Why you should consider opting for NOMA arbitration for your next contract

In the 2021 summer edition of Skipsmegleren, Thommessen gave a good overview of Nordic Offshore & Maritime Arbitration as a viable alternative for commercial dispute resolution in shipping and offshore matters. On that backdrop, we will provide a short update on what Nordic Offshore & Maritime Arbitration Association (NOMA) can offer – with focus on the situation when you are about to enter into a contract under which potential disputes shall be subject to arbitration.

Within the Norwegian maritime industry, the preferred arbitration mechanism has traditionally been ad-hoc arbitration in accordance with the Norwegian Arbitration Act, or "London arbitration" in accordance with London Maritime Arbitrators Association's Rules (LMAA). However, we would argue that you should consider to switch to NOMA arbitration[1] in your next contract, based on the following key reasons:

First, NOMA's arbitration Rules and Best Practice Guidelines are a codification of the Nordic culture of performing arbitrations. In the Nordic countries, and especially in Norway, ad-hoc arbitration has historically been the dominant choice in the maritime and offshore industry. Seen from within, Norwegian/Nordic ad-hoc arbitration is based on long traditions, it works well, and it provides a flexible and pragmatic approach to the dispute at hand. However, from "the outside", Norwegian/Nordic ad-hoc arbitration has been regarded as a black box as the Nordic arbitration acts provide a high level regulation of only a few of the many matters which must normally be dealt with in arbitration. By choosing NOMA arbitration the black box is "removed", yet the "Nordic way" is safeguarded.

Second, it is known that enforcement of ad-hoc arbitration awards may be difficult in some jurisdictions, compared to awards based on institutional rules. China constitutes one example. By choosing NOMA arbitration, you get institutional arbitration, but with as few institutional elements as possible. The solution, in short, is as follows:

(a) there are no fees for using NOMA unless the parties request NOMA to act,

(b) there is no administrative follow-up of the process from NOMA – it is led by the appointed panel, but

(c) NOMA has the power to act in some situations upon the parties' request. The main situations where it may be relevant with involvement from NOMA, are:

  (i) appointment of arbitrators if the parties do not meet their obligations to appoint;

  (ii) removal of arbitrators if he or she is unavailable; and

  (iii) "censoring" of the arbitration award if one of the parties is discontent with the legal costs ruling.

Third, a switch from ad-hoc to NOMA arbitration would gradually make it a more attractive and acceptable choice internationally. Individually, the Nordic countries are small players on the international arbitration market. "The Nordics" is a much more powerful unit which offer a wider pool of both counsel and arbitrators with the right competence. A Nordic platform offering transparent, pragmatic and cost-effective dispute resolution, might in the long run gain influence so as to compete with established entities such as the LMAA.

If you have any questions, or if you want to view a broader presentation of what NOMA arbitration can offer, please do not hesitate to reach out to me or to any of NOMA's board members. See also: www.nordicarbitration.org

NOMA wishes all readers of *Skipsmegleren a dispute free Christmas and a Happy New Year!*

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1 By "NOMA arbitration" we mean an arbitration governed by the NOMA Rules