Nordic Offshore and Maritime Arbitration Association (NOMA): Could the Nordic Maritime Model Attract a Wider Audience?

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The Nordics now boast two Nomas – the world-famous Danish restaurant (noma) and the Nordic Offshore and Maritime Arbitration Association (NOMA). NOMA began operations early this year, and its rules and best practice suggest a more pragmatic, quicker and cheaper service than traditional institutions.

NOMA was established as an initiative of the Danish, Finnish, Norwegian and Swedish Maritime Law Associations, with support from law firms and academics in the industry. It promotes the use of arbitration to resolve disputes and is primarily aimed at the shipping sector where at least one party is Nordic. However, the question arises whether it could attract a wider audience, particularly after Brexit. Nothing prevents non-Nordic parties or non-shipping disputes to be heard before the association.

One way that NOMA tackles the perennial issue of ensuring efficient and quick proceedings is by streamlining international texts. For instance, as compared to the UNCITRAL Arbitration Rules on which they are based, the NOMA rules:

1) Reduce by over a week the waiting time to ask for an arbitrator's appointment,

if a second party has not appointed one, or if two arbitrators have not agreed upon a third;

2) Eliminate the response to a notice of arbitration, so there can be no delays by a respondent claiming that it has not received the notice and no waiting for a response before a tribunal can be appointed;

3) Remove the possibility of requesting an interpretation of an award, and so also remove a delaying tactic; and

4) No longer have an article on tribunal-appointed experts, highlighting that their appointment would be unusual, and reducing time and costs spent in debating the need of such experts and in analysing their reports.

There are also three documents attached to the NOMA rules to assist in efficiency. These are 1) the NOMA Best Practice Guidelines, 2) the NOMA Matrix and 3) the NOMA Rules on the Taking of Evidence.

1) The guidelines assist the tribunal and parties on certain procedural points. For instance, the guidelines provide:

a) Considerations for a case management conference (e.g. are document-only proceedings possible? Are written witness statements or expert reports needed? Should time be allocated for mediation/settlement discussions?);

b) Default deadlines for submissions, for when new evidence and arguments can be presented, and for when hearings should start; and

c) The expected structure for a hearing (i.e. opening statements, examinations and closing statements).

2) The matrix provides a clear table which goes into greater depth about what is to be discussed during the case management conference, suggesting best practice and practical tips such as four-day weeks for hearings, termination fees and use of factual abstracts.

3) The rules on the taking of evidence are sleeker than the IBA’s. This is because NOMA flips the presumption of certain procedural steps. For instance, although the possibility to request documents from a party still exists, the tribunal may not order it unless the parties agree or the tribunal decides otherwise. Similarly,

written witness statements are not to be used, unless the parties agree.

So far so streamlined, and such features would appeal to parties wishing to keep down time and costs, as well as to tribunals looking for a solid basis to set clearer and leaner proceedings.

Moreover, not only does NOMA promote Nordic pragmatism, it is timely. The legal effects of Brexit are presently uncertain and, as Michael McIlwrath points out in a previous post, uncertainty is "anathema to dispute resolution clauses". NOMA accordingly provides an attractive and less uncertain option for shipping (and other) disputes which are traditionally resolved in England because:

1) Nordic lawyers are famously adept at English and indeed the rules state that English is the language which "shall normally be used";

2) Many Nordic lawyers are familiar with English law because it often governs contracts, and nothing prevents English law governing NOMA cases; and

3) The Nordic system is a useful blend of common and civil law, with a focus on written codes balanced with an advocacy forte because of the habitual emphasis on the hearing when resolving disputes.

For a new set of rules, one could have anticipated provisions on trending topics such as arbitrator diversity, third-party funding, counsel conduct, summary proceedings, tribunal secretaries, etc. Their absence unsurprisingly reflects a Nordic minimalism in focusing on the fundamentals for a final award. Nevertheless, these topics also demonstrate opportunities to grow and adapt to users' wishes, and of course, the tribunal can bear them in mind when conducting the "arbitration in such manner as it considers appropriate".

In short, NOMA looks to be a persuasive option for all parties and industries because of its streamlined arbitration services in English. We shall see if, owing to the strength and trustworthiness of the Nordic legal system, NOMA can become every bit as famous as its coincidental namesake.

Jacob Skude Rasmussen and Jens V. Mathiasen are members of Gorrissen Federspiel, one of the law firms involved in the establishment of NOMA. With thanks to Andrew Poole for assistance.

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