Nordic Commercial Arbitration Forum 2025

Nordic Arbitration: A Strategic Choice for Business

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Nordic Arbitration: A Strategic Choice for Business

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FOREWORD

By Prof., Jur. Dr. Johnny Herre[*]

The arbitration community in the Nordic region is vibrant. All five of the Nordic countries have arbitration institutes: the Danish Institute of Arbitration (DIA) in Denmark, the Arbitration Institute of the Finnish Central Chamber of Commerce (FAI) in Finland, the Nordic Arbitration Center at the Iceland Chamber of Commerce (GVI), the Nordic Offshore & Maritime Arbitration Association (NOMA) and the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce in Norway and the SCC Arbitration Institute in Sweden. Several of these institutes administer considerable amount of domestic and international arbitration disputes. In addition, many disputes are settled in the Nordic countries under the rules of the ICC International Court of Arbitration or ad hoc.

The Nordic region could, to a considerable extent, be regarded as a domestic market in the commercial and contract law area. The choice of, for example, Swedish law means that significant and important parts of Danish, Finnish, Icelandic and Norwegian law are also included or at least could be considered when arguing a case. The parties and their advisers as well as the judges can thus be inspired by and seek support in the legal literature, legislation and case law of the other countries. This is something that provides an additional strength to arbitration in the area, as one would otherwise be confined to material in relatively small jurisdictions, which cannot be compared with, for example, such jurisdictions as the United Kingdom.

There are also other reasons for emphasizing the Nordic dimension. For example, when Danish law is chosen, a chair from one of the other Nordic countries can be appointed with confidence that they are sufficiently familiar with Danish law as part of the laws of the Nordic legal family and are familiar with the rules, general doctrines and legal concepts there, even if they come from another country in the Nordic region.

In 2023, an initiative was launched by the academic institutes in the Nordic countries to strengthen Nordic commercial and contract law in various ways. One part of this work is to strengthen arbitration in the Nordic region by working with the institutes and others to actively market the Nordic region as a suitable place for international arbitration.

One way of doing this was to arrange a conference with the participation of all the institutes mentioned above, the purpose of which was to highlight the special features of Nordic law and arbitration in the Nordic countries.

Therefore, the Nordic Commercial Arbitration Forum was established as a biannual event to provide a forum for discussing different aspects of dispute settlement in the Nordic region.

The first conference, with the theme "Nordic Arbitration: A strategic choice for business" took place on 11 March 2025 in Stockholm at the premises of the SCC Arbitration Institute. At this conference different themes were discussed by different speakers or panels of speakers:

- Arbitration in the Nordic countries: How do the Nordics stand out and what explains the high level of arbitration activities in the Nordics?

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• Insights in and experience of disputes in the Nordics from a commercial perspective

• Presentation survey results in relation to Nordic Arbitral Institutions

• Presentation of the institutes in the Nordic countries and their activities

• Overview of professional experiences in the field of arbitration under Nordic arbitration rules, as arbitrator or as counsel

• Shared characteristics of the legal systems in the Nordic countries: How arbitration works in the Nordic context. What are the Nordic elements in international arbitration?

• Experiences in negotiating agreements and what factors to consider when deciding on choice of law, choice of seat, and the form of dispute resolution

These themes were discussed by more than 25 practitioners, academics, and representatives of the arbitration institutes (see the detailed programme below).

In this book, some of the panellists share their insights on the subject. In addition, the report "2025 Survey Report on Nordic Arbitral Institutions – Mapping Nordic Arbitral Institutions" by Ms Natalia Petrik is presented.

The conference would not have been possible to realise without the assistance and generous support from the SCC and the Swedish law firms Mannheimer Swartling and Vinge. And this book would not have been possible without the great work by Natalia Petrik and Therese Isaksson (Westerberg & Partners), Daria Kozlowska-Rautiainen (Stockholm University) and Monica Seifert (KTH).

The next conference will be organised in Oslo in 2027 by the Oslo Centre for Commercial Law and the Norwegian Arbitration Association.

KEYNOTE SPEECH

By Prof. Dr. Kaj Hobér[*]

This discussion begins with an examination of the role and success of Stockholm as a leading centre of international arbitration. I do this not particularly to blow the Stockholm horn, but rather because I believe that there are two important lessons to be learnt from this experience.

To put it in somewhat provocative – and joking – terms Stockholm has been lucky. Stockholm has been lucky twice.

The first time was in 1977 when the US-USSR Optional Clause Agreement was signed. This was an agreement between the USSR Chamber of Commerce and Industry and the American Arbitration Association, providing for arbitration in Stockholm under the UNCITRAL Arbitration Rules, with the Arbitration Institute of the Stockholm Chamber of Commerce as the appointing authority.

This was the heyday of détente between the two political blocs. Businessmen in both blocs were looking for a neutral forum to solve commercial disputes. According to reliable sources, the American side was strongly in favour of Switzerland, whereas the Soviet side suggested various alternatives essentially in Eastern Europe. Eventually, the parties agreed on Stockholm as a compromise, suggested by the Soviet side.

As far as publicly known, the only case that has been heard on the basis of the US-USSR Optional Clause Agreement is the infamous dispute between the USA and the USSR concerning the construction of the US embassy in Moscow. The construction contract had been entered into between the US State Department and the Soviet foreign trade organization Soyuzvneshstroiimport. The dispute was, of course, highly sensitive from a political point of view and was eventually settled during President Yeltsin's first visit to the United States in the early 1990s.

The most important aspect of the Optional Clause Agreement is, however, that it came about at all. It put Stockholm and the SCC firmly on the map of international arbitration.

The SCC undertook considerable efforts throughout the 1980s and 1990s to maintain and develop Stockholm as the leading centre for East-West arbitration. During this period, the SCC engaged in extensive international outreach, travelling widely to explain the benefits of arbitrating in Sweden.

Stockholm was lucky a second time in 1994, when the Energy Charter Treaty (ECT) was signed. Part III of the ECT deals with the protection of investments in the energy sector. Art 26 of the ECT provides for arbitration to resolve investment disputes. One of the arbitration options available to claimants is arbitration at the SCC under its rules. One might have reasonably expected – or indeed hoped -that the inclusion of SCC arbitration was the result of the efforts of the Swedish delegation at the negotiations. It has turned out, however, that it was in fact the Russian delegation which proposed Stockholm and SCC arbitration.

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Thanks to the inclusion in the ECT, the SCC has become the second-largest arbitration institution in the world handling investment disputes - second only to ICSID in Washington, D.C. This development, once again, generated a lot of hard work on the part of the SCC.

The first lesson to be learned from the above is that it is no longer realistic to count on being lucky. The Nordic countries must be proactive if they hope to establish themselves as relevant fora for international arbitration.

The second lesson is that hard work is required. Over the years, and in various contexts, I have often quoted Vince Lombardi, the legendary coach for Green Bay Packers, which used to be the unchallenged powerhouse in American football in the 1960s – and which is still a very strong team. One of the things Lombardi used to say to his players was this: "Remember that the only place where success comes before work is in the dictionary!"

In all the hard work ahead of us, we need to focus on our unique selling points.

What are then the unique selling points for us in the Nordic countries? From my perspective, there are four advantages that the Nordic countries offer in this regard:

1 We have a long tradition of arbitration in our countries. The history of arbitration in the Nordic countries goes back many decades – and in some countries, centuries. Among businessmen, arbitration has long been a frequently used dispute settlement mechanism, if not the preferred one. We can only guess why this is the case. I believe the explanation lies in the fact that our societies are small and relatively homogenous, leading to a high degree of trust among participants in the commercial world. Businessmen and professionals have trusted each other sufficiently to make private dispute settlement possible, reliable, and trustworthy.

2 Even though our legal systems belong to the civil law group of legal systems, when it comes to procedural law and dispute settlement, we are somewhere in between common law and civil law. Our legal systems are, generally speaking, more flexible in these respects than some civil law systems, including some on the European continent. The general approach in commercial disputes is considerably less inquisitorial, for example, than in some other civil law systems. This position makes us well suited to handle commercial disputes between parties from common law jurisdictions and civil law jurisdictions in a smooth and flexible manner.

3 The Nordic countries typically provide comprehensive and robust legal education and training for young lawyers. As a result, we have a cadre of lawyers who are trained to apply their legal minds in an objective and dispassionate manner. This is, of course, of utmost - indeed, decisive - importance in the context of dispute settlement. This legal education and training also ensure that the respect for party autonomy is in the DNA of most lawyers from the Nordic countries. This is crucial, as party autonomy and the consensual nature of arbitration constitute the cornerstones of modern international commercial arbitration.

4 Courts in the Nordic countries are arbitration-friendly. This approach manifests itself primarily in two ways: *First*, courts in Nordic countries do not - and generally cannot - interfere in an ongoing arbitration. Once there is a valid arbitration agreement, the arbitration proceeds and results in an enforceable arbitral award. S*econd*, there is a very high threshold for setting aside arbitral awards, which can be done only on narrowly defined

procedural grounds. The arbitration-friendly approach of courts in the Nordic countries is also reflected in the fact that all Nordic countries are signatories to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and that all Nordic countries have modern arbitration legislation which is compatible with the UNCITRAL Model Law on International Commercial Arbitration.

Taken together, these factors represent unique selling points that make the Nordic region a highly attractive seat for international arbitration.

Let us all go out there and preach the Nordic Gospel.

NORDIC ARBITRATION: A STRATEGIC CHOICE FOR EFFICIENT, NEUTRAL AND BUSINESS-FRIENDLY DISPUTE RESOLUTION

By Peter Appel, Thomas Edelgaard Christensen, and Simon Nøhr[*]

1. Introduction

Arbitration has long been the preferred method of resolving international commercial disputes, offering parties confidentiality, procedural flexibility, and enforceability of decisions that litigation in national courts often cannot match. As cross-border transactions grow in complexity and value, the importance of selecting the right arbitral seat and governing law becomes more important.

The Nordic countries — Denmark, Sweden, Norway, Finland, and Iceland — offer an attractive arbitration environment. Rooted in strong rule-of-law traditions and underpinned by a legal culture of pragmatism and commercial sensibility, Nordic arbitration combines legal certainty with practical efficiency. This article sets out the key reasons why arbitration seated in the Nordic region, governed by Nordic law and administered by Nordic institutions, is an excellent choice for both domestic and international commercial actors.

2. Pro-Arbitration legal cultures

The broader legal culture of the Nordic countries strongly supports arbitration. The region has a deep historical foundation for private dispute resolution, dating back to the Middle Ages, particularly with regard to commercial disputes. In Denmark, specifically, arbitration was first codified in section 1-6-1 of the Danish Code of 1683 (in Danish: "Danske Lov"), which explicitly recognised that parties could settle their disputes through arbitration, that arbitration agreements were binding and that awards of arbitral tribunals were not subject to court appeal.

This early recognition of party autonomy and binding arbitration decisions laid the groundwork for a longstanding tradition of arbitration. This lasting tradition has since been modernised and institutionalised, particularly in Denmark and Sweden, establishing a legal environment that is arbitration-friendly both in law and in practice.

Nordic courts consequently take a restrained and respectful approach to arbitration, intervening only when absolutely necessary to uphold fundamental legal standards. From a Danish perspective, this was firmly recognised by the Danish Supreme Court in case U 2016.1558/2 H, in which the court held that:

"[…] courts are not permitted to conduct a substantive review of an arbitral award. Thus, except for the extraordinary cases mentioned below, where there is a manifest conflict with public policy (ordre public), the courts cannot set aside an arbitral award as invalid on the grounds that the arbitral tribunal has misapplied the law or incorrectly assessed the factual circumstances of the case." (office translation)

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Similar views have been articulated by the Swedish Supreme Court in NJA 1979 s. 527 and by the Norwegian Supreme Court in Rt-2011-986. In NJA2003 s. 379, The Swedish Supreme Court adopted an approach in favour of enforcement, holding that:

"The provisions of the Arbitration Act concerning the enforcement of foreign arbitral awards and the underlying New York Convention should be interpreted in light of the general aim of facilitating enforcement as expressed in the Convention." [office translation].

This approach ensures that parties can rely on the finality and autonomy of arbitral proceedings, making arbitration a truly independent alternative to court litigation. Unlike in jurisdictions with more interventionist judicial traditions, such as in England and Wales, Nordic courts seldom review the merits or otherwise interfere with arbitral awards.

However, the courts are willing to intervene in situations where it would be contrary to fundamental principles of justice, either by setting aside the award or refusing its enforcement. This was demonstrated in a recent decision by the Danish Supreme Court in case U 2025.1922 H, in which the Court denied the enforcement of a default award rendered under the rules of the Shanghai Arbitration Commission as the party who failed to participate had not received notice of the proceedings.

The region's legal professionals – judges, arbitrators, and counsel – all promote and uphold this culture through a high level of professionalism and solution-focused approach to resolving disputes. Disputes are often resolved with a commercial mindset that values efficiency and practicality over procedural posturing. These values create an environment favourable to amicable resolutions and the continuation of business relationships, which are particularly important in long-term commercial ventures.

3. Legal certainty and the rule of law

This supportive legal culture is grounded in a solid institutional framework. Legal certainty is a fundamental precondition for any reliable dispute resolution system, and the Nordic countries consistently score among the highest in global rankings for judicial independence, anti-corruption, regulatory quality and respect for the rule of law.

All Nordic jurisdictions have modern arbitration statutes that are mostly in line with, or are based on, the 1985 UNCITRAL Model Law on International Commercial Arbitration. This ensures consistency with international standards and predictability for users. While the Swedish Arbitration Act is not strictly based on the Model Law, it still follows the basic arbitration-friendly principles. In general, the Nordic courts demonstrate a willingness to rely on international sources when interpreting national arbitration acts, thereby ensuring a coherent and globally oriented arbitration framework. A recent example of this is the judgment of 19 May 2025 from the Norwegian Supreme Court, in which the court assessed the impartiality of an arbitrator by expressly referring to the IBA Guidelines on Conflicts of Interest in International Arbitration.

Importantly, the Nordic legal systems also offer full access to the enforcement mechanism of the 1958 New York Convention. This ensures that arbitral awards rendered in the region are readily enforceable in over 170 countries.

Moreover, courts in the region are highly predictable and respectful of party autonomy, a cornerstone of arbitration. They enforce arbitration agreements and uphold arbitral awards with minimal grounds for annulment. This further strengthens the appeal of Nordic arbitration for

international parties, offering assurance that their dispute resolution mechanisms will be respected and upheld.

4. A pragmatic legal culture: beyond civil and common law

One of the key features of Nordic arbitration is the pragmatic legal culture that characterises the region. While Nordic legal systems are generally rooted in the civil law tradition and have incorporated elements from common law, they do not mirror the rigidity often associated with either model. Instead, Nordic arbitration represents a flexible and business-oriented approach, setting it apart from more formalistic systems.

Civil law jurisdictions are often associated with strict codification and a rigid adherence to statutory rules, whereas common law systems may be weighed down by extensive procedural formalism and expansive discovery obligations. In contrast, the Nordic legal tradition emphasises effectiveness and commercial reasonableness. It is a legal culture that prioritises practical outcomes over rigid legal doctrines. While all legal systems have their benefits and drawbacks, the pragmatic Nordic model is arguably well suited for commercial arbitration.

This pragmatism is reflected in multiple ways. Procedural rules are designed to facilitate, rather than hinder, the efficient resolution of disputes. Arbitrators in the region are typically empowered to take a hands-on, problem-solving approach tailored to the needs of each case. Procedural battles that may arise in other jurisdictions – over discovery scope, admissibility of evidence, or strict rule compliance – are comparably rare in Nordic proceedings.

For example, in contrast to the costly and often burdensome disclosure regimes of common law jurisdictions, Nordic arbitration takes a more restrained approach. Document production is limited to what is genuinely relevant to the case, avoiding excessive document production requests (so called "fishing expeditions"), which could derail the focus of the case. This approach is explicitly set out in section 25 of the Swedish Arbitration Act, as well as section 28 of the Norwegian Arbitration Act, which stipulates that:

"The arbitral tribunal may refuse to admit evidence if it is clearly irrelevant to the resolution of the dispute. The arbitral tribunal may limit the presentation of evidence if there is no reasonable relationship between the significance of the dispute or the significance of the evidence for the resolution of the dispute and the scope of the presentation of evidence." [office translation]

The approach to deny irrelevant evidence is generally in line with Danish law which is also characterised by narrower disclosure obligations compared to the broad discovery known in Anglo-American law.[1] This approach has several benefits. Not only does it reduce time and costs, but it also ensures a sharper focus on the important substantive issues.

On matters of substantive law, Nordic systems favour commercial sensibility. Contract interpretation is guided not only by the literal wording but also by the parties' intentions, trade usage and business context. Arbitral tribunals seated in the Nordics are known for adopting a purposive and commercially grounded approach – an attractive feature for parties seeking fair and realistic outcomes that reflect the nature of their commercial relationship.

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[1] See Jakob Juul & Peter Fauerholdt Thommesen, Voldgiftsret, (3d ed., Karnov 2017), p. 242.

In short, Nordic arbitration and substantive law seek to strike a balance between the main international systems of law: less rigid and systematic than civil law, less procedurally burdensome than common law, and more pragmatic than either. It is this flexible, efficient, and business-focused legal culture that makes the Nordic region particularly appealing as a seat of arbitration.

5. Neutrality and political stability

When selecting a seat of arbitration, neutrality and political stability are key considerations. Nordic countries are consistently ranked among the world's most stable and least corrupt nations. They are neutral, transparent and governed by democratic institutions that enjoy a high level of public trust. Despite Finland and Sweden joining the NATO, the history of political neutrality of the Nordic countries continues to enhance their attractiveness as arbitral seats. They are not aligned with the major power blocs that sometimes influence perceptions of bias in other jurisdictions.

This neutrality extends to the judiciary, which is widely perceived as impartial and independent of political or economic influence. International businesses, particularly those cautious of local protectionism or arbitrary state interference, can rest assure that the courts of the Nordic region are offering a level playing field for the resolution of commercial disputes.

In the Nordic countries, the judiciary operates under high ethical standards and with no political involvement in the appointment of judges. Courts handle arbitration-related matters, such as the appointment of arbitrators or challenges to awards, with integrity and in line with international best practice. This institutional independence provides foreign investors with a high level of legal security.

6. Efficiency and cost-effectiveness

Efficiency is a key selling point of Nordic arbitration. The region's arbitral procedures are designed to be lean, time-efficient, and proportional to the complexity of the dispute. Procedural rules are clear and concise, and unnecessary formalism is avoided. This stands in contrast to some arbitration hubs, where proceedings may be subject to lengthy delays due to procedural disputes, discovery battles or overly long timelines.

From a cost perspective, Nordic arbitration is competitive. Administrative fees charged by institutions such as the Danish Institute of Arbitration (DIA) or the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) are not excessive compared to those of larger institutions like the International Court of Arbitration of the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA). Additionally, thanks to the region's efficient procedures and streamlined hearings, arbitrator costs are generally lower. Lawyers' fees are also typically lower than in other major arbitration centres, such as London and Paris, which further enhances the overall cost-effectiveness of Nordic arbitration.

Another advantage is finality. Unlike in jurisdictions such as England and Wales, where arbitral awards may be challenged on points of law (unless the parties have agreed otherwise), Nordic legal systems allow only very limited review on the merits. This reduces the risk of post-award litigation, shortens timelines and limits additional legal expenses.

7. Language accessibility: English as a practical standard

Language is often a barrier in international disputes, but not in Nordic arbitration. English is widely used as the working language in Nordic-seated arbitrations, and the region boasts some of the highest levels of English proficiency in the world.

Lawyers, arbitrators and business professionals in the Nordic countries are accustomed to conducting proceedings in English. Contracts, submissions, witness statements and hearings are routinely handled in English without the need for translation, reducing cost and minimising misunderstandings. This makes Nordic arbitration user-friendly for international parties.

8. Experienced arbitration institutions and practitioners

The Nordic region is home to several well-established and respected arbitration institutions, including the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) in Sweden, the Danish Institute of Arbitration (DIA), the Finland Arbitration Institute (FAI), the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce (ADRI) in Norway, the Nordic Arbitration Centre (NAC) in Iceland and the more recent initiative, the Nordic Offshore and Maritime Arbitration Association (NOMA). These institutions generally provide clear and efficient procedural rules, experienced case managers and robust support services.

In addition, the region is home to a large number of experienced arbitrators and arbitration counsel with international credentials. Many have studied or practised abroad, speak multiple languages and regularly act in international disputes. Their expertise covers a wide range of commercial sectors and legal systems, enabling them to bridge legal and cultural differences in complex disputes.

8.1 The SCC: Sweden as a premier arbitral seat

Among the Nordic arbitral institutions, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) (established in 1917) holds a particularly prominent position on the global arbitration stage. During the Cold War, Stockholm – and specifically the SCC – emerged as a preferred neutral venue for disputes involving parties from the West, the Soviet Union and China. The SCC became widely used in contracts involving these jurisdictions, which often stipulated both Stockholm as the seat of arbitration under the rules of the SCC. This history laid the foundation for Sweden's and the SCC's reputations as credible, impartial and effective international arbitral forums. The SCC continues to serve as one of the world's leading arbitral institutions and ranks as the second-largest institution globally for investment treaty disputes.

8.2 NOMA: A Nordic alternative for maritime and offshore disputes

The Nordic Offshore and Maritime Arbitration Association (NOMA) (established in 2017) offers a tailored arbitration framework for disputes in shipping, offshore and related industries. Created as a cost-effective and regionally grounded alternative to London-based arbitration (e.g., LMAA), NOMA prioritises sector-specific expertise, simplified procedures and accessibility.

Its rules are designed with the needs of maritime and offshore actors in mind, and include provisions on language, time limits and default procedural steps. Amid rising costs and Brexit-related restrictions, there is growing global interest in alternatives to London, and NOMA presents a timely and commercially sensible option for maritime stakeholders.

9. Strong sector knowledge

One of the key advantages of arbitration is the ability to appoint decision-makers with sector-specific expertise. In the Nordic region, this benefit is amplified by the economic structure of the countries, which includes internationally leading industries. Nordic arbitrators and counsel often bring decades of industry-specific legal and commercial experience, ensuring that disputes are resolved with not only legal precision but also commercial realism. Some of the industries in which Nordic companies are among the global leaders are highlighted below.

9.1 Shipping, maritime and transportation

Denmark and Norway are global leaders in shipping and maritime services. Denmark is home to A.P. Møller-Mærsk, the world's second-largest container shipping company, and hosts a significant cluster of shipowners, bunker suppliers, service providers and organisations such as BIMCO, the world's largest shipowners' association. Denmark is also home to several major transport and logistics companies, most notably DSV, currently the world's largest logistics company. This makes Denmark a hub for both the shipping industry and the broader logistics and transportation services essential to global supply chains.

Similarly, Norway boasts a highly developed shipping industry with major players such as DNV, Wilh. Wilhelmsen, Höegh Autoliners and Frontline, listed on the Oslo Stock Exchange, which operates one of the world's largest fleets of tankers. Nordic arbitrators often have deep maritime law backgrounds, making them well-suited to handling disputes involving charter parties, shipbuilding and repair contracts, port operations and marine insurance. Finland's Wärtsilä and Sweden's Stena AB also contribute significantly to the region's maritime significance.

9.2 Pharmaceuticals and life sciences

Sweden and Denmark have robust pharmaceutical and biotech sectors. Companies such as Novo Nordisk, Lundbeck and AstraZeneca (with major operations in Sweden) form the basis of a thriving ecosystem of pharmaceutical research, development and manufacturing. Disputes in this sector often involve intellectual property rights, licensing, joint ventures and regulatory matters. Nordic legal professionals are highly experienced in handling these complex legal and technical issues in arbitration.

9.3 Energy and offshore industries

Norway is a key global player in energy, especially offshore oil and gas exploration, as well as emerging sectors like carbon capture and storage. Equinor, Norway's state-backed energy company, operates worldwide and frequently engages in large-scale energy projects and contracts. Similarly, the Aker Group plays a major role in the oil, gas and offshore industry.

In Denmark, companies like Ørsted and Vestas have made the country a global hub for wind energy. Arbitration in these industries requires an understanding of the long-term nature of the projects, joint ventures and engineering-related claims – an area in which Nordic arbitrators and institutions are especially well-equipped.

9.4 Manufacturing and industry

Sweden and Finland in particular host several world-class industrial manufacturers that are global leaders in transport, automation and engineering. Major companies include Volvo Group, ABB, Sandvik, SKF and Saab, which operates in advanced defence and aerospace technologies. Noteworthy contributors from Finland include Wärtsilä and Kone.

Contracts in this sector are typically high-value and technical, often involving international delivery terms, product specifications, and long-term supply agreements. Disputes are well-suited to arbitration, particularly when handled by professionals with sector-specific expertise. Nordic arbitrators have particular experience in managing these complex, engineering-focused cases.

9.5 Technology and telecommunications

The Nordic region is a global hub for innovations in technology and telecommunications. Finland is anchored by Nokia, a world leader in mobile and network infrastructure. In Sweden, companies like Spotify, which has revolutionised the global music streaming industry and exemplifies the region's strength in digital platforms and consumer tech. Norway contributes with Kongsberg Gruppen, a high-tech powerhouse operating in defence, aerospace and industrial automation.

Contracts in this sector often involve licensing, intellectual property, software development and technology transfer – areas that give rise to complex commercial disputes. Given the fast-paced and technical nature of the industry, arbitration is often the preferred method of dispute resolution. Nordic arbitrators have valuable experience in handling such matters, particularly when deep sector knowledge is required.

9.6 Food and beverage industry

The Nordic region is home to several major players in the food and beverage industry. Denmark, with its long-standing agricultural heritage, is home to Arla Foods, which is one of the largest dairy cooperatives in the world. Carlsberg, also headquartered in Denmark, is one of the world's largest brewing companies. Meanwhile, Norway's Orkla operates a vast portfolio of food brands and consumer goods, dominating grocery shelves across the Nordics. Norway is also a world-leading exporter of salmon, while Iceland contributes with Marel, with a significant position in food processing solutions.

Contracts in this industry often involve cross-border distribution, co-manufacturing, trademark licensing and long-term supply agreements. Disputes may arise over product quality standards, exclusivity terms or regulatory compliance. Due to the international scope and branding sensitivity of many such agreements, arbitration is often preferred for its confidentiality and sector-specific dispute resolution.

To sum up, the alignment between arbitration expertise and industrial specialisation in the Nordic region enhances the quality, efficiency and credibility of the arbitral process. With deep-rooted commercial insight, Nordic arbitrators are exceptionally well placed to resolve complex disputes across key industries. Their ability to navigate both the technical and legal aspects of a case ensures outcomes that are not only enforceable but also grounded in practical business realities.

10. Conclusion

The Nordic region offers an arbitration landscape that is not only legally sound but commercially strategic. Few jurisdictions can match its combination of legal certainty, neutrality, institutional maturity and sector-specific insight. These features are embedded in the daily functioning of courts, arbitration institutions and legal practitioners across Denmark, Sweden, Norway, Finland, and Iceland.

Nordic arbitration is characterised by a distinctive legal culture: pragmatic, solution-oriented and business-focused. Unlike the rigid formalism of some civil law systems or the costly disclosure requirements of common law jurisdictions, Nordic arbitration strikes a balance.

Whether seated at a well-established institution like the SCC or through sector-specific framework such as NOMA, Nordic arbitration affords parties the confidence of impartial dispute resolution and finality of awards. Arbitration statutes (mainly based on the UNCITRAL Model Law), strong rule of law and low judicial interference provide a stable legal foundation.

English is the default working language in most arbitrations, and legal professionals across the region are comfortable operating in an international setting. This eliminates barriers and facilitates smooth, cost-effective proceedings.

Significantly, Nordic arbitration reflects the economic characteristics of the region. It is built to serve industries where the Nordics are global leaders, including shipping, pharmaceuticals, energy, technology, manufacturing and food production. Arbitrators and counsel bring deep sector knowledge to the table, enabling them to resolve disputes with technical precision and commercial understanding.

In today's globalised and legally complex business environment, Nordic arbitration stands out not merely as a method of resolving disputes, but as a strategic and business-friendly choice. Selecting the seat of arbitration and governing law is a deliberate decision. The Nordic region presents a particularly attractive option, offering legal certainty, neutrality, procedural efficiency, linguistic accessibility and deep sector-specific expertise – all within a pragmatic and business-friendly legal culture.

THE CASE FOR JOINT APPOINTMENT OF THE TRIBUNAL - A NORWEGIAN BUSINESS PERSPECTIVE

By: Knut Høivik [*]

1. Introduction

Arbitration proceedings can, at times, expand in scope and complexity, giving rise to multiple procedural disputes and escalating both costs and delays. While parties are often blamed for such delays—such as by "allowing their counsel to belt-and-suspender every argument with still further arguments",[1] a key observation from the business client's perspective is that the tribunal's capability and competence in managing the case, the process, and the award effectively and with high quality is essential to avoiding such inefficiencies. As Professor Pierre Lalive aptly noted, "[a]rbitration is only as good as its arbitrators".[2] Accordingly, the process of appointing the tribunal—particularly the presiding arbitrator—is often more critical than the choice between arbitration institutions or procedural rules.

In international arbitration of a reasonable scale, the standard practice is to appoint a tribunal consisting of three arbitrators;[3] each party nominates one co-arbitrator, while the presiding arbitrator is appointed either by the co-arbitrators or by a third party—typically an arbitral institution or a national court. This model is generally followed across the Nordic countries, with one notable exception: Norway. A distinctive feature of Norwegian arbitration is found in Section 13 of the Norwegian Arbitration Act, which states that the parties shall "if possible appoint the arbitrators jointly."[4] While the provision merely requires the parties to explore the possibility of a joint appointment, they frequently succeed in doing so. As a result, the *joint appointment* of the entire tribunal has become the prevailing practice in Norway.

The widespread acceptance of joint appointments in Norwegian arbitration can largely be attributed to the high degree of *pragmatism*, *informality*, and *mutual trust* between the parties and their counsel. Despite often being in sharp disagreement, parties are generally able to cooperate in identifying the most suitable tribunal for their dispute. Although this may seem counterintuitive, in most cases, the underlying conflict does not extend to the appointment of arbitrators.

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[1] Michael Mcilwrath and Roland Schroeder, "The View From an International Arbitration Customer: In Dire Need of Early Resolution", *International In-house Counsel Journal*, Vol. 2, No. 8, 2009, p. 1355–1364 (p. 1361).

[2] Pierre Lalive, "Mélanges, en l'honneur de Nicolas Valticos', in Dupuy (ed.), *Droit et Justice: Mélanges en l'honneur de Nicolas Valticos*, CEPANI 1989, p. 289, cf. Nigel Blackaby KC, Constantine Partasides KC with Alan Redern, *Redfern and Hunter on International Arbitration*, Oxford University Press, Seventh Edition, 2022, p. 9. See also e.g. Lord David Hacking, "Arbitration is only as good as its arbitrators", in S. Kröll, L.A. Mistelis, P. Perales Viscasillas and V. Rogers (eds.), *Liber Amicorum Eric Bergsten. International Arbitration and International Commercial Law: Synergy, Convergence and Evolution,* Kluwer Law International 2011, p. 223–230.

[3] Gary B. Born, *International Arbitration: Law and Practice*, Third Edition, Wolters Kluwer, 2021, p. 151, *Redfern and Hunter on International Arbitration* (2022), supra note 2, p. 211.

[4] The same applies under Article 8 of the Rules of the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce, Arbitration and Fast-track Arbitration (2017).

In the pursuit of assembling the most effective tribunal, I contend that joint appointment of arbitrators is preferable to party appointment of the co-arbitrators. Furthermore, this approach may offer the Nordics a unique opportunity to cultivate a competitive advantage in the field of international arbitration. The following sections will outline the rationale supporting this position.

2. Party appointment and institutional appointment vs. joint appointment of the tribunal

The ability of each party to select one "judge of their choice" is often said to be a defining feature of international arbitration, distinguishing it from court proceedings.[5] This practice reflect the principle of party autonomy and may help bridge differences in language, legal tradition, or cultural background between the parties.

However, the practice of party-appointed arbitrators has been subject to criticism, primarily due to concerns that such arbitrators may be inclined to compromise their duty of independence and impartiality.[6] Several empirical studies lend support to this concern.[7] For instance, Alan Redfern observed that in all dissenting opinions in ICC awards from 2001—where the dissenting arbitrator could be identified—the dissenting view consistently favoured the party that had appointed them.[8] But as Redfern points out, there may be nothing unusual about this fact; parties will typically be cautious in selecting arbitrators who may be sympathetic to their perspective.[9]

Alternatives to party-appointed arbitrators include appointments made by arbitral institutions, professional bodies, or national courts. A common feature of these alternatives, however, is that they remove the composition of the tribunal from the direct *control* of the parties. This gives rise to a fundamental tension in arbitration: the need to *preserve independence and impartiality* versus the principle of *party autonomy*.

The joint appointment of all three arbitrators offers a resolution to this tension. *First* and foremost, it ensures that the composition of the tribunal remains under the *shared control of the parties*, even if

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[5] *Redfern and Hunter on International Arbitration* (2022), supra note 2, p. 217, cf. p. 211.

[6] See, for example, Jan Paulsson, «Moral hazard in international dispute resolutions», ICSID Review - Foreign Investment Law Journal, Volume 25, Issue 2, 2010, p. 339–355. Paulsson´s arguments and position has been rebutted in Charles N. Brower and Charles B. Rosenberg, «The Death of the Two-Headed Nightingale: Why the Paulsson—van den Berg Presumption that Party-Appointed Arbitrators are Untrustworthy is Wrongheaded», in *Arbitration International*, Vol. 29, No. 1, 2013, p. 7-44.

[7] Catherine A. Rogers, "Reconceptualizing the Party-Appointed Arbitrator and the Meaning of Impartiality", *Harvard International Law Journal*, Vol. 64, 2023, p. 137–202 (p. 151–161).

[8] Alan Redfern, «The 2003 Freshfields - Lecture Dissenting Opinions in International Commercial Arbitration: The Good, the Bad and the Ugly», *Arbitration International,* Vol. 20, No. 3 (2004), p. 223-242 (p. 234). Similar outcomes is found in a later study by Albert Jan van der Berg, «Dissenting Opinions by Party-Appointed Arbitrators in Investment Arbitration», in Arsanjani, Katz Cogan, Sloane, and Wiessner (eds), *Looking to the future: Essays in Honor of W Michael Reisman*, Koninklijke Brill, 2010, p. 821-843 (p. 824). Additionally, the ICC statistics for 2024 demonstrate that in all 39 majority awards where a dissenting arbitrator was identified, the dissenting arbitrator was a co-arbitrator nominated by a party, cf. *ICC Dispute Resolution 2024 Statistics*, p. 15.

[9] Redfern, Freshfield-Lecture (2004) p. 234. See also Richard Mosk and Tom Ginsburg, "Dissenting Opinions in International Arbitration", in *Liber Amicorum Bengt Broms* (Finnish Branch of the International Law Association), Helsinki, 1999, p. 259-284 (p. 275).

not under the unilateral control of either party.[10] This includes the crucial authority to appoint the presiding arbitrator. As the "first among equals," the presiding arbitrator leads the tribunal's deliberations, oversees the drafting of the award, and is primarily responsible for the progress of the proceedings.[11] Joint appointment thus enables the parties to retain influence over this pivotal role, helping to ensure an efficient and well-managed arbitration process.

This does not mean that joint appointment is the only way for parties to retain control over the appointment of the presiding arbitrator. Even in cases where co-arbitrators are party-appointed, certain mechanisms can be introduced to preserve some degree of influence over this key decision. For example, the parties may agree jointly on the presiding arbitrator. Alternatively, each party may submit a list of proposed candidates, allowing the other party to strike a specified number of names. The co-arbitrators would then select the presiding arbitrator from the remaining candidates.

Moreover, shared control over the composition of the tribunal can foster a spirit of collaboration, prompting the parties to prioritize the overall quality and balance of the tribunal rather than focusing narrowly on their preferred co-arbitrator. Joint appointments thus provide a more effective mechanism for ensuring that the tribunal collectively possesses the requisite competence, experience, availability, and diversity, along with the ability to manage disputes efficiently and handle procedural matters with clarity and structure. This approach also helps reduce the risk of unproductive tension between party-appointed arbitrators.

Second, when the parties agree jointly on all arbitrators, no direct "link" exists between any individual arbitrator and a specific party. As a result, joint appointment enhances the perceived and actual independence of the tribunal and reduces the risk of bias often associated with party-appointed arbitrators. It may be argued that a joint appointment merely "disguises the very same system of party appointments ("I agree to your appointee if you agree to my appointee")".[12] However, this concern carries limited weight in practice, as jointly appointed arbitrators typically do not know which party proposed or supported their nomination.

A practical challenge with joint appointment is that it requires the parties to *agree* on the composition of the tribunal. In discussions on party-appointed tribunals, joint appointment is often dismissed as unworkable—either because it is perceived as too difficult to achieve, or because the fallback procedures triggered by a failure to agree may cause delays, and "at worst, aggregate the dispute".[13] However, these concerns should not be overstated. The Norwegian experience demonstrates that the encouragement of joint appointment under the Norwegian Arbitration Act has been, perhaps surprisingly, effective. This success may be attributed to the high level of trust within the Norwegian arbitration community and its pragmatic, informal approach to proceedings.

In my view, there is no compelling reason why the practice of joint appointment could not be "exported" and developed into a competitive advantage for Nordic arbitration in the international arena. The trust-based and pragmatic approach that underpins the Norwegian experience is also

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[10] Johan Tufte-Kristensen, "The unilateral appointment of co-arbitrators", *Arbitration International*, 2016, 32, p. 483-503 (p. 495).

[11] See, for example, *Redfern and Hunter on International Arbitration*, supra note 2, p

[12] Sergio Puig, "Blinding International Justice", *Virginia Journal of International Law*, Vol. 56, no. 3, 2016, pp. 647-700 (p. 687).

[13] See, for example, Puig, supra note 8, p. 687 and Tufte-Kristensen, supra note 9, p. 495-496.

characteristic of arbitration practices across the Nordic region. Its limited adoption elsewhere in the Nordics may be more a matter of tradition and the stronger influence of international arbitration norms than of any structural or cultural incompatibility.

To some extent, the Norwegian practice of joint appointment has already been adopted more broadly in the Nordic region through the NOMA Arbitration Rules (2024). Article 7 no. 1 states that:

> "If the parties have agreed on appointing a tribunal of three arbitrators, the parties shall, as far as possible, appoint the arbitrators jointly."

This provision is essentially identical to Section 13 of the Norwegian Arbitration Act.[14] Accordingly, parties who agree to arbitrate under the NOMA Rules are required to explore the possibility of a joint appointment of the tribunal.

By contrast, the arbitration acts in Sweden, Denmark, and Finland are all based on the party-appointment model.[15] The same approach is reflected in the SCC Arbitration Rules (2023), the DIA Rules of Arbitration (2021), the FAI Arbitration Rules (2024) and the NAC Rules, all of which provide for party appointment of co-arbitrators in three-member tribunals.[16] However, with the possible exception of the DIA Rules, these frameworks allow the parties to agree otherwise.[17] This means that joint appointment is permitted across the Nordic region, even if not encouraged by default. The key distinction between these regimes and the Norwegian Arbitration Act or the NOMA Rules is that the latter impose an obligation to explore the possibility of joint appointment, whereas the former do not.

To support the further development of joint appointment practices in the Nordics, it would be beneficial to establish a more transparent and accessible Nordic pool of qualified arbitrators—one that includes individuals eligible to act in domestic disputes across the region. From a business perspective, this could help address a recurring challenge faced by large Norwegian companies in complex domestic cases: the limited availability of suitable arbitrators due to conflicts of interest. These companies often have some form of engagement with many of the legal experts who specialize in the areas of law relevant to their disputes, making it difficult to identify independent candidates. As a result, proceedings may be delayed because the few arbitrators deemed acceptable

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[14] Similar provisions can be found in Article 8 of the Rules of the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce (2017).

[15] Cf. Section 13 of the Swedish Arbitration Act (1999), Section 11 of the Danish Arbitration Act (2005) and Section 13 of the Finnish Arbitration Act. The system in Sections 3 and 4 of the Icelandic Act No. 53/1989, on Contractual Arbitration, appear to be that the procedure for establishing the tribunal is subject to the arbitration agreement between the parties, and that the District Court has the authority to appoint the arbitrators if the agreement is silent or the parties are in disagreement on this issue.

[16] Cf. Article 17(4) of the SCC Arbitration Rules (2023), Article 19 (3) of the DIA Rules of Arbitration (2021), Article 19 of the FAI Arbitration Rules (2024) and Article 4 of the NAC/Iceland Chamber of Commerce Rules.

[17] Cf. Section 12 of the Swedish Arbitration Act (1999), Section 11(1) of the Danish Arbitration Act (2005), Section 13 of the Finnish Arbitration Act, Sections 3 and 4 of the Icelandic Act No. 53/1989, Article 17(1) of the SCC Arbitration Rules (2023), Article 19 (3) of the DIA Rules of Arbitration (2021), Article 19 of the FAI Arbitration Rules (2024) and Article 4 of the NAC Rules.

are only available over extended timeframes. A broader and more distinct Nordic pool of arbitrators could help alleviate this bottleneck.

Based on the above, I believe that if we share the ambition to strengthen and promote the Nordics as a unified and competitive venue for international arbitration—grounded in robust *lex arbitri*, a high level of trust, and a pragmatic "no-nonsense" approach—then the practice of joint appointment of arbitrators may serve as a distinctive and valuable feature. It may also have the potential to become a genuine competitive edge for Nordic arbitration on the international stage.

