

Maritime and Cruise Ship Arbitration: Charting the Course and Setting Sail

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Maritime and Cruise Ship Disputes

Types of Agreements

- Employment contracts with crew members
- Contracts with passengers
- Onshore/offshore shipbuilding contracts
- Ship repair contracts
- Ship financing agreements



Types of Claims

- Personal injury claims (crew and passengers)
- Employment related claims
- Construction claims
- General commercial claims

Elements of an Arbitration Clause

Arbitral center and applicable rules

- Determines who will administer the arbitration
- Establishes default rules

Seat of arbitration

- Determines the applicable arbitral and procedural law
- Place where award can be annulled

Substantive law

- Law that governs the underlying claims
- Unrelated to the seat of arbitration

Venue of arbitration

- Physical place of the arbitration

Number of arbitrators

- Typically 1 or 3 arbitrators

Nationality and experience of arbitrators

- Can require arbitrators to have specific experience and background

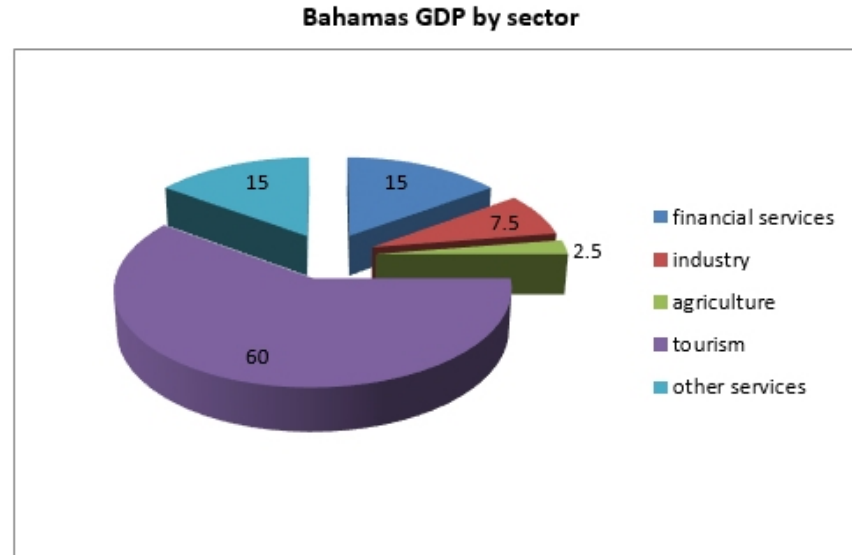
Language

- Can specify the language of the proceeding

Arbitration in the Bahamas

Why arbitrate cruise ship disputes in the Bahamas?

- Tourism and cruise industry a key market



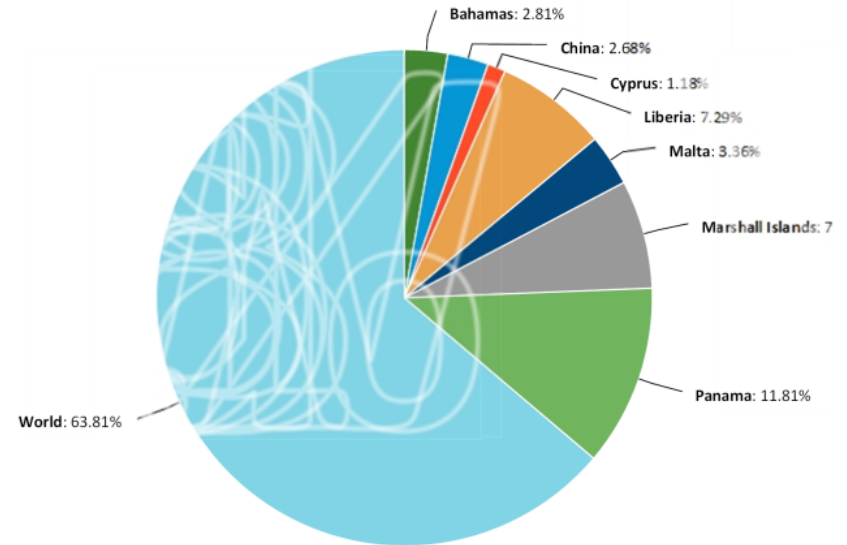
Source: Government of the Bahamas

Arbitration in the Bahamas

Why arbitrate cruise ship disputes in the Bahamas?

- The Bahamas established a shipping register in 1976
- Number of vessels registered in the Bahamas: **1,693**

Total fleet - Percentage of total world



Arbitration in the Bahamas

Why arbitrate cruise ship disputes in the Bahamas?

