THE RULES OF ARBITRATION OF TOKYO MARITIME ARBITRATION COMMISSION (TOMAC) OF THE JAPAN SHIPPING EXCHANGE, INC.

[ORDINARY RULES]

Made 13th September, 1962
Last amended 15th June, 2001
In force 1st September, 2001

Section 1. [Purpose of these Rules] These Rules apply to arbitrations to be held at The Japan Shipping Exchange, Inc. (hereinafter referred to as “the JSE”).

Section 2. [Tribunal of Arbitrators] (1) Arbitration described in the preceding Section shall be performed by the Tribunal of Arbitrators (including the case of a sole arbitrator, hereinafter referred to as “the Tribunal”) to be constituted by arbitrators appointed in accordance with Section 14 hereof.
(2) The Tribunal shall perform arbitration independently of the JSE and the Tokyo Maritime Arbitration Commission (hereinafter referred to as “the TOMAC”).

Section 3. [Relation between an Arbitration Agreement and these Rules] Where the parties to a dispute have, by an arbitration agreement entered into between them or by an arbitration clause contained in any other contract between them, stipulated that any dispute shall be referred to arbitration of the JSE or arbitration in accordance with its rules, these Rules (or whichever version of these Rules is in force at the time the application for arbitration is referred) shall be deemed to constitute part of such arbitration agreement or arbitration clause.

Section 4. [Secretariat of Arbitration] The Secretariat of the JSE shall assume and conduct for the TOMAC or the Tribunal all business provided for in these Rules or directed by the TOMAC or the Tribunal.

Section 5. [Documents to be Filed for Application for Arbitration] (1) Any party desirous to apply for arbitration (hereinafter referred to as “the Claimant”) shall file with the TOMAC the following documents:
1. Two (2) originals of Statement of Claim;
2. A document evidencing the agreement that any disputes shall be referred to arbitration of the JSE or arbitration in accordance with its rules;
3. Documents in support of his claim, if any;
4. Where a party is a body corporate, a document evidencing the capacity of its representative;
5. Where an agent or attorney is nominated by the Claimant, a document empowering that person to act on behalf of the Claimant.
(2) The documents under the preceding Sub-Section shall be submitted in the number of copies as instructed by the Secretariat.

Section 6. [Particulars to be Specified in Statement of Claim] The following items must be particularized in the Statement of Claim:
1. The names and addresses of the parties (in case of a body corporate, the address of its
head office or main place of business, its name, the name of the representative and its capacity);
2. The preferred place of arbitration;
3. The factual substance and grounds of the claim.

**Section 7. [Acceptance of Application for Arbitration]**

(1) Where the Secretariat has acknowledged that the application for arbitration conforms with the requirements of the preceding two (2) Sections, the Secretariat shall accept it, provided that where special circumstances are acknowledged, the Secretariat may accept the application for arbitration on condition that the documents required in Nos. 3 to 5 of Section 5 shall be filed later.

(2) The date when the Secretariat accepts the application for arbitration in accordance with the preceding Sub-Section shall be deemed to be the date of commencement of the arbitration proceedings.

**Section 8. [Attempt of Conciliation]**

(1) The Secretariat may, after it accepted the application for arbitration, recommend the parties to first conciliate the dispute which is the subject of arbitration.

(2) Where the parties agree to conciliate their dispute in accordance with the preceding Sub-Section, TOMAC suspends the arbitration proceedings until the termination of conciliation proceedings.

(3) The conciliation shall be conducted by one conciliator, who shall be appointed by Chairman of TOMAC, within 60 days from the day on which the above agreement is reached between the parties.

(4) The conciliation proceedings shall be in accordance with the Conciliation Rules of the JSE (hereinafter referred to as the “Conciliation Rules”) unless otherwise provided for in this Section.

(5) If the dispute is resolved by conciliation, the Filing Fee for arbitration shall be appropriated as part of the preliminary investigation fee and conciliation fee under the Conciliation Rules.

(6) The conciliator may become an arbitrator in the arbitration proceedings subsequent to the failure of the conciliation attempt only if the parties so agree.

(7) The Arbitration Fee for the resumed arbitration proceedings shall be the sum in accordance with the Tariff of Fees for Arbitration, minus the conciliation fee if paid.

**Section 9. [Instruction for Filing of Defense and Supplementary Statements]**

(1) Where the Secretariat has accepted the application for arbitration, it shall forward to the other party (hereinafter referred to as “the Respondent”) an original of the Statement of Claim together with the respective copies of the documentary evidence submitted, and shall instruct the Respondent to send to the Secretariat and the Claimant respectively the Defense and documents in support of the defense (if any) within twenty-one (21) days from the day of receipt of such instruction, provided that an allowance of a reasonable longer period will be granted to the Respondent where its address, its head office or main place of business is located in a foreign country, or special circumstances are acknowledged.