FROM WHEATFIELDS TO OILFIELDS TO WIND FARMS AND BACK AGAIN: INNOVATING DISPUTE RESOLUTION IN THE 21ST CENTURY AT THE SCC ARBITRATION INSTITUTE

By Caroline Falconer, Raoul J. Sievers[*]

1. Introduction

The inaugural Nordic Commercial Arbitration Forum in March 2025 offered an ideal opportunity to examine arbitration in the Nordic region. It also sparked reflections at the Secretariat of the SCC Arbitration Institute (SCC) as to the SCC's continued journey in becoming not only an arbitration institute for Swedish disputes, but for complex disputes from all parts of the world.

The SCC stands as a pivotal institution within Nordic commercial arbitration, tracing its origins to Sweden's grain industry in 1917. Founded to provide an alternative dispute resolution forum at a time when local businesses sought certainty amidst World War I, the SCC has since evolved into a globally recognised hub for complex conflicts, commercial and between investors and states. Over the decades, it has maintained a distinctly Nordic character, deeply rooted in Sweden's legal tradition, while also acquiring an unparalleled reputation as a gateway for East-West disputes. Having initially offered a "third way" around traditional legal forums, it has consistently strived to uphold swift, impartial, and user-oriented processes for the resolution of domestic and cross-border matters.

Today, the SCC administers a wide array of cases, both international and domestic, including large-scale energy and construction disputes and post M&A conflicts. Its strategic significance for complex international high value disputes has especially been evident in the many investment treaties referring disputes to the SCC. These high-value, often international, arbitration proceedings, often entailing complex legal and technical questions, together with lower-value, often domestic or regional cases, reflect the SCC's adaptability in addressing ever-evolving commercial and regulatory frameworks around the globe.

Beyond these high-profile disputes, the SCC's portfolio includes an array of innovative services designed to accommodate the diverse needs of its users. From its Expedited Arbitration Rules, introduced to resolve smaller claims more efficiently, to a robust mediation framework that encourages amicable settlements, the SCC demonstrates an unwavering focus on efficiency and flexibility. The Emergency Arbitrator procedure offers urgent interim relief when awaiting the constitution of the tribunal proves impractical, while the SCC Express provides a streamlined platform for non-binding neutral assessments. These initiatives manifest the SCC's continued quest for innovation in order to meet the demands of modern commerce.

With its heritage and global outreach, the SCC is not only considered a Swedish or Nordic institution but also as a leading international arbitration institute providing a benchmark for innovation in the field of dispute resolution. Its journey, from wheatfields to oilfields and back,

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over billions of euros disputed in construction and post M&A arbitrations, reveals a capacity to respond proactively to shifts in business and regulatory landscapes. The SCC's longstanding commitment to adaptability and neutrality firmly cements its impact on Swedish, Nordic, and international commercial arbitration and shapes its considerable influence on the broader arbitration community worldwide.

2. Envisioning peace in times of war – The SCC's history

The facilitation of trade has always been closely linked to the quest for an efficient method to resolve disputes arising from it. In 1917, the Stockholm Chamber of Commerce introduced an independent entity to address the increasing need of Stockholm's local grain industry for alternative dispute resolution.[1] Consequently, the Arbitration Institute of the Stockholm Chamber of Commerce was founded.[2] The SCC is not alone as an arbitral institution having its roots in the local chambers of commerce towards the end of World War I. Similarly, the Finnish Arbitration Institute (FAI) originates from the idea of the Vaasa Tradesmen's Association and has operated as an autonomous body under the Central Chamber of Commerce of Finland since 1919.[3] Outside the Nordics, the ICC Court of Commercial Arbitration was approved by the ICC Executive Committee in 1923, four years after its creation by the French Minister of Commerce, Etienne Clementel.[4]

One can argue that the facilitation of commerce and the efficient resolution of disputes are guardians of peace. The SCC's origins in World War I have guided it in its mission to provide a neutral forum for the resolution of disputes and shaped the SCC's history ever since.

2.1 Stockholm – Neutral ground between east and west in the cold war

Following the loss of a large part of its territory during the Napoleonic Wars in 1809 and 1812, Sweden adopted its policy of political neutrality and remained neutral during World War I, World War II, and the Cold War. Consequently, Sweden was neither a party of the Warsaw Pact nor, until 2024, of the North Atlantic Treaty Organization (NATO). This has made Stockholm a neutral ground to resolve disputes providing a "third way" for contracting parties. Sweden's neutrality historically coincided with the recognition of arbitration as a reliable and trustworthy dispute resolution method in Swedish legal and social tradition.[5] This placed Stockholm and the SCC in a particularly well-suited position to address the conflicts of the second half of the 20th century.

In 1973 representatives of the American Arbitration Association (AAA) and the U.S.S.R. Chamber of Commerce and Industry embarked on negotiations on an arbitration clause for use in contracts between legal or natural persons of the United States and foreign trade organizations of the Soviet Union. One of the fundamental aims of negotiations, at least for the AAA's representatives, was

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[1] J. Ragnwaldh, F. Andersson, C. Salinas Quero, A Guide to the SCC Arbitration Rules, 2020, p. ix.

[2] U. Franke, The Arbitration Institute of the Stockholm Chamber of Commerce, Nordic Journal of Commercial Law, Issue 2003/1, p. 2.

[3] History of the FAI https://arbitration.fi/en/resources/history/.

[4] ICC Origins and History https://iccwbo.org/dispute-resolution/dispute-resolution-services/icc-international-court-of-arbitration/centenary-of-the-icc-court/.

[5] E. R. Alley, International Arbitration: The Alternative of the Stockholm Chamber of Commerce, 22 Int'l L 837, 838 (1988).

to replace the widely used reference to arbitration before the Foreign Trade Arbitration Commission of the U.S.S.R. Chamber of Commerce and Industry in Soviet standard-form contracts with a reference to a neutral forum. When the AAA and the U.S.S.R. Chamber of Commerce and Industry concluded the negotiations on 12 January 1977, the so-called Optional Arbitration Clause designated neither Washington nor Moscow as the seat.[6] Instead, the representatives had chosen Stockholm as the seat and with it the SCC as the arbitral institution to administer disputes arising out of or in connection with contracts between parties from the United States and foreign trade organizations of the Soviet Union.[7] The Optional Arbitration Clause laid the foundation for the SCC's reputation as a neutral dispute resolution forum in conflicts between Eastern and Western parties.[8]

2.2 Re-integrating China – cooperating with the CCPIT

The SCC's qualities as a facilitator in disputes bridging legal cultural divides did not go unnoticed. In the late 1970s, upon the death of Mao Zedong and the end of the Cultural Revolution, China sought reintegration through its policy of opening to the outside (*duiwai kaifang*) – the practice of law ceased to be disparaged as a "*bourgeois intervention*" and international arbitration institutions were no longer viewed as "*instruments of imperialism*".[9] At the time, Sweden was a natural point of reference. Not only did the China Council for the Promotion of International Trade (CCPIT)[10] take note of the Soviet Union's recognition of SCC arbitration as a preferred method for resolving East-West trade disputes. Sweden had also been the first country to recognize the People's Republic of China in 1949. Over the following years, the relationship between the CCPIT and the SCC intensified and ultimately resulted in the signing of a formal cooperation agreement between the two institutions in Beijing on 30 October 1984 prompting Chinese companies to resolve their international commercial disputes at the SCC.[11] The SCC was firmly established as a neutral ground between East and West.

3. What does the SCC offer today?

Building on its historic foundation as an international dispute resolution forum, the SCC's focus over the past decades has been on internationalization and efficiency. Over the years, the SCC observed an ever-growing international caseload. In 2024, 65% of all disputes administered under

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[6] Cf. for a brief history of negotiations: Optional Arbitration Clause for Use in US-USS Trade: 16 Int'l Legal Materials 444 (1977), 3 N.C. J. Int'l L. 41 (1978).

[7] D. Engström, C. Marian, SCC, Getting the Deal Through – Arbitration 2013, p. 64.

[8] The agreement was renewed by the Russian Chamber of Commerce in 1992 following the collapse of the Soviet Union (cf. J Gernandt, Ulf Franke – Thirty-five Years and Afterwards, in K. Hobér, A. Magnusson, M. Öhrström, Between East and West: Essays in Honour of Ulf Franke, 2010, p. 169).

[9] M. J. Moser, Ulf Franke, Stockholm Arbitration, and the Bridge to China, in K. Hobér, A. Magnusson, M. Öhrström, Between East and West: Essays in Honour of Ulf Franke, 2010, pp. 343 et seq.

[10] The parent company of today's China International Economic and Trade Arbitration Commission (CIETAC).

[11] Cf for a comprehensive review of the documents on the relationship between Ulf Franke and China retained in the SCC's archives M. J. Moser, Ulf Franke, Stockholm Arbitration, and the Bridge to China, in K. Hobér, A. Magnusson, M. Öhrström, Between East and West: Essays in Honour of Ulf Franke, 2010, p. 343.

the SCC Arbitration Rules involved at least one non-Swedish party.[12] In fact, roughly a third of all cases involved no Swedish party at all accounting for a volume of over 8.3 billion euro in dispute.[13]

3.1 A Nordic institution

Despite its international alignment, the SCC administers many domestic disputes, as well as disputes between Nordic parties each year. The SCC commonly administers around 100 Swedish domestic arbitrations each year. In addition to its presence as a dispute resolution forum for Swedish and international parties, the SCC has become an arbitration institution for Nordic businesses registering disputes brought by parties from all Nordic jurisdictions, i.e. from Denmark, Finland, Iceland, Norway, and Sweden.

In 2024 alone, the SCC registered 322 Nordic parties and 107 purely Nordic disputes, i.e. cases which exclusively involved parties from Denmark, Finland, Iceland, Norway or Sweden.[14] These purely Nordic disputes concerned a disputed volume of over 1.1 billion euro and predominantly revolved around contracts concluded in the consumer goods (25%), construction (21%) or finance sectors (20%). These contracts in dispute were governed by either Swedish, Finnish or Norwegian law on the merits. In 2024, SCC arbitrations were seated in Stockholm, Helsinki, Copenhagen, and Oslo, among other places.[15] In fact, in addition to disputes between a Swedish party and an entity from another Nordic jurisdiction, the SCC administered numerous "domestic" disputes between exclusively non-Swedish Nordic parties in 2024 where the administration of the proceedings by the SCC was the only element linking the case to Sweden.

Reviewing the SCC statistics for 2018 through April 2025, it is clear that parties from Sweden, Finland, Denmark, and Norway trust the SCC since all these jurisdictions rank among the top ten nationalities in SCC arbitrations, alongside parties from Russia, Germany, the United States, Ukraine, the United Kingdom, and Switzerland.

3.2 Gateway between worlds

Nevertheless, until today, the SCC's history as a bridge between East and West has been strongly reflected in its caseload. The SCC regularly sees proceedings conducted in Russian and Russia consistently ranks among the five most common home jurisdictions of parties appearing in disputes administered by the SCC. In 2024 alone, the SCC registered 23 Russian parties, who participated in SCC arbitrations both as claimants and as respondents.[16] However, the heritage of the Optional Arbitration Clause and the SCC's involvement in resolving disputes between parties from the United States and the former Soviet Union goes beyond the administration of disputes involving Russian parties. For instance, in the last 20 years, the SCC registered a two-digit number of cases involving Uzbek parties concerning a volume of over 600 million euro in dispute and launched an Uzbek translation of the SCC Rules in February 2025. Over the last five years, more than 20 parties

[12] SCC Statistics 2024 https://sccarbitrationinstitute.se/en/statistics-2024/.

[13] 65 of 204 cases administered by the SCC in 2024 (32%).

[14] See SCC Statistics 2024 https://sccarbitrationinstitute.se/en/statistics-2024/.

[15] SCC Statistics 2024 https://sccarbitrationinstitute.se/en/statistics-2024/.

[16] SCC Statistics 2024 https://sccarbitrationinstitute.se/en/statistics-2024/.

from Georgia and more than 20 parties from Azerbaijan have entrusted the SCC with their disputes.

In the last 24 years, the SCC administered over 115 cases involving Chinese entities predominantly arising in the consumer goods sector as well as in the mining and metal industry. During the last decade, these disputes accounted for a volume of 1.2 billion euro in dispute, i.e. an average of over 100 million euro per year. Notably, only a third of opposing parties in these disputes came from Sweden. The SCC saw a considerable number of claims brought against Chinese entities by parties from jurisdictions such as Brazil, Canada, Germany, Switzerland, the United Arab Emirates, and the United States among others. This manifests the SCC's continued standing a neutral dispute resolution forum in Sino-Western conflicts.

3.3 A forum for states and investors

The SCC and Stockholm has been one of the most preferred fora for investor-state dispute settlement (ISDS), being referred to in 95 currently active bilateral investment treaties (BITs) and the SCC is one of two administering institutions in the Energy Charter Treaty (ECT). The 95 BITs involve 71 different jurisdictions that refer either to the SCC as the administering institution or appointing authority or to Stockholm as the seat of arbitration.

In its 2025 SCC Report Arbitrating for Peace: Stockholm, SCC Arbitration Institute, and ISDS,[17] the SCC noted that most active BITs that refer to the SCC are intercontinental agreements, i.e., between states from different continents. The largest group of these intercontinental BITs that refer to the SCC or Stockholm were concluded between parties from Europe and Asia. This confirms the SCC's historic status as a dispute resolution hub for East-West disputes, with many BITs involving either the People's Republic of China or Russia. Meanwhile, only a minority of BITs concerned parties located on the same continent. While a number of these intracontinental BITs were concluded between parties from Asia and Africa respectively, a slight majority of intracontinental BITs referring disputes to the jurisdiction of the SCC or providing for Stockholm as the seat involved European countries. It should be noted, that a considerable number of dispute settlement clauses referring to the SCC were terminated in 2022 when the EU member states terminated BITs between themselves in response to the Court of Justice of the European Union's (CJEU) judgment in *Slovak Republic v Achmea* (*Achmea*).[18] As a result, between January 2019 and August 2022, the SCC observed the termination of 31 intra-EU BITs (i.e. BITs between two EU member states) referring to the SCC or Stockholm for the resolution of disputes. To provide clarity for the international investment treaty arbitration community, the SCC adopted a policy in October 2024 confirming that, in intra-EU investment treaty arbitrations where the parties have not agreed otherwise, the SCC Board will designate a seat outside the EU (as well as outside any candidate or potential candidate for EU membership). This policy is consistent with the SCC's obligations under the SCC Rules to make every reasonable effort to ensure that any arbitral award rendered under its auspices is legally enforceable.[19]

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[17] See SCC Report: Arbitrating for peace: Stockholm, SCC Arbitration Institute, and ISDS, by J. Lowther, R. J. Sievers, and C. Falconer, May 2025, available on the SCC website: https://sccarbitrationinstitute.se/en/resource-library/reports/.

[18] CJEU, Judgment of 6 March 2018, Case No. C-284/16.

[19] See SCC Policy: Deciding the seat in intra-EU investment arbitrations administered under the SCC Rules as adopted by the SCC Board on 16 October 2024.

Between 1993 and 2024, the SCC registered a total of 129 cases under an ISDS framework. 94 of these cases were administered by the SCC (73%) while the SCC acted as appointing authority in another 22 disputes (17%). In the remaining cases the SCC was designated to decide on challenges or to provide other services such as fund holding. In the majority of cases, a BIT provided the basis for consent to arbitrate (60%) followed by disputes referred to the SCC under the ECT as well as under individual investment agreements. In most disputes administered by the SCC, the SCC Rules applied (71%). The remaining proceedings were conducted either under the UNCITRAL Arbitration Rules or were *ad hoc* proceedings.[20]

Through its inclusion in numerous, predominately intercontinental BITs, as well as the ECT, the SCC manifests its reputation as a trusted independent and neutral forum across continents and regions. The CJEU's jurisprudence in *Achmea* has led to the termination of the majority of European intracontinental BITs many of which referred to the SCC and Stockholm. However, the SCC maintains its importance, being referred to in 96 international investment agreements between states from all over the world and spanning across five continents. The steady flow of complex, high-value investment cases administered by the SCC each year reflects its significant role in ISDS and peaceful dispute resolution.

3.4 Procedural flexibility

The SCC has long been a subscriber to the concept of procedural efficiency through flexibility. Nowadays, the SCC offers a bouquet of services and procedures addressing the parties' needs for dispute resolution under a wide array of circumstances including proceedings under the regular SCC Arbitration Rules or the SCC Expedited Arbitration Rules but also emergency arbitrations, mediation, the SCC Express, as well as a number of services for ad hoc arbitrations.

3.4.1 SCC Expedited Arbitration

In 1995, as one of the first institutions to introduce a streamlined version of its procedural rules, the SCC launched the Expedited Arbitration Rules designed to resolve smaller disputes more efficiently.[21] The Expedited Arbitration Rules are largely similar to the regular Arbitration Rules, with a few notable distinctions.

One key difference is that the Expedited Arbitration Rules typically involve a single arbitrator, while the standard rules may involve either one or three arbitrators, depending on specific factors. Additionally, the Expedited Arbitration Rules limit the number of written submissions and impose stricter timelines. Hearings under these rules occur only if requested by one of the parties and the arbitrator finds justification for it. Another major distinction is the timeframe for issuing an award: under the Expedited Arbitration Rules, the arbitrator must deliver a decision within three months of the case being referred to the arbitrator, compared to six months under the regular Arbitration Rules.

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[20] For a more detailed analysis of the international investment agreements and the SCC's ISDS caseload, see SCC Report: Arbitrating for peace: Stockholm, SCC Arbitration Institute, and ISDS, by J. Lowther, R. J. Sievers, and C. Falconer, May 2025, available on the SCC website: https://sccarbitrationinstitute.se/en/resource-library/reports/.

[21] Cf. on the Expedited Arbitration Rules J. Lowther, C. E. Salinas Quero, C. Falconer, Chapter 48 Review of the SCC Arbitration Institute (previously known as the Arbitration Institute of the Stockholm Chamber of Commerce).

As mentioned before, the Expedited Arbitration Rules are designed to address the parties' needs for a streamlined procedure in less complex disputes. In 2024, the average amount in dispute under the SCC Expedited Arbitration Rules was approximately 627 000 euro. By contrast, for the preceding two years, the average amount in dispute in disputes administered under the SCC Arbitration Rules ranged from 33 million euro to over 100 million euro. Proceedings under the SCC's Expedited Arbitration Rules have proven to be exceptionally efficient. In 2023, all of the arbitrations under the Expedited Arbitration Rules were concluded with an award within six months.[22] In 2024, the same applied to 92% of all concluded expedited arbitrations.[23] An especially notable statistic is that, for expedited arbitrations initiated between January 2018 and April 2025, the average time from the request for arbitration to the conclusion, regardless of how the arbitration ended, was 4.8 months. These results underscore the effectiveness of the SCC Expedited Arbitration Rules in delivering swift and cost-efficient resolutions.

3.4.2 SCC Mediation

The Stockholm Chamber of Commerce has offered mediation services since 1999 when the Mediation Institute was first established to assist in the settlement of domestic and international disputes.[24] In 2014, the Mediation Institute merged with the SCC Arbitration Institute to form a unified institutional body for both mediation and arbitration that is the SCC today.[25] Between 2003 and 2024, the SCC registered 56 mediations concerning a total of over 120 million euro in dispute. Almost half of these mediations were international, i.e. involved at least one party that was not based in Sweden. The mediations were concluded within 2.9 months upon referral of the case to the mediator.[26]

The SCC Mediation Rules and the SCC's combined dispute resolution clauses involving mediation grant each party the right to object to pre-arbitration mediation and thereby adopt the understanding that mediation should be voluntary and bypassed if a party considers it more appropriate to directly initiate a final and binding dispute resolution mechanism.[27] The SCC Secretariat will dismiss the case if the other party does not consent.[28] Yet, such consent is found in most instances and the majority of requests for mediations received by the SCC lead to referral of the dispute to the mediator.[29]

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[22] SCC Statistics 2023 https://sccarbitrationinstitute.se/en/statistics-2023/.

[23] SCC Statistics 2024 https://sccarbitrationinstitute.se/en/statistics-2024/.

[24] B.R. Lindell, Chapter 31: Sweden, in: N.Alexander, .S Walsh, et al., EU Mediation Law Handbook, Global Trends in Dispute Resolution, Vol. 7, 2017, p. 768.

[25] Y. T. Sam, Mediation proceedings at the SCC Arbitration Institute 2017–2022, p. 3.

[26] R. J. Sievers, Evolving Mediation Practices at the SCC Arbitration Institute, Daily Jus, 14 April 2025.

[27] J. Lowther, The SCC's Combination Dispute Resolution Clauses: A Leap of Faith or the Best of Both Worlds?, Jus Mundi Arbitration Review (JMAR) Vol. 1 Issue 2, 2024, para. 60; cf. R. Oldenstam, K. Löf, J. Ragnwaldh, A. Foerster, F. Ringquist, R. Rylander, C. Monell, Guide till kommersiell tvistlösning, Mannheimer Swartling Advokatbyrå, 2021, 4th edition, pp. 37 et seq.

[28] See Art. 4(5) of the SCC Mediation Rules 2025.

[29] R. J. Sievers, Evolving Mediation Practices at the SCC Arbitration Institute, Daily Jus, 14 April 2025.

The latest update of the SCC Mediation Rules was in 2025, when the SCC revised, in particular, the remuneration scheme. An SCC internal analysis revealed that the interplay between registration fees, *ad valorem*-based administrative fees, and time-based mediator remuneration (common for many institutions) could result in institutional fees exceeding the mediator's fees. The SCC addressed this issue by introducing a *novum* for institutional mediation fee schemes: the SCC Board decided to remove the registration fee and fixed the administrative fee at 4,000 euro while fixing the mediator fees at 16,000 euro per case.

3.4.3 SCC Emergency Arbitrator

As one of the first institutions in the world, the SCC introduced the SCC Emergency Arbitrator proceedings in 2010. The rules for emergency arbitration administered by the SCC are attached as Appendix II to both the SCC Arbitration Rules and the SCC Expedited Arbitration Rules. SCC emergency arbitrations remain popular among users. In the last five years, the SCC has received 30 applications requesting interim relief from an emergency arbitrator.

Under the provisions of Appendix II, a party can request the appointment of an emergency arbitrator before the case is formally referred to an arbitral tribunal. The emergency arbitrator, upon a party's request, has the authority to grant any interim measures they find appropriate. These measures are binding on the parties and may take the form of either an order or an award. Upon receiving the application, the SCC promptly notifies the respondent and appoints the emergency arbitrator within 24 hours.[30] Once the appointment is made and the arbitrator has signed a declaration of impartiality and independence, the application is forwarded to them for action. As outlined in Article 7 of Appendix II, the emergency arbitrator is expected to conduct the proceedings in a manner that reflects the urgency of the situation.

According to Article 8 of Appendix II, a decision on interim measures must be issued no later than *five days* after the application is referred to the emergency arbitrator. This time limit may be extended upon a reasoned request from the arbitrator or if deemed necessary. Moreover, the emergency arbitrator may allocate the costs of the emergency proceedings between the parties, using the same principles applied in regular arbitration.

The SCC has to date published six practice notes on emergency arbitrator decisions,[31] analysing the practices in emergency arbitrations. They demonstrate that emergency arbitrators have relied on international practices and assessed various factors, including whether they have jurisdiction, whether the applicant has a prima facie case on the merits, the urgency of the situation, and whether the risk of irreparable harm to the applicant outweighs the potential harm to the responding party

[30] The SCC has managed to appoint all emergency arbitrators within 24 hours, except for one. This request, however, was not submitted in accordance with the emergency arbitration procedure, but instead as an ordinary arbitration request. Consequently, it was noticed by the SCC Secretariat more than 24 hours after submission, during the weekend.

[31] SCC Practice Note on emergency arbitrator decisions rendered 2010-2013 (by J. Lundstedt), SCC Practice Note on emergency arbitrator decisions rendered 2014 (by L. Knapp), SCC Practice Note on emergency arbitrator decisions rendered 2015-2016 (by A. Håvedal Ipp), SCC Practice Note on emergency arbitrator decisions rendered 2017-2018 (by E. T. Wahlström), SCC Practice Note on emergency arbitrator decisions rendered 2019-2022 (by E. T. Wahlström), SCC Practice Note on emergency arbitrators in investment treaty disputes at the SCC 2014-2019 (by A. Pirozhkin). All reports are found at https://sccarbitrationinstitute.se/en/resource-library/reports/.

if the measure is granted.[32] In addressing these questions, emergency arbitrators referred to the SCC Rules, Articles 17 et seqq. of the UNCITRAL Model Law, the *lex arbitri*, as well as previously published decisions on interim relief. The requirements for obtaining an interim measure are, however, stringent, and the majority of applications submitted have been rejected.[33] In particular, the practice notes observed that the most difficult criterions to meet are the urgency requirement as well as irreparable harm.[34]

This rigorous threshold is, in many ways, reassuring, as it demonstrates that emergency arbitrators remain mindful of the significant implications interim measures may have for the responding party. By applying a careful and balanced approach, the SCC framework upholds the integrity of the process while ensuring that exceptional relief is granted only in truly compelling circumstances.[35]

3.4.4 SCC Express

The SCC Express is the most recent addition to the services provided by the SCC and the first of its kind. It serves to address disputes that require swift handling or where parties prefer to avoid full-scale arbitration or court proceedings. It offers a fast and efficient method for obtaining a neutral legal assessment of the issues in contention, thereby facilitating quicker resolution and allowing parties to proceed without prolonged disruption.

The SCC Express Rules are based on the realization that many parties used the emergency arbitration procedures to obtain a quick, neutral assessment of the merits of their claim within five days, with the aim of negotiating a settlement. In light of this, the SCC developed the SCC Rules for Express Dispute Assessment in response to growing demands from the business community for greater speed and cost-effectiveness in dispute resolution. While traditional arbitration remains well-suited for many types of disputes and has served as the SCC's primary dispute resolution service for over a century, there is an increasing need for even more agile procedures that can accommodate less complex or more time-sensitive matters.

The SCC Express aims to fill this gap by offering a streamlined alternative. It is both consensual and confidential, providing a legal assessment within a fixed three-week period for a predetermined fee of 29,000 euro. The SCC Express is particularly suitable for scenarios such as deadlocks in long-term contractual relationships, where a prompt evaluation may assist parties in resuming cooperation. The assessment is intended to reflect how an arbitrator might approach or resolve the

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[32] Cf. A. Håvedal Ipp, SCC Practice Note on emergency arbitrator decisions rendered 2015-2016, pp. 6 et seqq; cf. also J. Lowther, C. E. Salinas Quero, C. Falconer, Chapter 48 Review of the SCC Arbitration Institute (previously known as the Arbitration Institute of the Stockholm Chamber of Commerce), at § 48.05.

[33] E. T. Wahlström, SCC Practice Note: Emergency Arbitrator Decisions 2017 – 2018, December 2020, p. 12; cf. J. Lowther, C. E. Salinas Quero, C. Falconer, Chapter 48 Review of the SCC Arbitration Institute (previously known as the Arbitration Institute of the Stockholm Chamber of Commerce), at § 48.05; cf. with similar results A. Håvedal Ipp, SCC Practice Note on emergency arbitrator decisions rendered 2015-2016, p. 18; even lower numbers in L. Knapp, SCC Practice Note on emergency arbitrator decisions rendered 2014, p. 9; an exception can however be noted in the most recent practice note, cf. E. T. Wahlström, SCC Practice Note on emergency arbitrator decisions rendered 2019-2022, p. 26.

[34] See E. T. Wahlström, SCC Practice Note: Emergency Arbitrator Decisions 2019-2022, October 2023, p. 26 as well as E. T. Wahlström, SCC Practice Note: Emergency Arbitrator Decisions 2017 – 2018, December 2020, p. 12; cf. further L. Knapp, SCC Practice Note on emergency arbitrator decisions rendered 2014, p. 6.

[35] For an overview of emergency arbitrations in ISDS cases see A. Pirozhkin, Emergency arbitrator's decisions in Investment Treaty Disputes at the SCC (2014-2019), May 2020.

matter, thereby supporting informed decision-making, potential settlement, or preparation for subsequent arbitration.

This was also reflected in the inaugural SCC Express matter. In that case, the parties involved looked forward to a long-standing commercial relationship and they had a shared desire to preserve their positive business ties. A dispute emerged concerning one party's entitlement to additional payments under the terms of their contract. Both parties consented to resolve the issue through the SCC Express procedure, requesting a binding evaluation of whether further payments were warranted and, if so, the amount due.

The procedure included two rounds of written submissions and a brief oral hearing after which the appointed Neutral issued her assessment within the prescribed three-week period. The Neutral's assessment ultimately helped the parties resolve their dispute, maintain their commercial relationship, and avoid arbitration.[36] Last year, the SCC registered and concluded the second case under the SCC Express Rules as the procedure begins to gain traction and popularity among users.

While the SCC Express is designed to result in a non-binding legal assessment, parties may agree in advance that the outcome will be binding upon them. Such an agreement may be documented as part of their SCC Express submission or separately, depending on the parties' needs. Furthermore, if the parties wish to elevate the legal assessment to the level of an enforceable arbitral award, they may agree to appoint the Neutral as a sole arbitrator under the SCC Arbitration Rules, enabling the assessment, once formalized into an award, to be subject to recognition and enforcement under the New York Convention. This hybrid approach provides an additional layer of flexibility, allowing users to tailor the level of finality and enforceability to the specific circumstances of their dispute.

To promote ease of use and contractual clarity, the SCC provides four different model clauses for the SCC Express procedure. These clauses are freely available on the SCC website and can be incorporated into contracts either at the drafting stage or when an issue has already arisen. They offer varying levels of scope and commitment, allowing parties to select the clause best suited to their commercial relationship and dispute resolution needs.

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The SCC has evolved from a Swedish arbitration institute addressing the local grain industry's needs in the early 20th century to a globally recognised forum for dispute resolution. Nonetheless, it retains a pronounced Nordic character, regularly administering domestic Swedish cases as well as disputes from across the Nordic region. This regional focus endures to the present day, complemented by the SCC's historic role as a bridge between various jurisdictions, which has enabled it to administer disputes involving parties from over 40 countries annually and more than 90 countries over a ten-year period.

The optional clause agreement between the United States and Russia, together with the subsequent Chinese cooperation agreement, led to the SCC becoming one of the most trusted arbitral institutions in the field of international commercial dispute resolution. Its sustained attention to the needs of the parties, along with efficient dispute management and consistently high standards of service, underpins its lasting international reputation. Furthermore, in an evolving ISDS

[36] For a summary of the first SCC Express Case, cf. J. K. Schaefer, On the Fast Track - Insights from the First SCC Express Dispute Assessment, King & Spalding, Client Alert, 21 September 2023.

landscape, the SCC maintains its position as a leading international institution and a trusted forum for treaty-based arbitration.

By catering to the diverse needs of the international business societies, the SCC offer expedited arbitration for lower-value or less complex claims, mediation for swift settlements, and emergency arbitration for urgent interim relief. Since 2021, the SCC Express has introduced a three-week procedure for rapid legal assessments, underscoring the institution's ongoing commitment to flexible and efficient dispute resolution within the evolving global business environment.

4. From wheatfields to oilfields to wind farms and back again – recent developments at the SCC

In many ways, the shift from wheatfields to oilfields to wind farms metaphorically captures the SCC's trajectory as it navigates a rapidly changing commercial landscape. Over time, the SCC's guiding vision has remained adaptable, fulfilling needs that could scarcely have been imagined by the Stockholm business community in 1917. This forward-thinking approach is essential in today's interconnected world, where climate change, sustainability, and cross-border commerce create new challenges. The SCC's expertise and strong framework offer practical solutions to parties from all corners of the world.

Central to this evolution is the trust that stakeholders place in the SCC. Whether managing disputes in complex projects or handling conflicts involving vast sums of money, the SCC provides a well-designed system that combines tradition with modern approaches. This approach not only strengthens its position as a preferred arbitral forum but also reflects its reputation for fairness, efficiency, and reliability from shifting trends in energy disputes and construction agreements to the growing number of international post-M&A conflicts.

As the following sections show, the SCC's evolution combines a rich history with ongoing innovation. Developments in energy arbitration, construction disputes, and post-M&A matters, among other types of disputes, demonstrate the SCC's ability to adapt, even in challenging global conditions. The journey from handling disputes in relation wheatfields, to oilfields, and to wind farms shows not just institutional strength, but thoughtful planning for the future. This important balance between heritage and progress forms the foundation of the SCC.

4.1 Energy disputes at the SCC

In times of climate change, the future of the energy sector and its regulatory environment is of paramount importance. Energy disputes have historically been a significant part of the SCC's work. The energy sector is notorious for inspiring eye-watering volumes of claims and the SCC has been the forum of choice for many of these complex cases. This led to the SCC being one of only two arbitral institutions referred to in Article 26 of the ECT. Since 2010, the SCC has administered almost 300 disputes arising from the energy sector comprising claims worth well over 100 billion euro. Given the international nature of the energy sector it is of no surprise that over 80% of cases administered by the SCC in this industry were international disputes. Notably, in the vast majority of these disputes the SCC's jurisdiction arose out of commercial agreements between the parties, only a fraction of these disputes was brought under the ECT.

At the same time, the SCC's role in energy dispute resolution is twofold and with great power comes great responsibility. Besides administering disputes, the SCC is active in the public debate

in relation to energy arbitrations and disputes in the energy sector.[37] The SCC observes that an ever-growing number of disputes administered by the SCC arises in connection with renewable energy sources. In late 2022, the SCC launched a comprehensive report on green technology disputes[38] which followed up on a previous 2019 report.[39] Under both reports, the term "green technology" was defined as any process, product or service that reduces negative environmental impacts in support of the Paris Agreement on Climate Change and both reports identified the renewable energy sector to account for the majority of green technology cases administered by the SCC. Such disputes included the construction of power plants such as wind farms, biomass power plants, and hydro power plants as well as service and installation works performed on such plants.[40] The 2022 report found that in the three-year time span that had passed since the previous report, the SCC had registered an average of 17 green technology cases per year between 2019 and 2022 compared to 6.2 cases per year between 2014 and 2018.

Drawing on these findings, the report found that parallel to a global increase in climate change disputes, the number of registered SCC cases where one or more parties used green technology as part of their main business activity increased significantly between 1 January 2019 and 1 October 2022 compared to cases registered between 2012 and 2018. Aligning with the SCC's mission as a modern and progressive institution, this finding indicates that the SCC is an increasingly attractive venue for the resolution of disputes involving companies whose commercial activities reduce the negative effects of climate change.[41]

4.2 The SCC in construction disputes

A significant share of disputes in the energy sector revolves around construction agreements. In fact, the 2022 report on green technology disputes found that 35% of the disputes arose out of construction contracts.[42]

Meanwhile, Swedish domestic construction disputes continue to some extent to be submitted to ad hoc arbitration, a practice stemming from the Swedish standard contracts (AB 04 or ABT 06), which are widely used within the domestic construction sector. Although ad hoc arbitration for construction disputes is not unknown to the Nordic or European dispute resolution community, its prevalence in Sweden remains noteworthy given the presence of well-established arbitration institutes in Sweden, Finland, and Denmark.

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[37] See C. Falconer, G. Majumdar, Industry Insights: 2023 Energy Arbitration Report, Jus Connect, October 2023, p. 93.

[38] C. C. Hedberg, Green Technology Disputes at the SCC Arbitration Institute, November 2022.

[39] A. Kjellgren, Green Technology Disputes in Stockholm, August 2019.

[40] C. C. Hedberg, Green Technology Disputes at the SCC Arbitration Institute, November 2022, p. 18.

[41] For a comprehensive overview of the SCC's involvement in green technology disputes including cases revolving around green investments, cf. C. C. Hedberg, Green Technology Disputes at the SCC Arbitration Institute, November 2022.

[42] C. C. Hedberg, Green Technology Disputes at the SCC Arbitration Institute, November 2022, p. 13.

This inspired the SCC to conduct a comparison and survey into construction disputes.[43] The survey examined the respective benefits and challenges of institutional arbitration as opposed to ad hoc arbitrations in construction disputes. The survey revealed that the average claim in an ad hoc arbitration (4.9 million euro) was considerably lower than the average claim for SCC construction arbitrations with three arbitrators (64.1 million euro). Additionally, although the claim amounts in ad hoc construction arbitrations were smaller, the parties nonetheless spent over 68% more on arbitrator fees (440,665 euro) compared to the SCC table of cost (261,558 euro).[44] As a result, costs per dispute in ad hoc proceedings exceeded the costs in institutional arbitrations in virtually every scenario.[45]

One key observation from this comparison was that larger Swedish construction contracts, as well as larger industry entities supported by established in-house legal teams, generally preferred institutional arbitration. It appears that these entities favour the predictability, structure, and expertise offered by organised arbitral institutions.

In contrast, small and mid-sized companies, as well as presumably less informed entities concerning the full range of available dispute resolution methods, alongside segments of the Swedish public sector, tended to rely on the dispute resolution clauses contained in standard contracts. The chosen clause, however, led them towards the comparatively less predictable and often more costly route of ad hoc proceedings.

Although the length and cost of proceedings represent major considerations in selecting a dispute resolution mechanism, additional factors are also relevant. The SCC Rules, for instance, undergo regular revisions to reflect developments in the arbitration sector and to accommodate parties' evolving needs. They also incorporate procedural mechanisms, such as emergency arbitration, summary procedure, joinder of parties, consolidation of parallel arbitrations, and multi-contract arbitrations, that may not be available in ad hoc proceedings.

Documented benefits associated with institutional arbitration include a system of checks and balances intended to safeguard the proceedings' legitimacy and ethical standards. This system is implemented through clear appointment policies, robust impartiality and independence screenings, reasoned rulings on challenges, transparent rules on fees and cost allocations, the possibility to remove an arbitrator who fails to fulfil assigned responsibilities, and established procedural timelines. These provisions ensure that arbitral tribunals can perform their functions effectively and that parties have recourse if concerns arise. In this way, institutional arbitration rules enable the upholding and enforcement of ethical values such as expedition, transparency, and diversity.

Despite the continued use of ad hoc arbitration in certain domestic construction disputes, the construction sector as a whole remains among the most frequently represented areas in cases referred to the SCC. Over the past five years alone, the SCC registered well over 150 construction disputes concerning a combined volume of over 1.6 billion euro. The caseload analysis suggests

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[43] The report examined and compared disputed values, costs, duration, and the number of arbitrators in construction disputes resolved in Sweden in 2017 – 2022, N. Petrik, A. Runestam, Ad hoc vs. Institutional Arbitration in Construction Disputes, 2023.

[44] N. Petrik, A. Runestam, Ad hoc vs. Institutional Arbitration in Construction Disputes, 2023, p. 9.

[45] For further remarks on the increased efficiency of institutional arbitration, cf. N. Petrik, A. Runestam, Ad hoc vs. Institutional Arbitration in Construction Disputes, 2023, p. 13.

that parties increasingly value the benefits of the cost and time efficient dispute resolution services offered by the SCC.

4.3 Increase in post M&A disputes

Post M&A disputes have long been a fundamental part of the SCC's caseload. Since 2019, contracts related to business acquisitions have constantly ranked among the top three of the most frequently disputed agreements in cases administered by the SCC. For the first time, in 2024, post M&A disputes were the single most common type of conflicts giving rise to 57 arbitrations at the SCC.

From 2019 to 2024, the SCC administered a total of 259 disputes relating to business acquisitions. While post M&A disputes administered by the SCC remain predominantly domestic, the SCC notes a steady increase in proceedings arising from international business acquisitions from nine cases in 2019 to 19 cases in 2024 (hence, every third case). Correspondingly, over 30% of proceedings related to business acquisitions are now conducted in English. Similarly, while Stockholm is the most common seat of arbitration, the SCC increasingly administers post M&A disputes seated abroad, in Finland, Denmark, and England. This coincides with an increase in disputes governed by laws other than Swedish law, in particular English law.

Post M&A disputes administered by the SCC predominantly arose in three distinct sectors. Since 2019, every fourth post M&A dispute related to a business acquisition in the *retail and consumer goods industry*. Another 25% of cases can be linked to share purchase agreements in the *construction sector* while another 24% of post M&A conflicts administered by the SCC since 2019 arose in the *finance sector*. Other industries that considerably contributed to the SCC's post M&A caseload include the technology sector, media and entertainment as well as acquisitions in the broader context of manufacturing agreements. This distribution of industries corresponds to the SCC's overall caseload in the same time period which frequently sees disputes arising in the retail and consumer goods industry or relating to financial services or real estate and construction projects.

With regard to the value of the claims asserted in SCC arbitrations in the context of business acquisitions the SCC notes that the average disputed amounts range slightly below the average amounts in dispute in the respective years. Yet, the constantly high number of post M&A cases entails that disputes relating to business acquisitions nevertheless significantly contribute to the total volume administered by the SCC. In 2024, the SCC saw a number of exceptionally high valued claims asserted. Consequently, the numbers for 2024 are off the charts with claims in a total amount of over 5 billion euro administered in disputes following business acquisitions accounting for a disputed amount of 112 million euro in an average post M&A SCC arbitration in 2024.

While post M&A disputes have always been a fundamental part of the SCC's caseload, a brief look at the development of SCC administered arbitrations relating to business acquisitions reveals a steady increase in international and high-volume post M&A cases in recent years.

4.4 Focus on accessibility

Over the past 40 years, the SCC has invested significantly in strengthening its position as an accessible international arbitration institute, especially in the Nordics, Europe, and Asia. No longer perceived as a distant forum, the SCC has become increasingly familiar to practitioners in these regions.

