



NORDIC OFFSHORE AND MARITIME ARBITRATION ASSOCIATION (NOMA) – AN UPDATE

The NOMA Arbitration Rules were introduced in 2017. With this, the Nordic countries have a well-functioning regime for shipping arbitrations, which offers more transparency and clarity than the ad hoc-arbitrations that were previously conducted. The rules have been warmly welcomed in the market as a Nordic alternative to the shipping arbitration institutions and rules in other jurisdictions. In this article we will give a short summary and update of the developments since 2017, and some comment on the status and way forward for NOMA.



BY KNUT ERLING ØYEHAUG

Background

The Nordic countries have for many years been a significant shipping and offshore hub. For this reason, a fair number of disputes within these sectors have traditionally been handled in arbitration. Contrary to

what has been the case in other shipping hubs, notably New York, London and Singapore, arbitrations in the Nordic countries have traditionally been so-called “ad hoc”-arbitrations, i.e. not involving any arbitration institute or based on institutional arbitration rules. While this worked well for lawyers and other “insiders” in the Nordic shipping environment, it did not provide much transparency and comfort to parties from outside the Nordic countries.

For these and other reasons, the Maritime law associations of Denmark, Sweden, Finland and Norway decided some seven or eight years ago that it would be beneficial for all to establish a Nordic arbitration association and a set of arbitration rules applicable to the shipping industry. The initiative was also motivated by a desire to attract more international business to Nordic arbitration. Given the fact that Norway and Denmark had a significant offshore industry, it was decided that both the association and the rules should be referred to as “Off-

shore and Maritime Arbitration”. The rules as such are however general in nature, and may be used also outside the shipping and offshore industries.

The association was established and a working group with shipping law experts from all the Nordic countries was appointed to draft the new arbitration rules. The first set of rules (Rules of Nordic Offshore and Maritime Arbitration Association (NOMA)) were published in November 2017. As stated in the rules, they are based on the widely used UNCITRAL Arbitration Rules, but adjusted somewhat to reflect well established traditions in Nordic arbitration.

Together with the arbitration rules, NOMA issued a set of Best Practice Guidelines (the “Guidelines”). These are meant to be used together with the NOMA arbitration rules but may also be used in ad hoc arbitrations not based on a specific set of arbitration rules. The Guidelines specify in further detail matters that have developed over many years in Nordic arbitration, for example, issues to be dealt with at the Case Management Conference (CMC) held at an early stage of the arbitration, and the arbitrators’ use of procedural orders for the conduct of the arbitration.

At the beginning, few, if any, contracts had a NOMA arbitration clause, but it soon became a fairly common practice for parties to agree on the application of the Guidelines even if the NOMA rules had not been agreed in the contract. The Guidelines include a document named “CMC-matrix”, i.e. a document setting out the matters to be discussed at the CMC (Appendix 1), and a set of rules “on the taking of evidence”, aiming at setting out an efficient and economical process for the taking of evidence (Appendix 2).

The NOMA Arbitration Rules and related documents can be found on [NOMA’s web site](#). The web site also includes news etc., including several articles published over the years in various publications. These articles provide a lot of information for those who would like more details.

Developments Since 2017

From the outset, it has been a goal for NOMA and the Nordic Maritime Law associations to market the NOMA Rules and Guidelines, and particularly to seek to convince major charterers and others in the industry to incorporate NOMA arbitration in their

standard contracts. These efforts have been successful, and particularly gained traction when it was decided that NOMA arbitration would be introduced as an alternative dispute resolution mechanism in the new revision of the Nordic Marine Insurance Plan as of 2019. A very significant share of the world commercial fleet (more than 20%) is insured for H&M and LOH on these terms. Since then, NOMA has gradually been able to widen the application of the NOMA Rules.

NOMA appreciated from the outset that in order to offer an attractive product, the general arbitration rules should be accompanied by other dispute resolution tools that are helpful in order to resolve commercial disputes. In 2021 NOMA launched their NOMA Fast Track Arbitration Rules. As the name suggests, these rules provide a procedure aimed at securing an even more efficient and fast process, with features such as a sole arbitrator being the main rule, shorter time limits etc. The rules may be applied to any dispute, but unless otherwise agreed between the parties will apply to disputes where the claim and/or counterclaim does not exceed USD 250,000.