(2) Where the Respondent nominates its agent, the Respondent shall file, on filing of the Defense, a document empowering the agent to act on its behalf.

(3) When the Claimant has received the Defense and documentary evidence (if any), the
Claimant shall, if it has any objection to the Defense, send to the Secretariat and the Respondent respectively within fourteen (14) days from the day of receipt thereof its Supplementary Statement and further documentary evidence, if any.

(4) In the event of any further Supplementary Statement and documentary evidence being filed, the procedures provided in the preceding Sub-Section shall be repeated.

(5) The Defense, Supplementary Statements and documentary evidence may be submitted via e-mail or fax, provided that the sending party shall bear the burden of proving that the copies are identical to the originals and that it has in fact forwarded those to the other party.

(6) The documents under this Section shall be submitted in the number of copies as instructed by the Secretariat.

Section 10. [Service of Documents] Documents relating to arbitration shall, unless handed in person to the other party or his agent, be served to the address of the party indicated in the Statement of Claim, to the address of his agent or to the place which the party designates.

Section 11. [Counterclaim by the Respondent] (1) If the Respondent wishes to apply for arbitration of a counterclaim arising out of the same cause or matter, as a rule, he must do so within the period stipulated in Section 9(1).

(2) Counterclaim applications made within the period specified in the preceding Sub-Section shall, in principle, be heard concurrently with the arbitration applied for by the Claimant.

Section 12. [Amendment of the Claim] Amendment of the claim (if any) must be made prior to appointment of the arbitrators, with the exception, however, where approval of the Tribunal is obtained, even after the arbitrators are appointed.

Section 13. [Place of Arbitration] (1) Arbitration shall be performed in Tokyo or Kobe.

(2) Where no place of arbitration is designated in the arbitration agreement or the arbitration clause, Tokyo shall be the place of arbitration.

(3) Where it is not clear whether the arbitration agreement or the arbitration clause designates Tokyo or Kobe as the place of arbitration, and no mutual consent of the parties is obtained, arbitration shall be performed in Tokyo.

Section 14. [Appointment of Arbitrators] (1) The arbitrator(s) shall be appointed from among the persons who are listed on the Panel of TOMAC Arbitrators and who have no connection with either of the parties or with the matter in dispute. However, TOMAC may appoint a person or persons not on the Panel if TOMAC deems such appointment necessary.

(2) The Claimant may, when filing its Application for Arbitration, and the Respondent may, when sending its Defense, inform the Secretariat of preferred nominations of up to seven (7) arbitrators respectively (hereinafter referred to as “the nominees”) who may satisfy the requirements in the text of the preceding Sub-Section. The parties must not however contact the preferred nominees as regards the matter in dispute.

(3) Where the parties have informed of the nominees in accordance with the preceding Sub-Section, TOMAC shall appoint one arbitrator from each set of the nominees and a
further third arbitrator. In case the parties agree to nominate one person and have no objection to a sole arbitrator, TOMAC may appoint such nominee as a sole arbitrator. Where the parties do not provide nominees, or where TOMAC deems it inappropriate to appoint arbitrators from among the nominees, TOMAC shall appoint either a sole or three arbitrators taking into account the further preferences of the parties.

(4) Appointment of arbitrators shall be made by consultations of Chairman and Vice-Chairmen of TOMAC.

(5) Where appointment was made in accordance with the preceding Sub-Section, the Secretariat shall advise the parties of the names and resumes of the arbitrators.

Section 15. [Appointment of Substitute Arbitrators] (1) Where a vacancy occurs amongst the arbitrators due to death, resignation or other reasons, a substitute arbitrator shall be appointed in accordance with the provisions of the preceding Section.

(2) In the case of the preceding Sub-Section, the Tribunal shall determine whether any prior hearings shall be repeated.

Section 16. [Obligations and Punitive Provisions for Arbitrators] (1) Arbitrators shall carry out their duties fairly and justly, treating the parties equally.

(2) Arbitrators shall not privately associate with the parties, their agents or other related persons in regard to the matter in question.

(3) Arbitrators shall not reveal to third parties the contents of the arbitration, the names of the parties or anything else related to the matter in question.

(4) An arbitrator in violation of any of the preceding three (3) Sub-Sections shall resign immediately.

(5) The TOMAC may remove the arbitrator in the preceding Sub-Section from the Panel of Arbitrators.

