other arbitral institutions recognizing the arbitrators of those institutions as qualified to act as arbitrator in which case those persons are deemed included on the VMAA list of arbitrators.
10. Where the amount in dispute is no more than US\$100,000 then the dispute shall be determined by a Tribunal consisting of a single arbitrator.
11. Where the amount in dispute is more than US\$100,000 then the Tribunal may be constituted by a single arbitrator or by each party appointing an arbitrator, and the arbitrators so appointed appointing a third arbitrator who shall act as chairperson. .
12. The office of the Tribunal is where the single arbitrator or the Chairperson of a Tribunal designates. Prior to the constitution of a Tribunal, all requests are to be made to the president of the VMAA at the office of the VMAA c/o the Chamber of Shipping of British Columbia, Suite 100 - 1111 West Hastings Street, Vancouver, B C Canada, V6E 2J3; Telephone 604.681.2351, Fax 604.681.4364.
13. Any party seeking to use these Rules shall register their dispute with the VMAA, and shall pay to the VMAA an administration fee in the amount of \$250.

D. CONTRACT REFEREE

14. Parties to a contract that have agreed to the determination of their disputes by these Rules, may during the course of their contract in which there are continuing performance obligations seek the appointment of a contract referee to resolve disputes regarding past or future compliance with the parties' respective contractual obligations by applying to the president of the VMAA for the appointment from the VMAA list of arbitrators of such referee (the "Contract Referee"). In making such a request the parties will specify whether any special qualifications of the Contract Referee are desirable.
15. The Contract Referee after consultation with the parties and conducting such investigations as he/she may deem necessary will determine the facts to that time and issue a decision on the dispute of the parties.
16. Unless the decision of the Contract Referee is appealed within 30 days by one or more of the parties, the findings of fact and decision shall be binding on the parties and any Tribunal. An appeal of the decision of the Contract Referee is accomplished by commencing an arbitration.
17. The parties utilizing the services of the Contract Referee are jointly and severally liable for the costs and fees of the Contract Referee. The Contract Referee may withhold any decision until such time as his/her fees have been paid.
18. Once a Contract Referee has been appointed, the parties are free to use the same person for any further disputes that may arise during the course of their contract, without re-registering or making a further request to the VMAA.

E. EMERGENCY ARBITRATOR

19. Prior to the constitution of a Tribunal, a party may request the president of the VMAA to appoint from the VMAA list of arbitrators an Emergency Arbitrator to grant interim relief. Such a request will be copied and sent to the other party or parties to the dispute. The president normally within two days of the request will appoint an Emergency Arbitrator by advising the parties of the identity and contact details of the Emergency Arbitrator.
20. The Emergency Arbitrator has full discretion to grant whatever relief he/she deems appropriate in the circumstances taking into consideration among other things the urgency of the matter, whether certain rights are seriously disputed and the consequences to the parties should no relief be granted. The Emergency Arbitrator also has the power to order temporary measures pending a decision on the interim relief sought.
21. The Emergency Arbitrator will render his or her decision as soon as practicable.



22. The application for appointment of an Emergency Arbitrator shall include a statement of the interim relief sought, the reasons justifying it and the evidence supporting it. Within 7 days of the request, the other party or parties shall file a reply setting out their position on the interim relief sought and providing any evidence necessary to support their position.
23. Should no response be received from the other party or parties, within 7 days of the request, the Emergency Arbitrator may proceed with the application and make an order ex parte. The respondent parties on being informed of the decision of the Emergency Arbitrator may on 2 days notice apply to the Emergency Arbitrator to re-consider the decision. On good cause being shown as to why no response was received in the time-period provided for by these Rules, the Emergency Arbitrator may vary, confirm or rescind his/her decision.
24. The applicant for an Emergency Arbitrator is responsible for paying the fees and costs of the Emergency Arbitrator in the first instance.
25. A person who has acted as Emergency Arbitrator is not eligible for appointment to a Tribunal in the same dispute.
26. The decision of an Emergency Arbitrator on interim relief is not binding on any Tribunal.

