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CONTENTS

The Identity of the Carrier under a Time Charter in Japanese Law (*The Jasmin* Case)

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Introduction

The identity of carrier under time charter contracts is one of the classical questions in the law regulating carriage of goods by sea. The cargo claimants are often not sure whom they should sue – the shipowner or the charterer. The courts of different countries have dealt with identity of carrier problem in various ways, using different arguments. As a result, there is a wide spectrum of approaches to the identity of carrier problem among the different national laws.

Under the traditional position of Japanese law it was considered that in the case of a contract of carriage performed by the ship under a time charter the carrier was the charterer. This position was based on the decision of the Supreme Court in *R.D. Tata & Co. v. Taiyo Shipping Co., Ltd.*[1] Since the Commercial Code has not regulated the time charter, the Supreme Court held that the time charter is a kind of lease contract, and applying by analogy Article 704 of the Commercial Code it came to the conclusion that the carrier was the charterer. This decision of the Supreme Court was followed in later cases[2] and was supported by the leading Japanese scholars.[3]

The Jasmin case

The traditional view that the carrier is the charterer is strongly challenged by a recent decision of the Tokyo District Court in *The Jasmin* case.[4]

In this case the cargo was carried by the motorship "The Jasmin" from Indonesia to

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1) Japanese Supreme Court, June 28, 1928 (1928) Minshu vol.7, 8, p.519.

2) *See*, Kobayashi "Teikiyosen Keyaku Ron" (1988) Hogaku Kyokai vol.105, 5, p.570.

3) Ishii "Kaishoho", Tokyo 1964, p.17, Kawamata "Teikiyosen Keyaku no Seishitsu" (1977) Shoho Soten, 2nd ed., p.270, Kojima "Sogo Hanrei Kenkyu Sosho Shoho", Tokyo 1963, vol.9, p.302, Tanikawa "Teikiyosen Keyaku no Hoteki Kosei" (1955) Hogaku Kyokai, vol.27, 6, p.618; contrary, Toda "Kaishoho", Tokyo 1979, p.114.

4) Tokyo District Court, March 19, 1991 (1991) Kaijiho Kenkyu Kaishi No.10, p.16.

Korea. The ship was under the time charter. The bill of lading was signed by the charterer's agent "For the Master". The name of the charterer was printed at the top of the bill of lading. On the back of the bill of lading was printed an "identity of carrier" clause. The cargo claimant has sued both the shipowner and the time charterer.

The Court held that the charterer was not the carrier, and the claim against it was declared wrong. The Court based its decision on several points:

– The expression "For the Master" on the bill of lading is generally understood to mean that the shipowner is the party to the contract of carriage, i.e. the carrier;

– The Master is legal representative of the shipowner pursuant to Art.713 of the Commercial Code;

– The time charterparty contained following provision:

"It was agreed that the Master authorizes the Charterer or his agents to sign bills of lading on behalf of the Master always in conformity with mate's or tally clerks receipts, or the time charter concerned";

– The time charterer has given the voyage charterer or his agents the authority to sign bills of lading on behalf of the Master:

– The ship's agents signed the bills of lading acting for shipowner/master;

– The bill of lading contained the so-called "demise clause" which provided:

"If the Vessel is not owned by, or chartered by demise to the charterer (as the case may be notwithstanding anything that appears to the contrary), this Bill of Lading shall have effect only as a contract with the owner or demise charterer, as principal, as the case may be, made through the agency of the charterer, who acts as agent only and shall be under no liability whatsoever in respect thereof";

– Even in the case under which a time charter is concluded, the power to instruct and supervise the master and crew is retained in the hands of the shipowner who employs them.

Based upon above mentioned points the Court came to the following conclusions:

– The name of the charterer printed on the top of the bill of lading serves only to show who is the time charterer as a matter of description of the bill of lading, but it is the shipowner and not the time charterer indicated thereon as being responsible in the capacity of carrier. The Court found the justification for this assumption in the fact that in shipping practice the bills of lading often indicate thereon the names of the time charterers, while providing that the shipowner is the only party liable thereunder. Therefore, the merchants, who are well versed in shipping business, are expected to be aware that the carrier is the shipowner and not the charterer. So, the Court concluded that the principle of the apparent representation, on the presumption that the charterer is apparently shown as the carrier on the bill of lading, should not be applied.

– The clause of the time charter by which the master authorizes the charterer to sign

bills of lading should be interpreted as having the effect of granting the charterer the power to issue the bills of lading under which the shipowner is to be liable as carrier. In a time charter, a charterer has the power of instructing a master in respect of the commercial employment of the vessel, but this does not mean that the charterer assumes the responsibility of the carrier. In the case of the damage caused as a consequence of charterer's instructions, the question of charterer's liability may arise. A time charter usually provides for charterer's ultimate liability in such cases, but this is an internal agreement between the shipowner and the charterer and the charterer is not responsible to the cargo owners directly for such damages.

– The legal status of the carrier shown on the bill of lading is to be decided on the interpretation of the content of the bill of lading. Article 3 (1) of the International Carriage of Goods by Sea, 1957 cannot be basis for the responsibility of the charterer as carrier when the charterer is not specified as carrier on the bill of lading. Only if the bill of lading is signed in the name of the charterer, it would be possible to place the responsibility of the carrier on the charterer.

– The bill of lading expressly defined the shipowner as carrier by the demise clause. According to the Court, there could not be found the ground to invalidate the effect of this clause, since it does not make the responsibility of the carrier ambiguous nor is contrary to Article 15 (1) of the International Carriage of Goods by Sea of 1957, since its effect is not to lessen or exclude the carrier's liability. Accordingly, the demise clause was accepted as valid.

