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ADVOCATES, CONSULTANTS & NOTARY

DUBAI | SINGAPORE | DELHI | MUMBAI | KOLKATA | CHENNAI | COCHIN info@calliduscmc.com

Branches

Dubai
7th Floor, Office #713
Business Avenue Building
Port Saeed Area, P.O. Box # 90992
Dubai, UAE, Tel : +97142956664
Fax : +97142956099

Singapore
20 Maxwell Road
#04-02 D, Maxwell House
Singapore - 069113
Tel: +65 6221 4090

Delhi
D 1st 145 Basement (Rear)
Lajpat Nagar R 1
New Delhi - 110 024
Tel: +91 11 4132 1037

Mumbai
8-B, Dariya Building
2nd Floor, In between
American Dry Fruits & Zara
Dr. D.N.Road, Fort, Mumbai 400 001
Tel: 022-22853371

Chennai
Old No. 123, New No.255,
3rd Floor, Hussiana Manzil,
Ankapanaiken Street,
Parrys, Chennai - 600 001
Tel: +91 98 40 844463

Cochin
Near St.Joseph's High School
Chittoor Road, Cochin - 12, India
Tel : +91 484 4010566
Fax : +91 484 2391895
office@callidusindia.com

ARBITRATION FRIENDLY FORUMS: AN ANALYSIS

Maritime arbitration is being increasingly preferred as an alternative method of dispute resolution by the stakeholders in the maritime industry. Major maritime countries in the world have been upgrading their legal system with much emphasis on arbitration with the intention to project their country as an arbitration friendly forum. The contracting parties while deciding on the forum for arbitration basically seeks to resort to jurisdictions which provide for cost effective and speedier adjudicating procedure with finality of arbitration award, ensuring certainty in results.

London continues to dominate the maritime arbitration scene. It has been noticed that the London Maritime Arbitrators Association stood head and shoulders above all other dispute resolution centres. One of the advantages of the arbitration in England is that unlike other jurisdictions, the English courts usually allow you to raise questions on a point of law. This right of appeal can in a way prove advantageous to the parties. The full implications of Brexit for arbitration in the UK are being closely monitored by the industry, but it does not appear to have had any immediate impact. For a number of reasons, London remains a very attractive venue for parties to choose as a seat for arbitration. Apart from London, Paris and Geneva are also much sought after arbitration jurisdictions.

Commercial arbitration in the United States originated in New York which has a long and rich history of supporting maritime arbitration and continues to be a leading maritime and commercial arbitration center. Party autonomy is the hallmark of New York maritime arbitration. The parties are free to determine most procedural rules, and to select arbitrators (or the method of their selection) and the law to be applied. The arbitration awards are final and not subject to appeal save on narrow, largely procedural, grounds. A great majority of maritime arbitrations in New York are conducted under SMA (Society of Maritime Arbitrators) rules. Awards are enforceable in any country which is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral awards and the Inter-American Convention on International Commercial Arbitration. Maritime awards in New York are usually final and binding. There are very few specific grounds under which an award can be vacated, and these are confined to the fairness of the arbitration procedure. A mistake in law or fact is generally not a ground for vacating an award. Motions to vacate, modify or correct must be made within three months of the date of the award.

Singapore is gaining global footprint in respect of maritime arbitration. Its established record of neutrality has contributed to its development. The courts in Singapore have offered maximum judicial support to arbitration and minimum intervention. The Singapore International

"No goal was ever met without a little sweat."

-Anonymous.

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Arbitration Centre (SIAC) stands out above the other regional arbitration centres. The country boasts a state of the art, integrated dispute resolution centre that houses first class hearing facilities and offices of top ADR institutes and dispute resolution professionals. Furthermore, Singapore has a judiciary that supports arbitration and there is a constant re-examination of legislation to ensure arbitration-friendly laws and processes are in place to promote and support arbitration. According to the International Chamber of Commerce (ICC) 2015 Report, Singapore has consistently been ranked as the number one preferred seat for arbitration in Asia and among the top five preferred seats globally. The International Arbitration Act and the Arbitration Act only set the framework governing arbitrations in Singapore. Consequently, the provisions are generally not mandatory insofar as parties are free to agree on the specific rules and procedures that bind them. This is in line with the fundamental principle of party autonomy in arbitration proceedings. However, the provisions relating to the enforcement, setting aside and/or appeal of the arbitral award are mandatory. The main arbitration organisations in Singapore are the Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC) and the Singapore Chamber of Maritime Arbitration (SCMA).The Singapore government has built an impressive infrastructure to support international arbitration in Singapore and has actively been behind efforts to promote Singapore as the obvious and best choice for arbitration in the region.