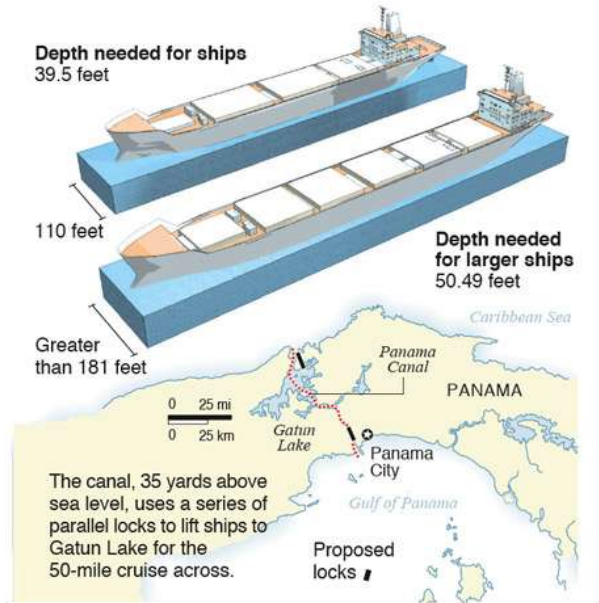
- Grand Bahama Shipyard Limited completed repairs on 20 cruise ships in 2016
- Has bookings for at least 23 ships in 2017 for refurbishment jobs



Arbitration in the Bahamas

Why arbitrate cruise ship disputes in the Bahamas?

Panama Canal Expansion



SOURCE: Panama Canal Commission

AP

Freeport Harbor Expansion



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- Well-developed substantive law
 - Stable and predictable
 - Adequately address issues
- National arbitration law
 - Bahamas Arbitration Act of 2009
 - UNCITRAL Model Law
 - Proposed changes?
- New York Convention
 - Bahamas ratified the New York Convention on 20 December 2006

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- Arbitration Center
 - Chartered Institute of Arbitrators
- Arbitration Rules
 - Rules specific to cruise ship industry
 - Proposed rules?



Chartered
Institute of
Arbitrators

CIArb
Bahamas

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ARBITRATION RULES

MARITIME ARBITRATION ASSOCIATION OF THE UNITED STATES

RULE 1 Definitions

The following definitions shall apply in these Arbitration Rules:

1. "Arbitral tribunal" is the decision-maker in the arbitration and may be comprised of one or more arbitrators.
2. "Arbitration" is an out-of-court dispute resolution proceeding conducted under these Rules.
3. "Arbitrator" is a member of the arbitral tribunal, whether party-appointed or otherwise.
4. "Award" is the decision of the arbitral tribunal in the arbitration.
5. "Claim" or "agreement to arbitrate an existing dispute" is a document filed with the MAA constituting a demand for arbitration and stating a claim to be arbitrated.
6. "Claimant" is an individual or other entity seeking damages or other relief in the arbitration, and may include the respondent and third parties to the extent of any claims in the nature of counterclaims and third party claims.
7. "MAA" is the Maritime Arbitration Association of the United States, also known as the Maritime Arbitration Association.
8. "Party" is the claimant, respondent, and each party to an agreement to arbitrate an existing dispute, and all are "parties."
9. "Respondent" is an individual or other entity against whom a claim is asserted, and may include the claimant and third parties to the extent any claims are asserted against them.
10. "Response" is a document filed with the MAA that responds to a claim.
11. "Rules" are these Arbitration Rules.
12. "Venue" is a place where an arbitration hearing is held.



CRUISE LINE DISPUTE PROGRAMS

I. PASSENGER DISPUTES PURSUANT TO THE PASSENGER-TICKET CONTRACT

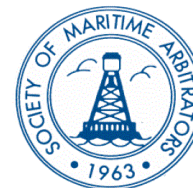
Each year, thousands of travelers choose to vacation on cruise lines. Most passengers have a positive experience. However, on occasion, unforeseen issues may arise. In order to resolve any problems quickly and efficiently, binding arbitration is used to resolve claims that are associated with the cruise or that arise out of the Passage/Ticket Contract. NAM is the arbitration administrator for Carnival Cruise Lines, Norwegian Cruise Lines, Princess Cruise Lines, Royal Caribbean Cruise Lines and Regent Seven Seas Cruise Lines.

NAM affords disputing parties cost-efficient access to some of the most highly qualified and respected Hearing Officers throughout the country. Claims are reviewed and decided by independent, experienced and neutral arbitrators. NAM's Comprehensive Dispute Resolution Rules and Procedures provide a sensible and expedient process so that issues will be resolved in a timely fashion.

Click below for printable versions of the following documents:

NAM's Comprehensive Rules and Procedures	
NAM's Comprehensive Fees and Costs	
Demand for Arbitration Form	
Carnival Cruise Lines' Ticket Contract	
Norwegian Cruise Lines Ticket Contract	
Princess Cruise Lines Passage Contract	
Regent Seven Seas Cruise Lines Ticket Contract	
Royal Caribbean Cruise Lines Ticket Contract	

PLEASE NOTE: Claims involving emotional or bodily injury, illness to or death of any Passenger whatsoever arising out of or relating to the Passage Contract are not subject to the arbitration provision and shall be litigated before a court of competent jurisdiction.



