

Competing arbitration clauses



The challenge:

There was a dispute over substantial charges that were said to be payable by the charterers to the vessel owners. The owners asserted that their claim for payment of the charges should be resolved under Hong Kong Maritime Arbitration Group rules, and the charterers asserted the matter should be determined in London, under London Maritime Arbitration Association rules. The charter party referred to both institutions, and the dispute was referred to both.

Our approach:

Working with overseas counsel we filed an arbitration claim in the English Commercial Court seeking a determination of the question of which arbitral Tribunal had standing to decide the substantive claim. Meanwhile, the Tribunals in both acknowledged arbitrations remained involved to review any substantive issues as and when they arose.

The outcome:

In the event, the substantive underlying dispute was settled between the parties.

However, the case serves as an example of the types of issues that can be referred to the Commercial Court for determination, outside the scope of an agreement to arbitrate and any Tribunals' decision as to the extent of its own jurisdiction.

Such preliminary issues can often be key considerations, changing the dynamic of the dispute, and providing a context in which the underlying substantive dispute may be re-considered and ultimately settled.



How we made a difference:

We were instructed at short notice and were able to support the owners by issuing the arbitration claim within a short timeframe. This changed the dynamic of the dispute, and contributed to creating circumstances in which a settlement could be negotiated and agreed.