

# CIAMA: A Specialist Maritime and Air Arbitration Centre for the MENA Region

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As the backbone of globalization, the shipping industry is at the heart of cross-border transportation networks that support supply chains and facilitate international trade.

In the MENA region, the maritime sector is a significant industry. In order to manage the rise in foreign trade, both governments and the maritime industry have increased investment into the sector.

Due to the involvement of transnational actors, maritime transportation of goods is almost always international in character, which makes it a breeding ground for arbitration. This has led actors of the maritime industry to congregate for the purpose of creating centres for dispute resolution which are both independent from State jurisdiction and adapted to their needs.[fn]SMA; LMAA; CAMP; José M. Alcántara, 'An International Panel of Maritime Arbitrators?', *Journal of International Arbitration*, (© Kluwer Law International; Kluwer Law International 1994, Volume 11 Issue 4) pp. 117 - 126.[/fn]

Although Western Europe and North America still maintain a monopoly over settling maritime disputes through arbitration, '*[w]e should never forget that, just as anyone can be an arbitrator, arbitration can take place anywhere*'. [fn]Bruce Harris, *Arbitration-A World Overview*, in *BIMCO Review*, 1994 (2nd edition), W. H.

Robinson, Stroudgate plc., London, at p. 65.[/fn] Therefore, there has been a need for diversification of the options when it comes to accommodating the parties' choice for dispute resolution in the MENA region. This diversification can be achieved through providing the shipping industry in the MENA region with a reliable and secure internationally established forum.

The first step towards achieving this goal in the MENA region was the establishment of the Emirates Maritime Arbitration Centre (EMAC), which was established in Dubai in April 2016. This initiative has been further pursued by the establishment of the CIAMA in Morocco in September 2016.

## **Introducing CIAMA**

The *Cour Internationale d'Arbitrage Maritime et Aérien* (International Court of Maritime and Air Arbitration), shortened 'CIAMA', is a private and independent institution, the purpose of which is to organize and manage arbitration proceedings in disputes related to international maritime trade.

CIAMA has partnered with the *Chambre Arbitrale Maritime de Paris* (Paris Chamber of Maritime Arbitration) to offer new means for dispute resolution between economic actors through arbitration.

The creation of CIAMA coincides with the commitment by public authorities and professionals of the maritime community to endow the Moroccan Kingdom with a specialized centre for international dispute resolution that adds to EMAC for the MENA region.

CIAMA aims to provide a simple alternative framework for the resolution of national and international commercial disputes by arbitration.

Moroccan legislation encourages the use of arbitration, with the most recent reform enacted by Law n° 08-05.[/fn]Promulgated by Royal Decree No. 1-07-169 of 30 November 2007 and published in the Bulletin Officiel du Royaume du Maroc No. 5584 of 6 December 2007.[/fn] In effect, Moroccan law leaves arbitrators a great deal of freedom in the organization of arbitral proceedings and the choice of applicable law. On the other hand, CIAMA adopted its own Rules, which set out the procedural framework for the conduct of arbitral proceedings.

## **How are CIAMA Arbitration Proceedings Engaged and Conducted?**

Arbitration, as a fundamentally consensual process for the settlement of disputes, is initiated either through the parties' mutual consent – materialised through an ad hoc arbitration agreement once a dispute arises – or in accordance with an arbitration clause in a commercial contract. If parties opt to have their disputes heard at CIAMA, they must adhere to CIAMA Rules (see 3rd preliminary disposition of CIAMA Rules).

At CIAMA, formalities are reduced to a minimum. For instance, a mere registered letter with acknowledgment of receipt, or an e-mail confirmed by postal letter sent to the Respondent is enough to engage the arbitration proceedings and therefore interrupt the statutory limitation period (see Article 5.1 of CIAMA Rules). Once the proceedings are engaged, the parties exchange their respective memoranda.

Pursuant to Article 7.2 of the CIAMA Rules, the parties have the opportunity to appoint a single arbitrator for small claims. In most cases however, the constitution of an arbitration panel, composed of three arbitrators, is required. In such instances, each party appoints one arbitrator, with the third being designated by the CIAMA Committee of the Court, according to the provisions of Articles 7.3 and 7.4 of the CIAMA Rules. The arbitrator or arbitration panel is then seized of the dispute and proceeds to fix the date of the first hearing and schedule the proceedings.