A central element of the SCC's efforts to improve accessibility lies in its comprehensive language support. The SCC Arbitration Rules are currently available in 15 different languages, namely Swedish, English, Bulgarian, Chinese, German, Norwegian, Persian, Polish, Romanian, Russian,

Serbian, Spanish, Turkish, Ukrainian, and Uzbek, with more translations forthcoming. In addition, the SCC's dispute resolution clauses are accessible in 22 languages, some of which, such as Azerbaijani and Uzbek, do not to our knowledge feature other model arbitration clauses in their native tongues. These initiatives serve not only to enhance knowledge and understanding of arbitration but also to foster the development of institutional and international arbitration.

The SCC's international outreach is further evident in the international nature of the SCC Board as well as the SCC Secretariat.

In addition to its focus on language accessibility, the SCC supports professional development and networking through various initiatives. Notably, the SCC/SAA Diploma Course for International Arbitrators provides an educational forum for both aspiring and established arbitration professionals. Meanwhile, the SCC Arbitrators' Council has been established to maintain high standards in international arbitration, and to promote institutional arbitration as well as SCC arbitration. By engaging with a broad community of practitioners via these initiatives, the SCC not only enhances professional expertise but also advances its goal of making reliable dispute resolution services available to all markets.

Taken together, these undertakings exemplify the SCC's broader mission: to serve as a readily accessible centre for international arbitration, attuned to the practical and linguistic needs of parties worldwide. Through its many efforts, the SCC continues to uphold its longstanding reputation as a leading forum for dispute resolution, meeting the needs of a rapidly evolving global legal landscape.

The SCC's evolution reflects a commitment to staying responsive to global challenges such as climate change, where the SCC has become a key forum for resolving energy disputes including for a growing number of disputes arising from renewable energy projects, highlighting the SCC's supporting role in promoting green technology and sustainable business practices. Alongside energy, construction arbitrations have constituted a major part of the SCC's current work. Meanwhile, the SCC has seen an increase in international post M&A disputes involving large volumes in dispute. In supporting these global activities, the SCC continues to expand its reach by launching translations of the SCC Rules and dispute resolution clauses and strengthening ties with local arbitration communities.

5. What is next?

The landscape of international dispute resolution is constantly changing. This poses some unique challenges but also opportunities for all working in arbitration. Ultimately, the SCC aims to keep the users top of mind when considering the future of dispute resolution. What will make them want to continue to choose arbitration, institutional arbitration, and the SCC?

5.1 Artificial Intelligence and technology

One fairly obvious development to be addressed is the integration of artificial intelligence (AI) and technology. AI will play a significant role in streamlining arbitration processes. From automating document review and legal research to predictive analytics for case outcomes, AI will enhance efficiency, improve quality and reduce costs. Furthermore, the trend towards digital platforms will continue to grow, making arbitration more accessible. This will be particularly beneficial for international disputes. Since 2013, all of the SCC's case management has been digital and since 2019 all cases have been administered via the SCC Platform. The SCC now observes many

institutions have implemented some sort of digital platform for the conduct of proceedings by the tribunals and the parties.

5.2 Diversity among arbitrators

In addition, efforts to increase diversity among arbitrators will intensify. This includes but is not limited to gender, ethnic, and professional diversity, ensuring a broader range of perspectives in decision-making. This has been a number one priority for the SCC for many years and the SCC Board continues to achieve gender equality in its appointments.

5.3 Sustainability

Moreover, the SCC has for years placed particular emphasis on increasing sustainability. Environmental considerations are already prominent and are expected to become even more so. Institutions may and should adopt green practices to minimize the carbon footprint of arbitration proceedings, such as reducing travel and using digital platforms. The SCC itself is an active member of the Campaign for Greener Arbitrations and pushes for sustainability at every stage of the process.

5.4 Tailored solutions to all types of disputes

By introducing and promoting multi-tiered clauses, the SCC seeks to encourage well-thought-through dispute resolution models as well as hybrid models. Combining arbitration with other forms of dispute resolution, like mediation, and SCC Express, could become more common as seeking to resolve a conflict through mediation may, at times, turn out to be the more economic approach for the parties. Such hybrid approaches can offer more flexible and tailored solutions to complex disputes.

5.5 Geopolitical conflicts

Finally, institutions cannot avoid looking at the challenges geopolitical conflicts and resulting regulatory changes engender for the arbitration community and for the broader performance of legal services. For instance, Regulation (EU) No 2022/1269 exempts from the scope of sanctions, transactions which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in an EU member state, as well as for the recognition or enforcement of a judgment or an arbitral award rendered in a member state, if such transactions are consistent with the objectives of Regulation (EU) No 833/2014 and Regulation (EU) No 269/2014. If we look at Sweden, in order for the SCC to process funds related to a party subject to sanctions under Regulations (EU) No 269/2014 or (EC) No 765/2006, an authorisation from the Swedish National Board of Trade is required. Owing to the SCC's intense cooperation with the National Board of Trade, the SCC is able to receive and distribute funds strictly necessary to ensure access to justice as stipulated in Art. 5aa No. 3. lit. (g) of Regulation (EU) No 833/2014. The SCC also works proactively with its bank to anticipate possible payment blocks and, as mentioned, in cases of confirmed sanction status, coordinates with the Swedish National Board of Trade for permits to release funds. The SCC takes proactive measures to maintain open dialogue with corresponding banks, allowing immediate clarification on any flagged transaction and has established standardized procedures, including translated pro forma documents, for requesting regulatory approval if funds are frozen, minimizing delays and legal uncertainties. These systematic checks and clear procedures help maintain the flow of legal fees, arbitrator remuneration, and institutional costs. They are indispensable for an arbitral institution operating in the current and future geopolitical and regulatory environment.

5.6 The Nordic approach in maintaining an international position

The SCC's journey from its origins in Sweden's grain industry to its current status as a global hub for resolving disputes has been marked by a careful balance between international adaptability and Nordic pragmatism. As we look to the future, this balance becomes increasingly vital. The SCC must continue to align with evolving international standards while preserving the distinctive Nordic approach to dispute resolution that has earned it global recognition.

This dual focus serves as both a strength and a challenge. While harmonising with international best practices ensures accessibility across diverse legal traditions, its Nordic character, defined by efficiency, transparency and impartiality, provides the competitive edge. The institution's future success hinges on maintaining this delicate balance: embracing innovation while preserving tradition, accommodating global standards while upholding Nordic pragmatism, and expanding internationally whilst safeguarding the neutrality and trustworthiness that have distinguished its century-long reputation.

This approach aligns perfectly with the SCC's historical trajectory – from its humble beginnings serving the Swedish grain industry, through its pivotal role in East-West disputes during the Cold War, to its current position addressing complex commercial matters ranging from renewable energy projects to sophisticated post M&A disagreements and everything in between them.

Conclusion

From its establishment in 1917, the SCC has grown into a globally recognised hub for resolving complex commercial disputes. Initially founded as an alternative forum at the height of World War I, the SCC was established to meet local demands for a swift, neutral procedure, a commitment that remains at the core of the SCC until today. The SCC's distinctly Nordic character is reflected in its deep roots in Sweden's legal tradition and its ability to uphold efficiency and neutrality in resolving disputes.

Historically, the SCC emerged as a key bridge between East and West, particularly during the Cold War when Sweden's neutrality enabled Stockholm to serve as a "third way" for parties from both sides. This reputation was formalised in 1977 through the so-called Optional Arbitration Clause between American and Soviet trade entities, designating the SCC as a neutral forum. In the years to follow, the SCC further cemented its standing by establishing close ties with China's CCPIT and providing a trusted platform for Sino-Western trade disputes. Until today, the SCC regularly administers cases involving parties from Russia, Eastern Europe, CIS, and beyond, maintaining a strong connection to its East-West heritage.

The SCC also occupies a prominent role in ISDS. Its history of handling large-scale energy, construction, and post M&A disputes underscores its adaptability in addressing shifting regulatory landscapes. Meanwhile, the SCC has continually refined its range of services to meet user demands: the SCC Expedited Arbitration Rules facilitate smaller claims with tighter deadlines, mediation offers amicable settlements under flexible terms, the Emergency Arbitrator procedure provides urgent relief, and the SCC Express offers fast assessments for speedy dispute resolution. These initiatives manifest the SCC's strong user orientation and its forward-thinking approach as the most innovative institution in the world.

The SCC's journey from the grain sector to hosting billion-euro disputes from the energy sector highlights its remarkable ability to evolve without losing its Nordic core, with domestic as well as Nordic disputes of all types. The SCC stands out for bridging cultural divides, harnessing expertise

in major commercial and investor-state matters, and offering modern, multifaceted services. As a result, the SCC exerts significant influence on domestic, Nordic, and international commercial arbitration, guided by its original aim: to resolve disputes efficiently, impartially, and in tune with the needs of modern commerce.

APPOINTMENT OF ARBITRATORS AND DIVERSITY IN FAI ARBITRATIONS

By Henrik Sajakorpi, Mika Hemmo[*]

1. Introduction

Founded in 1911, the Finland Arbitration Institute (FAI) is one of the oldest continuously operating arbitration institutions in the world and the oldest in the Nordics. It functions as an autonomous body within the Finland Chamber of Commerce and administers both domestic and international arbitrations under the FAI Arbitration Rules and the FAI Expedited Arbitration Rules (collectively the "FAI Rules").[1] Known for its efficiency[2] and user-oriented practices, the FAI plays an important role in the Nordic arbitration landscape and is increasingly active beyond the region on the international stage.

The FAI's annual caseload includes a mix of domestic and international arbitrations, spanning a wide range of industries and jurisdictions.[3] Over the past decade, its services have expanded to include emergency arbitration and mediation under the FAI Mediation Rules. The FAI may also act as appointing authority in arbitrations conducted under the UNCITRAL Arbitration Rules. In 2025, the FAI launched a confidential arbitrator database and is currently finalizing the development of a digital case management platform.

This article focuses on a core aspect of the FAI's institutional role: the appointment of arbitrators in cases where the responsibility falls to the FAI. Drawing on the FAI Rules and recent appointment practice, including data from 2020–2024, it examines the legal framework and decision-making criteria that guide such appointments, and considers how these contribute to procedural quality, promote diversity, and support user confidence.

2. Institutional responsibility in arbitrator appointments

Party autonomy is a foundational principle of arbitration and remains central even in institutional settings. In most cases, parties appoint co-arbitrators of their choice. However, institutional rules must also address situations where, for example, agreed mechanisms for constituting the arbitral tribunal do not function as intended, such as when deadlines are missed or co-arbitrators fail to agree on a presiding arbitrator. In such circumstances, the institution may step in to ensure that the process moves forward efficiently.

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[1] The FAI Rules were revised with effect from 1 January 2024. The revisions included, among others, adjustments to cost and fee schedules as well as provisions addressing third-party funding.

[2] The median duration of arbitrations conducted under the FAI Arbitration Rules in 2024 was 9 months. For arbitrations under the FAI Expedited Arbitration Rules, the median was 3.4 months.

[3] In 2024, the FAI registered 75 new cases, of which 26.6% were international. Parties came from a wide range of jurisdictions, including countries such as Finland, Sweden, Estonia, Lithuania, Germany, the United States, and China.

Institutional appointments are not merely procedural necessities. When an institution selects an arbitrator, it exercises informed judgment within the framework of its rules. While the deliberations remain confidential, the quality of the resulting appointments signals the institution's values and commitment to good governance. Thoughtful, principled decisions strengthen user confidence in the arbitration process as a whole and support respect for the final award irrespective of the outcome.

At the FAI, this responsibility lies with the FAI Board, which consists of 16 members from Finland and abroad. Each appointment is considered on its own merits. While the FAI Secretariat supports the process, the final decision rests with the FAI Board. As with all FAI Board decisions, only members without a conflict of interest take part in the discussions or decision making. Conflicted members are not present and do not receive any material related to the case.

3. Legal framework

The FAI Rules establish a framework that prioritizes party autonomy in the constitution of arbitral tribunals. As a general rule, the parties are free to agree on the number of arbitrators and the procedure for their appointment, including nominating arbitrators themselves. These provisions ensure flexibility while providing a structured fallback where needed. Under the FAI Expedited Arbitration Rules, party autonomy is preserved in the appointment procedure, but the number of arbitrators is fixed: disputes are always decided by a sole arbitrator.[4] One notable feature of the FAI Rules is the inclusion of a specific time limit for the parties to agree on a sole or presiding arbitrator.[5] These time-limit provisions, which are relatively uncommon in institutional rules, reinforce party autonomy while also promoting efficiency.

Institutional involvement by the FAI in making appointments becomes relevant where one or both parties fail to nominate an arbitrator, where the parties fail to jointly nominate the sole or presiding arbitrator, where the agreed procedure does not result in the constitution of the arbitral tribunal, or where the structure of the proceedings, such as in cases of joinder or consolidation, requires the FAI Board to constitute the arbitral tribunal in accordance with the FAI Rules.

When the FAI Board is called upon to appoint an arbitrator, the decision is made at a Board meeting. In preparation for the meeting, the FAI Secretariat compiles background materials summarizing key features of the case and relevant considerations, including the nature of the dispute, the applicable law, the language of the proceedings, and any party comments regarding appointments. Board members review these materials in advance and may also draw on technical tools to support their identification and assessment of suitable candidates. The process does not rely on a fixed list, and no proposals are circulated ahead of the meeting. Instead, any Board member may suggest candidates during the discussion, and the decision is reached collectively. Board members are not eligible for appointment themselves.

Before making any appointments, the FAI Board may first need to determine the number of arbitrators, if the parties have not agreed on this themselves.[6] Under the FAI Arbitration Rules, the

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[4] See Article 16 of the FAI Expedited Arbitration Rules.

[5] See Articles 18–-20 of the FAI Arbitration Rules and Articles 17–19 of the FAI Expedited Arbitration Rules.

[6] Where the FAI Board must determine the number of arbitrators under the FAI Arbitration Rules, the parties are only invited to nominate arbitrators after that decision has been made. In a three-member tribunal, each party may nominate one arbitrator; if either party fails to do so within the applicable time limit, the FAI Board appoints on that party's behalf. The parties may then jointly nominate the presiding arbitrator, and if no joint nomination is made

default is a sole arbitrator, unless the FAI Board decides that a three-member tribunal is appropriate, taking into account the amount in dispute, the complexity of the case, the parties' proposals, and any other relevant circumstances.[7] As with all FAI Board decisions, the determination is made only by Board members without any conflict of interest.

Regardless of how an arbitrator is selected, whether jointly nominated by the parties, nominated by a party, by co-arbitrators, or appointed by the FAI Board, their mandate begins only once confirmed by the FAI. Through the confirmation process, the FAI seeks to ensure that all tribunal members meet the requirements of impartiality, independence, and necessary qualifications. Before confirmation, each candidate must submit a signed statement of acceptance, availability, impartiality, and independence, disclosing any circumstances that could give rise to justifiable doubts. The FAI Secretariat shares this statement with the parties, who are invited to comment within a set time limit.[8]

If the statement contains no qualifications regarding impartiality or independence and no party raises objections within the applicable time limit, the FAI Secretariat may confirm the arbitrator. In all other cases, the matter is referred to the FAI Board. The FAI Board may decline the confirmation only if the candidate fails to meet the requirements of impartiality and independence or is otherwise unsuitable to serve. Where confirmation is declined, the FAI Board may invite a new nomination or, in exceptional circumstances, proceed directly with an appointment.[9] FAI statistics indicate that the confirmation process helps reduce arbitrator challenges and supports efficiency.

While confirmation is the formal stage at which impartiality and independence are assessed, these principles already guide the FAI Board's approach during the appointment of arbitrators. From the outset, the FAI Board avoids appointing arbitrators who, to its knowledge or reasonable estimate, may raise concerns in this regard.

4. Criteria for arbitrator appointments

The FAI Board appoints sole arbitrators, presiding arbitrators of three-member tribunals, and other tribunal members where required under the FAI Rules. In making these appointments, the FAI Board conducts a case-specific assessment based on the criteria set out in the FAI Rules. These criteria help ensure that each appointment corresponds to the particular features and needs of the case.[10]

A central consideration is any qualification agreed by the parties. These may relate to, for example, legal or technical expertise, or professional background. The FAI Board will seek to respect such

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within the applicable time limit, the FAI Board appoints the presiding arbitrator. In the case of a sole arbitrator, the parties may jointly nominate the arbitrator; if they do not do so within the applicable time limit, the FAI Board makes the appointment. See Articles 18–20 of the FAI Arbitration Rules.

[7] See Article 17 of the FAI Arbitration Rules.

[8] See Article 22 of the FAI Arbitration Rules and Article 21 of the FAI Expedited Arbitration Rules.

[9] Ibid.

[10] For further commentary on the criteria set forth in Article 22 of the FAI Arbitration Rules and Article 21 of the FAI Expedited Arbitration Rules, see Savola, Mika (2015), *Guide to the Finnish Arbitration Rules*, Lakimiesliiton Kustannus, pp. 211–219.

agreements and appoint arbitrators with the requisite qualifications. When agreeing on qualifications, however, it is worth bearing in mind that overly specific requirements may inadvertently reduce the pool of suitable candidates and complicate the appointment process.

The second criterion is the nature and circumstances of the dispute. This includes factors such as the type of contract, the legal and factual complexity, the industry context, and the amount in dispute. A more complex or high-value case may require an arbitrator with deeper subject-matter knowledge or more extensive procedural experience. The FAI Board considers these elements holistically when assessing each candidate's profile to ensure a suitable match for the case.

A third consideration is the nationality of the parties and the prospective arbitrator. Under the FAI Rules, if the parties are of different nationalities, the sole arbitrator shall be of a nationality other than those of the parties, and the presiding arbitrator shall be of a nationality other than those of the parties and the party-nominated arbitrators, unless otherwise agreed by the parties or unless the FAI Board, in special circumstances, determines that it is appropriate to appoint a sole or presiding arbitrator with the same nationality as any of the parties or party-nominated arbitrators.[11] The rule aims to reinforce neutrality in international cases and governs only appointments made by the FAI Board. It does not limit the parties' freedom to nominate co-arbitrators of their own nationality. In addition to promoting neutrality, nationality diversity within arbitral tribunals can contribute to a broader range of perspectives, which may enrich decision-making.

Finally, under the FAI Rules, the FAI Board may consider "any other relevant circumstances." The flexibility of this standard enables the FAI Board to consider various factors, such as the candidate's availability[12], prior arbitrator experience, and familiarity with the FAI Rules. In three-member tribunals, the FAI Board also considers the composition of the arbitral tribunal as a whole, including tribunal dynamics, aiming for a balanced mix of expertise, procedural strengths, and perspectives. While the FAI Rules do not require arbitrators to have legal training, in practice the FAI Board appoints only legal professionals.

As a matter of practice, in less complex and lower-value domestic cases, and provided that all applicable appointment criteria are fulfilled, the FAI Board occasionally appoints younger arbitration practitioners who are known to the FAI Board to have sufficient experience in arbitration, even if they have not previously served as arbitrators under the FAI Rules. Over time, this policy contributes to broadening the FAI's pool of arbitrators and supports the long-term development of arbitration expertise.

The FAI Board does not apply the appointment criteria discussed above mechanically. Instead, it carefully weighs the relevant factors in view of the case as a whole. Such an approach helps the FAI Board constitute arbitral tribunals tailored to each dispute, supporting both efficiency and user confidence.

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[11] In practice, an exception may be appropriate where the case has a clear connection to a single jurisdiction. For example, if one party is Finnish, the arbitration is conducted in Finnish, governed by Finnish law, seated in Finland, and both parties are represented by Finnish counsel and have nominated Finnish co-arbitrators, appointing a Finnish presiding arbitrator may still be appropriate.

[12] Availability is assessed not only in terms of time commitment but also in the arbitrator's proven ability to conduct proceedings efficiently and within the expected timeframe.

5. Observations from recent practice

FAI appointment statistics from 2020 to 2024 show how the FAI Board's appointment criteria and case-specific approach translate into real-world outcomes. In total, the FAI Board made 31 appointments in international cases during this period. While numerically modest compared to institutions such as the ICC and HKIAC, the figure is significant in the Nordic context and provides a representative sample of the FAI's appointment practice. This period also saw a steady rise in the total value of disputes submitted to the FAI, with figures increasing by nearly 40 percent between 2020 and 2024.

Notably, 58% of the arbitrators appointed during this period had not previously served in FAI-administered cases.[13] The trend demonstrates the FAI Board's openness to appointing individuals beyond its previous appointees and the breadth of the pool of arbitrators from which it draws.[14] This outcome also reflects the range of professional networks and institutional knowledge brought together by the FAI Board and FAI Secretariat, which enable the identification of qualified candidates across jurisdictions.

Diversity remains an institutional priority. From 2020 to 2024, 56% of all FAI-appointed arbitrators in international cases were women. The outcome highlights the FAI Board's attention to identifying qualified arbitrators of all genders across jurisdictions. To support this, the FAI Secretariat tracks the gender distribution of appointments. While the FAI does not set age-related targets, approximately half of the arbitrators appointed during this period were under 50, illustrating the range of seniority levels in FAI appointments.

In terms of nationalities, the 31 arbitrators appointed in international cases from 2020 to 2024 represented 14 different countries. Among the most common in 2024 were Germany, Switzerland, the United Kingdom, Sweden, and Norway. These figures highlight both regional proximity and broader geographic representation, reflecting the FAI Board's ability to identify qualified candidates across jurisdictions.

Regarding professional backgrounds, approximately 73% of arbitrators appointed by the FAI between 2020 and 2024 were private practitioners, primarily arbitration lawyers. An additional 8% were professors or other senior academics, and 6% were current or former judges. The remaining appointees included, for example, independent arbitrators. The distribution confirms the FAI Board's consistent practice of appointing legal professionals exclusively, even though, as discussed above, the FAI Rules do not formally require arbitrators to have legal training.

The data from 2020 to 2024 show that FAI appointments spanned a range of seniority levels, nationalities, and professional profiles. Rather than relying on a narrow pool of repeat appointees, the FAI Board applied a case-specific approach that resulted in diverse appointments aligned with the varied characteristics of international arbitrations.

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[13] For clarity, most of these individuals had prior experience as arbitrators in proceedings conducted under other institutional rules or in *ad hoc* arbitrations.

[14] This article does not address domestic appointments in detail. However, in such cases, the FAI Board has traditionally avoided repeated appointments from a narrow pool, instead favouring a broader circle of qualified individuals. In practice, the challenge is often not a lack of suitable candidates, but rather a greater supply of qualified arbitrators than the number of available cases.

6. Future outlook

To support its appointment processes and further improve efficiency, the FAI has recently developed new tools that enhance the quality and consistency of its institutional work. These include a confidential arbitrator database and a forthcoming digital case management platform.

The FAI arbitrator database, launched in early 2025, allows arbitrators to submit their professional profiles in a structured and confidential format. It captures key information such as legal training, language skills, sectoral expertise, arbitration experience, and nationality, supporting informed, case-specific appointments based on up-to-date profiles. While not a roster or register of approved candidates, the database provides the FAI Board with an additional tool to identify and appoint suitable candidates for each case.

Participation in the database is voluntary and aligns with the FAI's commitment to increasing access to opportunities for arbitrators and meeting the evolving expectations of greater efficiency and diversity. By helping to surface qualified candidates from underrepresented groups or jurisdictions, it also contributes to more balanced and inclusive tribunal compositions.

The FAI is also in the process of finalizing a digital case management platform, expected to launch by early 2026. The platform will offer secure tools for communication and document handling, accessible to arbitrators, parties, and the FAI Secretariat. By streamlining case-related exchanges, it aims to support the efficient administration of proceedings from start to finish. For example, in the context of arbitrator appointments, the platform will facilitate communication during the confirmation process.

Together, the arbitrator database and digital platform strengthen the FAI's ability to make informed, case-specific appointments and manage proceedings efficiently. As arbitration continues to evolve through technological advancement and other developments, tools such as these help ensure that the FAI remains responsive to user needs while preserving the key strengths and standards underpinning its appointment practice.

NOMA – PROVIDING SOLUTION-BASED ARBITRATION ACROSS THE NORDICS

*By Christian Hauge**

1. What do potential users of arbitration want?

The goal of the Nordic Offshore & Maritime Arbitration Association (NOMA) is to develop an attractive platform for offshore and maritime arbitration in the Nordics. In the long run NOMA aims to become the favoured alternative to arbitrating offshore and maritime disputes in London, New York, Singapore or Hong Kong. The goal to develop an attractive base for dispute resolution is most likely a goal shared with all other Nordic arbitration institutions. To make this happen, a natural first step is to evaluate what potential users of arbitration want if, and when, they end up in a dispute. Asking the following question will provide valuable guidance, even without conducting an extensive market survey:

What is the joint success criteria for both parties in a commercial dispute?

The straightforward answer is: a solution to the dispute. No matter the difficulty of the parties, no matter the gravity of the disagreement, both parties to a commercial dispute want a solution. That is why their contract contains a dispute resolution clause.

Assuming the parties have agreed to arbitrate, the next question is:

In what (civilized) form can a solution to the commercial dispute be provided?

The answer is simple: Either a settlement or an award.

Consequently, the third and final question is the following:

Do the parties, at the outset, want a process-driven or a solution-driven approach in the arbitration?

At conferences where users of arbitration are asked this question, the unwavering response has been that the users favour a solution-driven approach. For example, this was clearly expressed by Christian Gorrissen, vice president and general counsel of a major Danish shipowner, in a keynote speech on the NOMA Day in Copenhagen in October 2024, in which he emphasized the importance of focusing on solutions rather than processes within arbitral tribunals. Drawing from his experience, he pointed out that London Maritime Arbitrators Association (the LMAA) arbitrators and English counsel can sometimes be too focused on procedure – a mindset he referred to as "the English virus". He urged the arbitration practitioners to avoid becoming "infected" by this process-driven approach, reminding everyone that companies value speedy, cost-effective dispute resolution over drawn-out procedures.[1]

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[1] *See* NOMA's LinkedIn post on this topic (published October 2024), https://www.linkedin.com/posts/nordic-offshore-maritime-arbitration-association-noma_2024-10-10-torm-presentation-noma-day-10-activity-7251862384682672133-bj-o?utm_source=share&utm_medium=member_desktop&rcm=ACoAAALDM44BpCynYKm8XEyX_hrmnXAW6TaPEPc

The same line of argument follows from the International Chamber of Commerce (ICC) publication "Facilitating Settlement in International Arbitration":[2]

"The role of the arbitral tribunal in facilitating settlement of the parties' dispute has evolved in recent years. While arbitrators in some jurisdictions are accustomed to being proactive in this respect, the traditional viewpoint in most jurisdictions has been that the role of the arbitral tribunal is to decide the case in an enforceable award. Consistent with this view, the parties remained free to negotiate and settle their dispute should they wish to do so, but that was not something the arbitral tribunal should seek to encourage, facilitate or, least of all, become directly involved with. This view was motivated by concerns that taking on such a role would negatively impact the tribunal's neutrality vis-à-vis the merits of the dispute or the parties' perception of it.

This traditional view has, however, evolved as demonstrated by the way in which the ICC Arbitration Rules themselves and other publications now address the topic. The debate has now moved from whether arbitrators (and arbitral institutions) should take steps to facilitate settlement, to how that should be done."

From the perspective of NOMA, it is fair to conclude that potential users of arbitration, at the outset, want a solution-oriented approach. In the following, NOMA's approach is described – together with a recommendation regarding the direction that the Nordic arbitration institutes should take collectively.

2. NOMA's approach to (re)solution-oriented arbitration

2.1 NOMA's "Why"

NOMA was founded on 27 November 2017. The idea was planted by Geir Gustavsson from the law firm BAHR at the Nordic maritime law seminar in Sweden in August 2014. He asked the audience: Why cannot the Nordic countries, with their common legal tradition and maritime acts, establish a Nordic arbitration institute for maritime disputes? After three and a half years of hard work, NOMA was established with the four maritime law associations in Norway, Denmark, Sweden and Finland as members.

Each of the Nordic countries already had arbitration institutes in place, so the question which begs an answer is: Why a Nordic Arbitration Institute?

The first reason for establishing a Nordic Arbitration Institute was to preserve and codify the Nordic arbitration culture. 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, Nordic ad hoc arbitration is based on long-standing traditions, it works well and provides a flexible and pragmatic approach to any dispute at hand. However, seen from the outside and from the perspective of non-Scandinavians, ad hoc arbitration has possibly been regarded as a black box as the Nordic arbitration acts only provide a high-level regulation of the many matters which must normally be dealt with in arbitration. To "remove" this black box impression, it has been important to introduce transparent rules and best practice guidelines that capture the Nordic way of conducting arbitrations.

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[2] International Chamber of Commerce (ICC), Facilitating Settlement in International Arbitration, 2023, p. 4, https://iccwbo.org/wp-content/uploads/sites/3/2023/09/2023_Facilitating-Settlement-in-International-Arbitration-900-1.pdf

Secondly, it is well known that the enforcement of ad hoc arbitration awards can prove difficult in some jurisdictions, compared to awards based on institutional rules. It was therefore an additional goal that NOMA should take the form of 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 involvement from NOMA may be required 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.

Thirdly, the introduction of NOMA arbitration is expected to 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 offers a wider pool of both counsel and arbitrators with the right competences. A Nordic platform can in the long run gain influence to compete with established entities such as the LMAA.

NOMA's Why is thus to provide the parties with an effective and transparent arbitration process towards a potential award, but at the same time trying to nudge[3] them into finding a negotiated settlement. Below, we will highlight three important features of NOMA's solution-oriented approach. These are, in our view, "low-hanging fruits" which should be picked and implemented by the other Nordic institutions for the Nordics to stand out internationally.

2.2 Low-Hanging Fruit no. 1: Joint Appointment of the Arbitral Tribunal to Secure an Independent and Impartial Tribunal

The first and perhaps most obvious fruit is the Norwegian tradition for joint appointment of the arbitral tribunal as the starting point.

Section 13 paragraph 2 of the Norwegian Arbitration Act of 2004[4](referred to as NAA) reads as follows. "The parties shall if possible appoint the arbitrators jointly". Section 13 paragraph 3 stipulates that if the parties fail to appoint jointly, the fallback option is that each party appoints one arbitrator, and the two appointed arbitrators appoint the chairman.

In the preparatory works to the NAA, the motivation behind introducing the rule on joint appointment was to increase the arbitral tribunal's independence and impartiality.[5] By joint appointment none of the arbitrators have any link to either of the parties – which again increases

[3] The term "nudge" is taken from Thaler Richard H.& Sunstein, Cass R "Nudge – the final edition" (2021) and means in this context encouraging the parties, by a gentle touch or push from the arbitral tribunal, to reach a settlement to the dispute.

[4] LOV-2004-05-14-25

[5] NOU 2001:33 Voldgift p. 65

trust in the tribunal and its integrity. Moreover, the joint appointment procedure makes it easier to compose a tribunal with the required skills and diversity.[6]

In Norway, the joint appointment rule and practice has worked well over many years. Considering this success, it also became the main rule in the NOMA Arbitration Rules. The main rule is contained in Articles 6 (1) and 7 (1) of the NOMA Arbitration Rules 2024.

Based on the above, the joint appointment rule should gain wider recognition in the rules of all the Nordic arbitration institutions. There is, in NOMA's view, no downside to having this nomination mechanism as the default rule since the parties can, if they are unable to agree on joint appointment, quickly move to an appointment according to the standard appointment rules applicable today. If the parties succeed, the appointed arbitral tribunal will have the best starting point for being solution-oriented as none of the arbitrators feel bound to any of the parties.

2.3 Low-Hanging Fruit no. 2: The Tribunal Should try to Nudge the Parties to Settle the Dispute: "Mediation Window"

The second low-hanging fruit is that the arbitrators should encourage the parties to agree on allocation of time during the case preparation for mediation/settlement discussions (a "mediation window") in the arbitration schedule to enhance the chances of reaching a settlement.

Even if an arbitration is initiated, it is in NOMA's view important that the parties either revisit or start to explore the possibility of a negotiated solution. A general experience is that many parties (and their counsel), regardless of previous attempts to settle the case, to avoid looking weak, are afraid of making the first move towards, for instance, agreeing on a mediation process. Moreover, in some cases, the dispute needs to mature a bit before it is "mediation ready". Based on this, it is important that the arbitral tribunal plays an active role in encouraging a settlement and is familiar with the potential benefits of mediation and the framework necessary to ensure the best possible basis for a successful process.

Support for the arbitral tribunal being active in this respect is also found in a survey conducted by the Norwegian law firms BAHR and Wikborg Rein in September 2024.[7] One of the questions in the survey was:

"To what extent should arbitral tribunals actively influence the parties to discuss amicable settlement?"

To this, 58% (of 69 respondents) answered that it is "appropriate from time to time", 17% replied "always" and 22% replied "only in special circumstances". Only 3% of the respondents replied "never".

NOMA's best practice solution is to get the parties to agree on a mediation window in the procedural timetable, ref. NOMA's CMC-Matrix (2025) section 1.6: During the first Case Management Conference, the parties should be encouraged to allocate time for mediation/settlement discussions after the exchange of statement of claim and statement of defence. If a mediation window is agreed on, it should also be considered by the parties to empower the tribunal to appoint a suitable mediator on their behalf.

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[6] https://wiersholm.no/en/newsletters/international-commercial-arbitration-q2-2024/

[7] https://issuu.com/bahr1/docs/sp_rreunders_kelse_-_mekling_og_institusjonell_vol?fr=sMzE2YjYyOTQzMTc

The "mediation window principle" has been a part of the NOMA Best Practice Guidelines since 2017, and it is now also advocated in the ICC publication "Effective Conflict Management"[8:]

"The aim of (a) mediation/negotiation window(s) is to encourage the parties to settle in the course of an ongoing arbitration. Such mediation/negotiation window(s) occurs during the arbitration, after the parties will have gained more information on the other side's case and will have been able to reassess their own positions."

In NOMA's view the mediation window-solution should be introduced at a relevant stage also by the other Nordic arbitration institutions.

2.4 Low-Hanging Fruit no. 3: Development of a Best Practice on the Use of "Sealed Offers"

Article 37 (1) of the NOMA Arbitration Rules explicitly states that the arbitral tribunal, when deciding on the allocation of costs, "shall" take into account whether a party has rejected a reasonable offer of settlement.

For this rule to come into play, the arbitral tribunal must be made aware of any potentially reasonable settlement offers that have been rejected. Many parties are hesitant to disclose their settlement offers, fearing it may influence the tribunal's ultimate decision on the merits of the case. To avoid this, and with the aim to encourage more settlements early in the arbitration process, NOMA advocates the development of a joint Nordic best practice, and eventually firm rules, on the use and effect of "sealed offers" (also referred to as "Calderbank", Part 36 and "Without Prejudice Save as to Costs" offers).

A sealed offer is essentially a settlement proposal that, if not accepted by the opposing party, is disclosed to the arbitral tribunal after the award on the merits has been issued and the time has come for determining the allocation of costs.

On the use of sealed offers, it is noteworthy that the ICC publication "Effective Conflict Management", referred to in section 2.3 above, dedicates a separate section to this topic. Section 119 specifically highlights that sealed offers "promote settlement by exerting pressure on the receiving party to consider settling, rather than risk incurring additional arbitration costs.". However, the ICC publication stops short of offering specific regulatory suggestions to be incorporated into the terms of reference. Instead, Section 123 states as follows:

"The arbitral tribunal should also consider consulting the parties at an early stage (e.g. at the first case management conference pursuant to Art. 24, ICC Arbitration Rules) and inviting them to agree on a procedure for the possible use of sealed offer(s) in the arbitration."

Regarding the procedure for the possible use of sealed offers, it is NOMA's view that it should normally not be necessary for the arbitral tribunal to issue a draft award on the merits before the sealed offer(s) are opened and the final award, including cost award, is issued. However, it is recommended to consider whether it is beneficial, to ensure transparency, that the parties are given an opportunity to comment on the applicability of Article 37 of the NOMA Arbitration Rules considering the sealed offer(s) potentially put forward by the parties during the arbitration process.

[8] International Chamber of Commerce (ICC), Effective Conflict Management, 2023, p. 37, para. 111. (https://iccwbo.org/wp-content/uploads/sites/3/2023/09/2023_Effective-Conflict-Management-901-1.pdf)

Based on the above, NOMA suggests that it should be considered by the other Nordic arbitration institutes to introduce into their rules a provision stipulating that rejection of a reasonable settlement offer "shall" be taken into account in the arbitral tribunal's cost ruling, and that they should join NOMA in the development of "best practices" on the use of sealed offers. Together with the other two low-hanging fruits, this will substantiate a solution-oriented approach to international commercial arbitration in the Nordics.

ICC ARBITRATION AS THE NORDIC CHOICE AND FIVE REASONS TO USE THE EXPEDITED PROCEDURE

Therese Isaksson[*]

1. Introduction

On the first inaugural Nordic Commercial Arbitration Forum, the Nordic arbitration institutions and the International Chamber of Commerce (ICC) National Committee of Sweden presented their dispute resolution products. A comparative report presented by Natalia Petrik at the conference describes their general features.[1] The report confirms the general view that the majority of arbitrations seated in the Nordic countries are administered under the auspices of one of the Nordic institutions or are ad hoc arbitrations. However, arbitrations administered under the auspices of the ICC is on the rise and provides a competitive dispute resolution alternative for many disputes in the Nordic region.

In this article, I give five reasons to use ICC arbitration, in particular the ICC Expedited Procedure Provisions (EPP), as an alternative to the Nordic arbitral institutions. I do this in my capacity as a full time dispute resolution lawyer, counsel and arbitrator in commercial cases, and as the Swedish chair of the ICC National Committee on Arbitration and other ADR and Swedish member of the ICC Court.[2]

2. ICC Arbitration and the Nordic region

The ICC is by far the most preferred arbitral institution due to its unique track record, global reach and signature quality control. Nevertheless, as demonstrated by the detailed statistical overview presented at the conference, the number of ICC cases involving parties from the Nordic countries remains comparatively low when measured against the caseloads of the region's domestic arbitral institutions. These figures have remained relatively stable over the past several years, though a slight upward trend has been observed recently - one that is expected to continue and increase.

The strong position of the Nordic arbitral institutions in their respective jurisdictions and across the region is well established and well deserved. Within this context, the ICC is pleased to serve as a valued alternative, particularly when parties seek a neutral, truly international forum for dispute resolution.

Since 1923, ICC has been helping to resolve disputes in international commercial and investment disputes. Historically, ICC was chosen in particular for high-value, complex, international arbitrations. More recently, ICC is increasingly used also for smaller or less complex claims and in domestic disputes. There is also an increased demand for other ADR services, such as mediation and expert proceedings, which are available through the ICC International Centre for ADR.

The ICC aims at providing businesses, governments and individuals with a variety of customisable services for every stage of their dispute. The ICC offers a broad and flexible set of procedural tools

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[1] Natalia Petrik, 2025 Survey Report on Nordic Arbitral Institutions.

[2] This article is an extended and adapted version of a presentation I gave at the Nordic Commercial Arbitration Forum held in Stockholm on 11 March 2025.

intended to meet the needs of a wide range of disputes, and continuously develops and adds to the toolbox to meet the demands of the modern dispute community.[3]

These tools are designed to ensure procedural efficiency and adaptability, while maintaining the high standards for which the ICC is known. A cornerstone of this quality assurance is the scrutiny of awards, which applies to both standard and expedited proceedings. This process, conducted by the Secretariat and members of the ICC Court, ensures that each award is not only compliant with formal requirements but also meets the rigorous quality standards set by the institution.

The ICC Dispute Resolution Library offers a comprehensive collection of freely accessible resources.[4] This platform supports both dispute resolution and dispute avoidance, offering practitioners and parties alike a robust toolkit for managing and mitigating legal risk.

The ICC has undertaken significant efforts to adapt its rules and services to better meet the expectations of arbitration users globally. One key area of development is the increasing use of an expedited procedure such as the EPP, introduced in 2017 and designed to streamline proceedings and reduce time and cost. These provisions have seen growing application worldwide, and it is my view that they are particularly well suited to the types of commercial disputes that frequently arise in the Nordic region.

3. Five reasons to use the EPP

The EPP provide a simplified framework for conducting the arbitration, focusing on minimising costs and time, yet sufficiently flexible to suit smaller, less complicated cases. The procedure is adapted to suit the value and complexity of the dispute, ensuring a fair yet efficient resolution. Five key features and reasons to use the EPP framework will be described in the sections below.

3.1 Automatic application of the EPP

The EPP apply to disputes with a value of no more than USD 3,000,000 for arbitration agreements concluded on or after 1 January 2021.[5] Significantly, the EPP apply automatically to such disputes, provided that the parties have agreed to submit disputes to ICC arbitration and have not expressly opted out.

The automatic application of the fast-track rules to certain disputes reduces the opportunity for delay behaviour and enables swift resolutions, even between uncooperative parties. Cooperative parties can also opt in to the EPP irrespective of the arbitration agreement's conclusion date or the amount in dispute.

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[3] The ICC Arbitration Rules are currently under revision, which include both the ordinary procedure, the expedited procedure (EPP) and the emergency arbitrator procedure (EA). The revised rules are anticipated to enter into force during 2026. For this reason, this article describes the advantages of the EPP on a high level rather than going into the details of the procedure.

[4] Available at https://iccwbo.org/dispute-resolution/resources/digital-library.

[5] The EPP apply to disputes with a value of no more than USD 2,000,000 for agreements concluded between 1 March 2017 and 31 December 2020. The threshold amount is up for revision.