Maritime Arbitration Rules

MARITIME ARBITRATION RULES
SOCIETY OF MARITIME
ARBITRATORS, INC.

These Rules apply to contracts entered into on or after February 10, 2016

[Click here for rules prior to February 10, 2016](#)

[Click here for document in PDF format](#)

P R E A M B L E INTERPRETATION AND APPLICATION OF RULES

The powers and duties of the Arbitrator(s) shall be interpreted and applied in accordance with these Rules and Title 9 of the United States Code. Whenever there is more than one Arbitrator, and a difference arises among them concerning the meaning or application of these Rules, the difference shall be resolved by majority vote or in the case of a two Arbitrator Panel by an Umpire, chosen by the two Arbitrators.

In all matters not expressly addressed in these Rules, the Arbitrator(s) shall act in the spirit of these Rules and make every effort to ensure that an award is legally enforceable.

All references to Arbitrator(s) are deemed gender neutral. All references to Arbitrator(s) in the singular shall apply to the plural if the Panel consists of more than one Arbitrator.
All references to the OACIO are to the - Federal Arbitration Act (Title 9 of the United States Code).
All references to a third Arbitrator or Panel Chair shall, where applicable, also apply to an Umpire.
All references to OSMAO are to the Society of Maritime Arbitrators, Inc.

I. RULES A PART OF THE ARBITRATION AGREEMENT


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- Standard Arbitration Clause
 - Clause specific to cruise ship arbitration
 - Proposed clause

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- Proposed clause




TICKET CONTRACT

IMPORTANT NOTICE TO GUESTS THIS DOCUMENT IS A LEGALLY BINDING CONTRACT ISSUED BY CARNIVAL CRUISE LINES TO, AND ACCEPTED BY, GUEST SUBJECT TO THE IMPORTANT TERMS AND CONDITIONS APPEARING BELOW.

NOTICE: THE ATTENTION OF GUEST IS ESPECIALLY DIRECTED TO CLAUSES 1, 4, AND 10 THROUGH 13, WHICH CONTAIN IMPORTANT LIMITATIONS ON THE RIGHTS OF GUESTS TO ASSERT CLAIMS AGAINST CARNIVAL CRUISE LINES, THE VESSEL, THEIR AGENTS AND EMPLOYEES, AND OTHERS, INCLUDING FORUM SELECTION, ARBITRATION AND WAIVER OF JURY TRIAL FOR CERTAIN CLAIMS.

IMPORTANT TERMS AND CONDITIONS OF CONTRACT -
READ CAREFULLY

In consideration of the receipt of the full cruise fare, Carnival Cruise Lines ("Carnival") agrees to transport Guest on the above - specified voyage on the following terms and conditions:

1. DEFINITIONS AND SCOPE OF CONTRACT

(a) Whenever the word "Carnival" is used in this Contract it shall mean and include the Vessel, its owners, operators, employees, agents, charterers and tenders. The term "Guest" shall include the plural where appropriate, and all persons or entities booking or purchasing passage and/or traveling under this Contract, including heirs, representatives and any accompanying minors. The masculine includes the feminine. "Guest" shall have the same meaning as "Passenger" in this Contract.

(b) "Cruise Fare" or "Fare" means the amount paid for the cruise which includes full board, ordinary ship's food during the voyage, but not spirits, wine, beer, soft drinks or mineral waters, shore excursions, salon and spa services, or any other incidental charge or expense. The

12. JURISDICTION, VENUE, ARBITRATION AND TIME LIMITS FOR CLAIMS

(d) Any and all disputes, claims, or controversies whatsoever, other than for personal injury, illness or death of a Guest, whether brought in personam or in rem or based on contract, tort, statutory, constitutional or other legal rights, including but not limited to alleged

pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S. 3, 1970 U.S.T. LEXIS 115, 9 U.S.C. §§ 202-208 ("the Convention") and the Federal Arbitration Act, 9 U.S.C. § 1, et seq., ("FAA") solely in Miami-Dade County, Florida, U.S.A. to the exclusion of any other forum. Guest hereby consents to jurisdiction and waives any venue or other objection that may be available to any such arbitration proceeding in Miami-Dade, Florida. The arbitration

shall be referred to and resolved exclusively by binding arbitration pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S. 3, 1970 U.S.T. LEXIS 115, 9 U.S.C. §§ 202-208 ("the Convention") and the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq., ("FAA") solely in Miami-Dade County, Florida, U.S.A. to the exclusion of any other forum. Guest hereby consents to jurisdiction

COURT). THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT GUEST OR CARNIVAL WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION. An award rendered by an arbitrator may be entered in any court having jurisdiction under the Convention or FAA. Carnival and Guest further agree to permit the taking of a deposition under oath of the Guest asserting the claim, or for whose benefit the claim is asserted, in any such arbitration. In the event this provision is deemed unenforceable by an arbitrator or court of competent jurisdiction for any reason, then and only then the provisions of Clause 12 (c) above governing venue and jurisdiction shall exclusively apply to any lawsuit involving claims described in this Clause.