F. COMMENCEMENT OF AN ARBITRATION

27. Any party to a contract containing a clause providing for arbitration under VMAA Rules, or any party to a contract containing an arbitration clause when the parties have agreed, by stipulation or otherwise, to arbitrate under the rules of the VMAA, may commence an arbitration by such party (the "Claimant")
 - (a) delivering written notice to the other party (the "Respondent") of intention to resort to arbitration, containing a statement of the matter in dispute, the remedy or relief sought, and the name of its appointed arbitrator, or, in an arbitration where the dispute is to be determined by a sole arbitrator, the name of the person the Claimant proposes act as the sole arbitrator; and
 - (b) delivering a copy of the written notice described in Rule 27(a) to the president or the secretary of the VMAA along with the \$250 administration fee payable to the VMAA.
28. It is the obligation of the Tribunal where it appears that no written notice of the request to arbitrate has been provided to the president or secretary of the VMAA to either deliver the notice and pay the administration fee or to make certain that the Claimant has done so.

G. APPOINTMENT OF ARBITRATORS

29. A party commencing or responding to an arbitration may contact any person on the VMAA List of Arbitrators directly regarding their availability for appointment to an arbitration.
30. When a person is approached in connection with his/her possible appointment as a contract referee, Emergency Arbitrator, or arbitrator, on being advised as to who the parties are, in accepting the appointment the proposed contract referee or arbitrator shall disclose any relationship involving the parties, associated companies to the parties and counsel for the parties, which may give rise to doubts as to his/her impartiality or independence. On confirmation by the party/parties that such disclosure is not a concern, then the arbitrator is deemed to have been appointed on the date of their acceptance. The conduct of all appointees shall be governed by the Code of Ethics for VMAA arbitrators (Appendix A).
31. No person shall serve or continue to serve as an arbitrator if he/she has any financial or personal interest in the result of the arbitration; he/she has acquired detailed prior knowledge of the dispute; or where circumstances exist that give rise to justifiable doubts as to the independence or impartiality of the arbitrator; or, in cases where the parties have agreed to qualifications, he/she does not possess those qualifications.
32. For a single arbitrator Tribunal, the Claimant shall propose as arbitrator of the dispute a qualified arbitrator from the VMAA List of Arbitrators. The Respondent has 15 days to either agree to the nomination or to propose an



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alternative arbitrator. If the parties are unable to agree on the selection of arbitrator, then upon the request of any party, the president of the VMAA shall nominate the Tribunal.

33. For a three arbitrator Tribunal, within 15 days of the commencement of the arbitration, the Respondent shall appoint its arbitrator. If the Respondent fails to make its appointment of the second arbitrator within the prescribed period the Claimant may request the president of the VMAA to appoint the second arbitrator as the Respondent's arbitrator.
34. For a three arbitrator Tribunal, once the Respondent's arbitrator has been selected, the Claimant and Respondent's arbitrators within 15 days of the appointment of the Respondent's arbitrator shall appoint the third arbitrator for the Tribunal. If the parties are unable to agree on the selection of the third arbitrator, then upon the request of any party, the president of the VMAA shall nominate the third member of the Tribunal. The third arbitrator shall be the chairperson of the Tribunal.
35. Notice of the appointment of an arbitrator, whether appointed by the parties or by the VMAA, shall be sent by the nominating party to the other party or parties.
36. If any arbitrator should die, withdraw, refuse or be unable to act or be disqualified from performing the duties of his/her office, the vacancy shall be filled within 21 days, as follows:
 - (a) If the vacancy is created by an arbitrator appointed by either party, the one who nominated him/her will name a replacement, but that replacement shall not have the right to change the Chairperson previously appointed by the original two arbitrators.
 - (b) If the vacancy is created by the Chairperson, the two arbitrators shall appoint a new Chairperson. If the parties are unable to agree on a new Chairperson, then on request by one of the parties, the president of the VMAA shall appoint a new Chairperson of the Tribunal.

H. MEDIATION

37. Before or after an arbitration has been commenced, either party may refer the dispute to mediation in accordance with the VMAA mediation rules then in effect.

I. SEAT OF ARBITRATION

38. In the absence of a written agreement to the contrary, the seat of arbitration is Vancouver, Canada. Hearings may however be conducted anywhere the Tribunal in consultation with the parties deems fit. Any award made is deemed made at the seat of arbitration.