3.2 Sole arbitrator

Irrespective of any contrary provision in the arbitration agreement, the default position is that the ICC Court will appoint a sole arbitrator; a position that has become more common also under other arbitration rules. Undoubtedly, having a dispute decided by a sole arbitrator has several advantages, particularly for lower-value contracts where the amount in dispute is relatively low but also for any case where the parties want to save time and/or money.

Constitution of the tribunal will often be quicker with a sole arbitrator. Sole arbitrators also tend to resolve disputes more efficiently, although this is not always the case. Three arbitrators must discuss each decision, coordinate their calendars and consult each other throughout the arbitration proceedings, particularly when drafting procedural orders and the final award. Sole arbitrators, on the other hand, can easily streamline the process themselves and focus solely on drafting the award, without needing to consult other members.

Also, a sole arbitrator will certainly result in lower arbitration costs than a three-person tribunal, often significantly lower. Clearly, paying the professional fees of three arbitrators is more expensive than paying the professional fees of one arbitrator. When the procedure is streamlined, counsel fees are typically lower too. It is not uncommon for one party to insist on a three-person tribunal in relatively small disputes, particularly when the parties do not have equal litigation budgets, in order to increase costs. This situation is avoided in the EPP.

3.3 Speedy resolution

The EPP aims to resolve disputes quickly. The entire process typically takes around six months from start to finish, which is much quicker than the lengthy timelines of traditional litigation or arbitration. This compressed timeline significantly accelerates the arbitration process, while usually still allowing sufficient time for one or two rounds of submissions and a short hearing, if necessary.

Certain procedural steps are minimized, making the process simpler and faster. Already the preliminary procedure is accelerated; parties are not required to prepare and agree on so-called terms of reference with a list of issues as they would typically be in an ordinary ICC arbitration. Furthermore, the case management conference must be held within a shorter timeframe than that of the ordinary procedure. Other provisions facilitate streamlining the rest of the procedure too.

3.4 Limited procedure while flexible

The EPP is intentionally designed to be simple and flexible, making it particularly attractive for parties seeking a less formal and more adaptable dispute resolution process. The tribunal is empowered to adopt a streamlined approach throughout the proceedings, helping prevent unnecessary delays and pushing all parties towards procedural efficiency.

For example, the parties are generally unable to make new claims after the initial phase in the proceedings; express authorizations from the tribunal is required and due consideration should be made as to the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances.

The tribunal has the flexibility to determine the best procedural path for each case, with fewer formalities than ordinary ICC arbitration. This flexibility allows for more tailored solutions based on the specifics of each case.

For example, the tribunal has express discretion to decide the case on the basis of documents only, rather than hearing evidence and/or legal argument at a hearing. Similarly, the tribunal may limit

the number, length and scope of written submissions and written witness evidence (both fact witnesses and experts), and can exclude or limit requests for document production.

3.5 Scrutiny of award ensures high quality

Having three arbitrators in theory reduces the risk of issuing poor decisions and diminishes errors and mistakes. This risk can however be reduced also through the scrutiny process, which applies also in EPP Cases.

Draft awards are submitted to the ICC Court for scrutiny, assisted by the Secretariat.[6] The Court may make modifications to the form of the award and draw the tribunal's attention to matters of substance. No ICC award can be issued by a tribunal until it has been approved by the ICC Court as to its form. This process maximises the legal effectiveness of an award by identifying any defects, and improves the award's general accuracy, quality, and persuasiveness.

The scrutiny of draft awards reduces the scope for errors and helps ensure that ICC awards are of a consistently high quality, at least in terms of their form. This, in turn, reduces the need for applications to correct or interpret the awards and potentially reduces their susceptibility to challenge. While good arbitrators will take care to ensure that their awards are well written, a review by someone else can often be beneficial.

4. Concluding remarks

To conclude, although the Nordic institutions remain strong within their domestic and regional contexts, the ICC is ready to serve as a complementary, internationally recognised option, particularly in cases where neutrality, procedural rigour and global enforceability are key considerations. The EPP offers as a highly competitive alternative for many commercial disputes. The revision of the current rules will further improve the efficiency and applicability of the EPP, making them even better suited to many types of commercial disputes that frequently arise in the Nordic region.

[6] The Court with more than 170 members worldwide ensure judicial supervision and quality. The Court's Secretariat offer support with more than 100 lawyers and support personnel operating through offices world wide. It can administer cases in any language and communicate in all major languages, including the Nordic languages. The ICC Commission on Arbitration and ADR is a think thank that provides thought leadership through more than 1400 members worldwide.

LOOK TO THE NORDICS – A NORDIC APPROACH TO ARBITRATION

Ola Ø. Nisja[*] and Thomas K. Svensen[*]

Introduction

The Nordics is a stronghold when it comes to arbitration. Arbitration in the Nordics represents high quality, robust infrastructure, and foreseeable processes. However, Nordic arbitration is currently segmented into five geographical areas (Denmark, Finland, Iceland, Sweden and Norway) with limited coordination or collaboration.

In this article, we discuss whether it makes sense to take a more distinctly Nordic approach to arbitration. There can be no question that the five jurisdictions should collaborate more and learn from each other. We have differences, but more predominantly we have important similarities. Efficiency in delivering justice is a common and clear goal, and the Nordic approach to dispute resolution is present in all the five geographical areas that jointly represent the Nordics.

A bolder topic than whether we should collaborate more – which we in any case should – is whether the market is ready for more than just informal collaboration in the form of seminars and exchange of experiences. Is the Nordic way of thinking or logic in arbitration, a force of such strength that suggests it should come together to make the region's position even stronger?

We will start with Norway and then broaden our perspective to the wider Nordics.

Arbitration in Norway

Norway arguably has one of the lightest approaches to arbitration in the Nordics. The main reason for this is likely our strong *ad hoc* tradition.

Norway does not have a widely used arbitral institution. There are options for institutional arbitration in Norway, both through the OCC (Oslo Chamber of Commerce) and the semi-institutional NOMA (Nordic Offshore & Maritime Arbitration Association). These options are still used in only a minority of arbitration cases. The reason is not a lack of quality in the rules of these initiatives. They are accepted and even appreciated by the legal community. The lack of use is more likely a result of a traditionally low demand for institutional arbitration.

Norway does indeed have a very active, highly competent and thriving arbitration community. Many professionals in this community are well versed in international arbitration standards. Still, there is a traditional preference for *ad hoc* arbitration, even in major international disputes. While we are seeing a growth in arbitration in Norway, there has not been a rapid shift to institutional arbitration, although the trend is emerging.

At the same time, there is generally a positive attitude towards using the courts in commercial disputes. As a result, we also see major commercial disputes being litigated. That being said, arbitration in Norway is developing positively, but slowly.

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The reasons for the preference for *ad hoc* arbitration in Norway are probably threefold. One is tradition. The second is the light touch. The third is that it simply still works well. The popular light-touch approach is a major selling point we can develop further in the Nordics. Although there are variations, the light-touch approach can be found throughout the Nordic institutions compared to other alternatives internationally.

So, apart from the reasons already given for the strong ad hoc tradition, why has the Norwegian commercial players in Norway developed a, in several aspects, different system than the other Nordic countries? As so often with Norway in the recent decades, oil and gas has been a significant contributor. In practice, oil and gas has had a profound impact not only on Norwegian wealth, but also on governing law and dispute resolution mechanisms in commercial relationships.

In the 1980s, the Ministry of Petroleum and Energy decided, as a license condition, that Norwegian law and Norwegian contract tradition should be the basis for all license operations. The impact of this – what sceptics might call governmental interference with party autonomy – has been significant. Although the formal requirements of applying Norwegian law and Norwegian contract tradition do not specifically dictate that Norwegian court litigation or Norwegian arbitration should be applied as the dispute resolution method, it has in in practice resulted in Norwegian dispute resolution within this sector. Given the importance of this sector, this phenomenon has spread to other sectors. The result is numerous major commercial cases being resolved in Norway through litigation or *ad hoc* arbitration.

A Nordic approach

As we have noted, arbitration in Norway still carries a distinctly Norwegian flavour. There is, however, a clear willingness to adapt and improve based on positive developments from other countries, especially neighbours in the Nordics. Simply put, the age of ad hoc arbitration is not likely to last forever.

This does not necessarily mean that there will be fewer commercial cases before the courts. It is unlikely that the courts in Norway will lose much ground in the short term. As long as the courts continue to adapt to commercial cases, remain cost-effective, and maintain efficiency, they will, in our view, remain attractive. Furthermore, the differences between litigation before the courts and arbitration in Norway are not substantial. Dispute resolution professionals often have extensive courtroom experience, taking their positive experiences into arbitration. The courts, in turn, are increasingly interested in learning from arbitration to improve their handling of commercial cases. As such, the similarities are likely to persist.

Despite the position of the Norwegian courts, Norwegian parties – the "owners" of a dispute – should also have access to a strong arbitration institute. The benefits of a strong institution as opposed to *ad hoc* arbitration are clear. Although *ad hoc* arbitration certainly can work very well, and has worked well in Norway for many years, institutional arbitration offers greater robustness. Since arbitration is a private process, it lacks the stability of state-administered court proceedings unless a proper framework is in place.

One possible way forward is that local, domestic initiatives will grow to become more widely used institutions. The current case load of the OCC and the sector-specific NOMA, although increasing, suggests that such growth will take time in Norway.

The question is thus what type of institution Norwegian parties will choose for their disputes and when drafting dispute resolution clauses, including in oil and gas cases, should the institutional

trend continue. Will Norway be the first Nordic country to embrace international institutions more fully, or is there another path forward?

The absence of a strong arbitration institution in Norway may be seen as a shortcoming, but it is also an opportunity to build something new. That is where our question arises: Is there a Nordic approach to arbitration that may be progressed as part of the further development of Norwegian arbitration?

We believe that a Nordic rationale exists. Conferences like the Nordic Commercial Arbitration Forum could hint at this or suggest that such an approach should be developed. However, it will certainly not materialise by itself. As an arbitration community in Norway, and the Nordics, we have two options. One is to wait and see. That is always tempting, not having to take an active and bold move in a complex matter. The other is to be proactive: Predict trends, take action, and seek out the best way forward.

If we choose a visionary path, there is real potential to develop something new, robust, reliable and efficient, with the Nordic mentality that many refer to. In our view, there is a Nordic thinking, and it makes sense to take a Nordic approach. Although Norway may not have as strong institutes as Sweden, Denmark, and Finland, we have much to contribute: major cases, a robust joint appointment practice, a general light-touch approach, and extensive mediation, to name a few factors of value when developing a modern arbitration system. All the Nordic countries have their own successes and practices. There is definitely much to explore here – the synergies could be significant. If they are unlocked as part of an ambition to create a joint Nordic initiative, this could create benefits not only for Norway and the Nordics but even represent a major contribution to the arbitration scene globally. But of course, the community needs to dare and have the ability to execute such an ambitious thought.

THE ROLE AND REACH OF THE DANISH INSTITUTE OF ARBITRATION

By Steffen Pihlblad[*]

Introduction

Arbitration in Denmark has seen significant growth in recent years, both in domestic and international cases. One reason is that commercial disputes are becoming larger and more complex. Denmark's high ranking on Transparency International's list of low-corruption nations, along with a reliable and arbitration-friendly court system, makes Denmark an attractive seat of arbitration. Looking ahead, the Danish Institute of Arbitration (DIA) aims to play a more active role in the global and regional arbitration landscape.

Arbitration has long been a foundational element of commercial dispute resolution in Denmark as well as the Nordic region. In Denmark, arbitration has been recognized as a binding dispute resolution method for more than three-hundred years, with arbitral tradition dating back to the Danish Code of 1683.

Arbitration in Denmark is now governed by the Danish Arbitration Act 2005, based on the UNCITRAL Model Law, ensuring international standards of fairness and flexibility.

The DIA is Denmark's main arbitration institution, established in 1981 by leading Danish professional associations to promote arbitration as a dispute resolution method for both domestic and international cases. It is a non-profit private institute headquartered in Copenhagen, providing professional administration and specialized rules for efficient, fair, and neutral arbitration proceedings. The DIA handles all types of national and international disputes.

The administrative structure of the DIA includes the Chair's Committee, Board, Council of Representatives, and a legal Secretariat. Notably, the Chair's Committee – comprised of the Chair and Vice-Chair of the Board – has broad powers in relation to the specific cases, such as confirming and revoking the appointment of arbitrators, deciding on requests for consolidation and party joinders, and setting the fees of the arbitrators.

As for the Secretariat, it is led by a Secretary-General with extensive experience in arbitration, ensuring consistency and legal precision in the administration. In recent years, the DIA has seen a steady increase in its caseload with 156 pending arbitration cases as of the end of April 2025, with roughly one-third of them being international. The DIA interprets this rise in caseload as a declaration of trust from the arbitral community and the users of arbitration services and expects this figure to grow even more in line with the rising demand – both on a domestical and regional level.

The DIA's latest Rules of Arbitration (2021) emphasize best practices, procedural efficiency, and transparency, including requirements for disclosure of third-party funding for the purpose of protecting the integrity of the proceedings and options for virtual hearings. The DIA Rules are available in Danish and English. According to the Rules the default seat of arbitration is Copenhagen, unless the parties agree otherwise. Tribunals typically consist of one or three arbitrators, with at least the chair or sole arbitrator holding a law degree.

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[*] *Secretary General of the Danish Institute of Arbitration*

To preserve independence and impartiality, no member of the Chair's Committee, Board, Council of Representatives, or Secretariat, may be appointed as an arbitrator in cases administered by the DIA. However, members of the Board and the Council of Representatives may sit as arbitrators if requested by the parties.

Finally, at the DIA you will find bright, newly furnished hearing rooms and break out facilities at competitive rates. The meeting rooms are soundproofed and Wi-Fi equipped, with modern audiovisual equipment for online hearings or witness examinations. Lunch and other catering are offered, and the DIA staff can assist with practical tasks if needed.

Procedural efficiency

Efficiency is a hallmark of Nordic governance and dispute resolution. The DIA maintains a lean administrative structure with agile procedures that enable swift progress in arbitration proceedings. A key contributor to this efficiency is the DIA's Chair's Committee, a two-member decision-making body capable of confirming tribunal appointments within a single day. Uniquely, by consisting of two members, the Chair's Committee is a responsive and flexible body that efficiently can carry out its functions according to the Rules, which promote progress in the proceedings.

The DIA is also exploring the incorporation of artificial intelligence (AI) into arbitral practice. This topic has been extensively discussed both internally at the DIA, and during events organized by the DIA and in recent editions of the DIA newsletter, where both opportunities and risks have been addressed. While AI can enhance efficiency, it also brings risks and ethical responsibilities. In no way may the quality of the arbitral award decline, nor the legal process. Both lawyers and arbitrators must ensure compliance with data protection laws, uphold confidentiality, and refrain from submitting inaccurate or fabricated material. Also, the use of AI by the tribunal for decision making purposes should be clearly disclosed to the parties, and arbitrators must personally review and validate the output to ensure that it reflects the facts, applicable law, and specific context of the case. The DIA encourages a collaboration between the traditional arbitral process and whether to introduce specific provisions regarding the use of AI. Discussions on how to strike the right balance will certainly be included in the current considerations about updating the DIA Rules of Arbitration. Any regulatory developments in the DIA Rules will also need to be compatible with the EU AI Act (Regulation (EU) 2024/1689 of 13 June 2024), which will enter into force in August 2026, and which includes arbitration within its broader scope of critical AI applications. This reinforces the importance of a cautious and well-reasoned approach when integrating AI into institutional arbitration.

The DIA has also embraced digitalization in other areas, for instance, by adopting rules giving parties solid opportunity to facilitate online hearings. These initiatives reflect DIA's broader ambition to remain at the forefront of institutional arbitration and to provide competitive and cost-effective services for its customers.

Scrutiny of arbitral awards

One of the most distinctive procedural features in the DIA Rules of Arbitration is the internal scrutiny of arbitral awards – an added layer of quality control that remains rare among arbitral institutions. It follows from Article 43 of the DIA Rules, that the tribunal, before the rendering of the award, shall send the draft award to the DIA Secretariat, which shall scrutinise it. The Secretariat may propose modifications as to the form of the award and, without affecting the tribunal's jurisdiction, draw the tribunal's attention to other issues, including issues of importance regarding the award's validity, recognition and enforcement. Notwithstanding the scrutiny by the Secretariat,

the responsibility for the content of the award still lies exclusively with the tribunal. Accordingly, every draft award is submitted to and reviewed by the Secretariat before being finalized, with attention given to consistency, formal correctness, and enforceability. Importantly, the scrutiny process is conducted within clearly defined limits. The scrutiny does not extend to the substance or legal merits of the award. The Secretariat is not authorized to interfere with the tribunal's jurisdiction or reasoning, and the final content, the assessment of evidence and the presumed legal enforceability of the award remain entirely within the tribunal's domain. In this way, the DIA safeguards the core principle of arbitral independence, while still upholding institutional responsibility for procedural integrity.

From the DIA's perspective, this scrutiny mechanism serves a number of important functions. First, it helps minimize clerical or structural errors, which in turn reduces the need for post-award clarifications or corrections. Second, it enhances user confidence in the arbitral process by offering a degree of procedural oversight that reinforces perceptions of fairness and professionalism. In practice, not only the parties but also the arbitrators themselves have expressed appreciation for this review, particularly in sole arbitrator cases, where the absence of peer review can increase the risk of mistakes and oversights. For parties, knowing that the final award will undergo this layer of review often provides additional assurance that their case is being handled with care and diligence.

Furthermore, this mechanism may play a role in the remarkably low rate of challenges brought against DIA-administered arbitral awards. Empirical experience suggests that very few DIA awards are contested, and so far, none are successfully overturned or set aside by courts in Denmark or enforcement courts abroad. While the Secretariat's review is not a legal shield, it contributes to the quality and completeness of the award – thereby reducing procedural vulnerabilities and supporting enforceability under the New York Convention and applicable national laws.

Taken together, the DIA's award scrutiny procedure represents a careful balance between institutional oversight and tribunal autonomy. It reflects the DIA's commitment to maintaining high-quality outcomes without compromising the independence and flexibility that define arbitration. As such, this feature enhances the overall credibility of the DIA and offers a pragmatic model for enhancing the quality of the outcome of modern commercial arbitration.

Express Arbitration, "Baseball" Arbitration and Interim Arbitration

As a modern dispute resolution institute, the DIA actively listens to the ever-evolving needs of its users and continuously adapts its procedures to meet market expectations. A key example of this responsiveness is the introduction of Express Arbitration, a fast-track mechanism tailored for clear-cut disputes without compromising the core principles of arbitration.

The DIA's Rules for Express Arbitration (2022) are particularly suitable for low-value or straightforward commercial disputes. Fundamentally the application of the Express Arbitration procedure is only possibly if the parties have agreed to it. According to the Rules, the proceedings follow a fast timeline with strict and short time limits throughout the procedures e.g. 10 days to forward the Statement of Defense. Also, the proceedings are based on written communication only, and with no oral hearing, unless the parties agree otherwise. After final submissions the arbitral award must be rendered within 10 days.

As a part of the Rules for Express Arbitration the DIA has a unique method of dispute resolution for less complex cases. This method is also referred to as "baseball" arbitration. This term originates from professional baseball sports in the United States, where it was developed to resolve salary disputes between players and clubs. While its roots are in baseball, the approach has since

been developed and applied in a wide range of legal and economic contexts - including disputes between sovereign states, such as those involving taxation rights. The process basically works as follows: each party shall submit a reasonable proposal stating how the dispute should be resolved. These proposals are provided to the arbitrator in a sealed form. The arbitrator must then choose the proposal he or she considers to be the most reasonable resolution of the dispute. Importantly, the arbitrator is not permitted to draft an alternative or compromise decision - the arbitrator must select one of the two proposals. The selected proposal is then issued as a formal arbitral award under the agreed terms and carries the same legal status as an arbitral award by consent, including enforceability before domestic courts or courts abroad. If neither party's proposal is deemed suitable, the arbitrator may refer the case for resolution under alternative procedural rules. Where both parties agree to the use of this mechanism, it enables dispute resolution that is both quick and cost-conscious, while still maintaining the authority and enforceability of traditional arbitration.

Another of the DIA's distinctive procedural features is the appointment of an interim arbitrator, which allows parties to address evidentiary issues before a full-scale arbitration is commenced. As outlined in Article 48 of the DIA Rules of Arbitration and further detailed in Appendix 3 of the Rules, this mechanism provides an alternative to seeking interim assistance from national courts. Instead, parties may request the appointment of an interim arbitrator, who is empowered to decide on specific procedural matters regarding the taking of evidence. This process ensures that critical preliminary steps can be taken within the arbitral framework, preserving core advantages such as confidentiality, party autonomy, and institutional coherence. This feature is particularly useful in situations where evidentiary clarity is essential before initiating full-scale proceedings. It enables parties to evaluate the strength or viability of a claim in a cost- and time-efficient manner. More broadly, the availability of both interim and emergency relief mechanisms enhances the DIA's procedural flexibility and responsiveness. These tools reflect the DIA's ongoing commitment to providing practical, pre-tribunal safeguards tailored to the realities of modern dispute resolution – especially in cases involving urgency or procedural uncertainty.

Mediation at the DIA

DIA also offers the parties to manage their disputes through mediation. This approach is codified in the DIA's Rules on Mediation, which have been in force since 2015. To preserve independence and impartiality, no member of the Chair's Committee, Board, Council of Representatives, or Secretariat, may be appointed as mediators under the DIA Rules. However, members of the Board and the Council of Representatives may serve as mediators in cases administrated by the DIA Rules if requested by the parties.

Mediation under the DIA Rules can be initiated in two ways. The first way is by prior agreement between the parties. The second way is without prior agreement, where one party initiates mediation and the DIA facilitates the other party's consent. The process is initiated by submitting a Request for Mediation.

The DIA Secretariat supports the parties with guidance about procedural steps, timelines, and associated costs. Unless otherwise agreed, a single mediator is appointed. Parties may agree jointly on the appointment of the mediator, subject to confirmation by the DIA Chair's Committee. Where there is no agreement, the DIA may suggest a shortlist of candidates, enabling the parties to jointly select a mediator. Once the appointment of a mediator is confirmed and the financial deposit is paid by the parties and received by the DIA, the DIA refers the case to the mediator. The mediator is then responsible for convening a preparatory meeting with the parties, where the specific procedural steps is discussed and agreed upon. The mediation is to be concluded within

45 days, unless the parties agree otherwise. During the proceedings, the mediator ensures equality of treatment and that each party has the opportunity to present their case. The aim is to foster a collaborative environment focused on voluntary resolution.

If the mediation results in a settlement, the parties have the option to convert their agreement into an arbitral award under Article 11 of the Rules of Mediation. This can be particularly valuable for enforcement purposes, as arbitral awards carry international recognition under the New York Convention. At the parties' request, the DIA may appoint an arbitrator – who may be the mediator that assisted the parties with reaching a settlement – to issue a binding decision in the form of a final arbitral award.

Regarding the economic aspect the parties are jointly and severally liable for all mediation costs, unless agreed otherwise. These include the mediator's fee, administrative charges, and any related expenses. The mediator's fee is typically based on time spent, unless the parties and mediator agree to a fixed fee approved by the Chair's Committee.

Confidentiality is a cornerstone of the DIA's mediation process. All participants – including the DIA, mediator, and parties – are bound by strict confidentiality obligations, covering both the process and any settlement reached, unless the parties agree otherwise. Importantly, the parties also agree not to use any statements, or settlement proposals in subsequent proceedings, nor to call the mediator as a witness in such proceedings. The DIA's rules ensure that mediation remains a safe space for open dialogue and resolution.

Denmark as a seat of arbitration: Pro-arbitration, rule of law and cost effectiveness

Denmark is a pro-arbitration country with great support throughout the Danish legal system. For instance, when making appointments of arbitrators, it is possible to select arbitrators from a diverse pool within various fields of the legal profession. The appointments can vary from law professors and highly experienced attorneys to Supreme Court Judges. By including sitting judges in the pool of arbitrators, these judges can use their insights as arbitrators, when dealing with arbitration-related questions in their judicial office, for example regarding a challenge of an arbitral award and reviewing arbitrator's fees. This should contribute to ensure that the judgments concerning arbitral matters are in line with modern arbitration practices. Moreover, the broad possibilities for appointing differently skilled arbitrators help ensuring an inclusive and qualified basis for assembling the most competent panel of arbitrators.

Further to this, Denmark is widely recognized for its consistent performance in areas such as rule of law and low levels of corruption. According to the World Justice Project's Rule of Law Index 2024, Denmark ranks first out of 142 countries, reflecting strong scores across key indicators, including constraints on government powers, absence of corruption, protection of fundamental rights, and the functioning of civil and criminal justice systems. These results point to a legal framework that is structured, transparent, and accessible – qualities that support and promote trust in legal processes, including arbitration. Denmark's position in the index is part of a broader regional pattern: Norway, Finland, and Sweden rank second, third, and fourth, respectively. This consistency across the Scandinavian countries reflects shared institutional characteristics such as transparency, judicial independence, and legal stability. For those engaged in dispute resolution, this environment offers a high degree of predictability and procedural clarity. The effect is that the Scandinavian region as a whole provides a reliable setting for arbitration and other legal proceedings due to these underlying conditions.

Transparency International's 2025 index of the least corrupt countries ranks Denmark first among 180 nations. This ranking reflects a broader institutional integrity, which contributes to a high level of trust in Denmark as a seat of arbitration in international cases.

Transparency also relates the DIA's transparent and competitively structured pricing model, designed to give parties predictability and cost control from the outset. One of the key tools available to users is the DIA's online cost calculator, which allows parties and arbitrators to estimate tribunal and administrative fees based on the size of the claim and the complexity of the case.

This transparency contributes to greater planning certainty, particularly for parties managing limited budgets or seeking a viable alternative to higher-cost international institutes. To illustrate the competitiveness of the model: in a case involving a €1 million claim, the combined tribunal and administrative fees typically amount to approximately €65,000, representing around 6.5 % of the disputed amount. In high-value disputes – such as a €100 million case – the total cost typically falls to around €480,000, amounting to less than 0.5 % of the claim value, which is highly competitive compared to other arbitration institutes. This cost structure enables scalability and ensures proportionality between the dispute's size and the administrative burden. Importantly, this cost-efficiency does not come at the expense of arbitrator quality – exemplifying why the arbitral process benefits from the Secretariat's scrutiny of the awards etc.

Creating arbitration communities

The DIA is strongly committed to developing and shaping the arbitration landscape today - not only by informing and guiding the discussion, but also by shaping its direction, with the aim of strengthening the community in Denmark as well as the Nordic Region.

Through the DIA newsletter, the DIA offers subscribers a curated selection of insightful updates, emerging trends, and practical commentary on developments within both domestic and international arbitration. Recent topics include AI in arbitration, sustainability and ESG in dispute resolution, and Nordic legal culture in a global context. In addition to editorial content, the newsletter also serves as a platform for announcing new case law, procedural rules, upcoming events, and training opportunities, including conferences, workshops, and roundtable discussions. Subscribing to the DIA newsletter is free of charge and it is simple to subscribe to via the DIA's official website.

One of the topics the DIA wants to be a frontrunner on is gender diversity in arbitration. To support this ambition the DIA has signed the Equal Representation in Arbitration Pledge, strengthening its engagement with gender balance in arbitration. The DIA has worked on multiple initiatives corresponding to this pledge. For instance, the DIA is currently collaborating with prominent women in arbitration on creating a list of female arbitrators. The list is intended to serve as a reference point when parties and counsel are appointing arbitrators. The overall goal with the list is to provide visibility and inspiration, and to help ensuring that qualified women are considered and appointed more often. According to recent DIA statistics, there remains an underrepresentation of women among arbitrators appointed in proceedings administered by the DIA. By making it easier to identify and access a pool of qualified women, the initiative aims to support more balanced appointments and broader representation. The new list of female arbitrators is expected to be finalized and made publicly accessible in 2025. Hopefully the female arbitrator list together with other initiatives – so as interviews, podcasts and a second conference about diversity in connection to Copenhagen Arbitration Days 2025 in September – will make a difference and an important step toward practical inclusion.

Following several successful editions of Copenhagen Arbitration Day, the DIA has expanded the event into a two-day program for 2025. Copenhagen Arbitration Days creates a forum for leading practitioners and institutional voices – both regional and international. By blending high-level panel discussions with professional networking opportunities, the event fosters meaningful dialogue and helps to build lasting connections in the arbitration community. Set against the backdrop of one of Europe's most vibrant and accessible capitals, the event continues to grow in both reach and relevance. Also, the DIA has launched a new initiative: the *Arbitrator of the Year* award. Introduced for the first time in 2025, the award serves as a tribute to the commitment to professionalism, development, and the advancement of the Danish arbitration community. The professional standard among Nordic arbitrators is exceptionally high, and the DIA believes in recognizing this development in the field. To ensure independence and impartiality, the recipient will be selected by an independent committee of four members, appointed respectively by Young Arbitrators Copenhagen (YAC), the Danish Arbitration Association, ICC Denmark, and the DIA. The selection process is based on nomination from within the arbitration community. With this initiative, the DIA aims not only to celebrate individual achievement but also to reinforce its broader commitment to strengthening and promoting arbitration in Denmark and beyond.

Conclusion

In a global dispute resolution landscape increasingly defined by demands for efficiency, diversity, transparency, and trust, the DIA offers a model that is both principled and pragmatic. Over the past years, the DIA has transformed itself from a solid domestic institute into a fast-growing, regionally embedded institute with clear ambitions for the region. With 156 pending cases as of April 2025, a third of which are international, the DIA's rising caseload reflects a growing confidence among parties and counsel in the DIA's procedures and values. At the Nordic arbitration institutes more than 400 cases were filed in 2024, and more than a third of these new cases were commenced under the DIA-Rules. If the DIA caseload is combined with the cases filed under the Danish Building and Construction Arbitration Board, Denmark is by far the Nordic country with the biggest number of arbitrations.

What sets the DIA apart is innovation grounded in procedural integrity. Through initiatives like Express Arbitration, "baseball" arbitration, and appointment of interim arbitrators, the DIA has documented that it is responsive to the needs of the users of arbitration services. Also, the scrutiny of arbitral awards – rarely found in other institutions – offers a unique layer of quality control without compromising tribunal independence.

Denmark's well-documented position at the top of the Transparency Internationals index and World Justice Project's Rule of Law Index and its reputation for judicial independence and impartiality, transparency, and low corruption further contribute to making the DIA an attractive seat of arbitration in international cases – especially when combined with the country's neutrality and accessibility. The DIA's commitment to cost transparency and proportionality also stands out. Crucially, the DIA does not see arbitration as a static tradition, but as a space for dynamic and development. The DIA wants to be a community builder and is dedicated to principal areas such as inclusion and diversity, professional excellence, and ongoing progress in the arbitration field.

In short, the DIA offers a compelling Nordic option in institutional arbitration. It combines the region's hallmarks – such as trust, discretion, equality, and thoughtful governance – with global standards of enforceability and professionalism. As the arbitration community continues to evolve, the DIA's model – grounded in balance, responsiveness, and innovation – may well point the way forward.

SURVEY REPORT ON NORDIC ARBITRAL INSTITUTIONS

By Natalia Petrik[*]

Introduction

This report forms part of the Nordic Commercial Arbitration Forum, a bi-annual conference bringing together primarily arbitration practitioners from the region. First launched in March 2025 in Stockholm, the forum provides a platform for discussing developments in Nordic arbitration, fostering collaboration, and strengthening the region's position on the global arbitration arena.

The report, based on a January 2025 survey of six Nordic arbitral institutions, aims to deepen understanding of arbitration practices in the region and raise awareness of its institutions, services, and procedures. It also aims to assist arbitration users in making informed decisions when choosing venues and rules.

The study was proposed by Johnny Herre and Therese Isaksson, two leading Swedish arbitration practitioners, whose vision of mapping Nordic arbitral institutions through a comparative approach was instrumental to this research. We gratefully acknowledge their contribution, as it has shaped the direction of this study.

We also extend our sincere gratitude to all participating institutions for their support and contributions. Their willingness to share data has been essential in creating this report.

Scope of study

This report analyses the data collected from six Nordic arbitral institutions: the Danish Institute of Arbitration (DIA), the Finland Arbitration Institute (FAI), the Nordic Arbitration Centre (NAC) in Reykjavik, the Nordic Offshore and Maritime Arbitration (NOMA, which has no physical office), the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce (OCC), and the SCC Arbitration Institute (SCC). The report compares their structure, services, caseloads, arbitrator demographics, and digitalization efforts. Additionally, the study also incorporates statistics from the International Court of Arbitration of ICC as a benchmark, offering a comparative perspective between Nordic institutions and global arbitration practices.

The statistics represent the 2024 caseload of Nordic institutions, except for NAC, which provided both its 2024 statistics and average data for 2017–2024 due to its small caseload. ICC data pertains to cases involving at least one Nordic party filed in 2023. The level of detail varies, as some institutions have more comprehensive data available than others. Nevertheless, by compiling and analysing the provided information, the report offers a structured overview of (1) institutional governance, (2) services, (3) case characteristics, (4) arbitrator statistics and (5) digitalization and technology usage. The study concludes with key findings on factors critical to the development of arbitration, both within individual jurisdictions and across the Nordics.

I. Institutional governance

The Nordics has six active arbitral institutions, four of which — FAI (Finland), NAC (Iceland), OCC (Norway), and SCC (Sweden) — operate as divisions of local chambers of commerce. The

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remaining two, DIA (Denmark) and NOMA (the Nordic Offshore and Maritime Arbitration Association, with no physical location), were established by professional associations and operate as standalone organizations. DIA was founded by the Danish Bar and Law Society, the Danish Society of Engineers, the Association of Danish Judges, SMEdenmark, and the Federation of Danish Engineers. NOMA was founded as an arbitration institution focused on shipping and offshore energy by the Maritime Law Associations of Sweden, Finland, Denmark, and Norway.

With the exception of NOMA, all institutions have a governance structure comprising a decision-making body, the Board, and an administrative body, the Secretariat. SCC and FAI bring international expertise to their Boards. SCC has the highest proportion, with 9 out of 15 members being international, while 11 participate in decisions on Swedish/Scandinavian cases. The FAI Board includes 7 international members. The Secretariat is staffed by employees of the respective Chamber of Commerce or, in the case of DIA — a standalone organization — by DIA itself. The number of employees varies significantly, ranging from 15 at SCC to one at NAC.

NOMA operates without permanent staff or an office. Its structure includes Contact Persons, a Board of Directors, and a Procedural Committee. The Board has two representatives from each of its founding Maritime Law Associations in Norway, Sweden, Denmark, and Finland. For procedural decisions, it appoints a Procedural Committee with one representative from each country and a president from one of them.

Despite these structural differences, the institutions share key governance principles. All Boards consist of external experts, ensuring independent decision-making. DIA, FAI, NAC, OCC, and SCC do not appoint their own Board members as arbitrators during their tenure. At NOMA the parties or NOMA's Procedural Committee may appoint a Board member but the Procedural Committee may not appoint one of its own members. In NOMA arbitrations, tribunals are primarily appointed by the parties.

None of the institutions maintain formal arbitrator lists or require arbitrators to be members of the institution, allowing flexibility in appointments based on institutional rules and party agreements. A summary of the institutions' organizational data is provided in Table 1.

Table 1.

	Location	Founded	Affiliation	Board
DIA	Danmark	1981	Standalone	11 Danish members
FAI	Finland	1911	Part of Finland Chamber of Commerce	10 Finnish and 6 international members
NAC	Iceland	1921	Part of Iceland Chamber of Commerce	5 Icelandic members
NOMA	n/a	2017	Standalone	8 Nordic members

	Location	Founded	Affiliation	Board
OCC	Norway	1984	Part of Oslo Chamber of Commerce	12 Norwegian members
SCC	Sweden	1917	Part of Stockholm Chamber of Commerce	6 Swedish and 9 international members

II. Services offered

The surveyed institutions vary significantly in their service offerings and can be grouped into two categories: SCC, DIA, and FAI, which provide a broader range of services, and OCC, NAC, and NOMA, providing more basic dispute resolution procedures.

All institutions, except for NAC, administer arbitration, expedited/simplified arbitration, mediation, and the appointment of arbitrators in ad hoc and UNCITRAL arbitrations. NAC offers arbitration and mediation. Emergency arbitration, which allows for the appointment of an arbitrator to grant interim relief at the pre-arbitral and pre-referral stage are provided by DIA, FAI, and SCC. Express arbitration/express dispute assessment, the appointment of experts, and similar services, are offered by DIA and SCC.

1. SCC, DIA and FAI

SCC and DIA stand out for their wide range of services. Beyond its core services, SCC offers SCC Express (Rules for express dispute assessment), facilitates the appointment of expert evaluators, and provides technical solutions such as the SCC Ad Hoc Arbitration Platform, a software designed specifically for ad hoc arbitrations. SCC also leads in technical solutions for SCC arbitrations, offering the SCC Platform, a secure system for file and communication sharing.

DIA has also introduced innovative mechanisms, such as Interim Arbitration for evidence-taking, Dispute Board services, IT legal/technical opinions, and expert appointments, similar to those offered by SCC. DIA's Express Arbitration service enables parties to submit resolution proposals, with the arbitrator selecting the most reasonable one as a binding award, subject to fallback provisions.

Both DIA and SCC offer fundholding services for ad hoc arbitrations.

FAI provides a solid range of basic services, comparable to those of SCC and DIA, with a caseload similar to theirs, as detailed below. FAI is also in the process of introducing a case management platform to enhance its case administration.

2. NAC, OCC and NOMA

NAC, OCC, and NOMA form a group of smaller institutions.

NAC, while providing arbitration and mediation, does not extend its services to emergency arbitration or other procedural mechanisms, such as expedited/simplified arbitration. NAC does

not assist with the appointment of arbitrators in ad hoc or UNCITRAL arbitrations. However, it distinguishes itself by including hearing facilities in its institutional fee.

OCC has a limited role in institutional arbitration in Norway, where ad hoc arbitration is more common. However, as shown below, it stands out for its highly competitive fees compared to other institutions.

NOMA, with its industry-specific focus on offshore and maritime disputes, has been quite successful in developing light-touch rules, including limited services (if needed) at low cost. As a result of its governance structure, there are no costs involved in applying the NOMA arbitration rules, except that NOMA may require a fee if called upon to deal with e.g. procedural issues or appointments as per the rules.

3. Hearing facilities

The report shows certain differences in institutional capacity for accommodating in-person proceedings and providing hearing facilities and related services.

As previously noted, NAC includes hearing facilities in its institutional fee, while OCC, DIA and SCC offer facilities for additional fee. DIA offers specialized hearing facilities and accompanying services to its tribunals, as well as to ad hoc tribunals. SCC provides hearing facilities only for smaller cases.

The tables below compare the Nordic institutions with ICC, starting from the most comprehensive to the more basic service providers.

Table 2. List of services

ICC	DIA	SCC	FAI
Arbitration Expedited arbitration Mediation Ad hoc appt.s Emergency arbitration Experts appointments Docdex Dispute Boards ICANN New gTLD Dispute Resolution Hearing facilities	Arbitration Simplified arbitration Mediation/UNCITRAL Ad hoc appt.s Emergency arbitration Express arbitration Interim arbitration (evidence-taking) Expert appointments IT legal/technical opinions Dispute Boards Hearing facilities Fundholding	Arbitration Expedited arbitration Mediation Ad hoc appt.s Emergency arbitration Expert appointments SCC rules for express dispute assessment Fundholding Ad hoc Platform Certification and notarisation of SCC arbitral awards Fundholding	Arbitration Expedited arbitration Mediation Ad hoc appt.s Emergency arbitration

NOMA	OCC	NAC
Arbitration Expedited arbitration Mediation Ad hoc arbitrator appointments	Arbitration Expedited arbitration Mediation Ad hoc arbitrator appointments Hearing facilities	Arbitration Mediation Hearing facilities

Table 3. All institutions compared to ICC

Services offered	DIA	SCC	ICC	FAI	NOMA	OCC	NAC
Arbitration	x	x	x	x	x	x	x
Ad hoc/ UNCITRAL appointments	x	x	x	x	x	x	
Mediation	x	x	x	x	x	x	x
Expedited/ simplified arbitration	x	x	x	x	x	x	
Emergency arbitration	x	x	x	x			
Expert appointment	x	x	x				
Other ADR (DAB, DRB, Express)	x	x	x				
Hearing facilities	x	x	x			x	x
Fundholding, and other admin	x	x					
Interim arbitrator	x						

III. Case characteristics

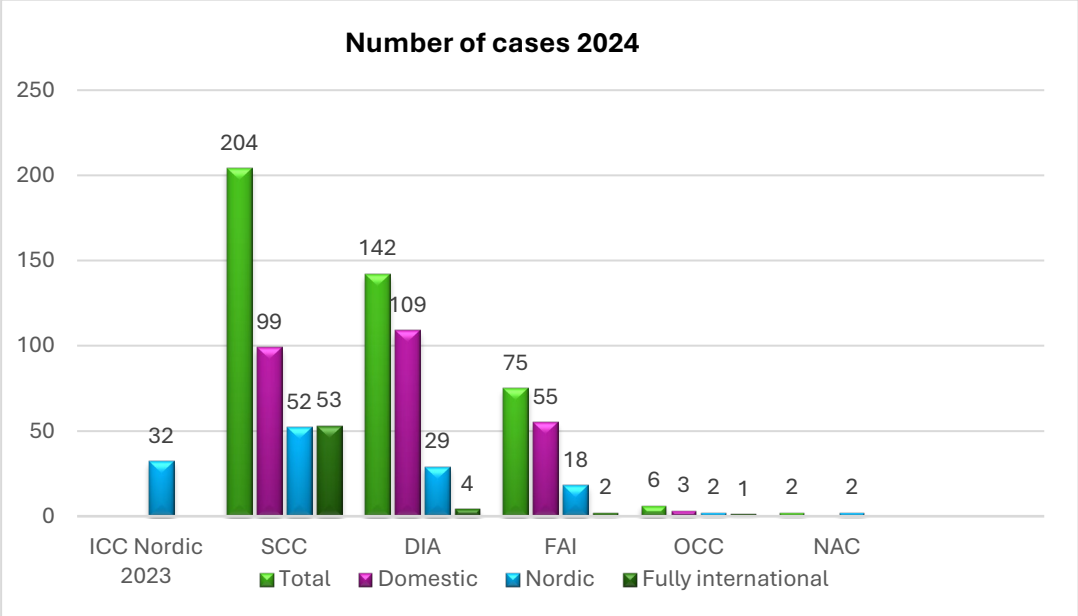
This chapter illustrates patterns in case types, nationality of the parties, arbitration seats and disputed values, benchmarking the figures and other data against ICC.