Section 17. [Disclosure by Arbitrators] (1) Arbitrators appointed in accordance with Sections 14 or 15, shall, within seven (7) days of being appointed, provide to the TOMAC a document indicating any circumstances which may give rise to doubts concerning their impartiality or independence, and the Secretariat shall forward copies of same to the parties.

(2) The disclosure in the preceding Sub-Section shall include whether the arbitrator has any close personal, commercial or other relationship with the following:
   1. Parties to the arbitration
   2. Subsidiary companies or other companies related to the parties
   3. Parties' agents
   4. Other appointed arbitrators

(3) When a party does not file a motion to challenge the appointment of the arbitrator within seven (7) days from the day of receipt of the disclosure document in the preceding Sub-Section (1), it shall be deemed that the party has no objection to the disclosure in the preceding two (2) Sub-Sections.

Section 18. [Challenge to an Arbitrator] (1) Where a party desires to challenge the appointment of an arbitrator, it must do so by making a motion of challenge to the TOMAC in writing showing the name of the arbitrator to be challenged and the reason for challenge.

(2) Where the motion of the preceding Sub-Section is made, the arbitration proceedings
shall be suspended until the advice provided in Sub-Section (4) of this Section is given. The TOMAC shall constitute an Arbitrator Challenge Review Committee of three (3) persons whom TOMAC shall, by consultations of Chairman and Vice-Chairmen, appoint from among those on the Panel of Members of the TOMAC to decide whether the challenge to the arbitrator shall be accepted or dismissed.

(3) Where the aforesaid Committee decides that the challenge to the arbitrator is reasonable, a substitute arbitrator shall be appointed in accordance with the provisions of Section 15.

(4) Where a substitute arbitrator is appointed in accordance with the preceding Sub-Section or where the aforesaid Committee concludes that the challenge to the arbitrator is not reasonable, the Secretariat shall so advise the parties.

(5) In the case where a challenge has been filed, the arbitrator may voluntarily resign from the matter. However, in such a case it shall not be deemed that the challenge was a reasonable one.

Section 19. [Parties’ Obligations] (1) The parties must follow the instructions the Tribunal gives for the purpose of facilitating the arbitration proceedings.

(2) Where a party, whether willfully or in gross negligence, fails to submit its statements or documentary evidence within a reasonable period or delays in applying for the hearing of a witness or expert witness such that the Tribunal deems it to unreasonably delay the conclusion of the proceedings, the Tribunal may dismiss such submission or application.

(3) The arbitration proceedings and record are not public information and the parties, their agents or any other persons concerned shall not reveal to third parties the contents of the arbitration, the names of the parties or anything else related to the pending matter in question.

Section 20. [Hearings] (1) The Tribunal shall conduct the hearing in the presence of all parties. However, where the Tribunal deems it necessary, separate hearings may be held for the parties.

(2) The Tribunal shall fix the date and time (hereinafter referred to as “the fixed date”) and the place for the hearing, and give notice thereof to the parties at least seven (7) days prior to the fixed date, unless prevented by special circumstances.

Section 21. [Appearance of Parties, Witnesses, etc.] (1) The parties (in case of a body corporate, representative thereof) or their agents must appear in person before the Tribunal at the fixed date, in order to gain hearing.

(2) Where any party wishes to have the person in charge of the matter in dispute appear at the hearing, it must submit to the Tribunal a document empowering such person to act on its behalf.

(3) The parties may bring their witnesses or expert witnesses before the Tribunal at the fixed date, in order to evidence their claim or statement.

(4) The parties must advise the Secretariat in writing, prior to the fixed date, of the names of the parties, agents, witnesses or expert witnesses who are expected to appear, and in case of witnesses or expert witnesses, the contents of testimonies or appraisals to be given by them.

(5) Where the Tribunal is unable to hold a hearing consequent upon the non-appearance of a party or agent thereof at the fixed date, the Tribunal may make its award on the
basis of the documentary evidence or other documents filed by the party.

(6) The Tribunal may, after taking into consideration the views of the parties, hold a hearing of any of the parties, agents, witnesses or expert witnesses, who are unable to attend because of illness, inconvenient location of residence or other unavoidable reasons, in such a manner as to enable the absentee and all the attendees to communicate with each other through two-way telecommunications technology. In this case, the person who has provided evidence through telecommunications shall be deemed to have attended the hearing.

**Section 22. [Hearings, etc. of Witnesses by the Tribunal]** The Tribunal may, irrespective of there being any request by either party, request from the witnesses or expert witnesses their voluntary appearance, or from the parties presentation of further documents, and examine them by hearing and in any other way, in order to elucidate the points in dispute.