J. PRELIMINARY MEETINGS

39. Within 15 days of being constituted, the Tribunal shall hold a preliminary meeting with the parties and their representatives to discuss the procedure to be followed in the arbitration, to confirm any modification to these arbitration Rules for the determination of their dispute and to discuss timelines or any other matter required or permitted under these Rules to assist in the efficient progress of the arbitration. The preliminary meeting may be held by telephone conference, online, or any other method so long as the parties and their representatives are able to hear/communicate with each other and participate in the proceedings. Further meetings preliminary to a matter being ready for determination of the dispute by the Tribunal, may be held in the same manner. The Tribunal will confirm in writing the matters discussed and agreed by the parties in a preliminary meeting.

K. INTERIM RELIEF

40. On request of a party, the Tribunal may issue such orders as may be deemed necessary to safeguard the subject matter of the arbitration, including reconsidering any decision of an Emergency Arbitrator, without prejudice to the rights of the parties or to the final determination of the dispute.



L. ORDER OF PRESENTATION OF CLAIMS

41. If no other method is agreed by the parties, claims shall be presented in the following manner:
- (a) The Claimant shall deliver to the Tribunal and the Respondent within 28 days after the Tribunal is established its points of claim, including details of the relief or remedy sought. The Claimant shall also deliver to the Respondent within 28 days after the Tribunal is established copies of any documents to be relied upon.
 - (b) The Respondent's points of defense (including those relating to any counterclaim) shall be delivered to the Tribunal and the Claimant within 28 days of the receipt of the Claimant's points of claim and documents. The Respondent shall also deliver to the Claimant within 28 days of the receipt of the Claimant's points of claim and documents copies of any documents to be relied upon.
 - (c) If there is no counterclaim the Claimant's points of reply, if any, shall be delivered to the Tribunal and the Respondent within 28 days after receipt of Respondent's points of defense and documents.
 - (d) If there is a counterclaim, the Claimant shall deliver to the Tribunal and the Respondent points of defense to counterclaim within 28 days and the Respondent's points of reply shall be so delivered within a further 28 days.
 - (e) The Tribunal may require the parties to produce within such period of time as the Tribunal orders, documents or other evidence.

M. ADDING ADDITIONAL PARTIES

42. (a) With the consent of the parties, the Tribunal shall have the power to direct that there be joined into the reference any other party or parties who, by written consent, have indicated readiness to be so joined and the arbitration shall then proceed as though the Tribunal had been appointed to deal with all associated disputes between the respective parties on a consolidated basis. The Tribunal will issue directions regarding how the present Rules shall apply to the party being so joined.
- (b) Where two or more disputes arising out of the same transaction or series of transactions have been referred to the same Tribunal, the Tribunal shall have the power to direct that the disputes be heard concurrently.
- (c) Unless stipulated to the contrary in advance, the parties agree, by consenting to the Rules, that a request to a court for an order consolidating arbitrations or joining any other person or persons to the reference shall constitute a request for an interim measure of protection.

N. HEARING ON DOCUMENTS

43. The parties, by written agreement, may submit their dispute to arbitration without the necessity of an oral hearing of evidence, on documents only. If it is agreed that the arbitration will proceed without oral hearing of evidence, the Claimant's written submissions and witness statements shall be delivered to the Tribunal and the Respondent within 28 days of the last step referred to in Rule 41. The Respondent's written submissions and witness statements, including those relating to any counterclaim, shall be delivered to the Tribunal and the Claimant within 28 days after receipt of the Claimant's written submissions. The Claimant may deliver its reply submissions, if any, within 14 days of receipt of the Respondent's written submissions. If there is a counterclaim, the Respondent's final written submissions, if any, on the counterclaim, shall be delivered within 14 days after receipt of the Claimant's reply submissions. The Tribunal if it has any questions of the parties may require the parties to attend a hearing. Otherwise, the Tribunal shall then give notice to the parties of its intention to proceed to its award and will so proceed unless either party within 7 days requests and is thereafter granted leave to provide further submissions or documents.