– The status of shipowner as carrier offers greater security for the shipowner's responsibility as carrier than in the case if the charterer is held to be the carrier. The shipowner has the maritime property, such as hull and appurtenances, which can stand for the security for the shipowner's responsibility as carrier and can constitute the so-called pledged property on which the preferential right over the ship and its appurtenances (i.e. maritime lien) can be exercised pursuant to Article 842 of the Commercial Code. In the case when the charterer is held to be the carrier, the cargo claimant could not have such protection, since the hull and appurtenances are not owned but possessed by the charterer.

Analysis

One of the most important parts of the judgement in *The Jasmin* case is the one which states that the identity of the carrier under bill of lading is to be decided on the basis of the content of the bill of lading, by which the practice of identification of the carrier based on the legal nature of the time charter seems to be terminated. According to the traditional view of the Japanese law, the charterer was considered as the party responsible against cargo owners. This position was established on the basis of the Commercial

Code, before the Hague Rules were ratified. After the ratification of the Hague Rules, the International Carriage of Goods by Sea Act, 1957 was enacted. The position of Japanese law in respect of the identification of the carrier, however, remained unchanged until *The Jasmin* case, so that usually the charterer was considered as carrier.

The Court's decision in *The Jasmin* case to rely on the content of the bill of lading and not on the legal nature of the time charter, in order to identify the carrier, can be greeted as justified. After the International Carriage of Goods by Sea Act, 1957 entered into force, there is no need anymore to look at a very complicated legal nature of the time charter in order to find out who is the carrier. This Act provides by Article 2 that the carrier can be the shipowner, charterer or lessee. However, this definition is so general that the carrier remains essentially undefined.

When a bill of lading is issued, the most reliable way to identify the carrier is to look at the content of the bill of lading, as the Court did in this case. However, some reasonings of the Court are questionable and deserve to be commented, such as those concerning: *a) the inapplicability of the principle of the apparent representation; b) the validity of the demise clause; c) the cargo claimant has better security against the shipowner.*

a) Inapplicability of the Principle of the Apparent Representation

In *The Jasmin* case, the Court held that when the bill of lading is signed "for the master" by the charterer's agents, the carrier should be the shipowner and not the charterer, even though the charterer's name was shown at the top of the bill of lading.

When a charterer or his agent, in accordance with the authority given by the time charterparty, signs the bills of lading "for the master", it is generally understood that the carrier responsible under such bills of lading is the shipowner. The charter party gives authority to the charterer to enter on behalf of the shipowner into contracts with other persons and that is his usual authority. If the bill of lading was not signed "for the master", the identity of the carrier would have to be determined on the basis of the capacity of the person who signed the bill and the fact in whose name the bill was signed. If that is not clear, the identity of the carrier might be determined on the basis of the name shown in the heading of the bill. When the bill of lading contains in its heading the name of the carrier which corresponds with the name of the person in whose name the bill is signed the problem of carrier's identity do not appear. The problem appears when there is a discrepancy, e.g. when the name of the charterer is shown in the heading of the bill, while the bill is signed "for the master". The Court in *The Jasmin* case gave preference to the signature of the bill, claiming that there is no need to apply the principle of the apparent representation. This reasoning faces some problems, especially in respect of third parties.

As regards third party holders of the bill of lading, in principle, the carrier is the party appearing to be the carrier from the content of the bill of lading. As regards the content of the bill of lading, the most reliable way to identify the carrier is to see in whose name a bill of lading is signed. In practice, the shipowner is most often considered to be the carrier, since a bill of lading is usually signed by the master, who is the legal representative of the shipowner.[5] The shipowner will be responsible even in the case when the bill of lading is signed by the charterer, or his agents, "for the master". It is, in fact, a widespread practice that the charterer's agents sign bills of lading "for the master", but it does not change the presumption that bills of lading are signed by the master binding the shipowner as carrier.

The general principle that bills of lading signed by the master, or "for the master", bind the shipowner is not a strict one. Identity of the carrier responsible from a bill of lading is a question of fact depending upon documents and circumstances of each particular case. If from the bill of lading it is clear that the bill of lading is signed in the charterer's name, or on his behalf, then the charterer should be considered as carrier.

The problem of identification of the carrier may appear if the name of the charterer is shown at the top of the bill of lading, and the bill is signed "for the master" by the charterer's agent. This was the situation in *The Jasmin* case. In such a case, the third party holder of the bill of lading can be justified in concluding that the charterer is the carrier. The third party holder of the bill usually do not have other information on the carrier except that appearing in the bill of lading. If the charterer or his agent signs bill of lading "for the master" it indicates to the charterer's representative capacity. However, even if the charterer signs the bill in representative capacity, the descriptions of the bill may indicate an intention that he should be personally liable. Such a description can be the name printed at the heading of the bill of lading, which is provided for inserting the name of the carrier.

