

## Guidance notes on applications for consolidation of arbitrations

*These Guidance Notes provide guidance for the benefit of parties when considering the commencement and consolidation of an arbitration. While they reflect the views of the Arbitration Panel Committee and are indicative of how a Tribunal may rule on certain matters referred to it, they are separate from and do not form part of the Arbitration Regulations and are not binding on any Tribunal.*

1. A number of problems have arisen recently where claims are submitted for arbitration under the Rules and Regulations of the Exchange (the “Regulations”) and such claims arise out of two or more contracts which are said to be related.

2. In the case of dealings on the Exchange, this is not usually a problem because there will generally be one underlying contract regulating dealings between the parties. In the case of contracts for physical transactions, there may be a number of separate contracts and it may be alleged that such contracts are connected or part of a series of similar contracts so that claims are best dealt with in combination. In such a case, an application for consolidation may be made to the Arbitration Panel Committee (“Panel Committee”) under Regulation 11.1 of Part 8 of the Regulations.

3. Regulation 11.1 of Part 8 reads as follows:

*On the appointment of a Tribunal, and whenever requested to do so by either party, the Panel Committee shall review pending arbitrations and, if it appears to the Panel Committee that*

- (a) some common question of law or fact arises in two or more of them, or*
- (b) the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or*
- (c) for some other reason it is desirable to make a direction under this Regulation,*

*the Panel Committee shall so inform the parties to all relevant arbitrations and may, upon the application of one or more of the parties to any of the arbitrations, and after consultation with the Tribunals and the parties, direct those arbitrations to be consolidated on such terms as it considers just or may direct them to be heard at the same time or one immediately after another or may order any of them to be stayed until after the determination of any of them.*

4. The key point to note is that, under Regulation 11.1, any issue of consolidation is dealt with by the Panel Committee “on the appointment of a Tribunal and whenever requested to do so by either party...”.

5. The Panel Committee regards this provision as meaning that an application for consolidation cannot be made or considered until the Tribunal has been appointed (whether consisting of one, two or three persons) but such an application may be made at any time thereafter by either (or both) of the parties. The Tribunal concerned must be consulted in all cases.

6. The problem for a Claimant, in relation to claims arising out of two or more contracts which are said to be related, is sometimes that the Claimant or its lawyers are reluctant to commence separate arbitrations for each contract when there could well be a later decision to consolidate them. Nevertheless, in these circumstances, separate arbitrations will initially be required.

7. The following procedure is recommended by the Panel Committee in such cases:

- (a) A separate Notice to Arbitrate should be served for each contract, together with the Claimant's nomination of Arbitrator. These Notices should comply with the Regulations but should be as short as possible and avoid combining the claim with other claims. Points of Claim may, under Regulation 6.3, be combined with the Notice to Arbitrate but these should not be submitted where there is a potential consolidation.
- (b) The Respondents' Counter Notice, with the nomination of an Arbitrator by the Respondent, should again be as short as possible while complying with the Regulations.
- (c) The Tribunal will be appointed upon notification to the parties by the Secretary in accordance with Regulation 3 of Part 8.
- (d) After the Tribunal has been appointed, an application for consolidation may be made to the Panel Committee by either party and the procedure under Regulation 11 will be followed.
- (e) If an application for consolidation is to be made, an immediate request should be made to the Tribunal or Tribunals concerned for the time limits for filing Points of Claim and Points of Defence to be extended so as to operate after the decision on consolidation has been made. In most cases, the Tribunal can be expected to give such leave. If not, their directions must be followed by the parties.
- (f) After a decision on consolidation has been made, the Points of Claim and the Points of Defence can be drafted appropriately.
- (g) It should be noted that the Panel Committee has power, in lieu of actual consolidation, to direct that separate arbitrations be heard at the same time or one immediately after another. This may be appropriate, for example, where there are two or more Respondents. A consolidation in such a case is unlikely to be agreed as it could lead to difficulties enforcing any subsequent Award.

8. All queries regarding these guidance notes or LME arbitration generally may be addressed to the Arbitration Secretary, Tom Hine ([tom.hine@lme.com](mailto:tom.hine@lme.com)), at the Exchange.

9. Further information on the LME arbitration procedure is available at <http://www.lme.com/regulation/arbitration/>.

July 2008