

Rules for Arbitration – A Survey of the Society of Maritime Arbitrators (SMA)

1. Introduction

Arbitration plays a central role in resolving disputes in the maritime industry, where transactions are often international, complex, and time-sensitive. The Society of Maritime Arbitrators (SMA), based in New York, is one of the leading organizations providing a structured framework for maritime dispute resolution. This document provides a comprehensive overview of the SMA Arbitration Rules, their structure, procedures, and practical significance.

2. Background of the Society of Maritime Arbitrators

The Society of Maritime Arbitrators, Inc. (SMA) was established in 1963 to promote the use of arbitration in maritime disputes and to provide experienced arbitrators knowledgeable in maritime law and practice. The SMA Rules are widely used in charter parties, bills of lading, shipbuilding contracts, marine insurance disputes, and other maritime agreements.

3. Scope and Application of SMA Rules

The SMA Arbitration Rules apply when parties agree to resolve disputes under SMA procedures. This agreement is typically incorporated through an arbitration clause in a contract. The rules are flexible and designed to accommodate both large, complex disputes and smaller claims.

Key characteristics include:

- Party autonomy
- Procedural flexibility
- Industry expertise
- Efficiency and cost-effectiveness

4. Commencement of Arbitration

Arbitration under SMA Rules begins with a written demand for arbitration. The initiating party (claimant) must:

- Notify the opposing party (respondent)
- Describe the dispute
- State the relief sought

- Appoint an arbitrator (if applicable)

The respondent must reply within a specified time and may appoint its own arbitrator.

5. Constitution of the Tribunal

Typically, SMA arbitrations are conducted before:

- A panel of three arbitrators, or
- A sole arbitrator (if agreed by the parties)

In a three-member tribunal:

- Each party appoints one arbitrator
- The two party-appointed arbitrators select a third arbitrator (chairperson)

If a party fails to appoint an arbitrator, or if the arbitrators cannot agree on a chairperson, the SMA may intervene to complete the panel.

6. Procedural Framework

The SMA Rules emphasize flexibility over rigid procedure. Arbitrators have broad discretion to manage proceedings, including:

- Scheduling hearings
- Determining admissibility of evidence
- Establishing timelines

Proceedings may be conducted:

- In person
- By written submissions only
- Via virtual hearings

7. Exchange of Submissions and Evidence

The arbitration process typically involves:

- Statement of claim
- Statement of defense
- Counterclaims (if any)

- Reply and rejoinder (if permitted)

Parties may submit documentary evidence, witness statements, and expert reports. Discovery is generally more limited than in court litigation, but arbitrators may allow document production where appropriate.

8. Hearings

Hearings are not mandatory in all cases. Many SMA arbitrations are decided on documents alone, particularly in smaller disputes. When hearings are held:

- Witnesses may be examined and cross-examined
- Experts may testify
- Arbitrators may ask questions

The process is less formal than court proceedings but maintains fairness and due process.

9. Awards

After considering the evidence and submissions, the tribunal issues an arbitral award. Key features include:

- Written decision
- Reasoned findings (unless otherwise agreed)
- Final and binding nature

The award may include:

- Damages
- Interest
- Costs of arbitration

10. Costs and Fees

Costs in SMA arbitration include:

- Arbitrators' fees
- Administrative fees (if applicable)
- Legal costs

The tribunal has discretion to allocate costs between the parties, often based on the outcome of the case.

11. Interim Measures

Arbitrators may grant interim relief where necessary, such as:

- Preservation of evidence
- Security for claims
- Orders to maintain the status quo

These powers enhance the effectiveness of arbitration in urgent situations.

12. Small Claims Procedure

The SMA provides a simplified procedure for smaller disputes, often referred to as "Shortened Arbitration Procedure" or "Documents Only" arbitration. Features include:

- Sole arbitrator
- Limited submissions
- No oral hearing
- Expedited decision

This procedure reduces time and cost significantly.

13. Confidentiality

While SMA proceedings are generally private, confidentiality is not absolute unless expressly agreed by the parties. However, in practice, maritime arbitration maintains a high level of discretion.

14. Enforcement of Awards

SMA arbitral awards are enforceable under international conventions such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This ensures global enforceability of decisions.

15. Advantages of SMA Arbitration

- Expertise in maritime law
- Flexibility in procedure

- Faster resolution compared to courts
- Neutral forum for international disputes
- Enforceability of awards worldwide

16. Challenges and Criticism

Despite its advantages, SMA arbitration may face:

- High arbitrator fees in complex cases
- Limited discovery compared to litigation
- Potential lack of appeal mechanisms

17. Conclusion

The Society of Maritime Arbitrators provides a robust and flexible framework for resolving maritime disputes. Its rules reflect the commercial realities of the shipping industry, balancing efficiency with fairness. As global trade continues to expand, SMA arbitration remains a key mechanism for dispute resolution in maritime law.

References (Suggested)

- SMA Arbitration Rules (latest edition)
- New York Convention (1958)
- Maritime Law Textbooks and Journals
- UNCITRAL Model Law on International Commercial Arbitration