With all due respect, the Court's reasoning that the merchants are expected to know that the bills of lading contain the name of the charterer at the top even though they are not charterer's bills must be rejected as wrong and misleading. The cargo claimant, as a third party holder of the bill of lading, had justifiable reason to believe that the charterer was the carrier, since his name was displayed at the top of the bill of lading. In such a case Article 504 of the Commercial Code can be applied, since the cargo claimant could not know that the charterer was acting as agent. The fact that the name of a company

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5) However, the Court's submission in *The Jasmin* case that the merchants normally consider the shipowner to be the carrier is questionable. Quite the contrary, when the Japanese law is applied, as it was in *The Jasmin* case, the merchants would usually consider the charterer as carrier, or at least such was the position of the Japanese law before *The Jasmin* case.

is shown at the top of the bill of lading implies that such company is the carrier. Moreover, Article 7 (6) of the International Carriage of Goods by Sea Act expressly provides that the bill of lading contains the name of the carrier. The usual place for inserting the carrier's name is the heading of the bill of lading and some bills of lading even expressly define the carrier as a party shown at the top of the face of the bill of lading, including the SHUBIL - 1994 form published by the Japan Shipping Exchange, Inc. The argument that the bill of lading was signed "for the master" does not have much weight. Until the 19th Century, bills of lading were regularly signed by the master and as a relic of such practice modern bills of lading often contain the expression "for the master" at the place provided for signature.

If the name of the charterer is shown at the top of the bill of lading and the bill of lading is signed "for the master" by the charterer's agent, the third party holder of the bill of lading is justified in concluding that the charterer is the carrier. Third party holders of the bill of lading may not have any other information regarding the carrier except that which appears in the bill of lading. Third party holders of the bill of lading may even not know that the bill of lading is issued under a time charter and they cannot be expected to investigate the relationship between the shipowner and the charterer under a time charter, nor whether the master actually authorized the charterer, or his agents, to sign the bill of lading, nor why the name of the charterer is shown at the top of the bill. When a charterer allows his name to appear in the heading of the bill of lading designated for inserting the name of the carrier, he should be precluded from denying the accuracy of this statement against a transferee who in good faith has acted in reliance on those statements. There is no reason why the principle of estoppel should only apply with respect to the particulars concerning the goods and not with respect to other particulars contained in a bill of lading as well. If the charterer wants to avoid his liability, when signing bills of lading in the name of a shipowner, he should expressly state that he acts as agent and the name of the shipowner should be shown at the top of the face of the bill of lading, or at least the name of the charterer should not be displayed there.

b) Validity of the Demise Clause

In *The Jasmin* case, the Court has based its decision to place the responsibility of carrier on the shipowner mainly on the submission that the demise clause was valid. According to the Court, the demise clause is not contrary to Article 15 (1) of the International Carriage of Goods by Sea Act, since it does not make ambiguous the responsibility of the carrier, nor restricts the carrier's responsibility, but its sole effect is to define the carrier. However, the problem of the validity of so-called "identity of carrier" clauses is very questionable.[6] These clauses are recognized by English law, but are considered as

invalid under American, Canadian, French, German, Belgian and some other laws.[7] In *The Jasmin* case, the Court would be right, as far as the argumentation is concerned, but only if the suit is brought against the shipowner. However, when the suit is directed against the charterer, who acted as carrier, the demise clause has as effect the exoneration of the carrier's responsibility and should be declared null and void as contrary to Article 15 (1). If the charterer appears to be the carrier from the bill of lading, as it was in *The Jasmin* case, then an "identity of carrier" clause should not be given an effect.

"Identity of carrier" clauses should not be recognized to have an effect when they try to make the shipowner liable for performing the carriage if the charterer has concluded in his own name a contract of carriage, or if on the basis of the bill of lading it can be concluded that the charterer is the carrier. In such cases, "identity of carrier" clauses go much further from the identification of the carrier, trying to exempt the charterer from the liability for damage and to make the shipowner liable for that damage. If a party enters into a contract of carriage with a charterer believing that the charterer is the carrier, or if a bill of lading contains the charterer's name at the place provided for inserting the carrier's name or is signed in his name, and if there is no indication or a fact which can put in doubt such party's belief that the charterer is the carrier, then an "identity of carrier" clause itself should not have the power to shift the status of carrier from the charterer to the shipowner. The charterer cannot claim that he is only a charterer and that he is not responsible for carriage, if he contracted the carriage in his name presenting himself as the carrier and if he appears to be the carrier from the bill of lading. In fact, the charterers often invoke "identity of carrier" clauses in order to turn attention from the real problem, i.e. whether they are responsible for damage.

c) Cargo Claimant Has Better Security against the Shipowner

The Court's argument that the cargo claimants are better secured in case of a claim against the shipowner than against the charterer is of doubtful value. Under Japanese law the action *in rem* does not exist. A cargo owner may order the arrest of a vessel to secure a claim giving rise to a maritime lien pursuant to Article 842 of the Commercial Code. However, pursuant to Article 242 of the Code of Civil Procedure, in order to arrest a vessel, the full name and address of the vessel's registered owner must be specified in the order for arrest. In practice, it is often a difficult task to find out who is the vessel's owner. The data on vessels contained in the ship's registers are not always credible and cannot serve as a reliable source of information on the vessel's owners. Those data are

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6) *See*, Pejovic "The problem of the validity of "identity of carrier" clauses" (1995) E.T.L. 297.

7) Pejovic, *ibidem*, p.304.

based on the information furnished by shipowners, who are often late in sending information about the change of property of the ship or about the change of the ship's name. Moreover, these registers may contain several ships with the same name, which further lessens the trustworthiness of those data. This means that the cargo owners will sometimes be unable to order the arrest of a vessel, which puts them in more difficult position than before when they had a sufficient security against Japanese charterers, who have often better financial standings than shipowners.

Conclusion

The Jasmin case provoked live discussion and division among Japanese lawyers.[8] Such a reaction was expected due to the radical change of law brought by this case and its great consequences.