1. Number of cases

In aggregate, the total caseload of SCC, DIA, FAI, NAC, and OCC in 2024 counted 429 cases. 266 cases or 62% of the aggregate caseload concerns fully domestic disputes. DIA, FAI, OCC and NAC have predominantly Nordic caseloads, while SCC administers more international disputes.

Cases involving at least one Nordic party (103) make up 24% of the total caseload across all institutions. Fully international cases (60) account for 14% of the total caseload, with SCC handling the majority.

Table 4.



SCC has the largest caseload which stands for almost half of the total caseload, followed by DIA, handling roughly one third of cases, and FAI which stands for approximately 17%.

The international caseload of DIA, FAI, OCC, and NAC consists largely of Nordic disputes involving at least one Nordic party. Purely international cases are rare, with only four at DIA, two at FAI, and one at OCC.

Data for NOMA is not publicly available, but estimates suggest it handles approximately two to three Nordic cases per year.

ICC's 2023 caseload involving at least one Nordic party totalled 32 cases, representing 3.8% of ICC's overall caseload of 838 cases. The relatively small number of Nordic cases at ICC, compared to the total caseload of Nordic institutions, indicates that ICC is not the primary forum for Nordic parties. Overall, these figures suggest that most Nordic arbitration users prefer regional institutions over ICC for resolving their disputes. From a statistical perspective, SCC stands as the leading regional alternative to ICC, whereas DIA, FAI, OCC and NAC are more oriented towards the Nordic and national arbitration markets.

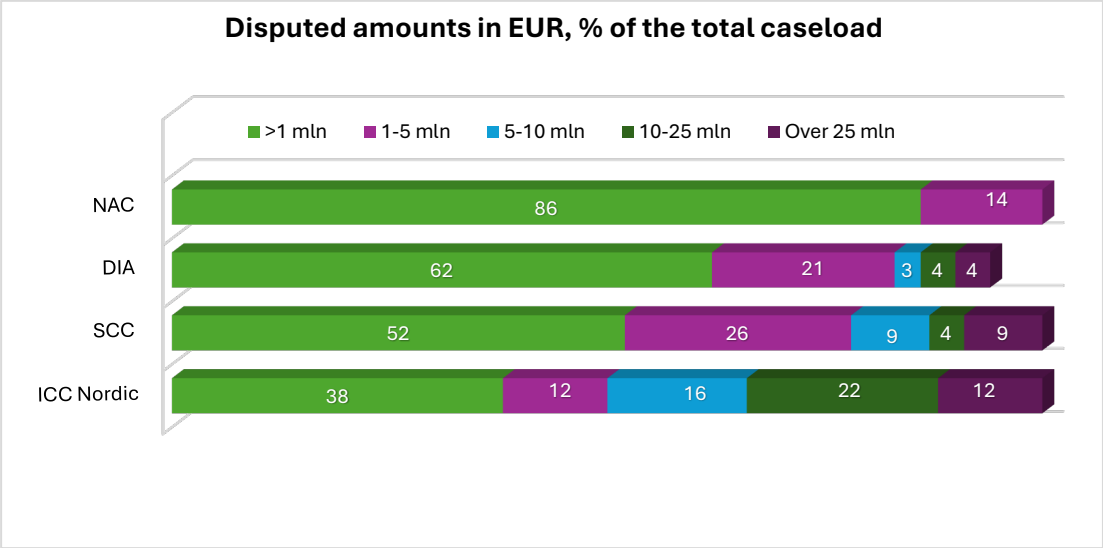
2. Disputed amounts

The following statistics are based on figures provided by ICC, SCC, DIA, NAC and OCC, reflecting the typical size of claims submitted to each institution.

ICC and SCC stand out as forums for disputes of higher value, with the majority of their cases involving claims exceeding EUR 1 million. In contrast, a significant proportion of disputes administered by NAC (based on the cases submitted in 2017 – 2024) and DIA —84% and 62%, respectively—fall below this threshold. Notably, all claims submitted to NAC remain under EUR 5 million. NAC's data concerns its total caseload in 2017 – 2024.

ICC and SCC also reported both the highest and lowest disputed amounts in 2023 and 2024, respectively. For ICC cases involving Nordic parties, the largest claim reached EUR 81,156,731, while the smallest amounted to EUR 50,000. SCC, in turn, registered a high of EUR 4,636,285,000 and a low of EUR 3,781. The SCC and ICC figures indicate that the average claim value is significantly higher in ICC and SCC proceedings compared to the other Nordic institutions, which primarily handle small to mid-range claims.

Table 5.



3. Top three types of disputed agreements

Construction and M&A transactions are among the most common sources of disputes across the region. ICC also reported that construction was one of the leading categories of disputes involving Nordic parties in 2023. Sale and purchase agreements are similarly prevalent.

Table 6. Top types of disputed agreements

ICC Nordic cases 2023	SCC 2024	DIA 2024	FAI 2024	NAC 2017- 2024
Construction	M&A Delivery	Cooperation Agreement Shareholder	Service Agreement	Delivery Employment

ICC Nordic cases 2023	SCC 2024	DIA 2024	FAI 2024	NAC 2017- 2024
	Purchase agreement	Agreement M&A	**Construction** Sale and Purchase	**Construction**

4. Top seats of arbitration

SCC cases are mainly seated in Stockholm, FAI cases in Helsinki, and Icelandic cases in Reykjavik, OCC in Oslo and Bergen, reflecting the practice of choosing the seat based on each institution's country. London is included as one of the seats of SCC arbitrations, which confirms SCC's higher level of internationalization. In contrast, ICC cases involving Nordic parties are often seated in non-Nordic locations like London and Geneva, which is consistent with ICC's practice.

Table 7. Top seats of arbitration

ICC Nordic cases 2023	SCC 2024	DIA 2024	FAI 2024	OCC 2024	NAC 2017-2024
Copenhagen Paris Geneve London	Stockholm Gothenburg London	Copenhagen	Helsinki Tampere Oulu Turku	Oslo Bergen	Reykjavik

5. Top nationalities of the parties

The geographic origin of the parties highlights the internationalization of Nordic arbitration institutions. While the majority of cases, as noted above, involve domestic parties, the international segment is primarily focused on neighbouring Nordic and European countries.

SCC has a broad geographic reach, similar to ICC, with parties from both within and outside the EU. DIA's cases are mainly concentrated in Europe, with parties from Denmark, Germany, Belgium, and Sweden. FAI has strong international outreach, particularly in Europe and the Baltics, reflecting Finland's economic ties and proximity to the region. In contrast, OCC and NAC remain more localized, with a party pool predominantly made up of Nordic entities.

Compared to the ICC, parties at DIA, FAI, OCC, and NAC are primarily from the Nordics or the EU.

Table 8. Top nationalities of the parties

ICC Nordic cases 2023	SCC 2024	DIA 2024	FAI 2024	NAC 2017-2024
Norway	Sweden	Denmark	Finland	Iceland
Sweden	Russia	Germany	Estonia	Finland
Denmark	Great Britan	Belgium	Uruguay	
Spain	Norway	Sweden	Germany	Russia
Germany	Finland		Italy	Danmark
Finland	Latvia		Lithuania	Bulgaria
France	Germany		Sweden	
USA	Switzerland			
Romania	Ireland			
Netherlands	China			

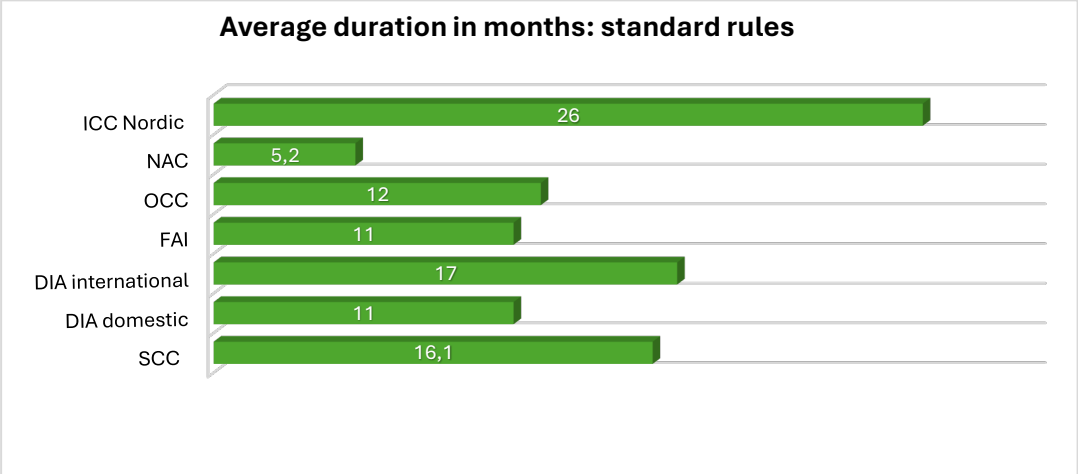
6. Duration of proceedings

The average duration of proceedings in the below tables covers cases concluded with the arbitral award. The average duration under the standard arbitration rules is relatively consistent across the Nordic institutions, with SCC, FAI, and DIA's cases requiring approximately 11 months to the award.

DIA's breakdown indicates that DIA's international cases take approximately 3 months longer than domestic. While similar breakdowns are not provided for the other institutions, a reasonable assumption can be made that international cases generally take longer across all of them. Logistical complexities, such as coordinating and scheduling hearings across different countries, are likely to contribute to this extended duration.

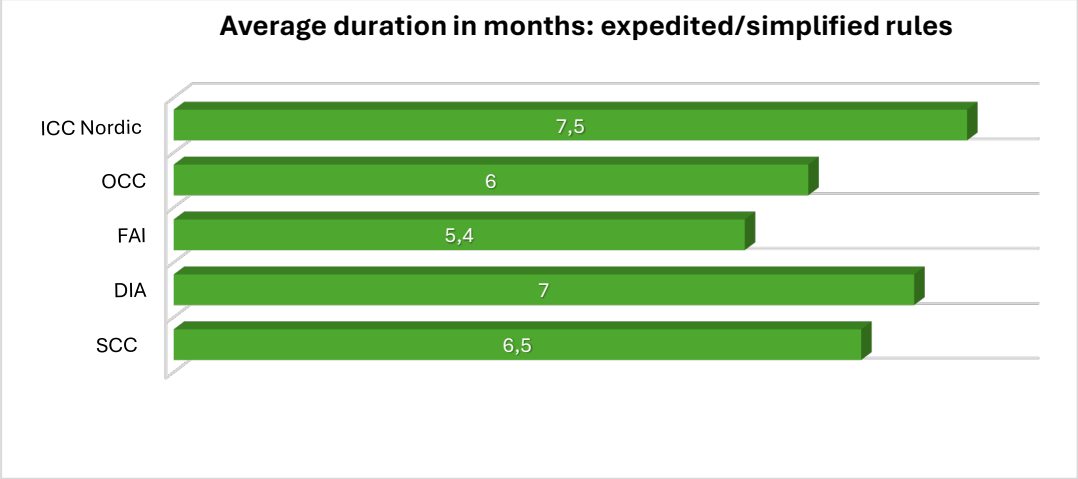
Benchmarking against the ICC, the report shows that ICC proceedings take an average of 26 months (2.2 years) from initiation to award—more than twice as long as FAI cases and approximately 1.5 times longer than those of the SCC and DIA. This is largely due to higher disputed values and more hands-on administration, involving scrutiny and confirmation of awards in ICC proceedings.

Table 9.



The duration of expedited/simplified proceedings is quite similar for all institutions, ranging from 7.5 months (ICC) to 5.4 months (FAI) on average.

Table 10.



7. Median costs

Table 11 summarizes the estimated median fees in EUR for proceedings with a three-member tribunal and disputed amounts of 1 million, 10 million, and 25 million EUR. The data indicates that ICC is consistently the most expensive option across all categories. For disputes involving 1 million EUR, FAI's costs slightly surpass those of SCC; however, SCC's costs are marginally higher in the 10 million and 25 million EUR categories. Both SCC and FAI are more expensive than DIA, which falls into the mid-range cost category. OCC and NAC, on the other hand, are positioned in the lower-cost range, with costs notably lower than those of the other institutions.

Table 11. Median costs in EUR

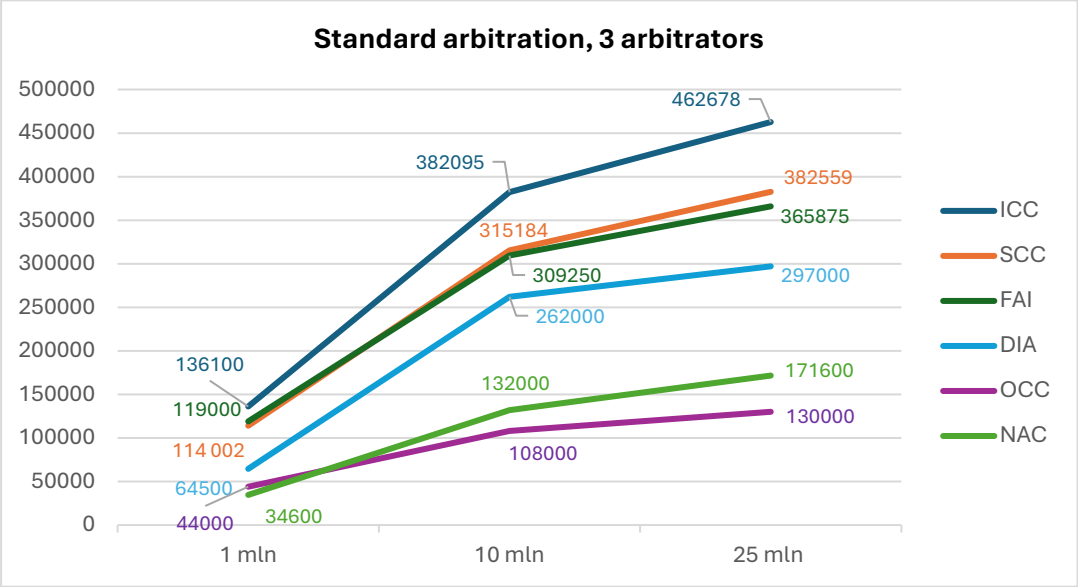


Table 12 below compares the median costs for standard arbitration with a one-member tribunal and a disputed value of 1 million EUR. In this scenario, the cost pattern shifts, with SCC slightly surpassing ICC. FAI's costs follow closely ICC, while DIA falls into the mid-range category, significantly below the costs of SCC, ICC, and FAI. NAC and OCC follow the pattern and correspond to the lowest cost segment on the chart.

Table 12. Median costs, standard arbitration

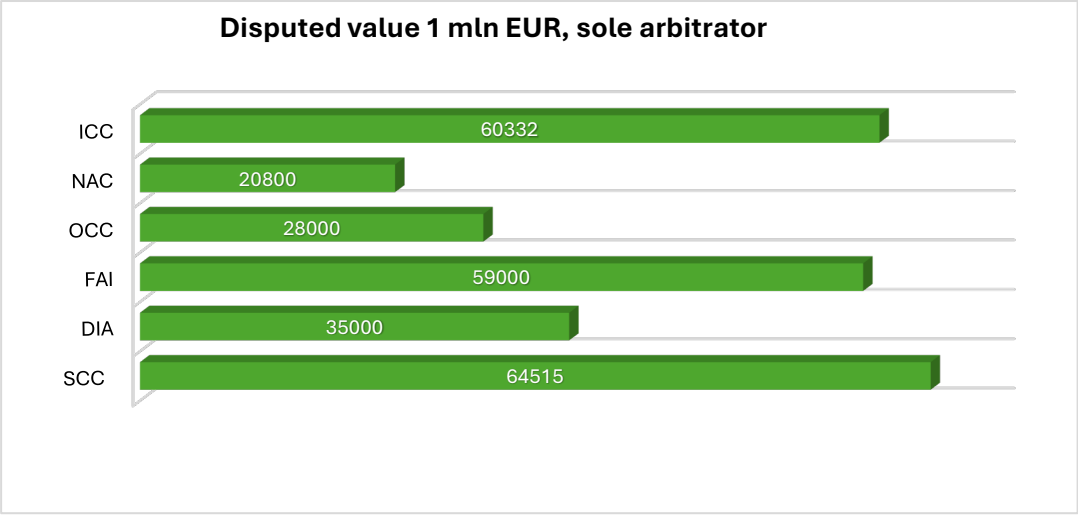
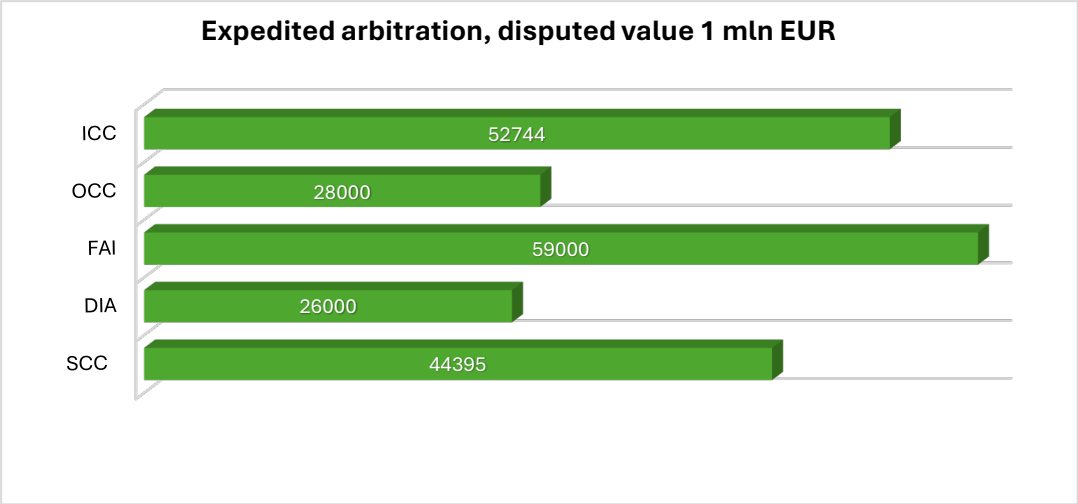


Table 13 presents the median costs for expedited/simplified arbitration involving a disputed value of 1 million EUR. In this scenario, FAI has the highest cost due to using the same cost table for both standard and expedited arbitration. ICC's costs are slightly lower, followed by SCC in the mid-range. OCC and DIA have the lowest median costs.

Table 13. Median costs



IV. Arbitrator statistics

The statistics presented below analyses appointments by nationality of arbitrators, number of arbitrators, and appointment of women arbitrators.

1. Top nationalities

Table 14 indicates the top five most frequent nationalities of arbitrators. In the case of ICC, the fifth position is jointly occupied by Spanish and German arbitrators, both having received three appointments. For SCC, the fifth position is held collectively by Norwegian, Swiss, and Latvian arbitrators, each with four appointments.

Nordic institutions primarily appoint arbitrators from their own jurisdictions or regions, with SCC and FAI showing the highest level of internationalization. DIA has more regional focus, while NAC has appointed only Icelandic arbitrators to date. The most frequently appointed arbitrators from outside the Nordic region are from the UK and Switzerland. ICC, in contrast, has greater geographical diversity in cases involving Nordic parties. OCC's statistics of nationality is not available.

Table 14. Top nationalities of arbitrators

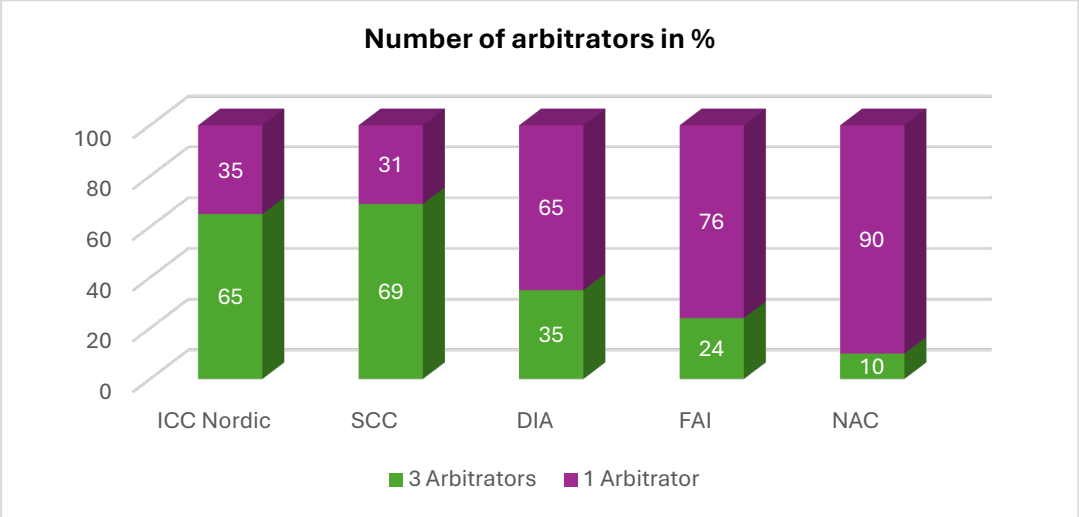
ICC Nordic 2023	SCC 2024	DIA 2024	FAI 2024	NAC 2017 – 2024
UK France Sweden Switzerland Spain Germany	Sweden Finland Denmark UK Norwegian Switzerland Latvia	Denmark Germany Norway Sweden	Finnish Norwegian Swiss Austrian Estonian	Iceland only

2. Number of arbitrators

Table 15 outlines the number of arbitrators in the proceedings conducted under the standard arbitration rules. A three-member tribunal is the predominant composition in ICC and SCC cases, accounting for 65% and 69% of the cases, respectively.

In contrast, the majority of cases in DIA, FAI, and NAC are handled by a sole arbitrator. At the DIA and NAC, this correlates with the relatively large proportion of low-value disputes in their respective caseloads.

Table 15. Number of arbitrators



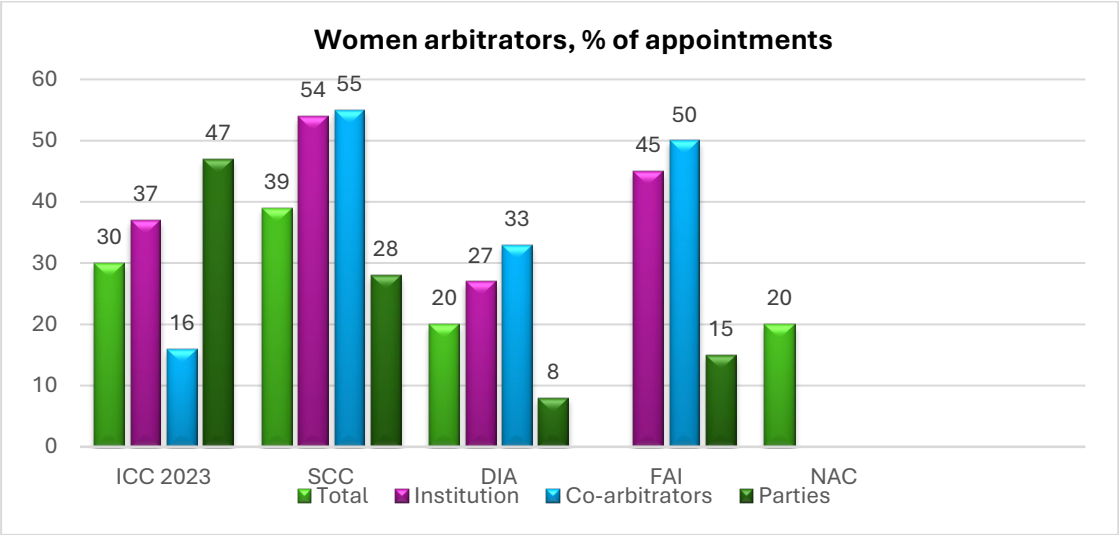
3. Women arbitrators

Table 16 presents the percentage of women arbitrators appointed by each institution, broken down by appointments made by the institution, by the parties, and by co-arbitrators in three-member tribunals.

The data shows that women remain underrepresented in all of the institutions when it comes to the total number of appointments. SCC has the highest percentage in all categories, followed closely by FAI in institutional and co-arbitrator appointments. DIA lags behind, with nearly half the percentage of women appointments compared to SCC and FAI. NAC also shows gender imbalance in its 2017 – 2024 caseload.

At ICC, the trend toward gender equality is also evident, but with a different pattern: the share of women arbitrators appointed by parties is higher than the share appointed by the institution. These statistics reflect the overall 2023 ICC caseload, not just Nordic cases.

Table 16. Women arbitrators



IV. Digitalization and technology usage

Table 17 analyses the digitalization level of Nordic institutions, comparing them with ICC. Both ICC and SCC use tailor-made file exchange platforms, while FAI is in the process of developing a similar system. NAC manages its cases through an E-court system, a digital platform designed for courts and arbitral institutions. DIA and OCC currently lack such platforms. Additionally, SCC and FAI provide standardized Request for Arbitration forms, streamlining the initiation of arbitration. DIA, NAC, and OCC do not offer comparable tools. Notably, all Nordic institutions, have moved away from requiring paper submissions, indicating a broader shift toward digital case management.

Table 17. Digitalization and technology usage

	ICC	SCC	DIA	FAI	OCC	NAC
Online platform	Available	Available	Not available	Under development	Not available	Available
Standardized forms of submissions	Not available	Available	Not available	Available	Not available	Not available
Paper copies	Not required	Not required	Not required	Not required	Request for arbitration	Not required

V. Key takeaways and strategic outlook

The Nordic arbitration institutions handled over 400 cases in 2024, dominating the region. Their total caseload far exceeds the number of ICC's Nordic-related cases. Most disputes are domestic, confirming the Nordic institutions' strong position in national markets. Additionally, each institution handles a significant number of cases involving at least one Nordic party, indicating their clear preference for regional arbitration

SCC is the major player and is the most globally oriented institution but also has a considerable Nordic user base. Its 50% international caseload includes roughly equal number of purely international and Nordic cases.

DIA and FAI handle solid case volumes but are less international in their caseloads. For both institutions, international cases — including those involving Nordic parties — account for approximately one-quarter of their caseloads.

OCC and NAC are small institutions focused on domestic and Nordic cases. NOMA has a similar caseload and plays a niche role in the offshore and maritime sectors.

All Nordic institutions offer cost- and time-efficient arbitration compared to the global players. At the same time, they vary significantly in service sophistication, international experience, visibility, and digitalization. OCC and NAC have potential for growth within their domestic markets and the Nordics by enhancing their visibility and expanding their services. NOMA's specialized expertise and no-cost model provide strong growth prospects both within and beyond the Nordic region.

SCC, DIA, and FAI are well-established and well-known institutions, with services that make them competitive on a global scale. Given the small size of the region, international outreach is crucial for their further development. To sustain their growth, these institutions will need to continue enhancing their relevance to non-Nordic parties and strengthen their presence on the global arbitration market.

HOW NORDIC IS NORDIC ARBITRATION?

By Prof. Dr. Giuditta Cordero-Moss[*]

This paper offers reflections aimed at putting the Nordic dimension of arbitration within a broader international framework. Hence, the slightly provocative title is: How Nordic is Nordic arbitration? Drawing on the very interesting interventions and debates presented at the conference, and taking up the challenge from Kaj Hobér about the lessons to be drawn from history, this contribution instead seeks to draw some lessons from geography.

Internationality - what does international arbitration mean? Today, everyone who hears international arbitration or international contracts thinks about harmonization, unification, transnationalization. It is true that considerable efforts towards harmonization are being made. In the field of arbitration, examples of harmonization are: the New York Convention, the UNCITRAL Model Law, the various IBA rules and guidelines, not to mention the spontaneous alignment among the different arbitration institutions. But internationality also entails diversity, because there is only so much one can achieve with harmonization or unification.

Consider the UNCITRAL, for example – which, by drafting conventions or soft law, is the body that is supposed to unify or harmonize, among other things, arbitration law. In Working Group II, we deal with dispute resolution – mainly, with arbitration. Some years ago, the focus of the discussion was on the organization of arbitral proceedings. Our work resulted into the Notes for organizing arbitral proceedings.[1] Originally, we considered preparing a collection of best practices, which was deemed to be appropriate in light of the UNCITRAL's purpose to further the progressive harmonization and unification of the law of international trade. However, we soon found out that achieving consensus on what constitutes "best practice" was exceedingly difficult. Instead, we decided to write notes on the organization of the proceedings. As section 2 of the Introduction says: "Given that procedural styles and practices in arbitration do vary and that each of them has its own merit, the Notes do not seek to promote any practice as best practice." In short, diversity is a part of internationalization.

The same reasoning applies to the UNIDROIT Principles for International Commercial Contracts, which are a wonderful initiative towards a transnational contract law. They were originally meant to distil, through an extensive comparative exercise, a set of contract law principles that are common to all legal systems. However, comparative analysis, no matter how abstract its level, not always succeeded in finding a principle that could be deemed to be generally recognized. Consequently, the drafters were compelled to include certain rules called "best rules", which were the authors' suggestions, where the comparison and abstraction did not produce a generally recognized principle.

This applies even to the ICC, which is on a global level the most important arbitration institution. The ICC provides a unitary and clear procedural framework to ICC arbitral proceedings, with extensive rules giving a paramount role to party autonomy and the arbitral tribunal's discretion.

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[1] See https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/notes-on-organizing-arbitral-proceedings-2023.pdf.

Furthermore, an active Secretariat and the supervision by the ICC Court of Arbitration promote a unitary ICC style of arbitration. But even in that very strong and centralized organization, parties, arbitral tribunals and the ICC Court have to take into consideration the arbitration law of the seat of each of the arbitral proceedings. For the sake of validity and enforceability of the arbitral award, the lex arbitri is extremely important also in the context of such a transnational arbitration framework.

In this picture of ideals of transnationalization and unification on the one hand, and diversification on the other hand, where does the Nordic fit?

"Nordic" is international, because it comprises more than one country. However, it is regional, even sub-regional: it belongs to the civil law legal family, to the European region, to the Nordic sub-region. We find, here, the same interaction between diversity and internationality. We still have the lex arbitri, which is different from Nordic country to Nordic country. However, as shown during the conference, we do have a Nordic style, we do have best practices, we do have a culture that is specific for the Nordic region.

One example of Nordic style is that the arbitral proceedings are more oral in the Nordic countries than in other legal systems. Furthermore, there is no procedural order number one, or a very "light" version of it. We do not practice extensive discovery. The entire arbitral tribunal may be jointly appointed by the parties. These features are distinctly Nordic and, as highlighted by other contributions at the conference, represent unique selling points of Nordic arbitration.

What has permitted these unique selling points to develop?

In the Nordic countries, we have a very homogeneous environment, particularly among the lawyers. We are trained in pragmatism. We learn to find out what is the legal effect and what it means in practice, rather than emphasizing legal theories and drawing legal effects from concepts and classifications. This goes hand in hand with the most important feature of all: the mutual trust. A shared set of values enables practitioners to anticipate the other party's and the adjudicator's thoughts. Furthermore, we rely on each other, knowing that the other party will behave professionally. Our reputation is our most important asset, and such a harmonious and overseeable environment imposes a professional behaviour. So, it is these very specific characteristics of the Nordic society, that create the conditions for a common style in arbitration. They are the reason why we may afford having a flexible and pragmatic style.

Would internationalization threaten the Nordic style? Could the mutual trust and the homogeneous environment that have permitted us to develop this style, disappear if Nordic arbitration is internationalized?

A parallel may be drawn to the statutes, and the way in which they are written. In Norway, for instance – a country not even a member of the EU – there is a clear difference in legislative style before and after the EU. Earlier, the preparatory works explained the purpose of the statues, the considerations that led to a certain formulation of the rules, and the expectations about how the rules should be applied in specific cases. This permitted to write the statutory rules in a simple and general way, leaving the specific application to the discretion of the adjudicator, guided by the preparatory works. In a harmonious and overseeable environment, it was possible to rely on the discretion being exercised in the spirit of the values underlying the statutes. Today, many statutes are written differently. They are much more complicated and detailed. Preparatory works are not as useful as they used to be. Why is that? Because the statutes that are developed on the basis of EU law do not rely on a mutual understanding. Admittedly, there is a principle of mutual trust in

the EU, but it is something different from the mutual trust discussed earlier in this paper. The mutual trust in the EU recognizes the application of EU law made by the EU member states, but it does not delegate to the adjudicator's discretion the implementation of the spirit of the rule. With 27 states that do not share the same cultural values, tradition, experiences, etc., rules cannot delegate the implementation of their spirit. They need more formalism. They need to be written in such a degree of detail that they will be understood and applied in the same way in Bulgaria, in Italy, and in Finland. To avoid misunderstandings, to avoid each lawyer reading into the rule their own legal tradition, you need to reduce flexibility.

Internationalization leads to the need to reduce the risk that the adjudicator's legal tradition taints the application of the rule in different ways, depending on where the adjudicator comes from. The rule will therefore be very detailed. This may promote a uniform application of the rule, but it is certainly to the detriment of flexibility and pragmatism.

This development affects also arbitration. In a conference a couple of years ago, the renowned arbitrator Yves Derains said: "arbitration is under attack". This was said not only with regard to investment arbitration – that, as we know, has very specific reasons for being attacked – but also with regard to commercial arbitration. Arbitration is being accused of being overregulated, time-consuming, and excessively expensive.

As a consequence of the attack on arbitration, the UNCITRAL Working Group II issued rules on expedited arbitration.[2] We have even worked on what received the working name of "supersonic arbitration". We should make it even faster, expedited was not fast enough. This resulted in clauses for "highly expedited arbitration".[3]

The final question is, in this situation where arbitration is under attack and we are trying to find supersonic solutions, can the Nordic style serve as a model for the future?

One aspect of internationalization is the need for business development, which in turn brings about more professionalism. This can be a double-edged sword. Several speakers at the conference expressed concerns about this trend. Some noted that "we are more influenced by the international trends." Others cautioned that "you should not become too inspired by the international trends", asked "have we become too good at procedure?", and concluded that "we should stick to where we come from". These quotes are manifestations of the concern that, if we internationalize too much, we run the risk of losing touch with the specifics of our arbitration. But the specifics of Nordic arbitration do not come from nothing; they are rooted in the society that we have.

As Kaj Hobér stated in his keynote speech, it is probably hard work. We have to maintain the Nordic features while opening to the world and promoting and selling Nordic arbitration out there. But in order to maintain the Nordic features, we must be aware of where they come from. They come from the mutual trust. The mutual trust comes from the communality of values and harmony among the systems. We need to create the conditions for maintaining mutual trust while opening to actors with other values and different traditions. To do so, we must find the magic formula: how

[2] See https://uncitral.un.org/en/content/expedited-arbitration-rules.

[3] See https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mc-highly_expedited_arbitration_2419435e-ebook_0.pdf.

to open to the international environment without losing the mutual trust that characterizes our arbitration.

NORDIC COMMERCIAL ARBITRATION FORUM - *What do we do well, and what could we do better?*

James Hope[*]

1. Introduction

We think we do things rather well in the Nordics. Although it is of course not acceptable to brag, there are many ways in which we are secretly proud of our countries and their achievements.

With respect to international arbitration, we have much that we can be proud of. We pride ourselves on our efficiency, we consider our procedures to be predictable, we are modern, we care about gender diversity and significant steps have been taken to improve the percentage of women arbitrators, we believe that we are generally cooperative, and we may even believe that we provide value for money.

I have acted as counsel or arbitrator in international arbitrations in all the Nordic countries except Iceland. Although it would be presumptive for me to opine upon the general features of arbitration in any of these jurisdictions other than Sweden, I do believe that all the above are features of Nordic arbitration.

2. What do we do well

SCC arbitration is particularly efficient. The latest SCC statistics reveal that, for arbitrations concluded under the SCC Arbitration Rules in 2024, 63% of cases took less than 12 months from referral of the case to the arbitral tribunal to the issue of the final award, and 82% of cases took less than 18 months.[1]

The SCC procedure is also predictable. One particular feature worth highlighting is that the SCC calculates the advance on costs at the beginning of the case, and it is rare for the SCC to require parties to pay more at a later stage in the case. This contrasts markedly with the practice of several other arbitral institutions, which often make several demands for payment throughout the case, with little or no predictability.

On modernity and gender diversity the SCC also scores highly. The SCC Platform[2] was one of the first such arbitration platforms to be successfully adopted, and it is now such a standard feature of all SCC cases that it is difficult to remember how we previously managed without it. The gender diversity statistics speak for themselves, with women accounting for 57% of the appointments made by the SCC in 2024.[3]

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[1] SCC Arbitration Institute, Statistics 2024,

https://sccarbitrationinstitute.se/en/statistics-2024/.

[2] SCC Arbitration Institute, SCC Platform,

https://sccarbitrationinstitute.se/en/case-management/scc-platform/.

[3] SCC Arbitration Institute, *supra* n. 1.

Arbitrators often say that counsel should be cooperative. In Sweden, and indeed in all our relatively small and close-knit Nordic arbitration communities, most practitioners naturally understand that it is sensible to co-operate with one another. The SCC Arbitration Rules provide expressly that parties are expected act efficiently, and parties can be penalised on costs if they fail to do so.[4] Failure to cooperate also has consequences in other ways.[5]

3. What we could do better

There is, of course, always room for improvement. I made a few specific suggestions when I spoke at the Nordic Commercial Arbitration Forum.

3.1 The Norwegian practice of appointing arbitrators

In Norway, it is common practice for the parties to agree upon all three members of the arbitral tribunal at the start of the case. This has several obvious advantages: the parties have direct influence on the appointment of the whole tribunal, the potential for so-called 'affiliation bias' is lessened or even eliminated, the parties will generally seek to appoint arbitrators who are likely to work well together, and there is also increased scope for the parties to promote diversity in arbitration appointments.

I accept that, as always, it is possible for such a procedure to be abused; sometimes the parties cannot agree on anything, and in such cases this procedure would be unlikely to work. Nevertheless, I suggest that this procedure does work well in most cases. Those of us outside Norway should try it.[6]

3.2 Clarifying the issues in dispute

What is the point of written submissions? Surely one of the main aims is to identify and clearly present the issues in dispute, and yet this rarely happens in practice. Too often, the parties focus on presenting and then elaborating upon their own positions, without elucidating the disputed issues. Those issues often become clear during the hearing, but in the worst cases even after the hearing the tribunal is left in some doubt about what exactly the issues are that it is being asked to decide.

Here we could all certainly do better. One possibility is to identify specific questions that the tribunal will need to answer. Even if this is not stated explicitly, it is good practice for counsel to identify for themselves what those questions might be. Sometimes it might also be helpful to produce a flow-chart.

3.3 Case management tools

Identifying the issues in dispute also allows the parties and the tribunal to make use of the various case management tools that are readily available.

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[4] *See* Article 2(1) and Articles 49(6) & 50 of the SCC Arbitration Rules 2023.

[5] For some striking examples of what not to do, *see* Mika Savola, *Ten Fail-Safe Ways to Irritate, Alienate and Antagonize Your Arbitral Tribunal*, 43 ASA Bulletin 1/2025 (March).

[6] For a good summary of the relevant issues, *see* Anna-Karin Nesdam and Marie Nesvik, *Unilateral Party-Appointment and Affiliation Bias – Is Joint Appointment the Solution?*, Stockholm Arbitration Yearbook 2025.

Some cases would clearly benefit from the early determination of one or more preliminary issues. In SCC arbitration, parties and arbitrators could more readily make use of the Summary Procedure at Article 39 of the SCC Arbitration Rules. This provision in the Rules allows a party to ask the tribunal to decide one or more issues of fact or law "without necessarily taking every procedural step that might otherwise be adopted in the arbitration". The provision is deliberately wide in its scope and "may concern issues of jurisdiction, admissibility, or the merits".

Parties could also more readily make use of the SCC Express procedure, by which SCC appoints a neutral legal expert to give a non-binding opinion on the merits of the case within three weeks.[7]

3.4 Shorter submissions

Counsel often find it hard to write short submissions. There is a natural concern that they might miss an important detail. Yet shorter submissions are clearly better if the purpose is to persuade the reader; do you want to read a 250-page document? We could probably all agree that written submissions have in many cases become too long.

I suggest that, again, it helps to focus on the issues in dispute. As a bare minimum, submissions should be well-structured.

3.5 Arbitrators should ask more questions

Finally, I suggest that arbitrators taking part in Nordic arbitration should not be afraid to ask questions. In fact, it is often good that the arbitrators ask questions for the purposes of clarifying the points being put forward by the parties.