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- Proposed clause



named vessel or substitute vessel, including the name that appears on the face of this ticket and is included in the ticket, and includes any accompanying passengers or representatives.

Guest agrees that this Contract governs the relationship between the Guest and the Carrier, regardless of the Guest's age, whether the Guest purchased the ticket has been held and/or presented by a third party, and that this Contract constitutes the entire agreement between the Guest and the Carrier, and shall supersede and exclude any prior representations that may have been made by anyone representing him/her by anyone, including sales agents, travel agents, brochures, advertisements, and other promotional materials. This Ticket Contract can use the Ticket Contract and the Ticket Contract.

This Contract is only valid for the cruise specified herein and is binding upon payment of the cruise fare by the Guest. The Carrier presenting this Contract to the Carrier for boarding the vessel. The rights, defenses, immunities and limitations of the Carrier and all concessionaires, independent contractors, related companies, parents, subsidiaries, successors, shipbuilders, component part manufacturers, subcontractors, erectors, agents, pilots, officers, crew and employees.

Fare: The fare paid by the Guest for this ticket includes the cost of the vessel, board, and ordinary vessel food, but does not include taxes, fees, and charges incurred for other incidental or personal services, such as port charges and charges imposed by governmental or quasi-governmental authorities, service charges or the cost of the fuel supplement, gratuities, and charges, for which passengers will be charged. The Carrier reserves the right to increase in any element of such taxes and fees exceeding the quoted amount. Carrier reserves the right to increase the fare that the Carrier shall not be liable to make any refund of the fare unless expressly provided for by the Guest except as otherwise expressly provided for in this section of the Terms and Conditions of the Cruise Contract.

Carrier reserves the right to collect the fare in effect at the time of boarding. Carrier shall be entitled to, but not obligated to, upgrade the fare at the sole discretion of Carrier. Carrier shall not be responsible or liable whatsoever in the event of a change in the fare.

(b) Other Suits: Any and all disputes, claims, or controversies whatsoever, other than for personal injury, illness or death of a Guest, whether brought in personam or in rem or based on contract, tort, statutory, constitutional or other legal rights, including but not limited to alleged violation of civil rights,

claims court, shall be referred to and resolved exclusively by binding arbitration pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S. 3, 1970 U.S.T. LEXIS 115, 9 U.S.C. §§ 202-208 ("the Convention") and the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq., ("FAA") solely in Miami-Dade County, Florida, U.S.A. to the

Resolution Rules and Procedures and the Fee Schedule in effect at the time of filing the dispute with NAM, which are deemed to be incorporated herein by reference. NAM can be contacted at 800-358-2550,

attention Commercial Claims Dept., 990 Stewart Avenue, First Floor, Garden City, NY 11530, to respond to any questions regarding the arbitration process, as well as to request a copy of NAM's current Comprehensive Dispute Resolution Rules and Procedures and the Fee Schedule. NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE APPLICABLE ARBITRATION RULES AND HEREIN, OR OTHERWISE TO LITIGATE THE CLAIM IN ANY COURT (OTHER THAN SMALL CLAIMS COURT). THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT GUEST OR CARRIER WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION. An award rendered by an arbitrator may be entered in any court having jurisdiction under the Convention or FAA. Carrier and Guest further agree to permit the taking of a deposition under oath of the Guest asserting the claim, or for whose benefit the claim is asserted, in any such arbitration. In the event this provision is deemed unenforceable by an arbitrator or court of competent jurisdiction for any reason, then and only then the provisions of Section 14 below governing venue and jurisdiction shall exclusively apply to any lawsuit involving claims described in this Section. In any event, no claim described in this Section may be brought against Carrier unless written notice giving full particulars of the claim is delivered to the Carrier within thirty (30) days of termination of the Cruise and legal action on such claim is commenced within six (6) months from the date the claim arose, notwithstanding any provision of law of any state or country to the contrary.

(c) Guest Waiver: Right to Class Action Relief: THIS CONTRACT PROVIDES FOR THE EXCLUSIVE

Questions?

The logo for Hogan Lovells, consisting of the name "Hogan Lovells" in a black serif font, positioned within a solid lime green square.

Hogan
Lovells

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