**Section 23. [Pronouncement of Conclusion of Hearings]** The Tribunal shall pronounce the conclusion of hearings when the Tribunal deems it appropriate. But the Tribunal may, if the Tribunal deems it necessary, re-open the hearing at any time before an award is given.

**Section 24. [Immunity of the TOMAC and the Arbitrators]** The TOMAC, the Arbitrators and the Secretariat have complete civil immunity from liability regarding the arbitration proceedings and the arbitration award.

**Section 25. [Language]** The language employed in the Statement of Claim, the Defense, the Supplementary Statements, the hearings and the arbitration award in domestic arbitrations shall be the Japanese language, and that in international arbitrations shall, as a rule, be the English language. However, except where the Tribunal has specified otherwise, it is not necessary to translate documentary evidence.

**Section 26. [Interpreting]** The parties who will need interpreters at the hearings may, at their own expense, arrange for interpreters to be present at the hearings.

**Section 27. [Mediation]** (1) The parties shall be allowed to settle the dispute amicably during the course of the arbitration proceedings.

(2) The Tribunal may, at any stage of the arbitration proceedings, mediate between the parties for the whole or a part of the dispute.

(3) In case mediation conducted in accordance with the preceding Sub-Section fails, the Tribunal resumes the arbitration proceedings, provided however that it must not issue an award based on any of the information it gained during the mediation proceedings.

**Section 28. [Dismissal of Application for Arbitration or Other Decisions]** In any of the following cases the Tribunal may, without examining the contents of the dispute, dismiss the application for arbitration or make such other decisions as it deems fit:

1. Where it is found that the arbitration agreement is not lawfully made or is void, or the said agreement is canceled;

2. Where it is found that either of the parties is not lawfully represented or his agent has no authority to act on his behalf;
3. Where both parties fail to appear without cause at the fixed date for hearing;
4. Where both parties fail to comply with such directions or requirement of the Tribunal as it deems necessary for a proper performance of the arbitration proceedings;
5. Where the Tribunal finds that the Claimant has wrongfully delayed the speedy prosecution of the arbitration proceedings (where the Respondent has filed a counterclaim the same applies to the Respondent's counterclaim).

Section 29. [Assessment of Damages] Where it is recognized that a loss was incurred, but it is extremely difficult to prove the amount of the loss due to the nature of such loss, the Tribunal may assess a reasonable amount on the basis of the results of examination.

Section 30. [When Award Given] Where the Tribunal has pronounced the conclusion of hearings in accordance with Section 23, it shall in principle within thirty (30) days thereof give its award.

Section 31. [How Award, etc. to be Determined] The award and other decisions by multiple arbitrators must be made by majority voting of the arbitrators.

Section 32. [Written Award and Items to be Described] (1) When the Tribunal decides its award, it shall be in writing and shall include the following items, and shall be signed and sealed by all the arbitrators. However, where for an unavoidable reason an arbitrator cannot sign or seal the award, this fact shall be noted on the award and the arbitrator's signature and seal shall be omitted:
1. The names and addresses of the parties (in case of a body corporate, the address of its head office or main place of business, its name, the name of the representative and the capacity), and in case an agent is nominated, its name;
2. The decision given;
3. The summary of the facts and points at issue;
4. The reason for the decision;
5. The date on which the written award is prepared;
6. The costs of arbitration and proportion thereof to be borne by respective parties;
7. The competent court (Tokyo District Court or Kobe District Court, same shall apply hereunder).

(2) The Tribunal may omit No. 4 of the preceding Sub-Section, when the consent of both parties is obtained.

Section 33. [Amicable Settlement of Dispute] Where both parties have settled amicably the whole or part of the dispute by themselves during the process of the arbitration proceedings, the Tribunal may, so far as request is made to do so by both parties, describe the contents of the settlement in the text of the award.

Section 34. [Service and Deposit of the Award] Authentic copies of the award signed and sealed by the arbitrators shall be served on the parties by the Secretariat or the competent court and the original text thereof shall be deposited by the Secretariat with the competent court in accordance with Section 799(2) of the Law of Public Notice Procedure and Arbitration Procedure.

Section 35. [Rectification of Errors on the Award] If any miscalculation, mistyping,
miswriting or any other apparent error is discovered on the face of the written award within thirty (30) days after its service, the Tribunal may rectify it.

Section 36. [Publication of the Award] The award given by the Tribunal may be published unless both parties beforehand communicate their objections.

