

THE NORWEGIAN ARBITRATION ACT



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INTRODUCTION

We have had recent experience of dealing with a member's successful arbitration in Norway against hull underwriters. The case illustrated rapid dispute resolution in which the tribunal applied principled logic in coming to the correct interpretation of a standard loss-of-hire form.

CURRENT LEGISLATION

Arbitration in Norway is governed by the Norwegian Arbitration Act of 2004 (the Act), which came into force on 1 January 2005. Norwegian courts recognise and enforce valid arbitration agreements. The main features of the Act are highlighted below.



- The Act is based on UNCITRAL's Model Law on International Commercial Arbitration.
- There is no requirement that the arbitration agreement must be in writing.
- The Act provides a framework for arbitration. However, the parties are free to choose which provisions of the Act are to apply.
- It applies to both domestic and international arbitration, as long as the proceedings are conducted in Norway.
- It has default provisions on:
 - the appointment of the arbitral tribunal,
 - the conduct of the arbitral proceedings,
 - the liability for costs of the proceedings,
 - the arbitral award,
 - claims for invalidity and setting aside of arbitral awards, and
 - recognition and enforcement of arbitral awards.
- The parties must agree on whether the arbitration and award are available to the public or are kept confidential.

The choice of procedural rules is still mainly left to the discretion of the arbitral tribunal. Consequently, if the parties wish to influence the applicable procedural rules, they have to agree upon such rules in the arbitration agreement or in a subsequent agreement. The parties could agree to use the Arbitration Rules of the Oslo Chamber of Commerce (www.chamber.no).

TRIBUNAL CONSTITUTION

The Act provides for three arbitrators to form the tribunal, although this can be altered by agreement. If the parties cannot agree upon the appointment of all three arbitrators, each party shall (within one month) appoint one arbitrator and these two arbitrators shall subsequently (within one month) appoint the third arbitrator. The third arbitrator will be the chairman of the tribunal. If any party fails to appoint its arbitrator, or the two party-appointed arbitrators fail to appoint the third arbitrator within the set deadlines, each party may request the local District Court to appoint the remaining arbitrator(s) of the tribunal. Any arbitrator of the tribunal shall be qualified for the assignment, be independent of the parties and be free of bias.

RECOGNITION OF FOREIGN AWARDS

The Act also has provisions on the recognition and enforcement of foreign arbitral awards. In principle, any foreign arbitral award may be recognised and enforced in Norway if it meets the relevant requirements under the Act. In order to enforce a Norwegian arbitral award in another contracting state, the provisions of the New York Convention have to be met, including the requirement that the arbitration clause must be in writing.

COSTS

Often each party will bear its own legal costs and expenses. However, it is possible for a successful party to seek a recovery of their legal costs and expenses. The club recently supported a member in an arbitration in Norway. The member pursued a claim against a local Norwegian insurer under a loss of hire policy. The member was awarded 100% of the claim and 100% of their Norwegian legal costs. In this case, the entire costs of the proceedings (including the arbitration deposit fees and the lawyers' costs) were expensive. There was never any guarantee that any costs would be awarded. The case highlights the need to seek prompt advice from suitably qualified local lawyers whilst being aware of the risk of incurring potentially irrecoverable legal fees.



^ Bergen, Norway