The main point of the judgement is the termination of the previous practice of identification of the carrier based on the legal nature of the time charter, which was replaced by a new approach of identification based on the content of the bill of lading. As a consequence, instead of the charterer, now the shipowner is considered to be the carrier. The Court in *The Jasmin* case came to this conclusion mainly relying on the validity of the demise clause. The validity of this clause is, however, strongly contested in many national laws. Its validity is the most clearly recognized by English law. However, the attention must be drawn to the fact that the environment of English law is much more favorable to the demise clause than the one of Japanese law, since under English law the shipowner is usually regarded as carrier, while under Japanese law the charterer was traditionally held to be the carrier. Besides, differently from Japanese law, English law recognizes action *in rem*. It must be said that some other arguments used by the Court are also of questionable value, as it was shown in this article.

It is guessed that the goal of the Court in *The Jasmin* case was to bring Japanese law close to the position of some of the leading maritime nations, most notably English law. If that is the case, some questionable arguments used by the Court can be forgiven as the price that was to be paid for the change of the law. The question is, however, whether such a change represents an improvement. ■

8) The judgement in *The Jasmin* case was commented by Kawamata, Shiho Hanrei Rimakusu, no.7, p.116, Kiyokawa, Juristo no.1002, p.105, Nakamura, Kaijiho Kenkyu Kaishi, no.104, p.16, Takakuwa, Shoji Homu, no.1386, p.33, etc.

TOMAC of JSE Revised Its Arbitration Rules

The Tokyo Maritime Arbitration Commission (TOMAC) of the Japan Shipping Exchange, Inc. (JSE) put into force its revised Arbitration Rules on 1st September, 1996. Major changes had been made in relation to (1)internationalization; (2)liability of and challenge to the arbitrators; (3)more expeditious and economical procedure.

1. Towards Internationalization

There are two important amendments to the Rules as regards international arbitration: one is to open the door wider for international arbitrators and the other is to make English an option for the language of arbitration. Under the revised Rules, the TOMAC, which is a standing commission organized in the JSE, holds and maintains the Panel of Arbitrators for the performance of maritime arbitration. The Panel will include not only the TOMAC members but other eligible specialists (Section 15. [Appointment of Arbitrators] – revised). Foreign experts the TOMAC plans to list on the Panel are those who are based in Japan.

And the Rules leave it to the arbitrators whether they choose English as the language of arbitration, unless otherwise agreed by the parties (Section 26. [Language] – new). Accordingly, the parties who will need interpreters at the hearings will be required to arrange for interpreters at their own expense (Section 27. [Interpreting] – new).

2. Liability of and Challenge to the Arbitrator

Although it is a matter of course from the nature of arbitration, the Rules expressly stipulate that the arbitrators shall carry out their duties fairly and justly and that the arbitrators shall not privately associate with the parties or reveal to other persons the contents of the arbitration. An arbitrator in violation thereof must resign immediately and the TOMAC may even remove the arbitrator from the Panel of Arbitrators (Section 17. [Obligations and Punitive Provisions for Arbitrators] – new).

And in order to avoid unnecessary delay of the procedure by unfounded challenges to the arbitrators the revised Rules require the arbitrators to provide a disclosure document indicating any circumstances which may give rise to doubts concerning their impartiality or independence (Section 18. [Disclosure by Arbitrators] – new).

In accordance with the international trend, the Rules rightly give the TOMAC and the arbitrators immunity from any liability regarding the arbitration proceedings and the arbitration award (Section 25. [Immunity of the TOMAC and the Arbitrators] – new).

3. Towards More Expeditious and Economical Procedure

For the purposes of achieving expeditious and economical proceedings and meeting international demands, the revised Rules value the privacy and confidenciality of the procedure, requiring the parties as well not to reveal to other persons the contents of the pending arbitration (Section 20. [Parties' Obligation of Confidentiality – new). And if the Claimant wrongfully delayed the procedure, their application may be dismissed (Section 29. [Dismissal of Application] – revised).

THE RULES OF MARITIME ARBITRATION OF THE JAPAN SHIPPING EXCHANGE, INC.

[ORDINARY RULES]

Made 13th September, 1962
In force 1st October, 1962
Amended 24th November, 1964
Amended 4th December, 1967
Amended 16th July, 1969
Amended 22nd March, 1976
Amended 27th January, 1982
Amended 25th April, 1985
Amended 19th November, 1987
Amended 17th April, 1989
Amended 13th September, 1994
Amended 17th April, 1996

Section 1. [Purpose of these Rules] These Rules apply to applications for arbitration based on agreements to arbitrate by the Tokyo Maritime Arbitration Commission (hereinafter referred to as "the TOMAC") organized in 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 15 hereof.

(2) The Tribunal shall perform arbitration independently of the JSE and 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] Any party desirous to apply for arbitration (hereinafter referred to as "the Claimant") shall file with the TOMAC the following documents:

1. Statement of Claim;
2. A document evidencing the agreement that any dispute 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 is nominated by the Claimant, a Power of Attorney empowering him to act on behalf of the Claimant.

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 his capacity);
2. The place of arbitration;
3. The claim;
4. The factual circumstances giving rise to the claim.

Section 7. [Acceptance of Application for Arbitration] (1) Where the TOMAC has acknowledged that the application for arbitration conforms with the requirements of the preceding two (2) Sections, the TOMAC shall accept it, provided that where special circumstances are acknowledged, the TOMAC 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 TOMAC 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. [Instruction for Filing of Defense] (1) Where the TOMAC has accepted the application for arbitration, the Secretariat shall forward to the other party (hereinafter referred to as "the Respondent") the duplicate of the Statement of Claim together with the respective copies of the documentary evidence submitted, and shall instruct the Respondent to file the Defense and documents in support of his defense (if any) within twenty-one (21) days from the day after dispatch of such instruction, provided that an allowance of a reasonable longer period will be granted to the Respondent where

his address, his head office or main place of business is located in a foreign country, or special circumstances are acknowledged.

