International arbitration in Norway
The Norwegian Arbitration Act

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1. Arbitration in Norway – overview

1.1 The Norwegian Arbitration Act 2004 (“NAA”)

- General
  
  • separate, dedicated act
  • all arbitrations taking place in Norway
  • small/large cases
  • professional/consumer
  • national/international arbitration

- Based on the UNCITRAL Model Law

- Some challenges due to “general” plus UNCITRAL
1. Arbitration in Norway – overview (contd.)

1.2 Practice

– Some institutionalized, but mostly *ad hoc*. Changing?
– Unknown number of arbitrations

  (despite NAA sect. 36 (5): “The arbitral tribunal shall send one signed copy of the award to the local district court to be filed in the archives of the court.”)

– Frequent arbitrations in commercial disputes
– Norwegian and mixed Norwegian/foreign parties
– Fairly large number of frequently used arbitrators
– Awards rarely publicized ?
2. NAA vs. UNCITRAL Model Law

2.1 General

- Wish to be recognized by UNCITRAL

- NAA is based on the Model Law (prior to amendments 2006)
  - form
  - content
2. NAA vs. UNCITRAL Model Law (contd.)

2.2 General modification

- The level of details of NAA
  (caused by the Act covering also minor national arbitration)
  may appear unrecognizable to international parties.

- NAA sect. 1 reminds of this fact
  (“This Act applies to arbitration … irrespective of whether
  the parties are Norwegian or foreign.”)

- All resulting deviations from UNCITRAL can be
  “corrected” by the parties
  (using their right to contract out of provisions of the Act)
Southbound near Glomfjord
## 2. NAA vs. UNCITRAL Model Law: DIFFERENCES

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<th>Confidentiality and public access</th>
<th>The arbitration agreement</th>
<th>Evidence</th>
<th>Application of law</th>
<th>Costs</th>
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<tr>
<td>NAA sect. 5</td>
<td>NAA sect. 10</td>
<td>NAA sect. 28</td>
<td>NAA sect. 31</td>
<td>NAA Ch. 8</td>
<td>NAA sect. 11</td>
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<tr>
<td>No parallel in Model Law</td>
<td>- written form not required</td>
<td>No similar rules in the Model Law on evidence and limitation of evidence</td>
<td>“Failing any designation by the parties, the arb. tribunal shall apply Norwegian conflict of laws rules.”</td>
<td>Model Law contains no rules on cost</td>
<td>Model Law contains no rules on this</td>
</tr>
<tr>
<td></td>
<td>- assignment of contract includes assignment of arb.clause</td>
<td></td>
<td></td>
<td>- determination - allocation - security</td>
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SUMMING UP:

- need to look at detailed rules deviating from Model Law

- Consider rules on applicable law

BUT generally: NAA deviations from Model Law are immaterial
3. Contract clauses: Practice in Norway, examples

- **Agreed standard contracts**
  - Offshore construction (the «NF Family»):
    - Ad hoc arbitration, unless agree otherwise
  - Onshore construction (the «NS Family»):
    - Courts of law, unless agree otherwise
  - Shipbuilding («Shipbuilding 2000»):
    - Ad hoc arbitration

- **Unilateral standard contracts**
  - Data: The State’s standards:
    - Courts of law
  - Data: Norw. Computer Society:
    - Ad hoc arbitration

**Notes:**
- BUT opposite in major disputes...
- BUT state party may require courts of law
3. Contract clauses: Practice in Norway, examples

Offshore Joint Operating Agreements (JOA)
(standardised condition for Production Licence)

Ad hoc arbitration
“Unless the Parties agree to bring a dispute before the courts of law”
(for 14 more days…)
4. Institutions

• Mostly *ad hoc* arbitration
  resulting in the “Black Box Syndrome”
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• But the institutions are coming:
  – OCC revitalized
    General scope
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• Mostly *ad hoc* arbitration resulting in the “Black Box Syndrome”

• But the institutions are coming:
  – OCC revitalized
    General scope
  – NOMA recently established
    Specifically aiming at offshore and maritime disputes

More later on…
That’s all, folks