The arbitration process in the Middle East is developing in a way which is quite promising. The Middle East region is reasonably well-equipped with arbitration facilities. There are a number of significant regional arbitration centres – for example, Dubai International Arbitration Centre (DIAC); DIFC/LCIA situated in the Dubai International Financial Centre; the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC); Qatar International Court and Dispute Resolution Centre (QICDRC); and the Bahrain Chamber for Dispute Resolution/ American Arbitration Association (BCDR-AAA). However, the judicial intervention and uncertainty in the enforceability of arbitral award is a matter of great concern. It has been noticed that the judiciary in the Middle East has not achieved the same standards of excellence in arbitration as others in more favourable jurisdictions. There have been instances where the lawyers conducting arbitration were subjected to prosecution for unfavourable outcomes. As a consequence, they were sometimes declining appointments and even resigning from ongoing cases as they were unhappy about the risks they were running. Under DIAC Rules, there was no appeal process. Further, as awards had to be signed within Dubai itself, this sometimes meant arbitrators having to fly in and out solely for this purpose.

India has huge potential to develop maritime arbitration but it would be a long and difficult ride before it is fully achieved. There have been significant improvements in recent years in India's provision for structured arbitration. It was noticed that a properly functioning arbitration system was necessary if the country was to attract more trade and investment. The Indian Arbitration and Conciliation Act, amended in 2015, had introduced changes in respect of interim relief, public policy considerations, High Court involvement in arbitration and 12-month time limits to determine awards. This was aimed at countering concerns that arbitral awards in India were taking too long. However, the 12 months could be extended by agreement between the parties. The whole package has been improved. The Mumbai International Arbitration Centre's Rules were approved in June 2016 and the Centre opened for business in October. The aim was to establish a cost effective and transparent process, focusing on procedures for multi-party and multi-contract cases, expedited arbitration and the scrutiny of awards.

China is a relatively young player in the international shipping arbitration scene. The Maritime Arbitration Commission (MAC) is the predecessor of the present China Maritime Arbitration Centre (CMAC). It seems that the MAC was more experienced than that the maritime courts in China in terms of handling maritime disputes. Also, maritime disputes in China are predominantly settled by conciliation and mediation. The attitude of the maritime court towards this organization is somewhat hostile exemplifying unfriendliness and competition. CMAC had revised its Rules in late 2014. The new CMAC Rules came into effect on 1 January 2015. CMAC's Revised Rules allows an arbitrator much freedom in choosing the appropriate procedure. It also stresses that the parties are to be given reasonable opportunity to make submissions and arguments.

International arbitration is on the rise in all these regions, generating an increasing interest in the practice. Thus, there is an increasing trend towards convergence of arbitral institutional rules and rise in the number of arbitral seats where parties can expect a modern and pro-arbitration approach from the judiciary.

UAE LABOUR LAW : PROVISIONS THAT SUPPORT COMPANIES IN UAE.

As on date, the Federal Law No. 8 of 1980 (as amended) also known as the Labour Law, governs the rights of the employees in the private sector. The Labour Law provides the provisions related to the working hours, vacation and public holidays, sick leave, employment of juveniles, maternity leave, safety standards to be followed, termination of the employment etc. Apart from the above mentioned Federal law, three ministerial decrees also support the current labour law: (1) the Ministerial Decree No. 764 of 2015 that deals with the standard employment contract; (2) the Ministerial Decree No. 765 of 2015 to deal the termination of employment and (3) the Ministerial Decree No. 766 of 2015 for labour mobility.

As per this Decree, the employer is required to comply with the new template of the employment contract (by MOL) in which a new notice period

and the termination payment is agreed upon by the employer and the employee. As per Article 115, "Should the employment contract be of a determined term, and the employer rescind same for reasons not set forth in Article 120, he shall be bound to compensate the worker for the damage incurred thereto, provided that the compensation amount does not exceed in any case, the total wage due for the period of three (03) months or for the remaining period of the contract, whichever is shorter, unless otherwise stipulated in the contract". The Article 116 is applicable for the employees and the same narrates as "should the contract be rescinded by the worker for causes not set forth in Article 121, the worker shall be bound to compensate the employer for the loss incurred thereto by reason of the rescission of the contract, provided that the amount of compensation does not exceed the wage of half a month for the period of three months, or for the remaining period of the contract whichever is shorter, unless otherwise stipulated in the contract". It is to be noted that as per the applicable Labour Law, the default notice period to be served both the employer (at the time of terminating the Employee) and by the Employee (at the time of resignation) is three (03) months if not agreed by the parties. Further, the employer is entitled to get full salary for 1.5 months as compensation from the Employee for early resignation and likewise the employee is entitled to get an amount equivalent to his three (03) months as compensation from the employer, for early termination.