(2) Where the Respondent nominates his agent, he shall file, on filing of the Defense, a Power of Attorney empowering the agent to act on his behalf.

Section 9. [Instruction for Filing of Supplementary Statements](1)Where the Defense of the Respondent and his documentary evidence (if any) have been filed, the Secretariat shall forward the duplicate of the Defense and the respective copies of the Respondent's documentary evidence to the Claimant and instruct him that, if he has any objection to the Defense, he shall file within fourteen (14) days from the day after dispatch thereof his Supplementary Statement and further documentary evidence, if any.

(2) Where the Supplementary Statement and documentary evidence (if any) have been filed, the Secretariat shall forward the duplicate of the Supplementary Statement and the respective copies of the further documentary evidence (if any) to the Respondent, and instruct him that, if he has any objection thereto, he shall file his Supplementary Statement within fourteen (14) days from the day after dispatch thereof.

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

Section 10. [Number of Copies to be Filed] (1)The Statement of Claim, Defense, and Supplementary Statements shall be filed, as a rule, in one (1) original, one (1) duplicate and four (4) copies.

(2) Documentary evidence shall be filed, as a rule, in six (6) copies. However, upon demand from the Tribunal or the other party, the party having received this demand must prove that the copies are identical to the originals.

(3) One (1) power of attorney shall be filed.

Section 11. [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 12. [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 8(1).

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

Section 13. [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 14. [Place of Arbitration] (1) Arbitration shall be performed, as a rule, 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 15. [Appointment of Arbitrators] (1) The TOMAC shall, in principle within fourteen (14) days from the day when the Defense of the Respondent under Section 8(1) was filed or should have been filed, whichever is sooner, nominate a reasonable number of candidates for arbitrator(s) from among the persons who are listed on its "Panel of Arbitrators" and who have no connection with either of the parties or with the matter in dispute and forward to the parties a List of Candidates for Arbitrators listing the names and resumes of such nominated persons. However, a person or persons not on the Panel may be nominated as a candidate or candidates if such nomination is deemed necessary.

(2) Each of the parties may, within fourteen (14) days from the day when the List of Candidates was dispatched, inform the TOMAC in the manner previously specified by the TOMAC of his preferences regarding the appointment of the arbitrator(s). If a party does not give notice of such preferences within the period stipulated above or returns a notice or communication in blank or without stating a definite preference, it shall be deemed that all persons listed on the List of Candidates are equally acceptable to that party as arbitrator(s).

(3) The TOMAC shall, with proper and reasonable regard to the preferences (if any) expressed by the parties concerning the List of Candidates, appoint an uneven number of arbitrators or a sole arbitrator. However, if a nominated candidate is for reasonable cause unable to accept appointment as arbitrator, the TOMAC shall so advise the parties and shall then proceed to appoint another arbitrator without re-submitting to the parties the List of Candidates.

(4) Where the arbitration agreement or clause provides to the effect that the parties shall themselves appoint the arbitrators, such arbitrators shall be appointed from among the aforesaid Panel and shall be deemed to be appointed by the TOMAC under these Rules.

(5) In the case of the preceding Sub-Section, each party shall, within thirty-five (35) days from the date of acceptance of the Claimant's application for arbitration, advise the other party and the Secretariat in writing of the name of its arbitrator and if such advice is not given, the TOMAC shall appoint an arbitrator on behalf of the party in default.

(6) Where the arbitrators are appointed in accordance with Sub-Section (3) or the preceding Sub-Section, the TOMAC shall advise the parties of the names of the arbitrators.

(7) The Proviso to Section 8(1) shall apply to the periods stipulated in Sub-Sections (2) and (5) of this Section.

Section 16. [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 17. [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 18. [Disclosure by Arbitrators] (1) Arbitrators appointed in accordance with Sections 15 or 16, 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 arbitrator within seven (7) days from the day after dispatch 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 19. [Challenge to an Arbitrator] (1) Where a party desires to challenge an arbitrator, he 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 appointed 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 reports to the TOMAC that the challenge to the arbitrator is reasonable, a substitute arbitrator shall be appointed in accordance with the provisions of Section 16.

(4) Where a substitute arbitrator is appointed in accordance with the preceding Sub-Section or where the aforesaid Committee reports to the TOMAC its conclusion that the challenge to the arbitrator is not reasonable, the TOMAC 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 20. [Parties' Obligation of Confidentiality] 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 21. [Hearings] (1) The Tribunal shall give the respective parties hearings concurrently. 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.

(3) Where a party desires to get the fixed date changed, he must request a change of

the fixed date in writing clearly showing the reasons at least three (3) days prior to the fixed date. The Tribunal may grant such request so far as the request is reasonable.
(4) On the occasion of the first hearing, the Tribunal may request the parties to confirm what documentary evidence they plan to present and whether there will be any witnesses.

Section 22. [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) The parties may bring their witnesses or expert witnesses before the Tribunal at the fixed date, in order to evidence their claim or statement.
(3) The parties must advise the Secretariat, 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.
(4) 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.

Section 23. [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 24. [Pronouncement of Conclusion of Hearings] The Tribunal shall ask the parties whether any Statement, documentary evidence, witness or expert witness, still remains to be filed or called, and upon ascertaining that there is none, shall pronounce the conclusion of hearings. But the Tribunal may, if the Tribunal deems it necessary, re-open the hearing at any time before an award is given.