NOMA also decided to issue their own Mediation Rules, and these were launched earlier this year (2023). Together with the Mediation Rules, NOMA also issued a Model Agreement for mediation.

The development of NOMA products may have been slowed down somewhat during the COVID-period, but in the autumn of 2022, it was decided to try to revive ongoing projects and the further development of NOMA. A new Board of Directors was appointed in November. Since then, the above-mentioned Mediation Rules have been launched, a Standing Revision Committee has been established (inspired by the Nordic Marine Insurance Plan) which will monitor and propose necessary changes to the various rules, and a Procedural Committee has been appointed to deal with certain procedural matters where NOMA’s involvement is required by the parties according to the rules. Earlier this year NOMA also launched a [LinkedIn-profile](#) where news etc. are regularly published. This is one of several marketing efforts put in motion lately.

A recommended NOMA Arbitration Clause has been on the NOMA website. When the Mediation Rules were launched, however, it was decided that the clause should be amended to become a Dispute

Resolution Clause which would also include mediation. The new clause was published in August 2023.

Although NOMA refers to itself as institutional arbitration, the normal procedure is that the parties and arbitrators conduct the arbitration in accordance with the Rules but otherwise without any involvement by NOMA. NOMA will only become involved at the request of the parties, and only for limited purposes such as appointment of arbitrators if the parties fail to agree.

Nordisk and NOMA

Nordisk has all along been a strong supporter of NOMA. A former Nordisk Managing Director, Georg Scheel, was instrumental in drafting the first set of rules and was for the first years the contact person for NOMA. We have been represented on the advisory board from the outset, and in the working group drafting the Fast Track Arbitration Rules. At present we are represented on the Board of Directors and the Procedural Committee, and act as the NOMA contact (NOMA@nordisk.no).

Our engagement fits perfectly with our position as a Nordic defence club, and our role as publisher of the Nordiske Domme i Sjøfartsanliggender (“Nordic Maritime Judgments”, Nordisk - [Nordiske Domme](#)),

a publication where judgments and arbitration awards within the shipping and transport sector in the Nordic countries have been published since 1900.

NOMA now seems well placed for gaining increased popularity and continued growth, with its functional dispute resolution rules and administrative structure in place.





THE HONG KONG CONVENTION: ADVANCING SAFE AND SUSTAINABLE SHIP RECYCLING PRACTICES

14 years since its adoption by the IMO, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the “**Convention**”) is finally set to become a reality. After several years of Norwegian funding of a capacity-building program in Bangladesh; Bangladesh recently decided to ratify the Hong Kong Convention, to accelerate the local compliance with the Convention’s requirements. Following Bangladesh, Liberia decided to ratify the Convention shortly thereafter and is the 22nd country to do so. As a result, the Convention is now scheduled to enter into force on June 26, 2025.

Background and objectives

The Convention was developed by the IMO in 2009, due to the need for a globally applicable instrument for responsible ship recycling. The Convention has since been ratified by 22 countries and seeks to

achieve two primary objectives: safeguarding the well-being of shipyard workers and preserving the environment.

To achieve these goals, the Convention applies to both (i) vessels (over 500GT and above) who are entitled to fly the flag of a signatory party or operating under its authority, and to (ii) ship recycling facilities operating under the jurisdiction of a signatory party.

Currently, the signatory parties are Bangladesh, Belgium, Republic of the Congo, Croatia, Denmark, Estonia, France, Germany, Ghana, India, Japan, Liberia, Luxembourg, Malta, Kingdom of the Netherlands, Norway, Panama, Portugal, São Tomé and Príncipe, Serbia, Spain and Turkey.



BY MINA WALÉN SIMENSEN

Key considerations for Shipowners

To achieve the overall objective, the Convention imposes specific requirements for both the working life of a ship, and for the recycling of an end-of-life ship. As a result, owners must comply with the regulations set out in the Convention during the entire life of the ship.

The contracting states have the authority to investigate vessels suspected of violating the Convention, and to take appropriate actions if there are any breaches, including exclusions from their ports.

