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NEWSFLASH

LMAA 2017 TERMS – EVOLUTION, NOT REVOLUTION

New terms and procedures will apply to all LMAA arbitrations commenced on or after 1 May 2017. Compared with the current LMAA 2012 regime, the new terms represent evolution rather than revolution. However, they will introduce a number of welcome changes, and we summarise a few of these below.

(1) **Sole arbitrators**: arbitration agreements sometimes call for disputes to be resolved by a sole arbitrator whose identity is to be agreed between the parties after a dispute has arisen. This can cause problems if one of the parties deliberately refuses to agree in order to stall the progress of the arbitration. In such circumstances it is currently necessary for an application to be made to the English High Court for directions under s.18 of the Arbitration Act 1996.

The new Terms now provide for the President of the LMAA to have the power to appoint a sole arbitrator in such circumstances (*Paragraph 11*). This is a positive move since it avoids the need for a time consuming and costly application to the Court.

(2) **Submissions**: arbitration is sometimes marketed as being an efficient and cost-effective alternative to litigation. One of the aims of the New Terms is to try to ensure that this is the case for LMAA arbitration.

One particularly welcome change is aimed at dissuading parties from serving excessive pleadings. After the standard claim submissions, defence, and reply have been served, a party wishing to serve any further submissions must now apply to the tribunal for permission to do so, explaining why it is necessary (*Paragraph 5 of the Second Schedule*).

The idea is to avoid excessive costs being generated, and time wasted, through parties serving rejoinders, surrejoinders etc. This is a welcome amendment, especially since it will still be possible to serve further submissions if this is truly necessary and the permission of the tribunal is obtained.

(3) **Offers to settle**: the new Terms make clear that LMAA tribunals are entitled to take into account "without prejudice save as to costs" offers when assessing costs, but also clearly state that the English High Court rules on Part 36 offers do not apply to LMAA arbitrations (*Paragraph 19(b) of the Second Schedule*).

The aim is to make clear that arbitrators are allowed to adopt a flexible approach when assessing costs, and that parties do not have to comply with the strict and sometimes onerous requirements of the Part 36 regime. It is a sensible and welcome clarification.

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