The conduct of the preliminary investigation and the hearing is very similar to that of a common court trial. The arbitrators lead the hearing and may request further explanation, call upon an expert for an opinion on a given technical point, and generally, take any measure of instruction such as they consider necessary in view of rendering an award.

The award should be rendered within six months, which can be extended by decision of the President of the Committee of the Court, (*i.e.* the President of CIAMA).

## **Who are CIAMA's Arbitrators?**

The General Meeting of Court members keeps a list of registered arbitrators. The arbitrators are selected based on rigorous criteria among professionals currently belonging or having previously belonged to organizations or companies related to maritime trade and maritime industry (*i.e.* any activities directly or indirectly related to matters stated in Article 1 of the CIAMA Rules).

Arbitrators registered with CIAMA can be divided into three broad categories: maritime trade practitioners (shipowners, charterers, brokers, insurers and consignees), academics or other legal practitioners (maritime law professors, business lawyers and judges) and technicians (maritime engineering engineers, long-term captains, mechanical officers and experts). Composing a panel with maritime industry professionals of different backgrounds balances out the opinion of the arbitral tribunal, thanks to practical experience and knowledge of customs specific to maritime law within the region.

### **What are the Functions of the Committee of the Court?**

The Committee of the Court is composed of the President of CIAMA and two other members appointed by the CIAMA Board of Directors. It is in charge of administering the arbitration.

The Committee of the Court appoints the President of the Arbitral Tribunal based on criteria such as experience and knowledge of the specifics of any given case. The Committee thus has an important role in the constitution of the Arbitral tribunal. Moreover, during the first and second stages, the draft awards are submitted to the Committee, which may then suggest any changes in the motivation or draw the arbitrators' attention to any matter of substance without imposing any modifications on arbitrators.

### **Appealing an Award**

During the proceedings, arbitrators are bound to respect the guiding principles for conducting a trial as set out in Articles 327-9 *et seq.* of the Moroccan Code of Civil Procedure.

Moroccan legislation recognizes the autonomous nature of arbitration; thus, the

only possible remedy against an award before a Moroccan court is that of annulment, which is only granted on the grounds listed in Articles 327-26 *et seq.* of the Civil Procedure Code. If the award is annulled by the Court of Appeal, the dispute will be sent back to CIAMA.

At the same time, the CIAMA rules also allow for an internal appeal against an award, giving the parties' the chance to have their case re-examined by a differently composed panel (see Article 17 of the Court's Articles). However, the parties can waive their right of appeal through a contractual clause to such effect (see Article 19 of the CIAMA Rules).

### **Transparency and Publication of Awards**

CIAMA has integrated into its rules the growing concern for transparency regarding the conduct of arbitration proceedings. The anonymous publication of awards<sup>[fn]</sup>As CIAMA is newly opened, there has not yet been a published award. However, it is expected that future awards will be published in the documentation section of its website.<sup>[/fn]</sup> contributes to attaining this goal, while also allowing for the development of a uniform case law (see Article 23 of the CIAMA Rules).

As a counter part to the full autonomy of international arbitration, arbitrators and CIAMA have joint responsibility with regards to building a coherent case law respectful of the nature of arbitration as a method of resolving disputes which is chosen by the parties and for their own convenience. The organization of CIAMA is meant to efficiently address this ambition.

### **Concluding Remarks**

The introduction of a sector-specific dispute resolution centre such as CIAMA offers many advantages.

On the one hand, it enables charters and professionals from the maritime and air sectors to have their disputes resolved locally and at a lower cost.<sup>[fn]</sup>See CIAMA Costs and Fees and LMAA Notes on Fees.<sup>[/fn]</sup>

On the other hand, being North Africa's only specialised maritime arbitration

centre, CIAMA fills a geographical and economic gap, giving parties trading internationally and which are reluctant to submit claims through foreign courts a viable alternative for dispute resolution in this region.

Finally, with its rules based on internationally recognised standards, CIAMA is able to level with international norms and established best practices in arbitration.