However, since the template of the renewed contract (in case of limited contract) shall specifically mention the Notice period and the termination payment, it will not trigger the provision of the UAE labour law of the notice period and the compensation to be paid by both the employer and the employee as per the Article 115 and 116 as aforementioned. Though this is a boon to the private sector companies and the employees, many are still not aware of rights available to them under UAE labour law, and they usually end up paying huge compensation (though as per law) to the other.

Though this is the situation with most of the companies, the government of United Arab Emirates has recently announced few changes to ease the current existing laws regarding to the recruitment/labour thereby replacing the requirements that a company shall follow while recruiting a new employee/ worker thus marking a wide change in Country's private sector and thereby providing a comfort to the Employers who wish to recruit new workers but hesitate to do so due to the huge expenses behind it.

As per the labour rule applicable in UAE, the Companies ("the Employer") was supposed to provide a bank guarantee equivalent to an amount of AED 3000/- for each worker they recruit. To the much satisfaction of the employers, this requirement has been replaced by the new law, with the provision of "Low Cost Insurance System of AED 60/- per worker instead of the bank guarantee of AED 3000/- thereby lowering the cost of doing business in the Country. The new insurance policy would cover the worker's end of service benefits, vacation allowances, overtime allowances, unpaid wages, return air ticket, etc. This new scheme aims to secure the rights of the workers in the private sector, thus easing the burden of the employers as the scheme would allow the employers to recover around AED 14 billion which was paid as guarantee, thereby freeing up the capital for other purposes like reinvestment. It is also estimates that an amount of 2.4 billion shall be reimbursed for the employees in logistics and supply chain sector. This new system is definitely an elegant solution and an inexpensive policy for the Employer's without hesitating, when compared to the provision to provide the bank guarantee of AED 3000/-.

The decision of government definitely shows that the UAE government is reforming the labour market thereby assuring both the employers and the employees, that their rights are been taken care of.

HOT NEWS

MCA: CAPTAIN OF RUSSIAN TANKER FINED OVER SAFETY FAILURES

Captain of the Russian oil tanker Tecoil Polaris was fined over GBP 25,700 (USD 34,300) for breaching the International Safety Management (ISM) Code.

Vitaliy Trofimov, Captain of the 85-meter-long tanker, pleaded guilty to serious non-compliance of safety requirements which placed the vessel – to be loaded with 1,665 tonnes of lubrication oil – at risk.

In a prosecution brought by the UK's Maritime & Coastguard Agency (MCA), on June 14, 2018, the Captain was fined GBP 1,400 and ordered to pay GBP 24,361 in costs.

The 2,821 dwt vessel arrived at Humber Port on the evening of June 5, 2018 having come from Hamina, Finland. Humber Port Authority reported concerns about the master and crew's competency as the vessel approached and berthed at Immingham Docks, Humber.

MCA Inspectors inspected the vessel on June 6 and found a catalogue of deficiencies in navigation and safety equipment, together with significant non-compliance with the ISM Code.

These included not having correct navigation charts or voyage plan, incorrect stability calculations, navigation equipment not working and defects with lifesaving equipment. The vessel was subsequently detained and its safety certificate cancelled, according to the MCA.

Upon investigation and questioning by the MCA's Investigation & Enforcement Unit, Captain Trofimov admitted the failures and deficiencies.

"This was an extremely serious breach of the ISM Code. In this case, the Captain showed complete disregard for the safety of his vessel and crew operating the vessel. The intention was for this vessel to carry 1,665 tons of oil to Finland, which could have had disastrous human and environmental consequences," Mark Flavell, MCA's Lead Investigator, said.

The vessel will not be released until the fines and costs have been paid, MCA concluded.

Address: Near St.Joseph's High School, Chittoor Road, Cochin- 12, India, T: +91 484 4010566, F: +91 484 2391895, office@callidusindia.com