

## KEY FEATURES OF FOSFA ARBITRATION

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### I. INTRODUCTION

International arbitration which brings faster, cheaper and fairer solutions to the parties of the dispute has become one of the most preferred methods of dispute resolution mechanisms. “Commodity Associations” in the UK have gained a special place in arbitration proceedings as they have succeeded in creating a specific arbitration model as they departed from the most known commercial arbitration institutions and their arbitration rules. Big port hubs in London hosts these industry-specific Commodity Associations as the Federation of Oils, Seeds and Fats Association (“FOSFA”), the Grain and Feed Trade Association (“GAFTA”), the Refined Sugar Association (RSA), the London Metal Exchange (LME), and the London Maritime Arbitrators Association (LMAA). It has been estimated that FOSFA and GAFTA arbitrations cover over 70% of annual commodity arbitrations in London.

This article will provide a general overview of FOSFA standard clauses, proceedings, procedure and post-award stages of FOSFA.

**Key Words:** International Arbitration, The Federation of Oils, Seeds and Fats Association, FOSFA

### II. GENERAL OVERVIEW

FOSFA is an international trade organization that facilitates and supports the global trading and shipping of vegetable and animal oils, fats, oilseeds and their derivatives. It was founded in 1968 by the union of the associations operating in the oil and seed industry, and has a reputation that encompasses 85% of the commodity trade in which it operates. Also, it has spread to nearly 90

different countries with its 1150 members including brokers, agents, merchants, lawyers, cargo companies, warehousemen, insurers and consultants.

FOSFA has developed a range of standard contract that offer legal protection to reduce risks and provide appropriate procedures for the settlement of disputes by arbitration.

### **III. ARBITRATION UNDER FOSFA RULES**

FOSFA Arbitrations are governed by FOSFA Rules of Arbitration and Appeals (“Rules”) While the Rules are regularly updated by FOSFA, it should be noted that the Rules in force at the time of the execution of the contract shall be applied. The Rules propose a three different types of arbitrations namely one-tier arbitrations process for small cases, two-tier arbitration process for regular matters and brokerage disputes. One the most important difference between the one-tier and two-tier arbitration is that there is sole-arbitrator in one-tier arbitration with no appeal procedure.

FOSFA does not administer international arbitrations in other seats of the world as the permanent seat of arbitration is London, UK. FOSFA has a panel of arbitrators with experience in commodity trade and parties are allowed to choose their nominee only from that panel.

### **IV. THE INITIATION OF FOSFA ARBITRATION**

According to the latest FOSFA Arbitration Rules, the claimant has to submit the notice of claim within two different time limits depending on the type of the dispute. The notice of claim should be submitted 90 days from the date of unloading of the goods or delivery in quality disputes; and within 1 year from the actual shipment or delivery of the goods, or from the end of the contract period for shipment or delivery (whichever ends later) in all other disputes (non-quality disputes).

### **V. ENFORCEMENT OF FOSFA AWARDS**

In the case where the losing party does not comply with the awards, the successful party can apply to the domestic courts where the debtor is domiciled or where its assets are located. In accordance with the domestic law, the court verifies the arbitration clause, the compliance by the parties to it and the enforceability of the award. Subsequent to the recognition,

### **VI. FEES**

FOSFA Arbitration is one of the cheapest commercial arbitrations in the UK. The cost of arbitration differs for the Two Tiers Arbitration and Small Claims Single Tier Arbitration. For the Two Tiers Arbitration, the Claimant has to deposit of, £5,000. The appointment of the arbitrator costs £100 for FOSFA members and £250 for non-members. FOSFA charges £750 per award and £250 is discounted where both of the parties and FOSFA members while and £750 is charged for each non-member. The total is subject to discount, depending on the tonnage level involved. FOSFA charges £10 for each page of awards in excess of four pages. Also, Notwithstanding the total amount calculated, a minimum £300 is applied. Arbitrator fees are fixed by the arbitrators at their discretion and charged in addition to FOSFA fees. The Second Tier (appeal stage) FOSFA charges £2,000 with a discount when the both parties are members.

For the Single Tier Arbitration, the claimant has to pay a deposit of £2,500. Then, £250 shall be paid to FOSFA which includes the appointment of the sole arbitrator. Also, there will be an additional

charge of £250 for each non-member. Finally, sole arbitrator fee is fixed by the arbitrator at their discretion up to a maximum of £1,000 and charged in addition to FOSFA fees.

## VII. CONCLUSION

FOSFA is a narrowly specialized institution that was created as a union of the associations operating in the oil and seed industry. As it embraces the whole spectrum of issues relating to international trade in oil and seeds, the arbitral mechanism of FOSFA is crafted and adjusted exclusively for this type of trade. FOSFA Arbitration limits the initiation of the arbitration due to the nature of this type of trade, where even an insignificant delay may cause significant damages. Additionally, when submitting their case for FOSFA Arbitration, the parties can make no doubt that their matter will be adjudicated by arbitrators who are highly professional and well-versed, not only in questions of law and process, but also in particularities of trade.

## REFERENCES

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