Section 25. [Immunity of the TOMAC and the Arbitrators] The TOMAC and the Arbitrators have complete civil immunity from liability regarding the arbitration proceedings and the arbitration award.

Section 26. [Language] (1) The language employed in the Statement of Claim, the Defense, the Supplementary Statements, the hearings and the arbitration award shall be Japanese or English. Other than where there is agreement between the parties to

employ one of these languages, the Tribunal shall determine which language shall be employed. However, except where the Tribunal has specified otherwise, it is not necessary to translate documentary evidence.

(2) With regard to documents submitted before the language has been decided in accordance with the preceding Sub-Section, the Tribunal may request that the parties provide translations.

Section 27. [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 28. [Mediation] (1) The parties shall be allowed to settle the dispute amicably even after the application for arbitration has been filed.

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

Section 29. [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 30. [When Award Given] Where the Tribunal has pronounced the conclusion of hearings in accordance with Section 24, it shall within thirty (30) days thereof give its award. The said period, however, may be extended if there is an unavoidable reason.

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 his capacity), and in case an agent is nominated, his 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 Japanese Code of Civil 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. [Engagement Fee and Costs of Arbitration] (1) The Claimant shall pay an Engagement Fee of One Hundred Thousand Japanese Yen (¥100,000) to the Secretariat on his application for arbitration. This provision shall also apply where an application for counterclaim is filed. However, even in disputes between the same parties, where there are multiple contracts involved, the Engagement Fee of One Hundred Thousand Japanese Yen (¥100,000) shall be multiplied by that number.

(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 Costs.

When no amount of claim can be stated at the time of filing, the Tribunal shall determine the Arbitration Fee taking consideration of contents of the claim, subject to adjustment in accordance with the Tariff of Fees for Arbitration Costs 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 foreging 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 Telegraphic Transfer Middle Rate 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 Costs.

(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 requesting an additional hearing 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 defrayed on account of calling for witnesses or expert witnesses by requirement of the Tribunal shall be additionally paid by the parties.

(8) The Engagement Fee shall not be returned after the application for arbitration is accepted. The Tribunal shall 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. [Costs of Arbitration] The costs of arbitration shall be paid from the Arbitration Fee paid to the Secretariat under the preceding Section and the ratio in which they shall be borne 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 consultation between Chairman and Deputy 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] Where any difference of opinion among the arbitrators arises on the interpretation of these Rules, it shall be determined by the TOMAC at the request of the Tribunal.

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 (17th April, 1996)

Section 1. These Rules shall be put into force as from 1st September, 1996.

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 Arbitration Costs

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 ¥ 1,000,000;

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.

Table of Arbitration Fees (each party)

Amount of Claim	Fee	Amount of Claim	Fee	Amount of Claim	Fee	Amount of Claim	Fee
¥20mil.	¥450,000	55	800,000	90	1,150,000	950	3,110,000
21	460,000	56	810,000	91	1,160,000	1000	3,210,000
22	470,000	57	820,000	92	1,170,000	1050	3,310,000
23	480,000	58	830,000	93	1,180,000	1100	3,410,000
24	490,000	59	840,000	94	1,190,000	1150	3,510,000
25	500,000	60	850,000	95	1,200,000	1200	3,610,000
26	510,000	61	860,000	96	1,210,000	1250	3,710,000
27	520,000	62	870,000	97	1,220,000	1300	3,810,000
28	530,000	63	880,000	98	1,230,000	1350	3,910,000
29	540,000	64	890,000	99	1,240,000	1400	4,010,000
30	550,000	65	900,000	100	1,250,000	1450	4,110,000
31	560,000	66	910,000	110	1,350,000	1500	4,210,000
32	570,000	67	920,000	120	1,450,000	1600	4,410,000
33	580,000	68	930,000	130	1,470,000	1700	4,610,000
34	590,000	69	940,000	140	1,490,000	1800	4,810,000
35	600,000	70	950,000	150	1,510,000	1900	5,010,000
36	610,000	71	960,000	160	1,530,000	2000	5,210,000
37	620,000	72	970,000	170	1,550,000	2100	5,410,000
38	630,000	73	980,000	180	1,570,000	2200	5,610,000
39	640,000	74	990,000	190	1,590,000	2300	5,810,000
40	650,000	75	1,000,000	200	1,610,000	2400	6,010,000
41	660,000	76	1,010,000	250	1,710,000	2500	6,210,000
42	670,000	77	1,020,000	300	1,810,000	2600	6,410,000
43	680,000	78	1,030,000	350	1,910,000	2700	6,610,000
44	690,000	79	1,040,000	400	2,010,000	2800	6,810,000
45	700,000	80	1,050,000	450	2,110,000	2900	7,010,000
46	710,000	81	1,060,000	500	2,210,000	3000	7,210,000
47	720,000	82	1,070,000	550	2,310,000	3500	8,210,000
48	730,000	83	1,080,000	600	2,410,000	4000	9,210,000
49	740,000	84	1,090,000	650	2,510,000	4500	10,210,000
50	750,000	85	1,100,000	700	2,610,000	5000	11,210,000
51	760,000	86	1,110,000	750	2,710,000	5500	12,210,000
52	770,000	87	1,120,000	800	2,810,000	6000	13,210,000
53	780,000	88	1,130,000	850	2,910,000	6500	14,210,000
54	790,000	89	1,140,000	900	3,010,000	7000	15,210,000

THE RULES OF SIMPLIFIED ARBITRATION PROCEDURE SUPPLEMENT TO THE RULES OF MARITIME ARBITRATION OF THE JAPAN SHIPPING EXCHANGE, INC.

