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Nordic Offshore and Maritime Arbitration

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Nordic Offshore and Maritime Arbitration

– a viable alternative for commercial dispute resolution in shipping and offshore matters

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Introduction

The Nordic Offshore and Maritime Arbitration Association ("NOMA") was established in 2017 at the initiative of the Danish, Finnish, Norwegian and Swedish Maritime Law Associations. A key purpose was to develop a more common approach to arbitration in the Nordic countries with a set of Rules and Best Practice Guidelines supplementing statutory regulation on arbitration in Norway and the other Nordic countries. The Rules and Best Practice Guidelines are aimed at providing an efficient, transparent and predictable process for the resolution of commercial disputes.

The NOMA Rules and Best Practice Guidelines constitute a viable alternative for dispute resolution in the shipping and offshore sectors, e.g. in connection with the sale and purchase of ships, shipbuilding and offshore construction and charterparties. The NOMA Rules have already been adopted as a default choice in the Nordic Marine Insurance Plan in situations where the parties have agreed on arbitration.

Whilst the initative to establish NOMA came from the Nordic maritime law associations, the Rules and Best Practice Guidelines as such are not industry specific and may well be used also outside what would normally be categorised as maritime and offshore disputes.

Arbitration in Norway

Arbitration under Norwegian law is governed by the Arbitration Act 2004 ("Arbitration Act"). In order for a dispute to be referred to arbitration rather than the ordinary courts, the parties must have agreed that disputes under a specific agreement or in a specific legal relationship shall be resolved by arbitration, cf. the Arbitration Act sec. 10. Such agreement may be made either before or after a dispute has arisen. Absent any such agreement, the dispute shall be handled by the ordinary courts.

In Norway, there are a number of distinct differences between arbitration and ordinary court proceedings, including the following:

- In arbitration, the parties may agree on confidentiality as opposed to ordinary court procedings which are as the main rule public.
- In arbitration, the parties may through the procedure for the appointment of arbitrators secure a highly qualified panel with relevant industry experience as opposed to generalist judges in the ordinary courts.
- In Norway, arbitral awards in Norway are not subject to appeal, save in the event of procedural errors etc. Thus, as the main rule, arbitral proceedings are finally concluded with the arbitral award.

Arbitration under the Arbitration Act is not "institutional", but "ad hoc", which, *inter alia*, means that the arbitral proceedings are not conducted under the supervision or regulation of a specific institute or body (such as the International Chamber of Commerce (ICC) or Stockholm Chamber of Commerce

(SCC)), but is private in the sense that, within the parameters set by the Arbitration Act, it is up to the parties and the appointed tribunal to agree on most matters of procedure.

The NOMA Rules and Best Practice Guidelines together create a more elaborate set of rules and procedures for arbitral proceedings in the Nordic countries. As such, the aim of NOMA is to maintain some of the flexibility that follows from ad hoc arbitration, while at the same time give the users more predictability by using a set of rules without being bound by the strict regime of an institutionalised arbitration.

Some key features of NOMA

The NOMA Rules are largely based on the so-called Unicitral Arbitration Rules. The Best Practice Guidelines contain further regulations to ensure a predictable, transparent, cost-efficient and fair arbitration process within the framework of the NOMA Rules.

The Best Practice Guidelines have two appendices. Appendix 1 is a Case Management Conference Matrix aimed at identifying all key issues to be addressed and discussed at a case management conference to be held as soon as possible after the arbitral tribunal has been composed. Appendix 2 is a set of rules on the taking of evidence and is aimed at providing an efficient and economical process for the taking of evidence in international arbitrations as an alternative to typical “discovery” processes.

The use of the NOMA Rules follows from agreement between the parties, either through an explicit reference to the NOMA Rules in the arbitration/ dispute resolutions clause in the relevant agreement or by way of a separate agreement before or after a dispute has arisen, cf. the NOMA Rules Art. 1. Once the parties have agreed on the use of NOMA, the arbitration shall follow the procedure described in the Rules.

The Rules set forth the procedure for commenement of arbitration proceedings, legal representation, composition and appointment of arbitrators and the conduct of the arbitral proceedings as such.

The arbitral proceedings are commenced by a notice of arbitration, cf. NOMA Rules Art. 3. Unless otherwise agreed, the number of arbitrators is three and the parties shall to the extent possible seek to appoint the arbitrators jointly, cf. the NOMA Rules Art. 5 – 7.

One of the key features of the NOMA Rules is the requirement for a statement of both independence and impartiality from the arbitrators prior to their appointment, cf. the NOMA Rule 7. The potential arbitrators may also be requested to state the basis for the calculation of their fees prior to their appointment.

NOMA Fast Track Arbitration Rules

NOMA has also developed a set of Fast Track Arbitration Rules for disputes where the aggregate amount of the claim and counterclaim does not exceed USD 250,000 or the equivalent amount in another currency, or such other amount as the parties have agreed. The Fast Track Arbitration Rules apply if the parties have agreed to refer the dispute to the NOMA Fast Track Arbitration Rules.

The Fast Track Arbitration Rules generally operate with shorter deadlines and fewer written submissions, and the default position is that the matter shall be resolved based on documents only, i.e. without an oral hearing.

All these measures are implemented to provide for a speedy and less costly way of resolving disputes.

Recognition and Enforcement

A key point in all legal proceedings between parties from different jurisdictions is cross-border recognition and enforcement. Without the possibility of obtaining an enforceable decision, there is normally few good reasons to commence legal proceedings.

One of the key benefits of arbitration is that recognition and enforcement is regulated through an international convention with a significant number of signatory states. The New York Convention on Regognition and Enforcement of Foreign Arbitral Awards 1958 (“New York Convention”) has been adopted by more than 150 states worldwide. Probably needless to say, the NOMA Rules are aimed at providing high quality arbitral awards through a fair and transparent procedure in order to ensure that the awards are recognised and enforceable worldwide under the New York Convention.

Where to find the relevant documents?

The NOMA Rules and Best Practice Guidelines may be found at www.nordicarbitration.org.

NOMA has in addition developed a recommended arbitration clause to refer disputes to the NOMA Rules and Best Practice Guidelines, which can also be found at www.nordicarbitration.org.

Finally, NOMA has developed a standard form of letter of acceptance and availability that may be used in connection with the appointment of arbitrators, which can also be found at www.nordicarbitration.org.

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www.thommessen.no