As I mentioned at the Nordic Commercial Arbitration Forum, I recently lost a case before the Svea Court of Appeal, in which my client was challenging an award in circumstances where the arbitrator appointed by the other party had asked many questions at the hearing in a manner which my client considered to be highly inappropriate. Nevertheless, the Svea Court did not find that there were any grounds for setting aside the award in that case.[8] This case is just one illustration of the fact that arbitrators have considerable discretion regarding the extent to which they ask questions, although of course arbitrators should always be careful to ask questions in a fair and impartial manner.

4. Concluding remarks; Learning more from one another

One of the main themes that emerged from the Nordic Commercial Arbitration Forum was the importance of trust in international arbitration. Forums such as this help to develop and maintain such trust across our Nordic arbitration communities.

We can all look forward to learning more from one another in the months and years to come.

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[7] *See* SCC Arbitration Institute, SCC Express,

https://sccarbitrationinstitute.se/en/our-services/scc-express/.

[8] *See* Svea Court of Appeal's judgment in Case T 11225-23 on 5 March 2025.

ARBITRATING IN THE NORDICS: DISTILLING COMMON TRAITS AND UNCOVERING DIFFERENCES

By Mika Savola[*]

1. Introduction

The inaugural Nordic Commercial Arbitration Forum provides an appropriate venue to reflect on the commonalities and differences in arbitrating commercial disputes across the Nordics. What are the most essential traits that underpin arbitration practices in all Nordic countries? Conversely, where do practices differ, and to what extent?

Below, I will share my two cents on the subject. The perspective is that of a full-time professional arbitrator with experience in arbitrating commercial cases across the Nordic jurisdictions, in both ad hoc and institutional proceedings, under various sets of rules.[1]

2. Commonalities

2.1 Influence of domestic court practices

The first common trait worth mentioning is that Nordic counsel and arbitrators often draw on their experiences in domestic court litigation, even in cross-border disputes. This tendency manifests in three specific ways.

[A] A bias toward local terminology

As is customary in many corners of the world, the language of the trade is heavily influenced by local *codes of judicial procedure and legal concepts developed by scholars specializing in procedural law*. For instance, it is not uncommon to use terms such as "legal facts" (Swe: "*rättsfakta"*) and "evidentiary facts" (Swe: "*bevisfakta"*) in arbitrations seated in the Nordics. And local practitioners are perfectly comfortable speaking about "evidentiary themes" (Swe: "*bevisteman"*) or "the doctrine of assertion" (Swe: "*påståendedoktrinen"*).

While all Nordic players are well versed in this terminology, it is sometimes overlooked that it may be entirely unfamiliar to non-Nordic parties and counsel. Scandinavian arbitrators should be mindful of this and ensure that foreign parties enjoy a level playing field in the proceedings.

[B] Frontloading

Another feature that tends to carry over from the Nordic litigation culture is the *frontloaded nature of arbitral proceedings*.

Nordic practitioners are staunch proponents of having each party present its complete factual and legal case at the earliest opportunity. Consistent with this, arbitrators with a Nordic background are mentally wired to promote efficiency and discourage parties from holding back any of their allegations or evidence.

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[1] This article is an extended and adapted version of a presentation I delivered at the Nordic Commercial Arbitration Forum held in Stockholm on 11 March 2025.

Accordingly – absent special circumstances – parties are expected to include, already in their initial submissions (statement of claim or statement of defence, as the case may be), a comprehensive statement of the facts and legal arguments they rely upon, together with a detailed specification of the relief sought, and accompanied by all documentary evidence, legal exhibits, witness statements, and expert reports (if any) they wish to introduce in support of their case.

The second round of submissions, in turn, is generally restricted to responding to or rebutting matters raised in the other party's immediately preceding submission, including any exhibits filed with it.

Finally, *cut-off dates* are frequently inserted into the procedural timetable to mark the final deadline ahead of the evidentiary hearing for parties to present any additional factual allegations or evidence they could not reasonably have produced earlier.

All this serves the interest of cost-efficiency. On top of that, it promotes predictability, helps avoid undesirable situations where one party is taken by surprise at the hearing (whether during oral opening statements or witness examinations), and allows the tribunal to arrive at the hearing well-prepared and fully engaged with all factual and legal issues. That is no small feat.

[C] Tradition of orality

The third area where Nordic arbitration tends to borrow from local litigation practices is its strong *tradition of orality*. This applies to oral opening statements, witness examinations, and closing arguments alike. Below, I address each of these separately.

First of all, few hearings in the Nordics proceed without counsel presenting *oral opening statements* – and for good reason.

There is much to commend in oral openings. In my experience, counsel should always aim to deliver a powerful opening statement because it is a great opportunity to seize the arbitrators' attention, gauge their reactions, and develop a personal connection with them at the outset of the hearing.

Furthermore, even the best-prepared arbitrator will benefit from being briefed on the key aspects of the case and the main evidence on record for a couple of hours or so, depending on the complexity of the dispute. And most arbitrators hope that the parties' opening statements will provide them with a clear, concise, and persuasive roadmap to the final award.

With that in mind, counsel should not squander this opportunity to influence the tribunal at the start of the evidentiary hearing.

Turning then to *witness examination*, in contemporary international arbitration, it has become standard practice to present witness evidence in the form of written witness statements, which are intended to serve as each witness's evidence-in-chief. However, in the Nordics, it is not unusual for parties and tribunals to dispense with written witness statements altogether and opt for direct oral examination instead. This can occur even in major cross-border disputes, provided that counsel and arbitrators share the same Nordic background.

The choice between these methods primarily depends on the nature of the case. In large and complex arbitrations, it is generally useful to have the witnesses' direct evidence in written form as this helps arbitrators prepare for the hearing and counsel for the opposing side to conduct their cross-examination efficiently. Conversely, if the dispute is small and straightforward – with only limited witness evidence – it may be perfectly fine to rely solely on direct oral examination.

In the latter case, tribunals rarely provide specific guidance on witness testimony in their "Procedural Order No. 1" (referred to as PO1) at the outset of the proceedings: instructions may be limited to a brief sentence along the lines of "witness examination shall be conducted in the form of direct, cross-, and re-examination". No more is needed because the parties typically hail from the same jurisdiction (or at least from very similar ones) and are therefore aligned in their expectations as to how witness examination at the hearing should unfold.

The situation is different, though, when written witness statements are employed. In such cases, PO1 should set out some ground rules regarding their use and content. Otherwise, parties may submit witness statements that fall short of the arbitrators' expectations and afford limited assistance to the tribunal. This is especially true when the parties or their counsel come from vastly different legal cultures and may have divergent views on how to deal with witness evidence in international arbitration.[2]

In fairness, there are potential issues both with using written witness statements and with opting exclusively for direct oral examination. Without purporting to be exhaustive, the most salient ones can be summarized as follows:

- *Witness statements* may be over-lawyered and replete with arguments copied directly from a party's written submissions. This is bad advocacy as it inevitably raises the question whether the statement reflects the witness's own views and recollections in the first place.

- At the other end of the spectrum, Nordic practitioners occasionally file "witness summaries" that are extremely concise – just a couple of pages – and offer little substantive insight into the issues the witness is projected to address. They bring hardly any value to the tribunal and fail to enhance the efficiency of the proceedings.

- As for *direct oral examination*, the fact that a witness has not produced a written witness statement may result in them being unprepared and unable to answer questions at the hearing in sufficient detail. This can negatively affect the quality and persuasiveness of their evidence in the eyes of the tribunal.

- Second, the absence of written witness statements may transform the direct examination into a scripted exchange in which counsel feeds the answers, rather than elicits them, through a series of unreasonably leading questions. This not only detracts from the evidentiary weight of the witness's testimony but also undermines counsel's credibility and, ultimately, their entire case.

So, whether parties and counsel agree on the use of witness statements or opt for direct oral examination only, they are well advised to avoid these pitfalls to maximize the impact of their witness evidence on the tribunal's decision-making. In particular, where witness statements are employed – as is the case in most international arbitrations today – a proper balance should be struck between witness statements that come across as over-rehearsed "lawyer's statements", on one hand, and those that are too bare-bones to serve as the witness's direct evidence, on the other.

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[2] For a discussion on the issues that should be covered in PO1 when witness statements are used, *see* Mika Savola, *Procedural Order No. 1 – Trends and Practices*, ASA Bulletin 4/2023, at 800–802.

Finally, a few words on *oral closing arguments*. While the prevailing international practice favours written post-hearing briefs, many Nordic arbitrators and counsel prefer oral closing submissions. Personally, I welcome this tendency for three main reasons:

- First, oral closings promote cost-efficiency by eliminating an additional written phase that prolongs the proceedings and increases the expense, often with no corresponding benefit.

- Second, most arbitrators appreciate hearing the parties' summation of arguments and evidence at the end of the hearing when everything is still fresh in their minds. Oral closings also allow tribunal members to interact with counsel and pose questions to them in a way that post-hearing submissions cannot.

- Third, considering that most tribunals begin their in-person deliberations immediately after the hearing, oral closing arguments provide an excellent opportunity to persuade arbitrators before they engage in decision-making. By contrast, post-hearing briefs are typically submitted after the arbitrators have already formed their preliminary views on the key issues in dispute. Much to counsel's dismay, post-hearing briefs rarely alter the tribunal's initial conclusions reached at the close of the hearing.[3]

For these reasons, I believe that in most cases, it is a strategic mistake for the parties to forgo oral closing arguments in Favor of post-hearing briefs. The best advocates know that there is no better way to sway the tribunal than by delivering a laser-focused, compelling, and effective oral closing.[4]

2.2 Influence of common cultural and psychological factors

There are also various *cultural and psychological factors* that are largely common to all Nordic countries, shaping how arbitral proceedings are typically structured and what is regarded as effective advocacy.

In the following, I will discuss three defining traits that stand out in the Nordics: the adversarial nature of arbitral proceedings, a strong tendency toward solution orientation, and a distinctive "minimalism" in arbitrators' case management and decision-making.[5]

[A] Adversarial procedures

Nordic practitioners are accustomed to *adversarial procedures* where arbitrators play a relatively passive role. In line with this practice, Nordic arbitrators are less inquisitorial than some of their continental counterparts (for example, in Germany, Austria, or Switzerland): they leave witness examination to counsel, rarely engage in active settlement facilitation on their own initiative, and are extremely cautious about ordering the production of evidence of their own accord.

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[3] *See* also Mika Savola, *Ten Fail-Safe Ways to Irritate, Alienate and Antagonize Your Arbitral Tribunal,* ASA Bulletin 1/2025, at 55.

[4] A limited exception may apply in extremely large, document-heavy and technically complex arbitrations, where counsel and arbitrators may prefer to reflect the arguments and evidence presented during an extensive hearing with the benefit of a written transcript, making post-hearing briefs a viable alternative to oral closings.

[5] To be clear, the issues discussed here are also influenced by the Nordic litigation tradition, but not exclusively so; to some extent, they reflect deeper cultural and psychological tendencies. This is why I have chosen to address them under a separate heading.

The philosophical foundation of this attitude remains subject to debate. As a practical matter, however, it is viewed positively in the Nordics as acting as a "tennis referee" – rather than a "conductor of an orchestra" – arguably minimizes the tribunal's risk of appearing biased.[6]

With that being said, I venture to suggest that Nordic arbitrators could exercise greater initiative in defining the essential substantive issues of the dispute early on, in consultation with the parties. Experience shows that much ink and money can be saved if the parties and the tribunal can identify the truly determinative questions well in advance of the evidentiary hearing; in the best-case scenario, this may allow counsel to dispense with many unnecessary witness statements, expert reports, and document production requests. Furthermore, while some arbitrators hesitate to express views on what they regard as the central factual and legal issues of the case for fear of prejudging the merits and jeopardizing the validity of the future award, such concern is generally unwarranted, "provided the arbitrators never go farther than identifying problems, without suggesting solutions".[7]

For the avoidance of doubt, this is not to say that Nordic arbitrators shy away from their case management responsibilities. Quite the contrary: Nordic practitioners firmly believe that parties benefit from a proactive arbitrator with strong case management skills. Consistent with this belief, leading Nordic arbitrators engage actively with counsel from the outset in order to establish a realistic procedural timetable that covers all steps up to the rendering of the final award. Moreover, they are reputed for conducting proceedings in a fair yet robust manner – by setting clear rules on how the case should be presented, and then holding the parties to those rules, unless there are weighty reasons to depart from them (for example, due to unexpected developments outside a party's control). All this is vital to the predictability of the proceedings, which is the very cornerstone of due process in the mind of Nordic arbitrators.

[B] Solution orientation

Another point worth noting is that Nordic arbitration practitioners are highly *solution-oriented*, no-nonsense people. They frown upon bombastic language – or excessive courtroom drama – and prefer to get straight to the point. Anything that does not directly contribute to resolving the dispute is seen as a mere distraction.

Non-Nordic counsel should keep this in mind when planning their advocacy. Superfluous verbosity – or an excessively harsh, "take-no-prisoners" style in written submissions – rarely resonates well with Scandinavian arbitrators.

It also pays to conduct cross-examination in a civil and respectful manner. Many arbitrators with roots in Nordic practice dislike overly aggressive cross-examination and are outright hostile to character-assassination tactics in witness intimidation. Additionally, local practitioners find limited value in long series of highly leading questions seeking exclusively "yes-or-no" answers: a cross-examiner who sticks to closed propositions is invariably seen as simply trying to put words in the witness's mouth – a strategy that holds no sway with Nordic arbitrators.

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[6] I have borrowed this comparison from Yves Derains; *see* his insightful monograph *The Conduct of International Arbitration Proceedings* (Edward Elgar Publishing Limited, 2024), para. 4.053.
[7] *See* Derains, *supra* n. 6, at 4.059.

Put simply, counsel appearing before Nordic tribunals would do well to leave their confrontational litigator egos at the office. Coming across as genuinely likable, cooperative, and solution-oriented works wonders in the Nordics.

[C] Nordic minimalism

Closely related to solution orientation is what I call *Nordic minimalism*: arbitration practitioners in this neck of the woods are inclined to *understate* – rather than overstate – matters.

For example, procedural orders and rulings in the Nordics are often shorter and more economically reasoned than those in some other jurisdictions. This streamlined approach reflects a preference for clarity and efficiency, allowing tribunals to communicate their reasoning succinctly while maintaining precision.

Nordic arbitrators are also reluctant to *micromanage* proceedings in a casuistic manner; instead, they tend to operate on the assumption that counsel will generally play by the book. As a result, many believe there is no real need for a very detailed PO1 addressing every potential instance of pathological behaviour that parties may, or may not, exhibit during any given arbitration.

In my mind, however, one may well question whether this is a valid working assumption in all cases. Especially when parties and their counsel come from vastly different legal cultures, I see clear benefits in a detailed PO1, which can proactively resolve many procedural issues even before they arise.

There is a lovely saying (attributed to Talleyrand): "Things that go without saying often will go better having been said."[8] The point holds for PO1s, too.[9]

3. Differences

3.1 General remarks

Despite the commonalities discussed above, it would be incorrect to posit that there is a "one-size-fits-all" model for arbitrating disputes with a Nordic angle.[10] Procedural technicalities do differ across the Nordic countries, albeit to a limited extent. For instance, beyond variations in the appointment of arbitrators, one can detect a degree of divergence when it comes to the use of case summaries, or so-called recitals; tribunal- versus party-appointed experts; skeleton arguments; common hearing bundles; and so-called cancellation fees.

In the following, I will explore each of these points separately.

3.2 Appointment of arbitrators

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[8] In the original French: "*Si cela va sans dire, cela ira encore mieux en le disant.*"

[9] For a more in-depth discussion on this subject, *see* my article *supra* n. 2, especially at 804, where I make the case that a properly drafted and sufficiently comprehensive PO1 remains "the cornerstone of any well-run arbitration", given that "[f]ixing the rules of the game clearly in PO1 helps cross any bridge quietly and provides for a fair proceeding for all the players involved in the game."

[10] By a "Nordic angle", I mean proceedings that are either seated in one of the Nordic countries or otherwise informed by Nordic traditions due to the nationality and legal background of the arbitrators (in particular, the chairperson) or counsel for the parties.

The *appointment of arbitrators* to a three-person tribunal follows a different approach in the various Nordic countries.

Finland, *Sweden*, and *Denmark* all apply a similar framework: unless the parties have agreed otherwise, each party appoints one arbitrator, and those two arbitrators appoint the chairperson. If either party or the arbitrators fail to make their respective appointments, the ordinary courts may intervene to make the necessary appointment.[11]

Norway, however, has taken a different path. The Norwegian Arbitration Act contains an innovative provision stating that the parties shall, to the extent possible, appoint the arbitrators jointly. Only if this joint procedure fails will the fallback solution adopted in the other Nordic countries apply.[12]

Some practitioners may doubt whether joint appointment can ever work in practice as the parties are routinely in heated disagreement at the time arbitration is initiated and the tribunal needs to be composed. Norwegian counsel, however, have reported positive experiences with this method and attested that "counsel are in most cases able to agree on which candidates to select".[13]

There are two principal advantages in the Norwegian method of appointment:

- First and foremost, it strengthens the *independence of the tribunal*. When arbitrators do not know which party proposed any of them, there is no link between one party and one arbitrator. This guards against real or perceived appearances of bias that are built into systems relying on party-appointed arbitrators.

- Second, the method allows parties to have a direct influence over who becomes the *presiding arbitrator*. Although anecdotal evidence suggests that parties are frequently comfortable with letting the three selected tribunal members determine among themselves who shall serve as chair, the ability to jointly designate a specific individual as president may hold particular appeal for many practitioners.[14]

In light of these clear benefits, I find it surprising that the Norwegian model of joint appointment has yet to gain a foothold in other jurisdictions. It is certainly food for thought for the Finnish legislator, which is currently in the process of reforming the Finnish Arbitration Act (967/1992) and aligning it with contemporary best practices.

3.3 Case summaries

Another area where practices tend to diverge is the use of so-called *case summaries* (also referred to as *recitals*).

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[11] This is the model followed in ad hoc cases under the local Arbitration Acts. In institutional arbitration proceedings, the applicable rules typically stipulate that – barring party agreement to the contrary – the institute selects the chairperson and is responsible for any default appointments.

[12] *See* Section 13 of the Norwegian Arbitration Act (*Lov om voldgift*, LOV-2004-05-14-25). A similar provision can be found in Article 7.1 of the Arbitration Rules of the Nordic Offshore and Maritime Arbitration Association (NOMA).

[13] *See* Knud Jacob Knudsen's LinkedIn post on this topic (published on 29 August 2024).

[14] *Id.,* where the author also submits that the success of the Norwegian model may be partly attributable to the fact that "the Nordics consist of countries with similar cultures and quite transparent legal markets", and that "[i]t may be more challenging to succeed in a joint appointment if the parties and their counsel are from larger countries with vastly different cultures."

By this term, I mean a specific document – which may also be inserted into the final award – that sets out not only the procedural history but also the main factual circumstances and legal grounds invoked by the parties, which are intended to define the limits of the tribunal's mandate. Tribunals may ask the parties to draft this document, or at least approve it, before potentially incorporating it into the award.

Such case summaries are occasionally seen in international cases seated in *Sweden*, but they are practically never used in my native *Finland*. Personally, I have applied this method only once: it was in a domestic Finnish accounting dispute in which the parties repeatedly changed the quantum of their claims (and underlying calculations), and I felt it necessary to prepare a recital, approved by both parties, to "lock" their positions before the evidentiary hearing.

Some Nordic practitioners find case summaries beneficial in focusing the proceedings and ensuring that the parties and the tribunal have a common understanding of the factual and legal framework at issue. The flipside is that they may limit the arbitrators' flexibility to consider other relevant issues that may emerge later in the proceedings, sometimes only during the hearing. Additionally, compiling joint case summaries requires substantial cooperation from the parties, which is not always forthcoming.

There are also other – more sinister – risks associated with the use of case summaries, as highlighted by the well-known 2015 judgment of the Svea Court of Appeal in *OAO Tyumenneftegaz v. First National Petroleum Corporation*. Upon a challenge to the final award, the court found that an SCC tribunal had based its decision on factual circumstances not covered by a document titled "Joint Summary of Legal Grounds", which was drafted on the tribunal's initiative but agreed upon by the parties. The court held that the summary defined the scope of the arbitration and that by examining circumstances not invoked in it the tribunal had exceeded its mandate. The award was therefore annulled.[15]

3.4 Experts

As for the use of *experts*, I think it is fair to say that *Danish* practitioners are significantly more open to having tribunal-appointed experts in commercial cases than their colleagues in the other Nordic countries, where it is customary to rely almost exclusively on party-appointed experts.

To illustrate: despite my 25 years of experience in arbitrating disputes in Finland, I have never encountered a *tribunal-appointed* expert – nor have I heard of any Finnish arbitrator colleague appointing one in Finland-seated proceedings.[16]

The use of *party-appointed* experts, whilst prevalent in modern-day international arbitration, comes with certain drawbacks. Their independence may be called into question because they are appointed by one of the two sides to a dispute. Indeed, although the duty of any expert is to the tribunal and

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[15] *See* the Svea Court of Appeal's judgment of 25 June 2015 (Case No T 2289-14).

[16] The only exception I know of is a case concerning the redemption of minority shares in a Finnish limited liability company. Pursuant to the Finnish Companies Act, such squeeze-out disputes are resolved in mandatory (statutory) arbitration, where the Redemption Board of the Finland Chamber of Commerce appoints the arbitrators. These proceedings differ to some extent from ordinary commercial arbitrations – for instance, in the involvement of a trustee as the guardian of minority shareholders' rights, and in the fact that the resulting arbitral award may be appealed to state courts. In the case mentioned, the tribunal appointed an external appraiser to assist in determining the value of the shares to be redeemed and ultimately based its decision on that appraisal.

not to their client, the truth is that experts are ultimately part of their appointing party's team, paid to win the case. And as the saying goes: "He who pays the piper calls the tune."[17]

In recent years, various efforts have been made to find alternatives to the binary choice between party- and tribunal-appointed experts. I myself have positive experiences with the "Sachs Protocol", under which each party proposes a shortlist of potential experts they would be willing to engage, and the tribunal ultimately selects one from each side and appoints them jointly as an "expert team". The main advantages of this approach are threefold:

- It reduces the credibility concerns inherent in the use of party-appointed experts, since the experts are not paid by the nominating party but from the advance on costs contributed equally by both sides (subject to the tribunal's final award on costs).

- The experts are more likely to regard themselves as facilitators to the tribunal, rather than as assistants to either party.

- Finally, this method eliminates the risk of multiple expert reports that reach entirely contradictory conclusions or, worse still, pass each other like ships in the night, failing to engage with one another's findings.[18]

Notwithstanding these advantages, the Sachs Protocol has apparently not yet gained much traction in the Nordics. I surmise that considerations of time and cost may render it less appealing in smaller disputes. That said, I can warmly recommend it in large and technically intricate cases involving multiple expert witnesses.

3.5 Skeleton arguments

It is sometimes said that *skeleton arguments* are becoming increasingly common in international arbitration. Serving as a bridge between the written and oral phases of the proceedings, a skeleton argument is essentially a brief outline of the key factual and legal points a party intends to rely on at a hearing. Without seeking to replace the earlier written submissions, skeleton arguments bring out the main issues and assist arbitrators in following the party's oral advocacy efficiently.

While skeleton arguments are mainly a common law concept, my experience is that they have found their way into some major arbitrations in *Denmark* as well. By contrast, skeleton arguments are rarely seen in the other Nordic countries, where parties prefer to address the issues in their oral opening statements at the hearing, typically supported by PowerPoint presentations.

I believe that parties and tribunals could benefit from adopting skeleton arguments with greater frequency in Nordic arbitrations. They are particularly useful in cases with voluminous materials and submissions running into hundreds of pages, which can result in key issues getting lost in the avalanche of information unearthed during lengthy proceedings. Arbitrators will then find it helpful to have the parties distil their main factual and legal arguments – coupled with references to the

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[17] The Finnish variant of this adage is even more colourful: "*Kenen leipää syöt, sen lauluja laulat.*" And the Swedes, true to their characteristic conciseness, put it as follows: "*Den som betalar bestämmer.*"

[18] For a detailed presentation of the Sachs Protocol, *see* Klaus M. Sachs and Nils Schmidt-Ahrendts, *Protocol on Expert Teaming: A New Approach to Expert Evidence*, in Albert Jan van den Berg (ed), *ICCA Congress Series No. 15 (Rio 2010): Arbitration Advocacy in Changing Times* (Kluwer Law International, 2011), at 135–148.

most important pieces of documentary and witness evidence – into a clear, logical, and succinct skeleton submitted one or two weeks prior to the hearing.

In some jurisdictions, skeleton arguments may replace oral opening statements altogether. In the Nordic countries, however, this is unlikely, given the strong tradition favouring oral openings. Nevertheless, a carefully crafted written skeleton may reduce the time required for oral submissions at the hearing as it will assist the tribunal in quickly grasping the core elements of each party's case. In fact, the best skeletons can serve as a persuasive outline for the tribunal's future award – a benchmark all self-respecting counsel should strive for.

To be effective, skeleton arguments will have to be concise, preferably not exceeding 20 pages. Tribunals should not hesitate to impose strict page or word limits where necessary. Moreover, to maximize their impact, counsel are encouraged to take full advantage of modern technology by submitting their skeletons in electronic format, hyperlinked to all essential factual and legal exhibits, with the relevant portions of those exhibits clearly highlighted for ease of reference.

3.6 Common bundles

Common bundles are widely employed in international arbitrations seated in the Nordic jurisdictions. In most cases, they contain all exhibits (or the key exhibits) grouped by category and organized in chronological order (with their own numbering) to assist the parties and the arbitrators during the evidentiary hearing.

Finland, however, stands apart in this respect. Many Finnish counsel and arbitrators do not perceive a need for a common hearing bundle as they are accustomed to referring directly to the exhibits filed with the parties' written submissions. For that reason, Finnish PO1s usually lack any provisions dealing with the preparation and submission of hearing bundles.

When common bundles are used, tribunals typically direct the parties to prepare a joint version and to circulate it to the tribunal a few weeks before the hearing. Traditionally, the bundle was produced in hard copy (with separate copies for each arbitrator), but nowadays it has become standard practice to settle for an electronic version only. The main benefit of this approach is that it allows for quick document searches and screen-sharing during the hearing, saving time otherwise lost while counsel and arbitrators fumble through physical folders or locate exhibits buried in the original submissions.

In very large cases with hundreds of exhibits, it may be sensible to identify the most pertinent documents likely to be referred to at the hearing and compile them into a so-called core bundle. Some practitioners also prepare a separate cross-examination bundle containing only the exhibits counsel intends to rely on when cross-examining the opposing side's witnesses. Others, however, reject this approach out of concern that it may tip off the adverse party and reduce the element of surprise that could be used to tactical benefit during cross.

As with all procedural matters, the tribunal should carefully listen to counsel – and accommodate their reasonable expectations – before issuing specific directives on the form and content of the common bundle, as party preferences may vary.[19]

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[19] For example, leaving aside the question that some counsel (and arbitrators) are less tech-savvy than others and may therefore prefer hard-copy bundles over electronic ones, views diverge on whether the bundle should contain not only the parties' factual exhibits but also their witness statements, expert reports, legal authorities, main written pleadings and/or correspondence and procedural documents relevant to the hearing. It falls upon the tribunal

3.7 Cancellation fees

In complex cases involving numerous fact and expert witnesses, arbitrators may be asked to reserve many weeks for the evidentiary hearing. Yet not infrequently, parties settle the dispute amicably, sometimes just on the eve of the hearing. It is also not unheard of for the hearing to be postponed because the originally agreed timetable proves too ambitious.

In light of these realities, many arbitrators particularly in common law jurisdictions prefer to negotiate so-called *cancellation* or *termination fees* which may be charged if the main hearing is cancelled or postponed on short notice due to reasons attributable to a party. The underlying rationale for cancellation fees is that they compensate for lost income when "[s]ubstantial blocks of time are carved out of the arbitrators' diaries and they must refuse other remunerative work during the reserved period".[20]

To my knowledge, cancellation fees are seldom applied in the Nordic countries.[21] However, I have recently encountered them in some cases involving *Norwegian* arbitrators. Moreover, cancellation/termination fees are expressly acknowledged in the NOMA Best Practice Guidelines, Appendix 1, which provides that the parties and the tribunal should discuss at the case management conference (referred to as CMC) "whether a termination fee to the arbitrators will be applicable if the case is settled or terminated prior to the main hearing", and proposes the following principles:

- If the hearing is scheduled for one or two days only, no cancellation fee will be charged.

- If the hearing is scheduled for three days or more and is cancelled less than three weeks prior to its start, a cancellation fee is 15% of the arbitrator's normal fee for the time reserved.

- If the hearing is scheduled for more than eight days and is cancelled less than six months but more than three months prior to its commencement, a cancellation fee is 5% of the arbitrator's normal fee for the time reserved.

- If the hearing is scheduled for more than eight days and is cancelled less than three months but more than three weeks prior to its commencement, a cancellation fee is 10% of the arbitrator's normal fee for the time reserved.[22]

Time will tell whether cancellation fees become more widespread in the Nordics through cross-fertilization of international arbitration practices. To my mind, there are legitimate reasons to regard them more favourably than has traditionally been the case in many civil law jurisdictions. In particular:

(and, in particular, on the chairperson) to clarify these issues sufficiently in advance of the hearing, in consultation with the parties.

[20] *See* Nigel Blackaby KC, Constantine Partasides KC and Alan Redfern, *Redfern and Hunter on International Arbitration* (Seventh Edition, Oxford University Press, 2022), para. 4.228.

[21] *See* also Kaj Hobér's observation that "[g]enerally speaking, cancellation fees are very unusual in arbitrations in Sweden"; *International Commercial Arbitration in Sweden* (Second Edition, Oxford University Press, 2021), para. 4.126.

[22] *See* NOMA Best Practice Guidelines, Appendix 1 ("CMC – Matrix"), para. 1.16. *See* also the Best Practice Guidelines, para. 3.9.

- Few would deny that professional arbitrators, who block significant time in their schedules, should not be left out of pocket if they are unable to rebook that time for other remunerative work due to a late cancellation of the hearing.

- Cancellation fees may also enhance procedural efficiency by discouraging parties from seeking adjournments without serious cause – a factor that should not be overlooked, given the pervasive criticism that international arbitration has become overly drawn-out, costly, and litigious in recent years.[23]

Arbitrators should weigh several considerations before suggesting that cancellation fees be applied. As a preliminary matter, the tribunal has to check that they are permissible under the law of the seat or – in the case of institutional arbitration – under the applicable rules. While some institutional rules contain specific provisions on cancellation fees, most do not.[24] It is imperative that arbitrators comply with any applicable regulations or *sui generis* guidance received from the relevant institute prior to negotiating a framework for cancellation fees with the parties.

It also goes without saying that when cancellation fees are applied, they should only be charged if the cancellation or postponement is attributable to the parties – not if the tribunal needs to reschedule for its own reasons. Furthermore, they should be agreed upon at the outset, not imposed unilaterally midstream. There are court cases from the UK and Australia holding that arbitrators acted improperly when insisting on cancellation fees as a condition for continuing their services, where no prior agreement existed.[25]

Additionally, arbitrators must ensure that cancellation fees are reasonable and do not amount to a windfall for them. The basis for their calculation should be clearly defined. While approaches vary in detail, the fee will usually be determined with reference to: (a) the arbitrators' agreed rate of compensation; (b) the amount of time reserved; and (c) the length of notice the arbitrators are given of the need for cancellation or adjournment (the shorter the notice, the higher the fee).[26]

Whenever arbitrators apply daily sitting fees, calculating cancellation fees is relatively straightforward. Matters become more complex, however, in *ad valorem*-based systems where arbitrators do not charge hourly fees but are remunerated based on the value of the dispute. For example, how should the arbitrators' "normal fee" in the NOMA Guidelines be interpreted if they

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[23] One seasoned practitioner has rightly remarked that arbitrators are facing today "ever increasing demands of quality and performance" requiring "higher and higher levels of professionalism", and that "[t]hese demands can only be properly satisfied and compensated by a reasonable, appropriate and economic return to those persons accepting appointment as arbitrators. Cancellation fees are an inevitable consequence of this. It is the proper and reasonable application of cancellation fees that is the salient issue; not whether or not there should be cancellation fees." *See* A. A. de Fina, *Cancellation Fees – A Symptom of the Arbitration Dilemma*, The Arbitrator, November 1990, at 126.

[24] Cancellation fees are explicitly recognized, for example, in the LCIA Arbitration Rules 2020 (Schedule of Arbitration Costs effective 1 December 2023, Section 2(iii)), HKIAC Administered Arbitration Rules 2024 (Schedule 2 effective 1 June 2024, Art. 10) and SCCA Arbitration Rules 2023 (Appendix I, Art. 3(1)(b)(2)).

[25] *See K/S Norjarl A/S v. Hyundai Heavy Industries Co Ltd* [1991] 1 Lloyd's Rep. 260 (QB) (English High Ct.), [1992] QB 863 (English Ct. App.), [1991] 1 Lloyd's Rep. 524; *ICT Pty Ltd v. Sea Containers Ltd* [2002] NSWSC 77.

[26] *See* the Chartered Institute of Arbitrators International Arbitration Practice Guideline No. 2 on Terms of Appointment including Remuneration (2016), p. 7. The Guideline goes on to note that "[i]f the period of notice is long enough to afford the arbitrator a reasonable opportunity to arrange other replacement work for the reserved time, there is no justification for a cancellation fee."

are not paid by the hour? It is prudent for the tribunal to raise this issue with counsel already at the first CMC to establish a common understanding and prevent future disagreements.

4. Concluding remarks

The distinctions discussed in section 3 above should not be overstated. At its core, arbitrating commercial disputes in the Nordic countries reveals more similarities than differences, owing to the many shared cultural and psychological traits present across this part of the world.

Two caveats are worth noting as I conclude.

First, my sample is admittedly limited, so a degree of modesty is called for. Other Scandinavian arbitration practitioners may well disagree with some of my observations.

Second, Nordic arbitration does not exist in a vacuum. There are many major international arbitrations seated in the Nordic countries where some of the arbitrators and counsel come from other jurisdictions. It is especially in these cases that proceedings tend to become truly "internationalized", with little deviation from the semi-standardized pattern typically followed in other major European arbitration venues. Given the strong Nordic pragmatism and solution orientation – coupled with pro-arbitration legal regimes – counsel and arbitrators from outside the region are likely to feel safe and comfortable arbitrating their disputes here.

NORDIC ARBITRATION PRACTICES: UNITY IN DIVERSITY

Mathias Steinø, Hafnia Law Firm[*]

1. Introduction

The Nordic countries have a long tradition for legal cooperation, particularly in the field of private law. During the 20th century, the Nordic states pursued joint legislative initiatives. This resulted in largely harmonised statutes in core commercial areas, such as in the sale of goods and the regulation of contracts.

Notably, between 1905 and 1907, Denmark, Sweden and Norway implemented sale of goods acts based on the same rules. Those rules were also used for the introduction of a sale of goods act in Iceland in 1922. While Finland never adopted the rules in a formal legislative initiative, the courts followed such rules as if they constituted law.[1] Denmark, Norway and Sweden introduced contracts acts in the 1920s also based on joint initiatives.

With respect to Norway and Denmark, the joint legislative history of arbitration can be traced back to King Christian V (1646-1699) who was ruler of these twin kingdoms. During his reign, comprehensive legal codes were introduced. These consisted of King Christian V's Danish Code of 1683 and King Christian V's Norwegian Code of 1687. Both of those codes contain rules on arbitration.[2] The Danish code contains the following rule in its first book, Chapter Six, Rule One (Danske Lov 1-6-1):

> *If the parties submit their case and dispute to arbitration by arbitrators, either with an umpire or without, then what the arbitrators say and decide—provided it is within the scope of the authority granted to them—shall be binding and may not be appealed to any court for annulment; however, the King's own cases are excepted.*[3]

This remarkable, timeless piece of legislation embodies concepts that remain relevant, even 400 years later. It reflects that arbitration is binding, but also that arbitration is only binding within the

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[1] Professor emeritus Ole Lando on Nordic cooperation on legal acts ("Nordisk Lovsamarbejde"), www.lex.dk.

[2] Earlier rules on arbitration existed in local rules prior to the codes introduced by Christian V. The arbitration judgment (in Norwegian: skiladómr) was e.g. found in the Norwegian regional rules in the so-called Frosta code and Gulating code. The Norwegian King Magnus VI Lagabøte (1238-1280) introduced a national Norwegian law (Landslov), which was enacted in the 1270s and which also included provisions on arbitration. https://www.regjeringen.no/no/dokumenter/nou-2001-33/id145095/?ch=3

[3] Automated translation. The code is available on the following link: https://bjoerna.dk/DL-1683-internet.pdf. The Norwegian code can be found on the following link and contains a rule identical to the Danish. https://books.google.dk/books?id=P29DAAAAcAAJ&printsec=frontcover&redir_esc=y#v=onepage&q&f=false

confines of the mandate given to the arbitrators. The rule remained operative in Denmark until the introduction of the first Danish Arbitration Act in 1972.[4]

Due to the long cooperation between the Nordic countries, it comes to no surprise that the region is often externally perceived as a relatively homogenous legal environment - a perception that is indeed entirely correct. Nordic arbitration is also aligned with modern international arbitration. Professionals from continental Europe, or any other part of the world, can easily adapt to Nordic arbitration and vice versa. International arbitration generally trends towards unity and the same applies for Nordic arbitration.

Each Nordic jurisdiction may be viewed from the outside as operating with a different level of maturity in the field of international arbitration. Over the past 50 years, Stockholm has built a tremendous reputation. It is fair to assert that Stockholm has been, and remains, the unrivalled capital of arbitration in the Nordics. On the other hand, Helsinki, Copenhagen and Oslo all have thriving arbitration communities with continuously growing pools of arbitrators and counsel. Major arbitrations take place in all Nordic capitals in fields such as energy (including renewables), minerals, infrastructure, construction and other types of arbitration known worldwide. By way of example, Norway has built up a significant pool of knowhow related to onshore and offshore energy based on many disputes in that area of expertise.

Despite the great degree of legal unity across the Nordic countries it is still possible to detect some differences, albeit some minute, in how arbitrations are conducted. The following examples identify and reflect upon some of these differences. Regardless, it is safe to assert that Nordic arbitration is flexible and hands-on in general. Arbitrations in the Nordics are gentle, context-sensitive and goal-oriented. That appears to be an overall approach permeating the community.

1. Witness evidence: direct vs. written examination

One area where Nordic traditions show divergence is the treatment of witness evidence. Historically in Denmark, direct examination has been the norm, particularly in domestic arbitration. The Danish Administration of Justice Act is based on the concept of direct oral examination and this tradition from litigation was for many years standard practice in Danish arbitrations.

Written witness statements were virtually unheard of in Denmark twenty years ago. However, that has changed, with written statements now being common in international arbitrations seated in Denmark and increasingly appearing in domestic proceedings. This is also reflected in new initiatives on private rules to be adopted in arbitrations. In 2025, the Danish Arbitration Association introduced new rules making a shift away from direct oral examination and towards the use of written witness statements. The introduction to the new rules on the taking of evidence addresses that arbitration has developed over the last 15 years and now follows a more international approach:

> *Since the adoption of the Danish Arbitration Association's Rules on the Taking of Evidence in Arbitration of 28 October 2010, arbitration in Denmark has undergone changes. This is especially true in relation to international and more complex arbitration cases, where inspiration from abroad has had a noticeable impact on the practical handling and conduct of arbitration cases with a seat of arbitration in Denmark. Therefore, the Danish Arbitration*

[4] See Professor Bernhard Gomard, Voldgift i Danmark, 1979, p. 7-8.

Association (the "Arbitration Association") has found it appropriate to revise and modernise the rules on the taking of evidence.[5]

In Norway, direct witness examination still dominates, especially in local arbitrations. On the other hand, Sweden leans more toward written statements, particularly in international disputes, though even this distinction is nuanced depending on context and tribunal composition. Finland tends to strike a balance between both models, often reflecting international norms in commercial arbitration.

The growing use of written witness statements has been influenced by international arbitration practice, where written statements are ordinarily mandated. Practitioners exposed to international norms have brought these practices back to local cases. Yet, the question remains whether the adoption of these practices always serves the purported goal.

While some arbitrators have taken the position that written statements should always be used, it is frequently the case in Nordic arbitrations that direct oral examination of witnesses takes place. In certain situations, this tradition remains relevant and value-creating. It very much depends on the size and complexity of the dispute. In large-scale and technically complex arbitrations it is standard to make use of written witness statements. That is at least the case in Denmark, Sweden, and Finland but perhaps there is a tendency in Norway to still use direct examination to a larger degree.

The community is clearly shaped by its users, and counsel often prefer direct examination—perhaps because they are more accustomed to it from litigation. While the arbitrators may be more accustomed to the use of written witness statements, any arbitrator would be – and should be – attentive to the parties' requests. The dispute belongs to the parties, and if the parties prefer direct examination over the use of written witness statements, an arbitrator should avoid imposing anything else.

In straightforward disputes, especially those involving simple factual disagreements rather than technical complexity, live testimony may prove more effective, allowing spontaneity and direct engagement with the tribunal. There is a certain immediacy and credibility in live testimony that written statements cannot replicate. Spontaneity can reveal inconsistencies or clarify ambiguities that prepared statements often conceal.