Section 37. [Documents not Returnable] Documents filed by the parties shall, as a rule, not be returned. Where any document is desired to be returned, it must be marked to that effect at the time of its filing, and a copy thereof must be attached thereto.

Section 38. [Costs of Arbitration] (1) The Claimant shall pay a Filing Fee of One Hundred Thousand Japanese Yen (¥100,000) to the Secretariat on its application for arbitration. This provision shall also apply where an application for counterclaim is filed. (2) Each party shall, within seven (7) days after the receipt of notice from the Secretariat, pay to the Secretariat the fee (hereinafter referred to as “the Arbitration Fee”) which the Tribunal shall determine in accordance with the Tariff of Fees for Arbitration.

When no amount of claim can be stated at the time of filing, the Tribunal shall determine the Arbitration Fee taking into consideration the contents of the claim, subject to adjustment in accordance with the Tariff of Fees for Arbitration as soon as an amount can be disclosed.

In case the amount of claim cannot be finally disclosed, the Arbitration Fee as provided in the foregoing paragraph shall be deemed the final one.

(3) Where the sum claimed is in a foreign currency, such sum shall, for the purpose of calculating the prescribed Arbitration Fee of the preceding Sub-Section, be converted into Japanese currency by calculation at the average rate on the Tokyo Foreign Exchange Market on the date when the application is filed.

(4) Where the Respondent files his application for arbitration of a counterclaim and the Tribunal considers that such arbitration can be performed concurrently with the Claimant's application, the amounts claimed and counterclaimed respectively shall be aggregated and the aggregate sum shall be taken as the amount of claim in the Tariff of Fees for Arbitration.

(5) The Tribunal may direct the Claimant to pay the Arbitration Fee due from the Respondent on his behalf.

(6) Where the number of hearings held exceeds four (4), beginning with the fifth (5th) hearing, each party must pay a fee of Fifty Thousand Japanese Yen (¥50,000) per additional hearing to the Secretariat. Regardless, however, of the number of hearings held on one (1) day, hearings held on one (1) calendar day shall be counted cumulatively as only one (1) hearing.

(7) The expenses caused by the particular nature of the subject of dispute and the expenses incurred on account of calling for witnesses or expert witnesses by requirement of the Tribunal shall be additionally paid by the parties.

(8) The Filing Fee shall not be returned after the application for arbitration is accepted. The Tribunal may return a part of the Arbitration Fee, so far as such partial amount of the Arbitration Fee has been decided to be returned by the Tribunal, on the ground that the application for arbitration was abandoned or the dispute was settled by mediation.

(9) Each party shall pay the consumption tax imposed on the amount of the each fee as
provided in the foregoing (1) to (7).

**Section 39. [Apportionment of Costs of Arbitration]** The costs of arbitration shall be paid from the Filing Fee and Arbitration Fee paid to the Secretariat under the preceding Section and the ratio in which they shall be borne by the parties shall be decided by the Tribunal.

**Section 40. [Remunerations for Arbitrators]** The remunerations for arbitrators shall be paid out of the Arbitration Fee of Section 38. The amount of the said remunerations shall be determined by consultations of Chairman and Vice-Chairmen of the TOMAC considering the degree of difficulty of the case and other circumstances.

**Section 41. [TOMAC]** Matters relating to the TOMAC shall be provided for in the Rules of the Tokyo Maritime Arbitration Commission.

**Section 42. [Interpretation of these Rules]** The Tribunal shall determine the interpretation of these Rules and the procedural matters not provided for in these Rules.

**Section 43. [Amendment of these Rules]** Any amendment of these Rules shall be made by the TOMAC at the initiative of Chairman of the TOMAC.

**Section 44. [Bylaws]** Bylaws shall be made to put these Rules into practice.

**Supplementary Provisions (15th June, 2001)**
Section 1. These Rules shall be put into force as from 1st September, 2001.
Section 2. The former Rules shall apply to the case of which application for arbitration is filed prior to the enforcement of these Rules.

**The Tariff of Fees for Ordinary Arbitration**

The amount of the Arbitration Fee to be paid by each party shall be as follows:
- When the amount of claim is ¥ 20,000,000 or less, the fee is ¥ 450,000;
- When the amount of claim exceeds ¥ 20,000,000 but is ¥ 120,000,000 or less, the fee is the fee to be paid for ¥ 20,000,000 plus ¥ 10,000 for each additional ¥ 10,000,000;
- When the amount of claim exceeds ¥ 120,000,000, the fee is the fee to be paid for ¥ 120,000,000 plus ¥ 20,000 for each additional ¥ 10,000,000.