

Paying attention to mediation clauses in shipping contracts

 By [Lana Jacobs](#)

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Parties to a shipping agreement, such as a contract of carriage or charter, should pay very careful attention to the wording of the mediation clause included in the shipping contract, if they agree that they wish to refer any future or existing disputes to mediation.



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An abundance of standard form contracts dictate commercial shipping relationships, some of which do provide for mediation. However, where the parties have a particular dispute or a particular mediation procedure in mind, they should involve lawyers to assist with the drafting of the clause to ensure that their expectations are met and their intentions are clearly expressed.

Although parties may or may not choose to incorporate a mediation clause into their primary transaction contracts, this approach does not preclude the parties from concluding an agreement to refer a dispute, as and when it arises, to mediation on an ad hoc basis.

Multi-tiered dispute resolution clauses are not uncommon to contractual arrangements and are incorporated into the standard BIMCO documents.

The English High Court has held that mediation clauses are enforceable and even further than that a 'friendly discussion clause' may also be enforceable.

Three models

Jonathan Lux, a London based barrister and mediation expert with 30 years' experience as a shipping solicitor at Ince & Co, notes that there are three potential models for the incorporation of mediation - mandatory mediation, no mediation at all and a hybrid where mediation is incentivised but not mandatory.

A model where mediation is encouraged or indirectly incentivised through the threat of adverse cost orders is best suited to the resolution of commercial shipping and logistics disputes. The incentives clearly outweigh the negatives. The Centre for Effective Dispute Resolution (CEDR) in London says that mediation leads to an 80% to 85% settlement rate.

The hybrid approach suggests cooperation among the various forms of dispute resolution. The future of dispute resolution lies in recognising the value of a multi-tiered approach. Shipping disputes are among the most complex, involving technical, legal, risk and commercial considerations. In light of the nature of shipping disputes, and the market conditions, solutions ought to be carefully crafted.

It is submitted that mediation provides the ultimate toolkit for dispute resolution. If mediation is to thrive, then the shipping market is ideally suited to its success. The courts agree that mediation must be explored; it is up to practitioners and clients to do the rest at the genesis of shipping transactions.

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