The key requirements for owners bound by the Convention, are as follows:

1. Surveys

All vessels are subject to an initial, renewal (occurring at specific intervals, not exceeding five years), and final survey during their operational life, which surveys will, in many if not all instances, be carried out by the vessel's classification society. These surveys are intended to ensure that the vessel complies with the restrictions against use and installation of Hazardous Materials. Successful initial or renewal surveys lead to the issuance of an International Certificate of Inventory of Hazardous Materials (IHM), while the final survey results in an International Ready for Recycling Certificate.

For newly constructed vessels, the initial survey will be conducted before the vessel is commissioned into service.

2. Restrictions against installation and use of Hazardous Materials

The state parties to the Convention must restrict or prohibit the installation and use of hazardous materials on vessels flying their flag or operating under their authority. The vessels must comply with these restric-

tions throughout their operational life. This applies not only to ships in active service but also those in shipyards, repair yards, offshore terminals, and ports.

All ships must carry a certified and continuously updated Inventory of Hazardous Materials (IHM) specific to the ship. The IHM is issued after initial or renewal surveys, for a maximum period of five years.

3. Ready to Recycle Plan

The vessel must undergo a final inspection before it can be recycled. Subject to compliance with the Convention's conditions, an International Ready for Recycling Certificate is issued, valid for up to three months. Throughout this transition, ships are required to minimize cargo residues, remaining fuel oil, and waste on board.

For all end-of-life ships who are destined to be recycled, the ship recycling facility is required to develop a so-called "Ship Recycling Plan" (SRP). The owner shall provide all parts of the completed IHM and other necessary information to the ship recycling facility, in order to facilitate for the development of the SRP.

The owner must control that the details contained in the SRP match the IHM. If there are any discrepancies, the owner should identify these for action by the recycling facility.

4. Recycling only at Authorized Ship Recycling Facilities

Recycling of the ship must be completed at an approved Ship Recycling Facility. The facility must be authorized in accordance with the requirements set out in the Convention.

At present, no comprehensive overview of approved Ship Recycling Facilities under the Convention exists. However, it is anticipated that such an



overview will become available as the Convention approaches its entry into force date in 2025. Importantly, while the Ship Recycling Facilities listed under the EU Ship Recycling Regulation (the “**EU SRR**”) are expected to achieve approved status as Ship Recycling Facilities under the Hong Kong Convention, this outcome is not assured. The EU SRR imposes stricter regulations on Ship Recycling Facilities compared to the Hong Kong Convention. Consequently, these two regulatory frameworks do not necessarily align.

The EU Regulations and the road ahead

The European Union has also addressed ship recycling through its own regulation, known as the EU SRR. While largely aligned with the Hong Kong Convention, the EU SRR introduces additional safety and environmental criteria. Three notable differences are:

1. The EU SRR adds two more materials to the IHM: Perfluorooctane sulfonic acid (PFOS) for EU-flagged ships and Brominated Flame Retardant (HBCDD) for new EU-flagged ships.
2. EU-flagged vessels must have the EU Ready for Recycling Certificate (RRC). As a result, vessels can only be sent to yards included in the European List of Ship Recycling Facilities. This list does not necessarily correspond with the approved Ship Recycling Facilities under the Hong Kong Convention, as the EU SRR imposes stricter requirements for the ship recycling facilities, inter alia, the requirement that all ship recycling facilities operate from ‘built structures’, such as pontoons, quays, slipways, and docks.
3. According to the EU SRR, the Ship Recycling Facilities must also comply with the relevant guidelines of the IMO, ILO, Basel Convention and Stockholm Convention on persistent organic pollutants to be approved. Furthermore, for EU-flagged vessels, owners must provide the operator of the Ship Recycling Facility with a copy of the Ready for Recycling Certificate.

The EU has also adopted the European Waste Shipment Regulation, extending the obligations of the

UN Basel Convention. Stricter waste handling regulations and the Basel Ban Amendment, restricting waste disposal shipment to non-OECD countries, are incorporated. However, end-of-life ships can still be sent to recycling facilities in developing countries if the countries are able to manage them sustainably. Both EU regulations are presently under review within the EU.

Given that the Convention requirements impact the life of a vessel, not just the end; Members are encouraged to start preparing for how to comply with the anticipated requirements. The Nordisk Recycling Team has extensive knowledge of recycling issues and are ready to assist members with queries that should arise.

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