Written witness statements, while valuable in complex or technical disputes, may inhibit spontaneity and allow over-preparation. It is not uncommon to hear a witness answer a simple question by referencing a paragraph number from a prepared statement, missing the mark entirely in terms of clarity or responsiveness. This scripted style may appear insincere or evasive, undermining the very credibility it seeks to enhance.

This divergence reflects a broader truth: arbitration should adapt to the dispute and the parties rather than impose a uniform evidentiary format on all cases. The challenge for arbitration practitioners is to recognise the added value of procedural flexibility while preserving predictability and consistency.

Despite the various pros and cons, to some degree written witness statements are becoming the norm in major international commercial disputes seated in the Nordics. In smaller or less complex disputes there is a mixed use of direct examinations and the use of written witness statements.

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[5] The rules on the taking of evidence can be found on www.voldgiftsforeningen.dk/regler/regler.

Nordic arbitrators may tend to be less rigid in choosing one evidentiary form over the other and will likely take a pragmatic approach tailored to the individual case and the requests of the parties. This also applies to large and complex international disputes.

3. Expert evidence: party-appointed vs. tribunal-appointed experts

Another point of divergence lies in the treatment of expert evidence. Denmark, traditionally, relied on court-appointed experts in litigation, and this practice has also influenced domestic arbitration to some extent. Over the course of the past 20 years, the influence of international arbitration has led to increasing use of party-appointed experts.

Sweden and Finland are already well-versed in the party-appointed model, especially in international settings. Apparently, this also applies in Norwegian arbitrations.

This development brings both benefits and challenges. Party-appointed experts can offer robust advocacy and ensure that each side's technical narrative is clearly developed. Yet, they may also contribute to polarisation and evidentiary overload. The tribunal may be presented with competing expert reports that are not easily reconciled, leading to confusion rather than clarity.

Tribunal-appointed experts, by contrast, can neutralise these dynamics and promote more objective assessment, particularly where the dispute involves narrowly technical or scientific questions. The trade-off lies in the perceived loss of control by the parties and the risk that the tribunal-appointed expert may overlook the nuances that party representatives would otherwise highlight.

Mechanisms such as expert conferencing, or "hot-tubbing", offer hybrid solutions, allowing party-appointed experts to present and test views collaboratively under tribunal supervision. These tools are underused in some Nordic settings and could be employed more systematically where appropriate.

The new rules on the taking of evidence developed by the Danish Arbitration Association identify the use of party-appointed experts as the starting point for expert evidence.[6] The rules permit a party to an arbitration to obtain and submit a party-appointed expert report whether such report has been commissioned before or after commencement of arbitration.[7] The rules further include an option for the arbitral tribunal to appoint an expert, but the relevant rule has been drafted as a solution subsidiary to the main principle of using party-appointed experts. The rule concerning tribunal-appointed experts reads as follows:

> *If the Arbitral Tribunal finds that specific issues to be decided by the Arbitral Tribunal are not sufficiently covered in the submitted expert reports prepared by experts appointed by the Parties (see Article 4), the Arbitral Tribunal may appoint one or more experts to submit (an) additional expert report(s) in the arbitration proceedings on these issues. Before making its decision, the Arbitral Tribunal shall consider the possible delay of the arbitration proceedings*

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[6] See above, foot note 5.

[7] In Danish procedural law a distinction exists between expert reports obtained before or after initiation of litigation and the rules developed by the Danish Arbitration Association consequently address that in arbitrations adopting the rules on the taking of evidence, an expert report may be submitted whether obtained before or after arbitration has been commenced.

that this taking of evidence may cause. Before the Arbitral Tribunal decides on the appointment of an expert, the Parties shall be given the opportunity to be heard.[8]

The development is continuing and certainly the use of party-appointed experts is becoming the main approach. The path forward may lie in more proactive tribunal management, establishing clear protocols for expert engagement at an early stage and calibrating the level of expert involvement based on the complexity and technical depth of the dispute. Initiatives such as the Danish Arbitration Association's Rules on the Taking of Evidence point in the direction of the use of party-appointed experts subject to the guidelines contained in the rules. This development is probably indicative across all Nordic countries.

4. Procedural culture and the case for front-loading

One point often advocated in the Nordic arbitration community is the pressing need for front-loaded arbitration procedures. Too often, parties defer important evidentiary and procedural issues until late in the case, leading to inefficiencies and deadline slippage. The Nordic Offshore and Maritime Arbitration Association (NOMA) is adopting revised guidelines to enhance front-loading and secure efficiency and speed in achieving a resolution to disputes.[9]

Front-loading, if well-executed, is one of the best tools to make arbitration efficient. Front-loading encourages parties to engage meaningfully with the merits early on, often leading to better preparation. It fosters clarity, ensures timely collection of evidence, and helps shape a coherent narrative early in the case. The growing length and detail of the first procedural order (PO1) provided by tribunals reflect this trend. PO1now frequently includes detailed timelines for submissions, evidentiary rules, page limits and witness examination modalities. This development has taken place internationally and has also been adopted in the Nordic arbitration community.

Still, front-loading is not a panacea. The parties may have diverging interests in scheduling—one party might benefit from delay, while the other seeks expedition and "one size doesn't fit all". Flexibility must therefore remain a guiding principle.

Even if front-loading is introduced at the outset of an arbitration process, it is obviously important that the tribunal exercises its procedural authority effectively. Front-loading only works if a tribunal holds parties to the procedural structure agreed at the outset. Otherwise, schedules quickly become aspirational rather than binding.

Over the past 20 years, procedural orders have evolved from skeletal frameworks into detailed roadmaps. This evolution reflects increased procedural complexity but also increased diligence and professionalism. When used appropriately, procedural orders can function as a governance tool, reinforcing discipline and fostering predictability.

It is possible that there are very limited differences with respect to front-loading of arbitration processes between the Nordic countries. On the other hand, there may still be great differences in the use of procedural orders and in the granularity of such orders.

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[8] Section 5.1 of the Danish Arbitration Association's Rules on the Taking of Evidence.

[9] Front-loading is currently a buzzword in Nordic arbitration and *"Front-loading" in practice* was the headline of a session during the Norwegian Arbitration Day, 26 February 2025.

Arbitrators working internationally tend to use more template-based and detailed procedural orders whereas arbitrators with a more localised portfolio of cases tend to lean more on informal directions. The tendency, however, is to make use of procedural orders which are based on front loading and which set out a compact onwards process strictly imposed on the parties. The development of matrixes and best practice guidelines such as the ones developed by the Nordic Offshore and Maritime Arbitration Association represent tools which can enhance frontloading and efficiency of arbitration, and which can serve to develop a greater harmonisation in how arbitrators conduct the arbitral processes.

5. Embracing pragmatism over orthodoxy

A recurring theme in Nordic arbitration is the balance between tradition and international influence. Whether in the use of written witness statements, the appointment of experts, or the design of procedural schedules, Nordic arbitrators and counsel must navigate between preserving effective local practices and adopting global norms.

The instinct to "do it like in London" or "like in Singapore" is understandable, particularly in cross-border cases. On the other hand, it is clearly voiced in the Nordic community that it is not necessary or desirable to do everything the way it is done in continental Europe, London, Singapore, or New York just to appear more modern and international.

This is not a call for insularity, but rather for confident pragmatism. Nordic arbitration has a reputation for efficiency, impartiality and legal sophistication. Nordic arbitration should not hesitate to maintain those elements that work well in the region - especially when they promote fairness, reduce costs, and enhance accessibility.

Embracing diversity in procedural approaches can be a strength rather than a weakness. Users appreciate procedures tailored to the dispute, not merely borrowed from global playbooks. Nordic arbitration, with its blend of structure and adaptability, is uniquely positioned to offer just that.

NEGOTIATING MECHANISMS FOR RESOLVING COMPLEX CONSTRUCTION DISPUTES

By Sara Johnsson[*]

1. Introductory remarks

This article is derived from a speech I delivered at the Nordic Commercial Arbitration Forum in Stockholm on 11 March 2025, as part of a panel discussion focusing on negotiating dispute resolution mechanisms.[1] Like my speech, this article focuses on the negotiation of dispute resolution mechanisms within the context of construction and infrastructure projects. I will often refer only to construction projects. However, the same considerations apply also for infrastructure and industrial projects.[2]

In Section 2, I will highlight the specific characteristics of such projects, with distinct allocation of risks and responsibilities, and how this affects the choice of appropriate dispute resolution mechanisms. The aim of any dispute resolution mechanism is to provide means to uphold and enforce the substantive allocation of risks and responsibilities agreed in the contract. With this in mind, I will go through three main types of such mechanisms suitable for construction projects:

- Dispute avoidance procedures (Section 3);
- Voluntary resolution in order to avoid litigation or arbitration (Section 4); and
- Final dispute resolution, i.e. litigation or arbitration (Section 5).

2. The prevalence of change affects the dispute resolution mechanisms suitable for a construction project

Construction projects may vary significantly in structure, with widely different end products, and each project featuring a unique legal and practical allocation of responsibilities, risks, and rights. Yet, all projects bear common characteristics, perhaps the most central being *change*.[3]

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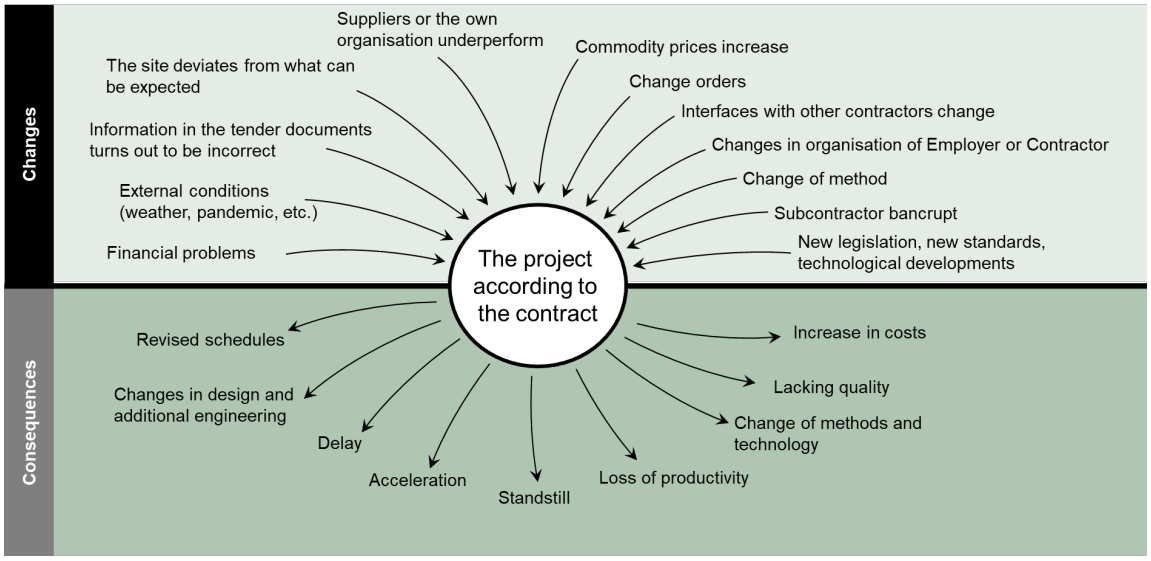
[1] The full title of the panel was "*Experiences in negotiating agreements and what factors to consider when deciding on choice of law, choice of seat, and the form of dispute resolution*". I am in debt to Kristin Eickhoff, Erik Hedström, Anders Ingvarson, Kristoffer Löf, Lisa Tyche and Åsa Waller of Mannheimer Swartling, for valuable input to this article. The views expressed in this article are, however, my own.

[2] My negotiating experience, on which I draw in this article, is primarily from large construction and industrial projects. The industrial projects often involve both general construction and infrastructure, such as electricity lines, roads, railroads, conveyors for water supply and water treatment, etc. This article is intended to be relevant for all these kinds of construction and infrastructure contracts. With respect to "pure" infrastructure contracts (for roads, railroads, etc.), however, there is a difference since those are nearly always publicly procured projects. Such contracts are of course not negotiated in the same way as private projects (or as PPPs, Public-Private Partnership projects). This article thus focuses on the situation where are contract is being negotiated and is not publicly procured.

[3] There are of course also other common traits of construction projects, including that such projects always encompass a variety of technical issues, involve a large number of people within both the employer's and contractor's organisations, and are relatively lengthy. Another common trait is that such projects often entail disputes, as raised by Nazzini, Renato and Godhe, Aleksander in "Chapter I: The Arbitration Agreement and

Even before the agreement is signed, we know that things will happen that cannot be fully foreseen at that point in time. What can be foreseen with certainty, however, is that there will be changes to what was determined and agreed at the time of signing the agreement. A wide range of changes may affect any project, as the image below seeks to illustrate:



At the centre of the image is the project as it is defined at the time when the contract is signed. This circle represents the collective understanding of the project by all parties involved at that specific moment.

Positioned above the central circle are illustrative categories of change that may materialise over the course of a construction project. These include financial distress affecting one or more parties; external events such as adverse weather conditions or pandemics; discrepancies or omissions in tender documentation; unforeseen ground or site conditions; performance deficiencies by subcontractors or internal project teams; fluctuations in commodity markets affecting input costs; employer-initiated change orders; alterations in the interface with parallel or adjacent contracts; restructuring within the employer's or contractor's organisations; insolvency of subcontractors or suppliers; and regulatory or technological developments, such as new legislation, revised standards, or innovations impacting design or execution.

These examples of change are neither exhaustive nor speculative; they reflect the broad spectrum of risk vectors inherent in large-scale construction undertakings. While not all such risks will manifest in every project, experience shows that change is not an exception but a structural feature of complex project delivery.

Change is thus both inevitable and systemic, and it remains the predominant source of disputes in construction projects.[4] Changes, once they occur, invariably carry consequences on time, cost,

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Arbitrability, Adapting Arbitration to the Construction Sector: Ensuring Efficiency Through Arbitration Avoidance and Case Management Techniques", in Klausegger, Christian, Klein, Peter, et al. (eds), Austrian Yearbook on International Arbitration 2024, pp. 3–20. Whether the frequency of disputes is a trait in itself or a result of the other traits, is a matter of philosophy.

[4] This conclusion is nothing new; see e.g. the 35-year old article by Cuisinier, Jean, "Typical Construction Dispute Problems", in van den Berg, Albert Jan (ed), ICCA Congress Series No. 5 (Stockholm 1990): Preventing Delay and Disruption of Arbitration / Effective Proceedings in Construction Cases, ICCA Congress Series, Volume 5, pp.

and/or quality – the very three pillars that every project agreement seeks to define with precision, but which may be destabilised by change. The lower half of the image above illustrates indicative examples of such downstream effects. These may include revisions to the project schedule; the need for additional engineering or redesign; project delays; acceleration measures; work stoppages; productivity losses; modifications to construction methodology; quality deficiencies; and cost escalations. Once such consequences begin to materialise, the pivotal legal and commercial question emerges: Which party bears the risk?[5]

> Example 1 – Change and its effect:[6] A bridge is to be built during summer in the North of Sweden. This year, there is a storm that brings the highest amount of rainfall in the area in over 100 years. Due to the rainfall, it is impossible to work on the bridge for two weeks. The weather conditions thus cause standstill, delay, revised schedules and increase in costs. In the contract, the parties have agreed on a typical allocation of risk for this situation, such that abnormal weather conditions may entitle the contractor to *extension of time*, but there is *no entitlement to additional compensation*. Accordingly, the contractor is granted extension of time (and is thus relieved from penalties or liquidated damages for that period of time) but has to bear any prolongation costs.

Unlike many other transactional agreements, a construction contract governs the execution of a yet-to-be-realised outcome. Its core function is not only to define deliverables but to establish a framework capable of managing deviation. While prior clauses may allocate risks for known categories of change, it is the contract's procedural architecture, its mechanisms for variation, valuation, and dispute resolution, that enables the parties to address the unknown. In this respect, the legal structure becomes as critical as the technical one: it must support adaptation without undermining the agreed commercial balance. If the dispute resolution mechanism does not manage to uphold the agreed risk allocation, it essentially changes the contract from what was negotiated and agreed.

> Example 2 – A determination of compensation for change that undermines the agreed risk allocation: A contractor carries out work related to a power station. The contractor is reimbursed through a fixed price and, pursuant to the risk allocation agreed in the contract, may only be entitled to additional compensation if certain facts are established. The contract differentiates between three types of changes: A. Events that may give the contractor a right to both extension of time and compensation for cost, B. Events that may give the contractor a right to extension of time, but no compensation for costs, and C. Events that may give the contractor a right to additional remuneration, but no entitlement to extension of time.
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> At the end of the construction period, the contractor presents a claim for

365–376: "*Frequently, the project to be done is unique and, therefore, has no identical antecedent. During the performance of the project, unforeseen events* […] *upset forecasts and bring about adaptations of the technical, financial and time schedule aspects of the initial contract, which can be a source of disputes. In short, the initial contract is the commitment to build such and such works (as precisely defined as possible) for a given price within a given time frame.*"

[5] Since it is a given that change will occur during project implementation, the contract must allow for change and the key focus in the negotiation of contract documentation will be how the resulting risks, responsibilities and rights to adjustments are regulated with respect to change.

[6] All examples presented in this article are fictional and are intended solely to demonstrate how the proposed dispute resolution mechanism might function in a hypothetical construction project.

> additional compensation, showing a major cost overrun in comparison to its own internal budget, stating that the increased cost has been caused by a host of events that can be categorised as either A, B or C, or as none of the categories that could give an entitlement. The employer denies the claim, stating that the contractor must point to specific events and their respective effects, and that B-events will never give the contractor an entitlement to additional monetary compensation, nor will the events that do not sort under any of the categories. The dispute is later referred to final dispute resolution whereby the contractor, without having specified its claim further, is awarded (exactly) 30 per cent of its claim with reference to a "general assessment", with no specification in the award of what amounts are awarded with reference to what event.

The example above is somewhat simplified yet representative of situations and claims that are seen in construction disputes.[7] By granting such claims, the agreed risk allocation, which is made through the carefully negotiated differentiation of event categories A, B and C, is undermined. Many parties that believe themselves to have regulated risks and responsibilities in a construction agreement are keen to avoid such a situation. Why would they otherwise negotiate at all?

In this context, dispute resolution is not merely a matter of choosing between litigation and arbitration. Construction projects, given their scale and complexity, require a more nuanced approach that integrates dispute management into project execution. Beyond traditional fora, a range of mechanisms can be employed to address disagreements proactively, before they escalate.[8] Rather than referring to these collectively as "alternative dispute resolution", this article categorises the principal mechanisms relevant to construction projects into three overarching types: (i) Dispute avoidance, (ii) Voluntary resolution, and (iii) Final dispute resolution.[9]

As illustrated below, these types may come in a variety of forms, all with the aim of resolving disagreements:

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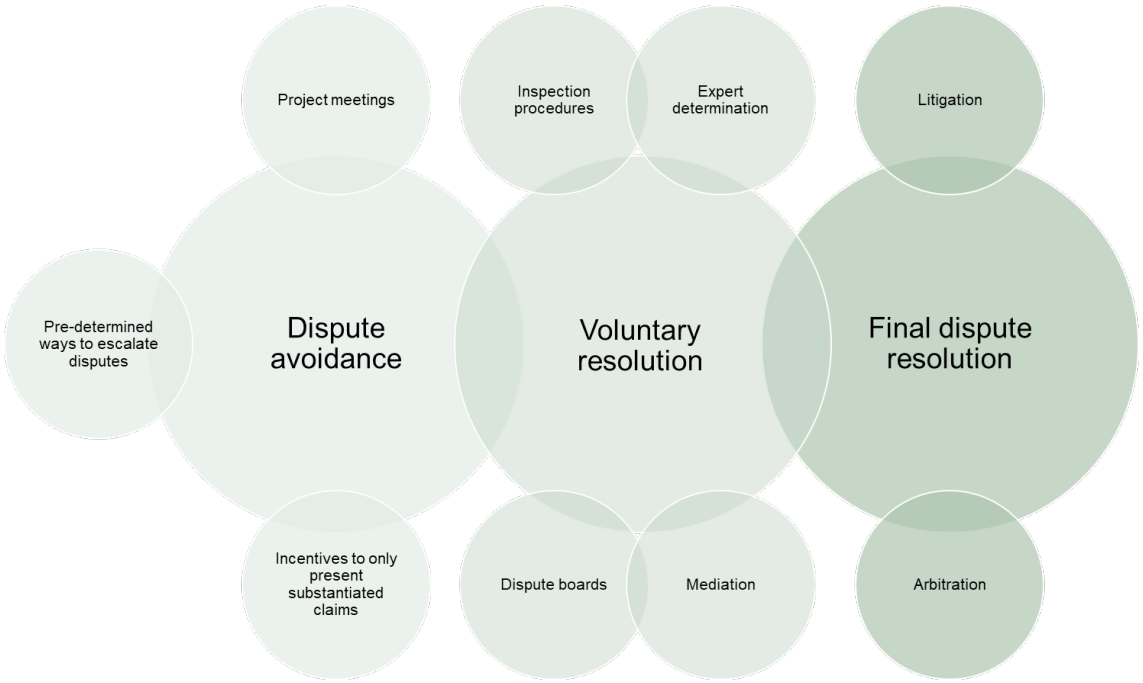
[7] See further footnote 32.

[8] As put by Doug Jones: "*It is of fundamental importance for parties to design a dispute management procedure that effectively deals with the kind of disputes that may arise in the method they see as most efficient, convenient and effective.*"; see Jones, Douglas S. "Various Non-binding (ADR) Processes", in van den Berg, Albert Jan (ed), ICCA Congress Series No. 12 (Beijing 2004): New Horizons in International Commercial Arbitration and Beyond, ICCA Congress Series, Volume 12, pp. 367–414.

[9] This article merely addresses a few alternatives for resolving disagreements and disputes in construction projects. For a more thorough account, see Roquette, Andreas J. and Pröstler, Tom Christopher (eds), International Construction Disputes: A Practitioner's Guide, 2022.



In practice, I have found that negotiations concerning final dispute resolution (which involve the critical choice between arbitration and litigation) are often more productive when preceded by a discussion and agreement on dispute avoidance and voluntary resolution mechanisms. By first agreeing on proactive methods to prevent disputes or to resolve them informally and efficiently, the parties lay the groundwork for a more cooperative project environment. Establishing structured approaches to dispute avoidance and voluntary resolution also tends to defuse the controversy often surrounding the choice of a final dispute resolution mechanism. When the parties have already committed to a tiered process for managing disagreement, the eventual selection of arbitration or litigation becomes less sensitive.

In the following, I will examine dispute avoidance and voluntary resolution in construction projects not merely as a set of practical tools, but as a deliberate contractual strategy. This includes practices such as structured communication protocols, early issue-spotting, rigorous contemporaneous record-keeping, systematic inspection procedures, and, where appropriate, the strategic use of mediation. Once such mechanisms are in place, arbitration or litigation can be framed as a last-resort safeguard – an essential but subsidiary element in a broader system designed to prevent disputes from crystallising in the first place.

3. Creating procedures for resolving disagreements and avoiding disputes

3.1 Dispute avoidance as a concept

Dispute avoidance is best understood as a proactive strategy for managing disagreements before they mature into a formal dispute. It involves the early identification and resolution of issues through processes designed to anticipate friction points and address them constructively in real time. The objective is not merely to delay conflict, but to create conditions under which disputes are less likely to arise at all.

While there are methods for dispute avoidance that are broadly known, their implementation must be calibrated to the specific characteristics of each project. Effective strategies are not one-size-fits-all; they must reflect the contractual, technical, and organisational realities of the project environment. In the context of infrastructure projects, particular attention must be given to the

structures, processes, and decision-making hierarchies established by both employer and contractor. Introducing avoidance mechanisms that are poorly aligned with operational realities, or that are never meaningfully used, risks generating confusion rather than clarity if disagreements eventually escalate.

In the sections that follow, I will outline three principal methods for operationalising dispute avoidance in construction projects. These measures are not exhaustive, but they represent structured interventions that, when properly integrated into the project framework, can significantly reduce the likelihood of disputes emerging.

3.2 Project meetings

Although often not even thought of as part of the tiered conflict resolution, one of the most practical and commonly employed dispute avoidance mechanisms is the structured use of regular project meetings throughout the construction period. These meetings provide a formalised forum for the parties to review progress, raise concerns, and resolve emerging issues in real time, before they escalate into entrenched disagreements. When effectively implemented, project meetings serve as a governance instrument that embeds continuous dialogue within the project's management processes, whilst also documenting that dialogue.

For these meetings to serve their intended function, the parties should clearly define the scope, frequency, and procedural status of the meetings. It is particularly important to clarify whether discussions held in such meetings are to be treated as advisory, binding, or subject to formal confirmation. Moreover, the contract should specify which individuals are authorised to represent the employer and the contractor, respectively, ensuring that decisions taken within a certain forum carry appropriate authority and are not later disavowed due to lack of mandate.

> Example 3 – Managing change through collaborative resolution in project meetings:
> A water conveyance pipeline is constructed in a remote area. The contractor arrives at site and realises that the fenced site deviates from what the contractor had expected. There is not enough room for the workmanship quarters, and the contractor thus has to arrange for housing elsewhere. The contractor addresses this at the project meetings, explaining that this will lead to additional costs and loss of productivity. The employer points to provisions in the agreement that says that the contractor is responsible for the costs for housing and that the contract included a map of the site. During the discussions, the employer suggests arranging for workmanship quarters at an adjacent property, also owned by the employer. The employer agrees to make the adjacent property available without cost, and the contractor undertakes to make sure that this arrangement will not affect the costs, productivity or time for completing the conveyance pipeline. The parties delegate the responsibility for reviewing the practicalities to named persons within their respective project organisations. Agreement on the details is put in writing and agreed to at the subsequent project meeting.

When properly structured and consistently utilised, project meetings do more than facilitate communication: they address and deal with changes as they occur and document the new allocation of risk and responsibilities resulting from the change. The meetings may thereby actively reduce friction, support collaborative problem-solving, and resolve the day-to-day issues that inevitably arise in complex construction projects.

3.3 Pre-determined ways to escalate disagreements

A further method of dispute avoidance involves the contractual establishment of structured escalation pathways for addressing disagreements that cannot be resolved at the operational level.

To be effective, the escalation procedure should be clearly defined in the contract, specifying both the circumstances that trigger escalation and the successive levels to which issues are to be referred, such as project management teams, steering groups, or executive leadership (and sometimes even to the boards of directors). This ensures that concerns receive timely and proportionate attention, and that critical matters are not left to stagnate within daily operations.

However, the success of this mechanism depends not only on its formal design but also on the ability and willingness of the designated representatives to engage constructively. This includes both a genuine mandate to make decisions and a clear understanding of the contractual risk allocation.

> Example 4 – Handling of change through escalation and negotiated risk allocation:
> A contractor is building an amusement park. The work can only be carried out in the period of April–October. For the project, the contractor has engaged several subcontractors. One subcontractor with a scope encompassing two rollercoasters, is continuously underperforming. This raises concerns both within the contractor's and the employer's organisations. The contractor realises that the underperforming subcontractor may cause delay to the entire project and has therefore declared its willingness to the employer to replace the subcontractor. However, in such case, there will be some time before a new subcontractor can be in place. The contractor has requested in project meetings that the parties should cooperate to facilitate this transition, and that the employer will refrain from claiming liquidated damages for any delay caused by the replacement of the subcontractor. The employer's representatives at the project meetings decline the contractor's request for release from liquidated damages. The contractor escalates the issue to an Executive Committee in accordance with the construction agreement.
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> The Executive Committee holds lengthy meetings on the issue. The representatives of the employer appreciates the transparency offered by the contractor and therefore agrees that the contractor will not be liable to pay liquidated damages for the reasonable delay caused by the replacement of the subcontractor, if the contractor undertakes to take all reasonable measures to accelerate the performance of the scope of the replaced subcontractor, at the contractor's own expense. In order to gain clarity on the allocation of risk and responsibility, the agreement is formalised in signed meeting minutes whereby the contractor is granted a precisely defined extension of time for the relevant milestone (the delivery of the two rollercoasters), with the risk of not meeting this new milestone being maintained with the contractor.

Effective escalation requires that representatives not only recognise when a risk has materialised, but also that they are prepared to assume responsibility in accordance with the agreed distribution of risks, rather than deflect or reassign blame. Without such authority, insight, and contractual discipline, even the most carefully drafted escalation clauses risk becoming procedural formalities without practical impact. As discussed below, the presence of a final dispute resolution mechanism which the parties trust will uphold and enforce the agreed risk allocation can itself reinforce compliance during the project. When the parties have confidence that deviations from the agreed allocation of risk will not be rewarded in hindsight, there is a greater incentive to resolve issues promptly and in line with the contract. Conversely, if such trust is lacking and the expectation is

that the final adjudication by a court or arbitral tribunal will be unpredictable or arbitrary in its outcome, a party may instead choose to preserve its position, avoid assuming responsibility, and speculate on the possibility of a more favourable resolution at a later stage.

3.4 Creating incentives to only present substantiated claims

3.4.1 Establishing what is required to succeed with a claim

Beyond mechanisms designed to resolve issues amicably, construction contracts can, and should, be structured to discourage the presentation of unsubstantiated or speculative claims.[10] The underlying assumption is straightforward: substantiated claims are more likely to lead to resolution, while loosely formulated claims tend to delay resolution and erode trust. Introducing clear procedural and evidentiary requirements for claim formulation, serve multiple purposes. First, they create incentives for both parties to adhere to disciplined record-keeping throughout the project lifecycle. Second, and equally important, they enable ongoing assessment of rights and obligations as the project unfolds. The contract can thus create incentives for disciplined contract performance and constructive dialogue.

Provisions requiring the systematic documentation of project progress, cost development, and related events, as well as making this available to the counterparty, support these objectives. However, to be effective, the obligation to maintain project records should not be framed solely as an administrative duty, but be supported by clear procedural expectations and, crucially, contractual provisions addressing consequences of non-compliance.

As an evidentiary matter, the contract can establish that specific types of documentation (such as approved time schedules, site diaries, inspection records, or subcontractor logs) will serve as exclusive or primary evidence of certain facts, or that the absence of required documentation shall adversely affect the evidentiary weight of any corresponding claim or defence. Such substantive evidentiary rules (Swe: "*materiella bevisregler*") foster compliance by attaching concrete legal consequences to inadequate documentation. They also greatly reduce the evidentiary scope, and thus the time and costs, of a future dispute if it nevertheless cannot be avoided.

It is thus a highly effective method for reducing disputes to define already at the contract drafting stage the substantive and evidentiary requirements to be successful with certain categories of claims. By regulating this, the parties promote predictability in contract enforcement and hopefully deter speculative or unmeritorious claims.

Take, for example, claims for extension of time, which is an ever-present feature in construction projects. The contract may require that any such claim, if not agreed upon, shall be supported by retrospective delay analysis demonstrating actual impact to the critical path, as defined in the most recently accepted time schedule. It may also require periodic updates to the time schedule in a transparent manner as a condition for any entitlement, thereby disqualifying claims based on out-of-date or purely theoretical schedules. This guards against the proliferation of claims for incidental or immaterial delays, thereby keeping the focus on events that truly affect delivery.

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[10] The importance of "[addressing] *the degree of substantiation with which claims are to be presented and proven*" is also highlighted by Martin Begrich and Cornel L. Kerber in "Chapter 1: Early Claims Resolution", Section II.3, in Roquette, Andreas J. and Pröstler, Tom Christopher (eds), International Construction Disputes: A Practitioner's Guide, 2022, pp. 1–34.

For compensation claims, the contract may stipulate that entitlement depends on submission of contemporaneous cost records, supported by timesheets, plant logs, and supplier invoices. This may include the right for the counterparty to access open books or inspect contemporaneous cost records. Such provisions support transparency and financial discipline, whilst providing a common factual basis for assessing whether compensation is warranted.

> Example 5 – Effect of documentation requirements on change management: A project involves the concurrent drilling of five tunnels. During execution, the contractor seeks an extension of time due to a temporary suspension of drilling in two of the tunnels, citing the need for further geological investigation. Under the infrastructure agreement, entitlement to an extension of time is conditional upon the contractor providing, for the duration of the alleged delay event and its effects: (i) contemporaneous statements detailing the event and the mitigation measures taken; and (ii) updated schedules identifying the revised critical path to key milestones and overall project completion. In compliance with these requirements, the contractor timely submits documentation to the project platform. Upon review, the employer concludes that the delay can be mitigated by redirecting resources to continue drilling the remaining three tunnels. The updated schedule confirms that, if executed accordingly, the project's overall time for completion remains unaffected. As a result, the employer denies the extension of time during project execution, relying on the contractually agreed framework. The contractor implements the proposed mitigation measures. As a consequence, delay to final completion is avoided, and no dispute arises.

Incorporating these standards into the contract enables claims to be evaluated while the project is still ongoing, when facts are fresh, documentation available, and resolution still possible. This, hopefully, reduces the scope for retrospective reconstruction of events and limits the credibility of after-the-fact claims.[11]

3.4.2 Claims procedures and cut-off dates

Comprehensive and well-defined claims procedures, with clear deadlines for notification and substantiation, can substantially reduce the incidence of disputes during and after a project.[12] By imposing specific cut-off dates for submitting claims, the contract encourages the parties to address potential issues promptly and in close proximity to the events that give rise to them. This not only promotes procedural discipline but also ensures that the responding party is afforded a meaningful

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[11] This is not unique for the Nordic context. As concluded in Bodenheimer, Rouven "Chapter 5: Evidence in Construction Disputes, E. Early Taking/Securing of Evidence", in Roquette, Andreas J. and Pröstler Tom Christopher (eds), International Construction Disputes: A Practitioner's Guide, 2022, pp. 329–338: "[C]*onsiderations to take and secure evidence should be made in a timely manner and throughout the construction process*". See also e.g. Lapp, Christophe and Abid, Chiraz, "Enhancing Efficiency in Complex Construction Arbitrations with a Focus on the MENA Region", International Journal of Arab Arbitration, Volume 12 No 2, 2020, pp. 28–40.

[12] See Sanders, Mark C, "Bad news should travel fast: a collaborative view of contract notice provisions", Construction Law International, Vol 18 No 3, October 2023, where the following is concluded: "*When an unforeseen event occurs, employers and contractors should both want a properly informed counterparty fully focused on solving the instant problem. Well-drafted notice provisions will encourage open communications, and their proper application will leverage notice as an input to collaborative change management. Employers can draft stringent notice provisions and contractors should strictly comply, but collaborative parties will remember that the provisions are intended to facilitate proactive change management. Protection of the parties' rights is a secondary benefit that will be applicable only if contractual change management processes do not result in a negotiated resolution of cost and schedule impacts. The first line of defence is working together to minimise those impacts in the first place.*".

opportunity to verify, respond to, or resolve the matter while the relevant facts remain accessible and untainted by hindsight.[13]

The contract can specify that the right to assert certain claims is precluded unless documentation has been submitted in the prescribed format, at the prescribed time, and via the agreed project management platform. For example, a claim for additional costs due to changed ground conditions may be contractually barred if the contractor has not submitted a contemporaneous site report and photographic evidence within a fixed number of days after encountering the issue.

Such mechanisms also serve an important evidentiary function: the closer in time a claim is made to the underlying event, the more likely it is to be supported by accurate documentation and objective recollection.[14] From a legal standpoint, timely notice facilitates fair and efficient resolution, while late claims that often lack contemporaneous support are more likely to result in protracted factual disputes and increased tension.

> Example 6 – A late claim based on change: A contractor has built a ten-story office building. On the day before the final inspection, which arrives later than what the contract provides, the employer receives a letter with a claim for extension of time and compensation for prolongation costs. The basis for the claim is an alleged event that occurred seven months earlier. The contract includes the following provision: "*The Contractor shall only be entitled to request extension of time if (a) it gives written notice of the relevant event of delay to the employer as soon as reasonably practicable and in any event not later than fourteen (14) days after it became aware of the event of delay; and (b) as soon as reasonably practicable and in any event not later than twenty-eight (28) days after the notice in (a), it gives a further written notice to the employer setting out: (i) a statement of which event of delay the claim is based on; (ii) details of the circumstances from which the delay arises and the extent of the actual and contemplated delay; (iii) details of the contemporary records which the contractor will maintain to substantiate its claim; (iv) details of the consequences, whether direct or indirect, which the delay may have on completion of the works; (v) details of whether costs will arise and of the causes and measures from which they will arise; and (vi) details of any measures the contractor proposes to adopt to mitigate the consequences of delay, and the increased costs, if any, associated with those measures. In the event that the contractor delays in making any notice required under (a) or (b), the contractor shall not be entitled to any extension of time in the period for which the notice is delayed or to any reimbursement for costs relating to such period.*" The employer denies the contractor's claim since it has not been presented in due time, pointing to the mentioned provision.

Defined claims procedures contribute to a culture of transparency and accountability. They clarify the parties' respective obligations and establish the consequences of non-compliance, whether in the form of forfeiture, adverse evidentiary inferences, or loss of entitlement as a substantive matter.

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[13] See e.g. Begrich, Martin and Kerber, Cornel L. in "'Chapter 1: Early Claims Resolution'", paras. 71–72, in Roquette, Andreas J. and Pröstler, Tom Christopher (eds), International Construction Disputes: A Practitioner's Guide, 2022, pp. 1–34, on notice requirements in FIDIC contracts serving to reduce misunderstandings and disputes by improving contract management practices.

[14] See e.g. Bodenheimer, Rouven "Chapter 5: Evidence in Construction Disputes, E. Early Taking/Securing of Evidence", in Roquette, Andreas J. and Pröstler Tom Christopher (eds), International Construction Disputes: A Practitioner's Guide, 20224, pp. 329–338, regarding the time-sensitive nature of evidence in construction disputes.

4. Structuring ways to resolve disputes without arbitration or litigation

4.1 Voluntary resolution as a concept

Even with the implementation of well-designed dispute avoidance measures, some disagreements will almost inevitably remain. In such instances, parties may wish to resolve disputes without immediately invoking formal determination through arbitration or litigation. Particularly in long-term or high-value construction projects, there is often a shared interest in maintaining control over the dispute process and preserving working relationships. Voluntary resolution mechanisms, when contractually agreed and properly structured, can serve this purpose by providing a forum for resolving disagreements efficiently, flexibly, and with minimal procedural costs.

Unlike arbitral awards or court judgments, the outcomes of voluntary resolution processes are not directly enforceable under procedural law. However, they may be contractually binding if so agreed, or become binding in practice if a party elects to comply with the outcome, which is why I refer to these methods as "voluntary". The parties' willingness to engage in and adhere to these processes often reflects a pragmatic recognition that early resolution is almost always preferable to formal escalation.[15]

In the sections that follow, I will examine four common forms of voluntary resolution mechanisms. As will become clear, these methods often serve a dual function: while aimed at resolving disputes, they also operate (at least in part) as instruments of dispute avoidance, helping the parties reach alignment before the conflict becomes entrenched.

4.2 Inspection procedures

Pre-established inspection procedures serve a critical function in managing evidence and verifying compliance and documenting evidence contemporaneously. In addition to that, inspection procedures may also serve as an effective means of resolving disagreements during the course of the project, particularly regarding quality and progress/delay. By contractually stipulating that inspections are to be carried out at defined intervals, milestones, or upon the occurrence of specific events, the parties introduce a structured and objective mechanism for verifying key facts in real time, by an independent third party.

Clear rules on when, how, and at whose initiative inspections are to be carried out ensure that important information is documented while it is still readily accessible. These procedures help confirm progress, verify quality, and identify any deviations from agreed specifications or timelines. In doing so, they reduce uncertainty and limit the scope for retrospective disagreement.

> Example 7 – Inspection protocols clarifying responsibility for post-completion change: A contractor has erected a building that includes a restaurant. One year after final inspection, a water leak occurs from a newly installed kitchen tap. The leak causes damage to the kitchen floor and continues down to the basement, revealing insufficient waterproofing. The restaurant tenant asserts that this must

[15] Voluntary or "non-binding" resolution has been described in the following way: "*Non-binding processes allow parties to share the risk of losing, and to devise outcomes different to those produced by a binding process. The result will inevitably be a compromise, but the important point is that, because the process is voluntary and non-binding, neither party will 'lose'. The result is a commercially workable solution, although it may not be a 'win-win' solution. Usually, neither party will be as pleased with the outcome as they would be if they had 'won'.*"; see Jones, Douglas S., "Various Non-binding (ADR) Processes", in van den Berg, Albert Jan (ed), ICCA Congress Series No. 12 (Beijing 2004): New Horizons in International Commercial Arbitration and Beyond, ICCA Congress Series, Volume 12, pp. 367–414.

be due to insufficient waterproofing for which the owner of the building is responsible. The contractor and the owner review the final inspection protocol and confirm that the waterproofing was deemed to comply with the contractual requirements at the time of final inspection. This limits the further investigation to two possibilities: either something has occurred after final inspection, or there was a defect that could or could not have been detected at the time. It is soon discovered that the restaurant tenant has installed additional equipment after handover, and that this work has compromised the waterproofing. The inspection record thus helps establish that the contractor is not responsible for the damage.

If the outcome of an inspection is accepted by both parties, expressly or by it not being contested, it may eliminate a dispute entirely.[16] And even if disagreement remains, the inspection record can serve as a credible, contemporaneous reference point in any subsequent arbitration or litigation. In this way, inspection procedures support both transparency and early issue resolution.

