

TIME FLEXIBILITY & VENUE FLEXIBILITY UNDER THE SMA RULES

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SMA Rules – flexibility – Generally



- Flexibility – A Primary Theme of the SMA Rules
- How Flexible? – As flexible as parties agree (subject to Panel’s administrative powers)
- SMA Rule 1 – Agreement of Parties
 - **Wherever** parties have agreed to arbitration under the Rules of the Society of Maritime Arbitrators, Inc., these Rules...shall be binding on the parties and constitute an integral part of that agreement. **Nevertheless**, except for those Rules which empower the Arbitrators to administer the arbitration proceedings, **the parties may mutually alter or modify the application of these Rules.**

I. Time flexibility – Primary Rule

- SMA Rule 21. Order of Proceedings

- Overriding Provision – All mentioned time limits are subject to Rule 34.

- SMA Rule 34 – Time Periods

The parties may modify any period of time by mutual agreement and consent of the Panel. The Panel may extend or shorten any period of time established by the Rules **upon a showing of good cause** and shall notify the parties accordingly.

I. Time flexibility – Two Stages of Arbitration

- As Applicable to “Standard Procedure” - (“Shortened Procedure” has its own timings)
- 1st - Panel Formation Stage/Period
 - From Initiation to Panel Acceptance
 - Relatively limited flexibility (Objective: Efficiency)
- 2nd - Arbitration Proceedings Stage/Period
 - Panel Acceptance to Award Issuance
 - Substantial Flexibility

I. Time flexibility – Panel formation stage



- Panel Formation Period: (usually two weeks to one month)

- Procedure:
 1. Initiation: Demand & Notice by 1st moving party - Nomination of 1st Arbitrator (Rule 6)

 2. Response: By 2nd Party – Nomination of 2nd Arbitrator within 20 days of notice (Rule 10)

 3. Formation of Panel: Appointment of Chair “within reasonable time” usually a week (Rules 10, 11)

 4. Disclosures by Arbitrators: no times specified - usually 2 to 3 days (Rule 9)

 5. Acceptance of Panel: no times specified - usually 1 to 3 days (Rule 9)

I. Time flexibility – Proceedings Stage



- Arbitration Proceedings Period – maximum flexibility

- Procedure:
 1. Position Statements: By parties' agreement - usually 15 to 30 days of Panel formation
Claimant's Statement: At least 20 business days prior to 1st Hearing
Respondent's Defense/Counterclaim: within 10 business days thereafter (but extendible) (Rule 21)

 2. Hearings: Submissions – (documents, exhibits, etc.) - not less than 10 days prior to Hearing (Rule 21)

 3. Post Hearing /Final Briefs: No times specified - if parties cannot agree, schedule established by Panel - usually within 30 to 60 days of Final Hearing (Rules 21, 25)

 4. Closing of Proceedings: upon completion of evidence submission, the Chair declares the proceedings closed - timing is usually quite prompt (Rule 25)

 5. Award: Panel's duty to issue - no later than 120 days after closing proceedings (Rule 28)

2. Venue flexibility

- There is no “Venue” Provision in the SMA Rules
- SMA Rule 7. Site of the Arbitration
 - **Unless otherwise provided in the arbitration clause**, arbitration hearings are to be held in the City of New York at a location chosen by the Panel in consultation with the parties. **However, the Panel may convene one or more hearings at any alternate location** to view physical evidence or to receive testimony and/or documents from any non-party witness. The Panel may, pursuant to Section 23, issue a subpoena to compel such person to appear and/or produce documents at such alternate hearing location. **The Panel shall be deemed to remain seated at any such alternate location to compel compliance with such a subpoena** in the appropriate local court

2. Venue flexibility – Hearings & Evidence



- 1st Hearing:
 - At time and place designated by the Panel Chair (Rule 21)

- Hearings & Evidence:
 - At any location agreed to in the Arbitration Clause (Rule 7)

 - If none is stated in the agreement, then at any location of the parties' choice - to take testimony including from non-party witnesses (Rule 23)

 - Audio-Video or Electronic Conferencing – to take witness testimony in appropriate circumstances (Rule 23)

 - Depositions – as directed by the Panel if witness(es) cannot testify in person (Rule 23)

 - Default Location – City of New York at a location in consultation with the parties (Rule 7)

3. Flexibility - Seamless Compliance with the Federal Arbitration Act (FAA)

- Compelling Arbitration. FAA Sec 4 and SMA Rules 10, 22
 - VENUE FLEXIBILITY – File petition and obtain directive in **any court having Jurisdiction** (FAA Sec. 4)
 - confirming validity of arbitration agreement and ordering parties to arbitrate (Sec. 4 FAA)
 - to proceed with arbitration with full Panel (with or without defaulting party) (Rule 22)

- Compelling Appointment of 2nd Arbitrator. FAA Sec 5 and SMA Rule 10
 - TIME FLEXIBILITY – Demanding party’s options (Rule 10)
 - (1) if after 20-day notice, appoint the 2nd arbitrator with the same effect as if appointed by the defaulting party (Rule 10)
 - (2) if need to expedite (**before 20-days**), petition the court to appoint the 2nd arbitrator under Sec. 5 of the FFA

- Compelling Appointment of Chair. FAA Sec 5 and SMA Rule 11
 - TIME FLEXIBILITY/EFFICIENCY - If the two party appointed arbitrators fail to appoint the 3rd (Chair) “within a reasonable time”, - any party may petition the court to do so pursuant to FAA Sec. 5

- Compelling Subpoena Compliance – FAA Sec 7 and SMA Rule 7
 - VENUE FLEXIBILITY - Any party may petition the court to compel witness(es) to testify where the Panel is “sitting” (FAA Sec 7) : Rule 7 provides flexibility for Panel to “sit” in the witness’s location/jurisdiction so petition can be filed and testimony can be taken there (or at default site in New York City)