

# Kluwer Arbitration Blog

## Review of new Rules of the Maritime Arbitration Commission at the Russian Chamber of Commerce and Industry

Daria Zhdan-Pushkina (Redstone Chambers) · Tuesday, October 10th, 2017

In January 2017, the new [Rules of the Maritime Arbitration Commission at the Russian Chamber of Commerce and Industry](#) were adopted (“MAC Rules”). The Rules implement new regulations which comply with the latest tendencies in arbitration.

MAC was established in 1930 in Soviet Russia and since then it administered about 4,500 disputes. In 2016 – 2017, the participants to the disputes came not only from Russia, but also from various other countries, including Poland, Malta, the United Arab Emirates, Turkmenistan, the Seychelles, the Marshall Islands. The majority of the claims arise from marine insurance. Nevertheless, claims in the fields of transportation, chartering, repair of ships, towing, salvage of ships and cargo are considered regularly.

This article touches upon the most significant changes in the procedure for considering disputes under the MAC Rules.

### **The requirements for the statements of claim and defense and for the amount of claim**

The statement of claim should now include more information, in particular, contacts details of the parties for urgent communication (phone, email addresses). The time allowed for rectifying any defects in the statement of claim was reduced from 30 to 15 days from the receipt of the invitation from the Executive Secretary of MAC to rectify the defects. If these are not eliminated, the arbitral proceedings may continue until an arbitral award or a ruling to terminate the arbitral proceeding is delivered. The rules previously stated that a claim was considered not filed or remained without motion if a party failed to rectify the defects.

The requirements for the content and structure of the statement of defense were also amended. In addition, the Rules now provide a new detailed procedure for submitting counterclaims and set-offs. In particular they establish time limits for submission of the counterclaim and set-off, and the consequences of an unjustified delay in submitting them.

The MAC Rules now provide a procedure for determining the amount of claim. This innovation simplifies the calculation of fees, set at 3% of the claimed amount.

### **Multiple claims and parties and engagement of third parties**

The MAC Rules set out the procedure for multiple parties and multiple claims. It is now possible to

consolidate proceedings if they are covered by the same arbitration agreement or by several compatible arbitration agreements referring the claims to MAC, and are connected from the view point of substantive law, that is by their merits. This can be done, as a rule, if all parties agree to such consolidation. In certain cases, the decision on consolidation may be made by the MAC Presidium.

The Rules now establish more comprehensive regulation on the involvement of third parties in arbitral proceedings. A third party making no claims against the parties to the arbitral proceedings may be involved or joined in the arbitral proceedings provided that there is an arbitration agreement covering parties to the proceedings and the third party, or all parties to the proceedings and the third party agree to such effect.

### **Composition of the arbitral tribunal**

According to the MAC historical tradition, the arbitral tribunal shall, as a rule, consist of two arbitrators. One innovation is that if the amount of claim does not exceed USD 15,000, such a claim is normally considered by a single arbitrator.

One new body within the MAC structure is the Appointing Committee, which has a significant role in forming and altering the composition of the arbitral tribunal. In particular, the Appointing Committee appoints the arbitrator where a party failed to select one. Also, the Appointing Committee may decide on challenges of arbitrators. If the challenge was filed after the set deadline, the Committee may still grant it provided that there is a reasonable explanation for the late filing and having regard to the nature of reasons for challenge. Also, the Appointing Committee has the right, on its own initiative, to decide on the termination of the arbitrator's powers, for example, if the arbitrator is in fact unable to participate in the consideration of a dispute and in other cases.

It should be noted that, as previously regulated, the parties are free to choose an arbitrator also outside the [list of recommended MAC arbitrators](#).

### **Language of the arbitral proceedings and representation of the parties**

In the MAC Rules, provisions on the language of arbitration are now collected into a separate article. The parties may agree on a language or languages of the arbitral proceedings. Arbitral proceedings in a case shall be conducted in the Russian language, unless the parties agree otherwise. Written documents shall be submitted in the original language. MAC may request the parties to provide the translation of the documents.

Provisions on representation of the parties are now more detailed. A party should ensure compliance by its representative with the Rules. Authorizing a representative to act on its behalf, the party thereby confirms the agreement of its representative to comply with the Rules and other MAC regulations. The responsibility of representatives for improper conduct and non-compliance with the MAC Regulations is now stipulated.

### **Preparation of the case, supplementing claims and other submissions, hearings**

The new MAC Rules have more details on the measures which may be taken by arbitrators to prepare for a case. These may include setting a schedule of proceedings, establishing a range of issues to be considered, and holding organizational meetings, including video-conferencing.

The new MAC Rules govern the procedure for supplementing claims and other submissions, aimed at accelerating the arbitration proceedings. Thus, the arbitral tribunal has now the right to set a deadline for submission of written statements and evidence by the parties, and not to allow amendments or supplements to the claims or explanations thereof having regard to any delay they may cause.

It is now possible to hear the parties, witnesses and experts via video-conferencing.

### **Proceedings in the case on the basis of written materials and expedited arbitration**

The arbitral tribunal now has the right to conduct proceedings based on written materials, without the agreement of the parties, if neither of the parties requests an oral hearing.

In response to current trends in the development of the arbitral procedure, the MAC Rules also establish an expedited arbitration procedure. According to this procedure, unless otherwise provided, claims of up to USD 15,000 are considered by a single arbitrator. Such cases are heard based on written materials only and without an oral hearing, within a period not exceeding 120 days.

### **Confidentiality**

In accordance with the new MAC Rules, the confidentiality requirements are extended not only to MAC and its staff, and arbitrators, but also to the parties, their representatives and other persons involved in arbitration.

### **Other comments**

As a rule, the new version of the MAC Rules applies to arbitration proceedings commenced after the Rules have entered into force.

Thus, the MAC Rules have become more detailed, and some provisions are completely new. In our opinion, according to the new Rules, the procedure for considering a dispute is now more predictable and clearer.

*The recommended arbitration clause* for contractual disputes reads as follows:

“Any dispute which may arise out of or in connection with the present contract shall be settled at the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation in accordance with its rules”.

Also, the Regulations on organizational principles of activity of MAC at the CCI of Russia and the Rules for the provision of certain functions for administering ad hoc arbitration came into force this year.

In accordance with the Rules for the provision of certain functions for administering ad hoc arbitration, MAC may provide assistance to the arbitral tribunal related to the case, such as sending notifications to the parties on the date of hearing and providing premises for hearings at the request of the parties or arbitrators.

*I wish to thank [Dmitry Davydenko](#), the Executive Secretary of Maritime Arbitration Commission at the Russian CCI, for his helpful comments with regard to the review of the MAC Rules.*

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