O. HEARINGS

44. The Tribunal shall fix the time and place for each hearing of evidence or submissions and shall give prior reasonable notice of the hearing to each party. The hearing may be conducted in whole or in part online or by video-conference. The Tribunal upon a showing of good cause, may grant an adjournment at the request of a party. A request by all parties for an adjournment shall be granted unless, in the opinion of the Tribunal, such request will unduly inconvenience the Tribunal or unduly protract the arbitration. Subject to such adjournments as the Tribunal decides are necessary in order to provide fairness to the parties, the hearings shall be continued daily until concluded.
45. Any party may be represented by counsel at the hearing, whose appointment, identity and address shall be promptly disclosed to all other parties and to the Tribunal.
46. The principal representatives of the parties are entitled to attend all hearings whether or not they are witnesses. The Tribunal shall have the power to require the absence of any other witness or witnesses during the testimony of other witnesses.
47. The party or parties shall make the necessary arrangements for the taking of a stenographic record of the testimony whenever such record is desired by one or more parties. The requesting party or parties shall pay the cost of such record subject to possible reimbursement in a subsequent decision by the Tribunal on the issue of costs.
48. The party or parties shall make the necessary arrangements for the services of an interpreter, if needed. The requesting party or parties shall pay the cost of such service, subject to possible reimbursement in a subsequent decision by the Tribunal on the issue of costs.
49. Before proceeding with the first hearing, or with the examination of the documents, each member of the Tribunal shall solemnly affirm to the parties to decide their dispute to the best of their skill and ability in a fair and impartial manner.
50. A hearing shall be opened by the recording of a Minute by the Tribunal. The Minute shall set forth the place, time and date of the hearing, the presence of the Tribunal, parties and counsel, if any, and the receipt by the Tribunal of a written or oral submission.
51. The Claimant, or its counsel, shall then present the Claimant's claim and proofs and its witness statements. The Respondent, or its counsel, shall then present the Respondent's defense and proofs and its witness statements. A witness for either party, on prior notice may be required to attend the hearing in person, by telephone or video conference in order to be cross-examined on their witness statements. A witness prior to being heard may be asked by the Tribunal to affirm their evidence to be the truth and whole truth. The cross-examination shall then take place during the case of the party relying on the witness statement. A party may with leave of the Tribunal be allowed to examine the witness on their cross-examined testimony. The Claimant shall have an opportunity to present its summation and argument following which the Respondent shall have a similar opportunity. The Claimant shall then be permitted to make a short reply. The Tribunal may vary the procedure in its discretion but shall afford full and equal opportunity to all parties for the presentation of any material relevant proofs, summation and argument.
52. The parties may offer such evidence as they desire and shall produce such additional evidence as the Tribunal may deem necessary for an understanding and determination of the dispute. The Tribunal may summon witnesses or documents on its own initiative or at the request of any party by subpoena, if necessary (Appendix B). Subpoenas need only be signed by the majority of the Tribunal to be effective.
53. The Tribunal shall be the judge of the relevancy and materiality of the evidence offered and conformity to any legal rules of evidence shall not be necessary. The evidence in any hearing shall be taken in the presence of the Tribunal and of all the parties except where any of the parties is without reasonable cause absent, in default, or has waived his right to be present or where submission of evidence by mail or in other form has been agreed by both parties.