[SIMPLIFIED RULES]

Made 25th April, 1985
In force 1st July, 1985
Amended 17th April, 1989
Amended 13th September, 1994
Amended 17th April, 1996

Section 1. [Definition] Simplified Arbitration in the present Rules shall mean arbitration which is performed with speed and simplicity, regarding a dispute over a claim not exceeding Twenty Million Yen (¥20,000,000), under the present Rules in place of the Rules of Maritime Arbitration of The Japan Shipping Exchange, Inc. (hereinafter referred to as "the Rules of Maritime Arbitration"), by agreement between both parties.

Section 2. [Relation between the present Rules and the Rules of Maritime Arbitration] All matters which are not covered by the present Rules shall be governed by the Rules of Maritime Arbitration. In the event of a conflict between the two sets of Rules, the present Rules shall prevail over the Rules of Maritime Arbitration to the extent of such conflict.

Section 3. [Application for Simplified Arbitration] Any party wishing to apply for Simplified Arbitration under the present Rules (hereinafter referred to as "the Claimant"), shall file with the Secretariat the documents stipulated in Section 5 of the Rules of Maritime Arbitration in the number of copies as instructed by the Secretariat. The Statement of Claim shall be on or similar to the Form designated for Simplified Arbitration by the Secretariat.

Section 4. [Acceptance of Application for Simplified Arbitration] (1) When the TOMAC acknowledges that the application complies with the requirements of the preceding Section, it shall accept the application.

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

Section 5. [Filing of Defense in Simplified Arbitration] When the TOMAC has ac-

cepted the application for Simplified Arbitration, the Secretariat shall forward to the other party (hereinafter referred to as "the Respondent") the duplicate of the Statement of Claim in Simplified Arbitration together with copies of the documentary evidence. In addition, the Secretariat shall instruct the Respondent that if he is also willing to settle the dispute by Simplified Arbitration he shall file with the Secretariat within fifteen (15) days from the day after its dispatch his Defense in Simplified Arbitration and any supporting evidence. The Defense shall be on or similar to the Form stipulated for Simplified Arbitration and shall be filed in the number of copies required by the Secretariat.

Section 6. [Counterclaim by Respondent] (1) If the Respondent wishes to apply for Simplified Arbitration of a counterclaim arising out of the same cause or matter, he must do so within the period stipulated in the preceding Section.

(2) When such an application is made within the period stipulated, Simplified Arbitration of such counterclaim shall, in principle, be performed concurrently with the Simplified Arbitration applied for by the Claimant.

Section 7. [Acknowledgement of Simplified Arbitration Procedure and Supplementary Statement] (1) Where the Respondent has, in accordance with the provisions of Section 5, filed with the TOMAC his Defense in Simplified Arbitration, he shall be deemed to have confirmed that the dispute should be submitted to the Simplified Arbitration procedure.

(2) The Secretariat shall forward to the Claimant the duplicate of the Defense together with copies of the documentary evidence, if any. The Secretariat shall instruct the Claimant that if he has any objection to the Defense he shall file with the Secretariat, within ten (10) days from the day after its dispatch, a Supplementary Statement and any supporting documents, in the required number of copies.

(3) If a Supplementary Statement is filed, the Secretariat shall forward the duplicate of the Supplementary Statement and copies of any supporting documents to the Respondent. If the Respondent has any objection thereto, he must state such objection orally direct to the Tribunal at the hearing.

Section 8. [Engagement Fee and Costs of Simplified Arbitration] (1) The Claimant shall, when he applies for Simplified Arbitration, pay to the Secretariat an Engagement Fee of One Hundred Thousand Yen (¥100,000). This provision shall also apply where an application for Simplified Arbitration of a counterclaim is filed.

(2) The Claimant shall also, when the application is filed, pay to the Secretariat the amount stipulated in the Tariff of Fees for Simplified Arbitration Costs (hereinafter

referred to as "the Tariff").

(3) If the Respondent applies for Simplified Arbitration of a counterclaim arising out of the same cause or matter and the Tribunal considers that such Simplified Arbitration can be performed concurrently with the Claimant's application, the amounts claimed and counterclaimed respectively shall be aggregated and the Respondent shall pay to the Secretariat the amount stipulated in the Tariff for the aggregate sum less the amount already paid by the Claimant pursuant to the preceding Sub-Section.

(4) Each party shall pay the consumption tax imposed on the amount of the each fee as provided in the foregoing (1) to (3).

Section 9. [Arbitration not to be Performed by the Simplified Arbitration Procedure]

(1) The following cases shall not be subject to the procedure of Simplified Arbitration but instead to the Rules of Maritime Arbitration, in which case the Statement of Claim under Section 3 shall be deemed to be a Statement of Claim under Section 5 of the Rules of Maritime Arbitration:

1. Where the Defense filed by the Respondent is not on the Form provided for Simplified Arbitration or similar thereto;
2. Where the Respondent does not file a Defense in Simplified Arbitration within the period stipulated in Section 5 above.

(2) Notwithstanding case 2 of the preceding Sub-Section, due consideration shall be taken of any reason or cause of the Respondent's failure to file a Defense within the period stipulated and if appropriate such case may still proceed in Simplified Arbitration.

