

Nordic Arbitration

Nordic Offshore and Maritime Arbitration
Association (NOMA)

An overview

Why and how

- Perhaps origin – Nordisk sjørettsseminar august 2014 “**Voldgift i shipping og offshore**”?
- Group of lawyers (all with a connection to NIFS), formally acting through sjørettsforeningene. According to my records, met first time August/September 2015
- Promote Nordic countries as venue for international arbitration
- Written Rules and Best Practice – i.a. documents show how the procedure works
- Informal working group, about 14 people, almost all from the largest commercial lawfirms in each country
- The group have had number of meetings in all the Nordic countries

NOMA is a legal entity

- Registered in Norway as an “association” (forening). Established 28. November 2017
- Members are “sjørettsforeningene” in Denmark, Sweden and Finland (to be formalized) and a Norwegian Foundation
- NOMA has a Board of Directors, chair Georg Scheel, Henrik Thal Jantzen, Niklas Lagenskiold and Stefan Brocher.
- A new, and larger BoD to be elected (about 12 people). Candidates (named) are judges (including from the Supreme Court), professors and practicing lawyers

Structure, overview

- “Institutionalized” arbitration (ICC, SCC etc.) - but “light”, not ad hoc
- Rules – Powers of NOMA, tasks etc.
- Best Practices – Guidelines how arbitrations should be conducted
- NOMA has the power to appoint arbitrators and certain other tasks which in ad hoc arbitrations would be done by the ordinary courts
- Documents, including Rules and Best Practice – nordicarbitration.org (or .se, .dk, .no)
- No “List of approved arbitrators”

Rules and Best Practice

- **Rules** – the framework of the arbitration. Contain mandatory rules
- Based on UNCITRAL recommended rules
- The Rules are shorter than UNCITRAL's, and more in line with Nordic tradition
- **Best practice** – Guidelines – how proceedings are done in practice. Parties not familiar with Nordic arbitration will see the main structure – like oral hearings, “discovery” by way of attaching documents in Statement of Claim, Statement of Defence etc.

Why NOMA?

- The parties can relate to the Rules and Best Practice for understanding the procedure
- No need to read the Arbitration Act, which otherwise is the framework for “ad hoc” arbitrations
- Ensure that proceedings are conducted in general the same way, regardless of whom are appointed as arbitrators (particularly important if non-Nordic arbitrators are appointed)
- NOMA is institutionalized arbitration (like ICC, SCC), but very “slim” and inexpensive
- Enforcement under NY Convention – easier to show that proceedings are conducted in a proper manner

Points of interest - Rules

- Notice of arbitration
- 3 arbitrators (if not otherwise agreed) – aim to appoint jointly, otherwise each party appoint its arbitrator, those two appointed to nominate chair
- If no agreement on chair, or a party fails to nominate, NOMA to appoint
- Appointment when multiple parties
- Challenge of arbitrators if doubts of impartiality or independence etc
- Proceedings (more detailed set out in the Guidelines)
- Interim measures

Rules - continued

- NOMA powers and tasks:
 - Appoint arbitrators in case of default
 - Decide on challenge of an arbitrator not suited (impartibility, independence or availability)
 - Review arbitrators fees according to Terms of Engagement
 - May issue tariff of costs guidelines for arbitrators fees
 - Maintain Rules and Best Practice

Best Practice Guidelines

- 3 documents – General guidelines, CMC (Case Management Conference) Matrix and Taking of Evidence
- General guidelines
 - more detailed than Rules on the procedure to be followed. Overlap
 - not compulsory – agreement by the parties override the Guidelines, otherwise the Tribunal can depart from, but shall “taking into account,” the Guidelines
- Best Practice can be used by itself in any ad hoc arbitration, even if there is not a NOMA arbitration clause

Best Practice Guidelines, continued

- Case Management Conference (CMC), Art. 3
 - list of items to be discussed between the Panel and the parties after the Panel has been constituted
 - agree on the procedure to be followed, Procedural Orders by the Tribunal
 - include items as scheduling of main hearing, deadlines for statement of claim etc., use of experts, deadline for new arguments
- - the list of items to be considered are two A4 pages long
- - CMC Matrix gives even more detailed guidelines for items to be discussed/decided

Taking of evidence

- IBA Rules on the Taking of Evidence in International Arbitration
- Duly amended – Nordic tradition
- Items like Documents, Witnesses of fact, Experts
- Practical items relating to evidence

Conclusion

- Framework for “ad hoc” arbitrations, institutional arbitration “light”
- Streamline arbitration proceedings – not depending on individual preferences by arbitrators – but still flexible
- Practical, easier to see how the procedure works, no need to check local Arbitration laws
- Persuade non-Nordic parties to accept Nordic Arbitration – easy to document how it works
- Enforcement procedures under NY Convention – easier to document that due process of law being followed