54. Exhibits, when offered by either party, may be received in evidence by the Tribunal and when so received shall be numbered by the Tribunal and made part of the record.
55. The Tribunal may receive the evidence of witnesses by their statements simpliciter without the necessity of such statements being sworn or affirmed and, in the absence of any request to cross-examine the witnesses on their statements, shall give such evidence appropriate weight.
56. Where a party intends to rely on the evidence of an expert they shall provide the other party with a written statement of the proposed evidence of the expert along with the qualifications of the proposed expert 30 days in advance of any oral hearing. The other party, if they intend to call rebuttal expert evidence, shall provide written notice of the nature of that evidence and qualifications of the proposed expert to the other side 10 days before any oral hearing. The Tribunal in its discretion may require the experts for the parties to meet to see if they can agree on a joint opinion for the Tribunal.
57. A party may apply to the Tribunal for directions on any procedural matter such as, but not limited to, document disclosure, prehearing examinations of witnesses, depositions, video or telephone conferencing, to assist in the efficient progress of the arbitration.
58. All documents filed with the Tribunal at the hearing, or which are presented at the hearing or subsequently by agreement of the parties are to be filed later, shall be open to inspection by all parties after such filing.
59. Whenever the Tribunal deems it necessary to make an inspection or investigation in connection with the arbitration, the parties shall be advised and the Tribunal shall set the time and notify the parties. Any party who so desires may be present at such inspection or investigation. In the event that the parties, or any of them, are not present at the inspection or investigation, the Tribunal shall make an oral or written report to the parties and afford an opportunity for the receipt of comment or testimony in relation thereto.
60. The Tribunal shall specifically inquire of all parties whether they have further proofs to offer or witnesses to be heard or summation or arguments to make. Upon receiving negative replies, the Tribunal shall declare the hearings closed and a Minute thereof shall be recorded. If written arguments are to be filed the hearings shall be declared closed as of the final date set by the Tribunal for the receipt of written arguments unless the Tribunal has questions for the parties based on their written submissions, in which case the Tribunal has the power to re-open the hearing to canvass those issues with the parties, after which the Tribunal shall declare the hearings closed. The time within which the Tribunal is required to make its award, shall commence to run, in the absence of any other agreement by the parties, on the closing of the hearing.

P. ARBITRATION IN THE ABSENCE OF A PARTY OR NON-COMPLIANCE OF A PARTY

61. (a) If in the opinion of the Tribunal a party to a dispute is unwilling to participate in the arbitration, the Tribunal may, on giving written notice to that party, proceed in their absence and make an award on the evidence accepted by the Tribunal.
- (b) If in the opinion of the Tribunal a party has refused or failed, without proper justification, to comply with these Rules, or with an order or direction of the Tribunal, the Tribunal may:
 - i) where the party is advancing a claim, make any order it deems appropriate to obtain compliance, or dismiss the claim;
 - ii) where the party is defending a claim, make any order it deems appropriate to obtain compliance, or proceed to grant an award in favour of the party advancing a claim, with damages to be assessed based on the evidence before it.

Q. THE AWARD

62. The Tribunal shall render an award as expeditiously as possible but in no case later than 42 days from the closing of the hearing or, in the case of an arbitration on documents only, the last step provided in Rule 43.



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63. Whenever there is more than one arbitrator, the decisions and award of the arbitrators shall be by majority vote.
64. The award shall be in writing and shall be signed either by the sole arbitrator, or by a majority of the Tribunal if there be more than one, so long as the reason for any omitted signature is stated, or by all if unanimous. A partial or total dissent may be signed by the dissenter and included with the majority award.
65. The Tribunal will draft a precis of the award in such a manner as to preserve anonymity as regards the identity of the parties, their legal or other representatives, and the vessel or vessels. Such draft may be published by the VMAA.
66. The Tribunal, in its award, may grant any remedy or relief, which it deems just and equitable and may, in its discretion, award the arbitration fees, legal costs and expenses in favour of, or against any party.
67. If the parties settle their dispute during the course of the arbitration, the Tribunal, if requested by either party, shall set forth the terms of the agreed settlement in an award.
68. The award shall state its date, the place of arbitration and the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an agreed settlement.
69. The Tribunal will advise the parties when the Award is ready and upon receipt by the Tribunal of its fees and expenses, the Tribunal will then Release the award to the parties.
70. At the request of any of the parties, or of the Tribunal's own volition, within 30 days of the receipt of the award, any errors in computation, any clerical or typographical errors or any errors of a similar nature in the award may be corrected by the Tribunal.