(3) Where the Respondent files a counterclaim in Simplified Arbitration but the Defense thereto filed by the Claimant is not on the Form provided for Simplified Arbitration or similar thereto, or is not filed within the period stipulated above, the reference to Simplified Arbitration shall become from that time subject to the Rules of Maritime Arbitration and both claim and counterclaim shall be considered concurrently thereunder.

(4) Where the original application becomes subject to consideration by the procedure of the Rules of Maritime Arbitration, pursuant to Sub-Section (1) or (3) of this Section, any request by the Claimant for amendment of the application for Simplified Arbitration shall be granted, including amendment of the amount claimed.

Section 10. [Costs of Arbitration other than by the Simplified Arbitration Procedure]

In the case of arbitration other than by the Simplified Arbitration procedure, pursuant to Section 9 above, the parties shall pay to the Secretariat the amount(s) decided by the Tribunal under Section 38 of the Rules of Maritime Arbitration provided however that such amount(s) shall be adjusted by reference to the amount(s) already paid pursuant

to Section 8(2) and (3) above.

Section 11. [Appointment of Arbitrators] When it is decided that an application shall, pursuant to Section 7(1) or Section 9(2), be accepted for Simplified Arbitration, the TOMAC shall, within ten (10) days from the day when the Respondent's Defense is filed, appoint an uneven number of arbitrators or a sole arbitrator from among persons listed on "the Panel of Arbitrators" who have no connection with either of the parties or with the matter in dispute.

Section 12. [Hearings] (1) The Tribunal shall, unless prevented by special circumstances, organize hearings within thirty-five (35) days from the day when the Supplementary Statement under Section 7(2) was filed or should have been filed, whichever is sooner.

(2) The Tribunal shall, in principle, organize hearings separately for each party and then conclude the hearings with both parties sitting together at the final hearing.

(3) Both parties shall be allowed to have witnesses attend the hearing(s) and give evidence. However, if for whatever reason a witness is unable to attend the hearing(s), his written and signed Statement shall be accepted in place of his appearance.

(4) When the parties have submitted an agreement stipulating no hearings, the Tribunal shall omit the hearings referred to in this Section.

Section 13. [Mediation] If either or both of the parties request mediation, or the Tribunal deems it suitable and advisable, the Tribunal may, at any time while the Simplified Arbitration is proceeding, make a mediation proposal. Such mediation shall occupy a maximum of fifty (50) days.

Section 14. [When Award Given] The Tribunal shall give its award on the case within thirty (30) days from the conclusion of the hearings.

Section 15. [Description of Items in the Award] In the Simplified Arbitration Award, Nos. 3 and 4 of Section 32(1) of the Rules of Maritime Arbitration shall be fully satisfied by as brief a description as possible of the matters referred to therein.

Section 16. [Costs of Arbitration] The costs of Simplified Arbitration shall be paid from the amounts paid to the Secretariat under Section 8(2) and (3) and the ratio in which they shall be borne shall be decided by the Tribunal.

The Tariff of Fees for Simplified Arbitration Costs

The rates of the Simplified Arbitration Fees to be paid shall be as follows:

When the amount of claim is ¥ 10,000,000 or less, the fee to be paid is ¥ 600,000;

When the amount of claim exceeds ¥ 10,000,000, but does not exceed ¥ 20,000,000, the fee to be paid is ¥ 700,000;

When the amount of claim exceeds ¥ 20,000,000, the fee to be paid is double the fee to be paid in accordance with the Tariff of Fees for Arbitration Costs, less 10%.

Japanese Sentiment, Today and Tomorrow

– Calmness –

Takao TATEISHI

The three Ss – Silence, Smile and Sleep – which often describe well the behavior of the Japanese at international gatherings may actually be elucidated by only one of the basic traits of the Japanese character. It is the nature to refrain from confrontations and from offending others' feelings. In other words, they avoid speaking out. This inarticulateness once made US President Clinton comment, "When Japanese say yes, they often mean no." Consequently, they would rather keep quiet and, whenever they think fit, add smiles. Things of this sort get them quite tired and bored, and soon a nap will be induced.

When the Japanese need to discuss solutions to their dispute, they try to find a way to compromise, which is called amicable settlement. There are many theories and hypotheses introduced by academics and arbitrators from around the world about the cause for the inclination towards amicable settlement. Some say it may be the difference in cultures that gives rise to the difference in the ways of dispute resolution. Others say Japanese people are unsophisticated in invoking legal procedures in order to preserve their rights. I admit that the Japanese are apt to pretend there does not exist any dispute at all, because the claim for damages is the result of conflicting individual rights. And this self-effacement may derive from the deepest remorse they feel when looking back on their wartime aggression, which inflicted enormous losses and sorrow in Asian nations.

Now here comes up a new theory. Quite recently a Japanese physician made public his interesting research on the calmness of the Japanese. After experimenting with a natural substance called "DHA", which is abundantly contained in fish, he concluded that DHA works as a sort of tranquilizer. The Japanese are great fish eaters and I think that would explain in part the reason why they are so quiet. Probably it is worthwhile to think for a moment about your choice of main dishes when sitting for lunch face to face with your tough negotiators.

In connection with internationalization, there are some problems as well in Japan's current systems. The calmness of Japanese at international conferences seems partly attributable to the educational system. Too much emphasis has been put on comprehension of written English, and capability of listening and speaking has virtually been ignored till lately. And, although the Japanese Diet passed in June this year the bill to permit foreign representation of parties in international arbitrations, the legal system still has a stumbling block for arbitrators. That is the Lawyers Law which prohibits anyone other than lawyers from pursuing business as a professional arbitrator in Japan. It now seems to be time to speak out for a better system. ■

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