R. FEES, EXPENSES AND LEGAL COSTS

71. Unless or until the parties otherwise agree, or the Tribunal otherwise awards:
 - (a) The expenses of witnesses for either side shall be paid by the party producing such witnesses;
 - (b) The cost of a stenographer taking a stenographic record shall be paid by the party requesting the stenographer. If the other party or parties orders a transcript or any part thereof, the cost of the stenographic record shall be pro-rated equally among all parties ordering copies. If ordered by the Tribunal its share of the cost shall be pro-rated equally among the parties.
 - (c) All expenses of the arbitration, including required traveling and other expenses of the Tribunal or the cost of any proofs or expenses of any witnesses produced at the direct request of the Tribunal, shall be borne equally by the parties.
 - (d) The fees and expenses of an arbitrator (and his travel and accommodation when he is from outside Vancouver) shall be borne by the party who appointed him, and of the chairperson borne equally by the parties.
72. In addition to an award of costs of the whole proceeding the Tribunal may award costs it deems appropriate in response to an application made during the course of the Arbitration, and without limiting the generality of the foregoing, may award costs payable on a forthwith basis, which costs may include fees, expenses, legal costs, and fees and expenses of the Tribunal.
73. In exercising its discretion to award legal costs, the Tribunal may consider the following factors:
 - (a) The result of the arbitration;
 - (b) The amounts claimed and the amounts recovered;
 - (c) The importance and complexity of the issues;
 - (d) The apportionment of responsibility;



- (e) Any written offer to settle;
 - (f) The amount of work;
 - (g) Any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the arbitration;
 - (h) The failure by a party to admit anything that should have been admitted;
 - (i) The conduct of the proceeding;
 - (j) Whether a party who was successful exaggerated a claim;
 - (k) The willingness or refusal of a party to mediate the dispute, or the failure of a party to participate in good faith in the mediation of the dispute; and
 - (l) Any other matter that it considers relevant.
74. The parties shall endeavour to agree on the amount of any legal costs awarded. If the parties are unable to agree on the amount the Tribunal may assess legal costs on a full or partial indemnity basis in the Tribunal's discretion. In determining the appropriate award of legal costs the Tribunal shall consider the factors set out in Rule 59, and may refer for guidance to Tariff B of the Federal Court Rules (with consequential changes to reflect the arbitration process) if awarding legal costs on a partial indemnity basis.
75. The Tribunal shall determine the amount of their fees. Unless otherwise agreed between the Tribunal and the parties, the Tribunal in fixing their fees shall have regard to the following:
- (a) the issues presented,
 - (b) the magnitude of the claim or subject matter,
 - (c) the complexity of the facts and issues, and
 - (d) the importance or urgency of the matter being arbitrated.
76. If the dispute is settled during the course of the arbitration, the Tribunal is nevertheless entitled to fees commensurate with their involvement in the arbitration.
77. The Tribunal may require the parties to deposit in advance such sums of money to secure their expenses and fees, and shall render an accounting to the parties and return any unexpended balance.
78. The Tribunal may require a party advancing a claim to provide to the other party security for fees, expenses, legal costs, and fees and expenses of the Tribunal, in a sum to be agreed by the parties or determined by the Tribunal. Unless ordered otherwise by the Tribunal, security may be provided in the following forms:
- i) A guarantee from a Canadian Chartered Bank;
 - ii) A bond or undertaking from a surety company licensed to do business in Canada;
 - iii) A bond or undertaking from a protection and indemnity club that is a member of the International Group of P&I Clubs; or,
 - iv) Cash or acceptable cash equivalent.

S. LIABILITY OF ARBITRATORS

79. An arbitrator shall not be liable for anything done or omitted in the discharge or purported discharge of their arbitral functions unless the act or omission is shown to have been in bad faith.



T. RELEASE OF CERTIFIED DOCUMENTS

80. The Tribunal shall, on the written request of a party, furnish to such party at the party's expense certified copies of any exhibits in the Tribunal's possession.

U. WAIVER OF RULES

81. Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with, and who fails to state his objection thereto in writing without undue delay, shall be deemed to have waived his right to object.

V. TIME PERIODS

82. The parties may modify any period of time by mutual agreement and consent of the Tribunal. The Tribunal may extend or shorten any period of time established by the Rules on a showing of good cause and shall notify the parties of any such extension or shortening of time and reason therefore.

W. INTERPRETATION AND APPLICATION OF RULES

83. The Tribunal shall interpret and apply these Rules insofar as they relate to their powers and duties. When there is more than one arbitrator, and a difference arises among them concerning the meaning or application of any such Rules, the difference shall be settled by majority vote.

84. Words signifying a male person include a female person, words in the singular include the plural and words in the plural include the singular. Words signifying a corporation include a person and words signifying a person include a corporation.

X. RULES OF LAW APPLICABLE TO SUBSTANCE OF DISPUTE

85. (a) The Tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.
- (b) Any designation by the parties of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of law rules.
- (c) Failing any designation of the law by the parties, the Tribunal shall apply the law of Canada to the dispute.
- (d) The Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.



APPENDIX A - CODE OF ETHICS for VMAA ARBITRATORS

1. A prospective arbitrator, including a contract referee, shall accept an appointment only if he/she is able to discharge their duty to give the arbitration of the dispute the time and attention which the parties are reasonably entitled to expect, without bias and on the basis that they are competent to determine the issues in dispute and are able to conduct themselves in the language of the arbitration.
2. It is the duty of the arbitrator to be familiar with and guided by the VMAA Arbitration Rules.
3. The criteria for assessing bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties. Dependence arises from relationships between an arbitrator and one of the parties, or someone closely connected with one of the parties, including counsel representing such parties.
4. Any close personal relationship or current or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potential witness may give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. A prospective arbitrator should decline any appointment in which their judgment may be called into question on the basis of a past or present relationship unless, on disclosure of the nature of the relationship, the parties are in agreement, that the prospective arbitrator may proceed.
5. A prospective arbitrator shall disclose any relationships that may give rise to doubts as to his/her impartiality or independence. The duty continues after acceptance of the appointment to the conclusion of the arbitral proceedings.
6. For greater certainty, a prospective arbitrator shall disclose:
 - (a) any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potential witness in the arbitration;
 - (b) the extent of any prior knowledge, he/she may have of the dispute;
 - (c) the extent of any commitments, which may affect his/her ability to perform their duties as arbitrator.
7. Disclosure should be made in writing and communicated to all parties.
8. When approached by a party, arbitrator on the Tribunal or the president of the VMAA with view to a possible appointment, a prospective arbitrator may respond to enquiries regarding their suitability and availability for an appointment provided the merits of the dispute are not discussed.
9. Before accepting an appointment an arbitrator may only inquire as to the general nature of the dispute, the names of the parties, the principal witnesses and representatives if they are known and the expected time period that may be required for the arbitration.
10. No arbitrator may confer with the party or counsel appointing him/her regarding the selection of a third arbitrator.
11. Throughout the arbitral proceedings, the Tribunal shall avoid any unilateral communications regarding the case with any party, or its representatives.
12. Unless the parties agree otherwise or a party defaults, an arbitrator shall make no unilateral arrangements for fees or expenses.
13. An arbitrator shall acquaint himself/herself with all facts, documents and arguments presented during the course of the arbitral proceedings so that they may properly understand the dispute.
14. An arbitrator shall at all times strive for fairness in the conduct of arbitral proceedings giving the parties an adequate opportunity to present their cases.
15. All arbitrators shall devote such time and attention to the dispute as the parties may reasonably expect having regard to the circumstances of the case, and shall endeavour to conduct the arbitration in such a manner that the costs of the arbitration do not rise to an unreasonable proportion of the interests at stake.
16. Where the parties have so requested, or consented to a suggestion to that effect by the Tribunal, the Tribunal as a whole or the Chairperson where appropriate, may make proposals for settlement of the dispute to all parties simultaneously.



APPENDIX B - SUBPOENA

In the matter of an Arbitration:

Between:

(Claimant)

and:

(Respondent)

SUBPOENA TO A WITNESS

To:

(name)

(address)

As YOU may have material evidence to give in the above arbitration proceeding, to be held at _____ on the ____ day of _____, 20____ at _____ hours of the said day, YOU are hereby commanded to appear then and there to testify in the above entitled matter and to bring with you the following document or documents:

Dated _____ this day of _____, 20_____.

Arbitrator

Arbitrator

Chairperson

Notice to Witness: In some cases, it may be possible to have your testimony heard by video-conference or telephone. Contact _____ at _____ in order to determine whether you may be able to do so in this proceeding.

Tribunal's Address:

Chamber of Shipping of British Columbia
Suite 100 - 111 West Hastings Street, Vancouver, B.C., Canada, V6E 2J3 / Fax 604.681.4364