The contract may also stipulate that certain inspections will be determinative and contractually binding on the parties for specific issues, such as whether liquidated damages should accrue or whether a condition constitutes a defect. This structured approach ensures that assessments are carried out systematically, objectively, and in close proximity to the relevant events, providing clarity and consistency for both parties.[17]

Claims for liquidated damages or time-related entitlements typically require substantial investigation and carry a risk of prolonged disagreement. By deciding key issues during the project, via contractual inspection mechanisms, parties can avoid unnecessary complexity and reduce the volume of post-completion disputes.

Example 8 – Pre-inspection determining entitlement to liquidated damages: A contractor (the "Builder") is constructing a factory facility in the south of Sweden. The factory will house complex manufacturing equipment to be supplied and installed by another contractor (the "Installer") engaged by the employer. The Installer is scheduled to begin installations before the Builder has completed its works. To ensure timely access for the Installer, the Builder's contract includes specific milestones to which liquidated damages is tied. One clause reads:

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[16] Per Samuelsson and Niklas Arvidsson have elaborated on the legal effect of inspections pursuant to the Swedish standard forms AB 04 and ABT 06, in "Entreprenadbesiktning i en byggmästarbildad bostadsrättsförening", in Arvidsson, Niklas, Nyström, Birgitta and Westberg, Peter (eds.), Tvistlösning inom affärsrätten, 2020, Section 7.

[17] Per Samuelsson and Niklas Arvidsson point to the important difference between procedurally binding and materially binding decisions by the inspector (as translated by this author): "*Nothing prevents the employer and the contractor from individually agreeing to give the inspector a different and extended assignment compared to what follows from AB 04. In terms of procedural law, the possibilities are limited by the procedural principle of invalidity, which means that legal support is required for agreements to have procedural legal effects. If the parties wish to ensure that the inspection includes a legally binding decision on issues of defects and penalties for defects, there is only one way to do this under current legislation, and that is to appoint the inspector as an arbitrator in an arbitration agreement, for example in the form of a special arbitration clause in the construction contract. If, on the other hand, they are satisfied that the inspector's findings will materially affect their legal relationship, they may instead stipulate that the report shall be contractually binding on the parties, for example by stating that defects shall only be deemed to exist if they are stated in the report. By virtue of such a contractual provision, the inspector effectively becomes a kind of private judge without, however, being equipped with any procedural competence to legally resolve disputes that arise.*" See Arvidsson, Niklas and Samuelsson, Per, "Entreprenadbesiktning i en byggmästarbildad bostadsrättsförening", in Arvidsson, Niklas, Nyström, Birgitta and Westberg, Peter (eds.), Tvistlösning inom affärsrätten, 2020, Section 7.

> "*If the Builder fails to achieve Milestone Completion on the warranted Milestone Completion Date or any extension thereof pursuant to this Agreement, the Builder shall pay to the Employer liquidated damages for delay equal to one (1) per cent of the contract sum in respect of each week the Milestone Completion is delayed. Considering that liquidated damages are tied to the Milestone Completion, the issue of whether Milestone Completion has been achieved shall be determined through pre-inspection carried out in accordance with this Agreement.*"
>
> As the warranted Milestone Completion Date approaches, a pre-inspection is carried out in accordance with the agreement. The inspector concludes that the milestone has not been achieved. Based on this determination, liquidated damages begin to accrue.

Inspection procedures, if agreed to have effect in these regards, share features with contractually binding expert determination processes. Both involve a defined method for resolving specific technical or factual questions based on objective input and, if so agreed, may become contractually binding. However, unlike expert determination, inspection procedures are practically always conducted during (and not seldom throughout) a construction project, while expert determination procedures must usually be initiated for a particular issue after it has arisen in a project. Moreover, inspection procedures revolve around pre-determined issues: whether the works performed comply with the contractual requirements, and sometimes, other pre-determined issues as in the example above. The latter may be the case also for expert determination. However, expert determination may also be used for issues which have not been foreseen and defined. The concept of expert determination is explored further in Section 4.3 below.

4.3 Expert determination

Expert determination is a contractual dispute resolution process in which an independent expert is appointed to make a binding decision on a clearly defined technical or factual issue.[18] This mechanism is particularly useful in complex construction projects, where disagreements may centre on matters requiring specialist knowledge such as engineering standards, delay analysis, or financial valuation.[19]

The expert is typically selected for its subject-matter expertise and tasked with reviewing the relevant facts, evidence, and arguments presented by the parties. The process is less formal than arbitration or litigation, and generally quicker and more cost-effective. The determination can be contractually binding or non-binding. If non-binding, it will largely be the persuasive power of the determination that decides how effective the decision is, i.e. if it seems sound and founded, the parties may accept the findings and move on. If not agreed to, the decision may still have evidentiary value in forthcoming procedures.

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[18] The parties can either agree to ad hoc expert determination, or to apply any of the sets of rules that various arbitration institutes provide for expert determination. For a summary of the rules that are available, see e.g. Ehle, Bernd, "Chapter 2: Alternative Dispute Resolution, C. Expert Determination", Section III, in Roquette, Andreas J. and Pröstler, Tom Christopher (eds), International Construction Disputes: A Practitioner's Guide, 2022, pp. 66–80.

[19] The main advantages raised by other authors is that expert determination is quick, flexible, less costly and confrontational than arbitration, and confidential (unlike litigation). See further Ehle, Bernd, "Chapter 2: Alternative Dispute Resolution, C. Expert Determination", Section IV, in Roquette, Andreas J. and Pröstler, Tom Christopher (eds), International Construction Disputes: A Practitioner's Guide, 2022, pp. 66–80, where also disadvantages are raised.

The decision may also be binding on certain points agreed by the parties. If that is the case, it will become contractually binding on the parties and possible to enforce in further proceedings, but it will not be directly enforceable as a judgment or arbitral award. The expert is also not typically tasked with assessing liability or making any legal findings in a proper sense. Instead, the focus is to assess facts within the expert's expertise. However, there will almost always be discussions about whether a certain issue, such as interpretation of a technical specification, is of a legal or technical nature.

> Example 9 – Expert determination to avoid disputed change order: A contractor is engaged to deliver a sprinkler system on a design and build basis. During execution, the employer raises concerns that the number of shut-off valves is insufficient to ensure long-term functionality and maintainability. The contractor maintains that the design meets all applicable standards and that any additional valves required by the employer would constitute a variation. Unwilling to issue a change order but still concerned about performance, the employer initiates an expert determination under the contract. A specialist in sprinkler systems is appointed to assess whether the proposed number and placement of valves satisfy the project's technical requirements. The expert determines that the contractor's design is incompliant if not supplemented with additional valves. The contractor proceeds in accordance with the expert's decision, with no entitlement to additional payment. The matter is closed without further escalation, and the project continues without delay.

By incorporating expert determination clauses into the contract, parties can preserve project momentum, reduce legal costs, and minimise the risk of unresolved disputes derailing delivery. As with inspection procedures, expert determination reflects a broader shift toward integrated, issue-specific dispute resolution within the life of the project itself.

4.4 Dispute boards

Dispute boards – whether structured as Dispute Adjudication Boards (DABs), Dispute Avoidance/Adjudication Boards (DAABs), or Dispute Review Boards (DRBs) – are increasingly recognised as effective tools for managing and resolving conflicts in large construction projects.[20]

These dispute boards consist of independent experts who are often appointed at the outset of a project to oversee its progress and address any disputes that arise.[21] Their proactive involvement allows for real-time resolution of issues.[22] The difference between dispute boards and arbitration

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[20] For an up-to-date summary of the development of dispute boards internationally and in Sweden, see Linton-Wahlgren, Mikael, "Chapter 12: Dispute Resolution Boards: An Efficient Dispute Resolution Method in Sweden?", in Schöldström, Patrik and Danielsson, Christer (eds), Stockholm Arbitration Yearbook 2024, pp. 221–240.

[21] That the board is constituted at the outset is an important feature to make the panel function efficiently. See Chapman, Peter H.J., Dispute Boards, 1999, https://www.fidic.org/sites/default/files/25%20Dispute%20Boards.pdf. However, ad hoc panels are also widely used.

[22] The dispute boards may render decisions and recommendations relating to specific matters, but often also implement dispute avoidance measures, sometimes rendering formal decisions unnecessary. Centre of Construction Law and Dispute Resolution at King's College in London recently published the results of an international survey on the use and effectiveness of dispute boards in construction projects. On the issue of implementation by the dispute board of dispute avoidance measures, individuals reported that the most common result was that the dispute was completely avoided, whilst entities reported the most common result to be that the dispute was relatively reduced. Nazzini, Renato, Macedo Moreira, Raquel, 2024 Dispute Boards International

or litigation, is that the outcome of dispute boards may be binding (although they often are only advisory in nature), but it is not enforceable (in the same way as described with respect to expert determination above).[23] Nonetheless, parties often agree to adhere to the dispute board's recommendation or decision. If they do not, they may refer the issue to arbitration or litigation, depending on what they have agreed to in their contract.

Dispute boards is not a novelty.[24] The International Federation of Consulting Engineers (FIDIC) started to incorporate dispute boards in its provisions already in the mid 1990s and still do today. Such rules are nowadays also provided in other sets of rules. The Swedish standard forms most commonly used on the domestic market – AB 04 and ABT 06 – do not include provisions for dispute boards.[25] Dispute boards have, nonetheless, been used in several large infrastructure projects in Sweden, for which the standard forms have applied.[26]

> Example 10 – A Dispute Adjudication Board determining right to payment: A contractor is performing work on a new airport terminal, at a fixed price basis. Due to other projects of the contractor's being delayed, the contractor has poor liquidity at the moment. The contractor is therefore keen to closely monitor that the airport project is carried out and paid in accordance with the contract and its attached payment schedule (which is linked to progress).
>
> The contractor submits a request for Payment Nr 4 of the payment schedule. The employer reverts within the timeframe set out in the contract, claiming that the targets have not been met yet and that the contractor is therefore not entitled to Payment Nr 4. The contractor claims that the additional work the employer wants completed relates to a change order, which does not affect the entitlement to payment for contract work. After a week of discussion between the parties, the contractor initiates a procedure in front of the Dispute Adjudication Board set out in the agreement. The employer participates in the proceedings, which are concluded within two weeks. The Dispute Adjudication Board decides in favour of the contractor, confirming right to Payment Nr 4 and that payment for the change order is regulated differently. The employer therefore makes Payment

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Survey: A Study on the Worldwide Use of Dispute Boards over the Past Six Years, p. 50. The increased use of dispute boards to avoid disputes is also evident by the fact that FIDIC has come to use the abbreviation DAAB for 'Dispute Avoidance/Adjudication Board' instead of simply DAB for Dispute Adjudication Board. See Seppälä, Christopher R., The FIDIC Red Book Contract: An International Clause-by-Clause Commentary, 2023, Chapter IV, Section 1.1.22.

[23] In a recent issue of IBA's Construction Law International, it has been argued that there is a need for international enforcement of construction adjudication decisions. See Jaberi, M Saleh and Hendry, Liam, "A growing need for international enforcement of construction adjudication decisions", Construction Law International, Vol 19 No 3, November 2024.

[24] For a historic exposé on the topic of Dispute Boards, see Appuhn, Richard, "Chapter 6: History and Overview of Dispute Boards Around the World", in De Ly, Filip J.M. and Gélinas, Paul-A. (eds), ICC Dossier No. 15: Dispute Prevention and Settlement through Expert Determination and Dispute Boards, Dossiers of the ICC Institute of World Business Law, Volume 15, pp. 63–69.

[25] AB 04 and ABT 06 do, however, include rules for "simplified dispute resolution".

[26] See also Linton-Wahlgren, Mikael, "Chapter 12: Dispute Resolution Boards: An Efficient Dispute Resolution Method in Sweden?", in Schöldström, Patrik and Danielsson, Christer (eds), Stockholm Arbitration Yearbook 2024, p. 237.

> Nr 4 and the contractor requests payment of the change order once the work relating to it has been completed. The issue is not advanced to arbitration.

Parties may have various reasons for interpreting a contract differently or for holding divergent views on the implications of an event. However, disputes pending arbitration or litigation can sometimes result in adverse consequences for both parties. A more effective approach might be to promptly seek a review or adjudication by a dispute board. If disagreements persist following this process, the matter can still be escalated to arbitration or litigation.

4.5 Mediation

Mediation offers a structured yet flexible method for resolving disputes when they arise. It involves the appointment of a neutral third-party mediator who facilitates discussions between the parties, helping them explore their positions and work toward a mutually acceptable solution.[27] Unlike formal adjudication by a court or arbitral tribunal, mediation does not impose a binding decision. Instead, it emphasises collaboration and allows the parties to retain control over both process and outcome.

The advantages of mediation are considerable. When successful, it is faster and less costly than arbitration or litigation. It can also help foster a less adversarial atmosphere and help preserve working relationships – an important consideration, not least in ongoing projects.

Despite these benefits, mediation has long been a topic of discussion in the Swedish construction sector without gaining significant traction. In practice, mediation remains underutilised in Swedish projects, even though many contractual frameworks make room for it in principle. In the author's view, this is a missed opportunity.

Mediation should be used far more frequently in Swedish construction projects than what is the case today. It offers a rare combination of procedural flexibility, cost efficiency, and relational sensitivity, which may be particularly valuable in long-term, high-stake projects.

> Example 11 – Mediation resolving different views on design, conditions and contractual requirements: An employer and a contractor have entered into an agreement for the design and construction of several retail facilities. A few months into the project, the employer realises that the parties have differing views on quality and aesthetics. This leads to claims from both sides, with the employer ultimately threatening to terminate the agreement. However, the employer is hesitant to terminate the agreement, as finding a new contractor for the project would be time-consuming. The construction agreement includes a mediation clause, prompting the parties to initiate mediation. After several sessions with the mediator, the parties reach an agreement on a procedure for the design process moving forward, allowing the employer to provide comments or approval at specific intervals (an aspect that was omitted in the original construction agreement). They also agree on how to determine any additional

[27] Much has been written on mediation. See e.g. Hydén, Håkan and Michelson, Staffan, "Rättslig konfliktlösning i par och i trekant – vad kännetecknar dessa och när kommer de till användning?" in Arvidsson, Niklas, Nyström, Birgitta and Westberg, Peter, Tvistlösning inom affärsrätten, 2020; McIlwrath, Michael and Savage, John, International Arbitration and Mediation: A Practical Guide, 2010, Chapter Four; Westberg, Peter and Maunsbach, Lotta, Civilrättskipning II Privat tvistlösning – förlikningsförhandling, medling, skiljeförfarande och andra privatdomarförfaranden, 2021, Section X.

remuneration due to comments by the employer. With these issues resolved, the project continues.

By explicitly incorporating mediation into the contractual dispute resolution process, including by requiring it to be pursued in parallel to any arbitration or litigation once initiated, parties give themselves access to a constructive and pragmatic forum for resolving disagreements.[28] This, in turn, supports project continuity. It also aligns with the broader goal of dispute avoidance through proportionate means of dispute resolution.

5. Final dispute resolution: Arbitration vs. litigation

5.1 Framing the discussion

If the earlier mechanisms fail to resolve a dispute, only two options remain: arbitration or litigation. These are the only means of obtaining a final and enforceable determination of the parties' rights and obligations. The preventive and voluntary tools discussed above aim to reduce the likelihood of escalation, but they cannot eliminate it altogether.

Importantly, the selection of a final dispute resolution forum is not only about where unresolved issues will ultimately be settled. It also shapes how the project is managed. When parties have confidence that the chosen forum will enforce the contract as written, including the allocation of risk and the procedural requirements agreed upon, that expectation should exert influence throughout project execution. If compliance with contractual duties, such as timely notification, proper documentation, and evidence of costs and progress, will be required for a claimant ultimately to prevail with a claim, the conduct during the project should be influenced accordingly. In this sense, the dispute resolution mechanism and the trust placed in it steer conduct proactively and hopefully support contractual discipline.

Conversely, as noted in Section 3.3 above, if the parties suspect that the ultimate dispute forum will apply vague standards or disregard the contractual framework (such as in Example 2 above), the incentive to follow agreed procedures diminishes. A party may instead choose to preserve its position, avoid taking responsibility, and speculate on the possibility of a more favourable outcome at a later stage.

This is why it is essential that parties agree, from the outset, which forum shall apply if final dispute resolution becomes necessary and also give some thought as to how more in detail to design the procedure.

It is sometimes suggested that parties negotiating contracts give limited attention to the dispute resolution clause, focusing instead on commercial and technical terms. In my experience, this does not hold true for construction contracts. On the contrary, many of those involved in construction projects have firsthand experience with complex disputes and understand the real-world implications of procedural design. They may have lived through lengthy or unpredictable proceedings – whether in arbitration or litigation – and draw on those experiences when forming a preference for one forum over the other.

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[28] This incorporation can be made by referring to mediation rules provided by various institutions, such as the SCC Mediation Rules, or by agreeing to ad hoc mediation, with tailored mediation rules. The rules can of course also be detailed once the need for mediation has arisen, although it might be more difficult to agree at that point.

Since the Nordic Commercial Arbitration Forum in March this year, developments in the field in Sweden have prompted a slight shift in my perspective regarding the most suitable dispute resolution mechanisms for construction projects. Attentive conference delegates may notice some revisions in this article in comparison to the speech. The next sections address key factors that affect the choice between arbitration and litigation in construction projects. The list will not be exhaustive, but focus on the appropriateness for construction projects, the possibility to appoint arbitrators, and the opportunity to tailor the proceedings through the arbitration agreement.

5.2 Factors to consider when choosing between arbitration and litigation

5.2.1 Appropriateness for construction disputes

When considering which dispute resolution mechanism is best suited for construction projects, one must begin with the nature of the disputes these projects tend to generate. I will focus on domestic Swedish projects; in international projects with English as project language, international arbitration is largely a given that will not be further discussed here.[29]

As discussed throughout this article, construction disputes often centre around alleged *change*, be it to scope or conditions, with effect on time, cost and/or quality. The disputes are inherently complex, fact-intensive, and frequently span long time periods. Typically, they involve multiple parties, dozens of expert witnesses and even more fact witnesses, and extensive documentation, ranging from technical data and progress records to email correspondence and notes. They also often concern substantial sums and may be intertwined with ongoing project performance or delivery obligations.

Given this, the efficiency and procedural flexibility of arbitration and its ability to adapt to the nature and scale of the dispute is a significant advantage. Arbitrators can limit the duration of hearings and give directions for a largely written procedure, require written witness statements to streamline fact presentation, and frontload the process by requiring the full case and supporting evidence to be presented early (with clear consequences if a party instead chooses to ambush with late introduction of facts and evidence). Arbitrators may also guide adversarial expert procedures to clarify technical issues and require the experts to assist in evaluating evidence that may otherwise be too voluminous or specialised for a single decision-maker to evaluate. Arbitration further permits alternative formats for analysis, such as Excel-based submissions, which are often better suited to delay analysis, cost allocation, and scope quantification, and which are typically prepared by technical experts rather than legal counsel. This flexibility enables arbitration to manage complexity without collapsing under it.

Litigation, by contrast, is less adaptable, particularly in jurisdictions like Sweden that lack specialised commercial or construction courts, or court procedures apt for this kind of disputes. Additionally, in Swedish courts, fact and evidence intensive construction disputes often generate lengthy and costly hearings.[30]

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[29] In international construction contracts, the question is rarely whether to agree to arbitration but rather under which set of rules. The same is often the case when a project includes a multitude of contracts and/or numerous parties, which is not rare in complex construction projects.

[30] See Ingvarson, Anders, "Reflektioner över entreprenadtvister och tvistlösningsformer", in Maunsbach, Lotta, and Hardenberger, Alexander (red), Festskrift till Peter Westberg, 2024, p. 326.

The above provides a great advantage for arbitration over litigation when it comes to construction projects. In short, a well-managed arbitration can deliver efficiencies that domestic Sweden litigation cannot match. So, with these clear procedural benefits of arbitration over litigation, could there even be a discussion as to what to choose? I submit that there must be, for at least the following reasons:

a) Arbitration's *potential* for an efficient and transparent procedure is not always realised. Some Swedish arbitrations are conducted as if being litigation, without the use of any of the case management tools that are distinct to arbitration.[31] This is often not a problem in a small or medium size arbitration, but in large construction arbitrations that deal with the consequences of change, the result may be arbitrations that are longer than the project itself. Where tribunals fail to use these case-management tools, much of the benefit is lost because you get an as lengthy proceeding as in court but without the benefits of litigation in court (see below). (This risk may be mitigated by additions to the arbitration clause, as will be discussed further below.)

b) Efficiency alone is not guiding for the choice. Construction contracts are the outcome of months of negotiation in which risks and responsibilities are finely allocated. That effort is wasted if the dispute forum fails to respect the bargain struck. Parties that I have worked with therefore value and expect predictability in outcome and transparent reasoning, at least as much as speed. They expect the tribunal to apply the agreed contract, not vague notions of equity, commercial fairness detached from the written terms, or large amounts awarded based on "overall assessments" without transparency as to what is being compensated and without any real statement of reasons. The occurrence of the latter is indeed rare, but with a few glaring exceptions. The problem risks being recurring, as there is a debate in Sweden in which parts of the community seeks to expand on equitable determinations in arbitrations.[32] (How this problem is to be addressed is dependent on the arbitrators appointed, but also on the choice of venue and hence the judicial oversight delivered as well as the arbitration rules used, and whether they provide for scrutiny.)

c) Judges in Swedish general courts are generally of high calibre and well equipped to handle complex construction disputes. In my experience, they approach such disputes with strong procedural structure and a high degree of fidelity to the contract terms. As parties cannot influence the composition of the bench, the risk of bias is reduced. Judgments are typically well reasoned and carefully crafted, reflecting a culture of accountability reinforced by the

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[31] This phenomenon is more common, in my experience, in fully domestic arbitrations, where counsel and arbitrators have as much or more experience from litigation as from well-functioning arbitrations.

[32] In recent arbitrations in which I have been involved, parties have at times argued – and in the Mall of Scandinavia arbitration (see Svea Court of Appeal's judgment in case T 10465-23 on 28 May 2025), the tribunal ultimately accepted, after first rejecting the proposition in a separate award – that the dispute should be resolved by a broad, discretionary assessment of the appropriate amount to be awarded, without analysis of specific causes or causal links with application of the contract terms. Indeed, I have repeatedly encountered arguments, both in arbitral proceedings, at conferences, and in articles from a small but productive group of law firms and lawyers suggesting that arbitration permits a more relaxed or discretionary approach to contract application than would be acceptable in court. These arguments are often justified by reference to "arbitral practice", as if arbitration (and arbitration of construction disputes in particular) were developing a private, non-public body of case law, detached from general legal principles, in which tribunals are free to depart from the contract without exceeding their mandate. This is a troubling development for any party who prefers arbitration but also expects to be able to allocate risk through contract, or indeed for anyone who believes in the binding force of negotiated terms.

possibility of appeal. It is often said that "*the district court writes for the court of appeal*", underscoring the emphasis placed on legal precision and clarity of reasoning.[33] Arguably, but also based on the experience of myself and of my teams, litigation gives more predictable outcomes.

d) Arbitration lacks the safety net of appeal on the merits, which increases the importance of robust procedural safeguards.[34] Tribunals must still comply with due process requirements and provide sufficient reasoning for their decisions. The prospect of annulment should function as a check against unreasoned or arbitrary outcomes. However, this control is only effective if judicial review is meaningful in practice. Recent case law suggests that in large and complex arbitrations, the courts may tolerate reduced reasoning requirements,[35] undermining the procedural protection that arbitration is expected to provide. This puts into question whether Swedish-seated arbitration offers sufficient safeguards for complex construction disputes unless the arbitration agreement is carefully drafted to reinforce those protections.[36]

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[33] See Ingvarson, Anders, "Reflektioner över entreprenadtvister och tvistlösningsformer", in Maunsbach, Lotta, and Hardenberger, Alexander (red), Festskrift till Peter Westberg, 2024, p. 322 *et seq*.

[34] See Lindskog, Stefan, Skiljeförfarande. En kommentar, 3rd ed. 2020, Chapter 0, Section 2.5.2.

[35] Notably the Svea Court of Appeal's judgment in case T 10465-23 on 28 May 2025, concerning the Mall of Scandinavia arbitration. For full disclosure, I was counsel in the arbitration (though not in the challenge proceedings, but my firm was). Perhaps, this makes me unsuitable to comment, or it qualifies me to draw certain conclusions from how the case was conducted in arbitration and subsequently reviewed. This judgment is one of the rare instances where the Court did annul part of an award – one of three major claims. The part annulled was the part in which the challenge applicant was counterclaimant in the arbitration. The Court of Appeal found that the counterclaim had not been properly assessed, taking a firm *claimant perspective* on due process whilst, in my reading of the judgment, less emphasis is placed on irregularities that affect the *respondent's* due process rights with respect to the main claims, where those were at issue. For someone concerned with being able to defend against a claim that is made and decided with no or little regard to the contract, the more instructive parts of the judgment concern those parts that were upheld. Here, the Court adopted legal positions that, arguably and at least in my assessment, may be seen to diverge from or considerably narrowing the scope of application of existing Supreme Court precedents (NJA 2009 p. 128 "*Soyak*", NJA 2019 p. 382 "*Ciclomulsion*", and the Supreme Court's ruling of 26 May 2025; T5715-24), and in other respects taking fresh positions on points of law that have not been subject to Supreme Court determination – notably on issues relating to *res judicata* effects of separate awards on broadly framed preliminary issues, and the limits of equitable relief and the meaning of the statutory provision that the tribunal must apply the law and rules agreed upon. In its determination of these points, the Court departed from views expressed by leading procedural law scholars (including professors Bylander, Westberg, and Heuman). By denying permission to appeal its judgment, the Court shielded its determinations from Supreme Court review. It may be that the Court of Appeal's reasoning is correct: that the referenced Supreme Court precedents are to be so narrowly interpreted, at least for large arbitrations, as to be of limited relevance, and that the legal issues determined without Supreme Court precedent could only be resolved in one way. But the point is that, absent Supreme Court review, uncertainty remains about the current status of judicial oversight in Sweden. If the standard adopted by the Court of Appeal stands, there is little legal incentive for a tribunal to fulfil its task diligently. Parties will instead have to put their primary faith in the (often strong) reputational incentive of arbitrators to produce well-reasoned awards in protection of their own standing (and hope that this incentive is not overshadowed by the incentive of some to prioritise other assignments or to provide a positive outcome for professional acquaintances or repeat appointers).

[36] As a general observation, one frequently hears that it is important for Sweden to be seen as "arbitration friendly", often taken to mean that courts should not annul arbitral awards. In my discussions with clients, however, I have never encountered anyone who values minimal judicial oversight for its own sake. On the contrary, what users of arbitration consistently seek is a robust system; one that offers clear, predictable safeguards in the event that the

It is against this background that I must advise my clients on the choice between arbitration and litigation. Ultimately, this decision must rest on a clear-eyed understanding of both the procedural features and the legal culture of the forum. In construction disputes, where stakes are high and contractual precision is essential, it is crucial to give the best possible means for both efficient resolution and fidelity to the parties' agreed risk allocation.

Accordingly, one effective safeguard to obtain the type of arbitration that a party seeks, is influence over the constitution of the tribunal. I address this further in Section 5.2.2 below. Another means of obtaining efficiency of arbitration, while being able to be comfortable with the application of the contract, is by adjusting the arbitration agreement, which I address in Section 5.2.3 below.

5.2.2 Possibility to appoint arbitrators

The ability to appoint one's arbitrator is often said to be a significant advantage in arbitration as compared to litigation.[37] This option provides parties with a sense of control and influence over the dispute resolution mechanism. By selecting an arbitrator, parties can ensure that the individual possesses the necessary expertise and understanding of the specific industry or technical issues involved in the dispute.

Moreover, the opportunity to choose an arbitrator can enhance the parties' confidence in the fairness and impartiality of the process.[38] Knowing that the party-appointed arbitrator has been carefully selected based on their qualifications and reputation can reassure parties that their case will be handled with the utmost professionalism and integrity.

The choice of arbitrators influences the arbitration greatly. A party who wishes to uphold the contract should seek to appoint arbitrators known for their commitment to contractual interpretation and procedural discipline. Conversely, a party who wishes to obtain more leeway in how the contract will come to be applied, for whatever reason, should seek to appoint arbitrators who are prone to such application. Another aspect in construction disputes is of course also the arbitrator's experience from representing contractors or employers. As with disputes regarding

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arbitral process fails. By agreeing to arbitration, parties waive fundamental protections otherwise available in state courts, including the right to an appeal on the merits, relying instead on the promise that due process and legal certainty (Swe: "*rättssäkerhet*") will ultimately be safeguarded by the judiciary. I would submit that it is only if that promise is fulfilled that the term "arbitration friendly" becomes meaningful and, generally speaking, if looking at the past decades of case law, the Courts of Appeal under the control of the Supreme Court has stricken a good due process balance. To my knowledge, our clients in the business community (the actual users of arbitration) have not been unsettled or discouraged by the few occasions on which awards have been annulled. On the contrary, such judgments can strengthen trust in the system, as they show that judicial oversight is real and capable of correcting serious flaws in the arbitral process.

[37] Bell, Adrian, and Pröstler, Tom Christopher, "Chapter 3: Arbitration, A. Commercial Arbitration", Section V, in Roquette, Andreas J. and Pröstler, Tom Christopher (eds), International Construction Disputes: A Practitioner's Guide, 2022, pp. 81–116.

[38] However, as pointed out by my colleague Anders Ingvarson (in translation): "*The idea behind arbitration, whereby each party appoints an arbitrator, also carries a risk of dependency between the appointing party and the arbitrator, but perhaps above all it carries a risk that a party will appoint a person who is not qualified to examine a dispute objectively and in accordance with the law and the agreement.*" See Ingvarson, Anders, "Reflektioner över entreprenadtvister och tvistlösningsformer", in Maunsbach, Lotta, and Hardenberger, Alexander (red), Festskrift till Peter Westberg, 2024, p. 328 *et. seq.*

other industries with clear dichotomies,[39] the perspective of one side or the other may also prove to be important.

Arbitral tribunals are often composed of three competent and committed individuals, making arbitration an excellent method for definitively resolving disputes, particularly those arising in construction projects. However, if the arbitrators lack engagement, the outcome can be significantly different. The key takeaway is that much depends on the arbitrators themselves.

In arbitrations where the arbitral tribunal consists of three arbitrators, a party can usually only be certain of being able to influence the appointment of one of them. There is thereby an uncertainty with respect to the majority of the tribunal. If, for example, a party wishes for the contract to be upheld, and it appoints an arbitrator who usually does so, the final arbitral tribunal can still come to consist of two other arbitrators less committed to the written agreement, or with insufficient experience or energy to go into the details of the risk allocation.

There are, however, other ways available for the appointment of arbitrators, for example by stating in the arbitration agreement that the arbitral tribunal shall be appointed jointly by the parties. As raised in another article in this publication, this is already provided for in the NOMA Arbitration Rules.[40] Personally, I see clear benefits in this approach and will consider advising my clients to include it in future arbitration clauses, whether by reference to NOMA or by adjusting other model clauses.

The pool of available arbitrators is also an important factor when it comes to parties' opportunity to appoint arbitrators. The language of the proceedings can greatly influence the number of potential arbitrators. The language selected often hinges on the language of the project documentation. In many cases, the choice of language in an arbitration will be a given in view of the domicile of the parties involved. However, in other projects, the issue of language may be an open issue. Opting for English as project language, rather than Swedish, can significantly expand the pool of potential arbitrators as well as potential experts in a future arbitration.[41]

5.2.3 Opportunity to tailor the proceedings through the arbitration agreement

As this contribution hopefully shows, arbitration offers unmatched opportunity to achieve an efficient and sound solution of complex construction disputes. At the same time, as I have also explored here, there are real issues to contemplate before agreeing to arbitration. In my view, to make the best use of arbitration's benefits, whilst protecting against non-legal assessments of entitlements, the potential lack of judicial review, and the risk that the arbitration is conducted without use of proper case management tools, several adjustments to the arbitration clause are worth considering:

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[39] Such as buyers vs. sellers within energy markets.

[40] Article 7.1 of the 2024 NOMA Arbitration Rules: "*If the parties have agreed on appointing a tribunal of three arbitrators, the parties shall, as far as possible, appoint the arbitrators jointly.*" However, as a fallback, the parties shall appoint one arbitrator each. A different fallback to be considered is that the arbitral tribunal, unless the parties are able to agree on the entire tribunal, will be appointed in its entirety by an institution. This could incentivise the parties further to achieve an agreement, since they are often reluctant to give away the power that they hold.

[41] See Ingvarson, Anders, "Reflektioner över entreprenadtvister och tvistlösningsformer", in Maunsbach, Lotta, and Hardenberger, Alexander (red), Festskrift till Peter Westberg, 2024, p. 330.

a) Procedural structure: Referencing the IBA Rules on the Taking of Evidence in International Arbitration already in the arbitration clause can help set expectations on document production, witness preparation and the acceptance of written witness statements, and the use and presentation of expert evidence. This promotes procedural efficiency and helps the tribunal maintain control of the process.

b) Award scrutiny: If quality control is important, it may be considered using institutional rules that include scrutiny of the award, such as the ICC Rules or the Rules of Arbitration of the Danish Institute of Arbitration. This may improve award quality and reduce the risk of unreasoned or unreviewable outcomes. (An award like the one discussed in footnote 35 above, partially upheld by the Svea Court of Appeal, would likely not have been rendered and seen the light of day had it been subject to scrutiny.)

c) Direction to apply the contract: The parties can include wording requiring that the contract be applied as written, and that the tribunal shall not decide the case ex aequo et bono or by reference to analogies or general principles that by their application would require deviation from the agreed terms. In light of recent arbitral practice in Sweden, this may be worthwhile considering to potentially try to compel a contractual application of claims assessment (although the more efficient way of achieving this likely is to gain influence over the appointment of the tribunal, as discussed above). Notably, the prohibition to decide the dispute in disregard of the agreed rules already follows from the Arbitration Act, but the Supreme Court has not determined what implications that prohibition entails in practice. It may be that the requirement would be seen to carry greater weight upon review, if repeated and clarified in the arbitration agreement, thus clearly tying it to the express mandate given to arbitrators.

d) Reasoned award: A contractual requirement for the tribunal to provide a reasoned award, stating the basis, including an analysis of causation, for any conclusion on entitlement and quantum, could potentially help secure transparency and increase the legal resilience of the award. This requirement already follows from most institutional rules, including the SCC Rules and has been interpreted by the Supreme Court in Soyak,[42] in which case the tribunal had provided sufficient reasons by presenting its determination of each disputed point (as opposed to just presenting its determination of each disputed amount, which was considered acceptable in the case referenced in footnote 35 above). Even clearer guidance could be given by referring to and incorporating guidelines issued by the arbitral institutions with respect to the quality to expect from an award.

e) Appointment mechanisms: See above; for construction disputes, it would often be worthwhile to consider a "Norwegian mechanism" in which all three arbitrators are appointed jointly by the parties, failing which all three be appointed by an institution.

f) Mandated mediation: Parties may also consider requiring mediation to be conducted in parallel with the early stages of arbitration. As mentioned in Section 4.5 above, while mediation has not gained traction in Swedish construction projects, I believe it should be used much more frequently. It provides a structured and confidential forum for resolution

[42] The Supreme Courts's judgment in Case 4387-07, NJA 2009 p. 128, often referred to as *Soyak*.

without prejudice to the ongoing arbitration and can help settle peripheral or even central issues before they escalate into fully developed claims.

Adjustments like these should often be possible to agree on and can materially increase the likelihood that the arbitration will serve its intended function: resolving disputes efficiently, transparently, and in accordance with the contract. They are worth considering already at the contract drafting stage, rather than after the first dispute has arisen.

6. Concluding summary

If attempting to summarise the central recommendations of this article, the starting point is that dispute resolution in construction projects must be aligned with the nature of the projects themselves: complex, long-term, technically demanding, and governed by contracts that allocate risk with great precision. Disputes often arise from change, and the manner in which such disputes are managed will significantly influence cost control, scheduling, and ultimately project success.

Early issue identification and voluntary resolution should be prioritised. Mechanisms such as mandated documentation, executive escalation, structured project meetings, inspections, and expert determination can reduce the need for formal adjudication by a court or arbitral tribunal and promote alignment with the parties' contractual intent. Having established such mechanisms in the agreement, the negotiation of the choice between arbitration and litigation will also likely be facilitated.

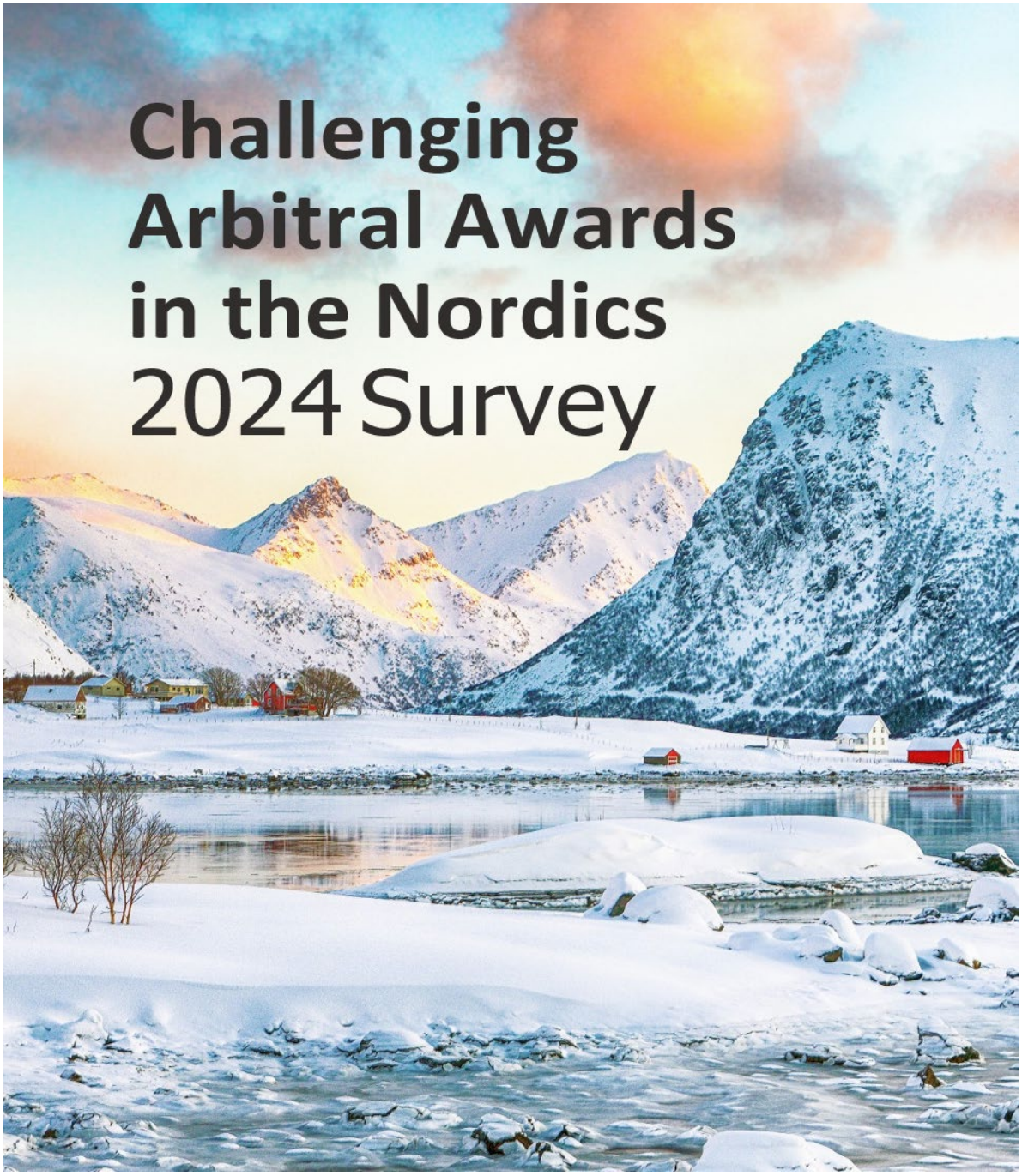
When that choice is considered and discussed, this must be done with realistic expectations. Arbitration offers flexibility and efficiency, provided that the tribunal uses appropriate case management tools. It also allows for expert procedures, optional confidentiality, and tailor-made formats that suit technically and factually complex disputes.

However, arbitration's advantages are not automatic. In large construction disputes, if arbitrators fail to make use of available tools, the procedure can become lengthy, costly, and opaque, without the systemic safeguards found in court litigation. Arbitration lacks a substantive appeal mechanism. The only form of oversight lies in the limited grounds for challenge. In Sweden, recent case law has raised concerns as to whether such oversight functions effectively in practice, in particular since there may be an inclination to give large and complex disputes a more lax treatment with softer due process requirements.

In contrast, litigation provides a high degree of legal certainty. Swedish courts are well equipped to handle complex construction disputes with professionalism and fidelity to the contract (although there are limitations within the procedural system that reduce flexibility and efficiency). Judges are independent, most often free from affiliation to the parties, and subject to a multi-tiered system of appeal that ensures robust legal review. This level of judicial oversight can be decisive for parties that value certainty with respect to legal risk, transparent reasoning, consistent application of contract terms, and legal accountability.

Ultimately, the decision is not binary. A party seeking the advantages of arbitration can secure many of the qualities of litigation through careful design of the arbitration agreement and by exerting joint control over the appointment of arbitrators. This further includes adopting institutional rules that provide for scrutiny of the award, mandating reasoned decisions, requiring the application of contract, and including already in the arbitration clause procedural standards such as the IBA Rules on the Taking of Evidence.

In conclusion, the optimal final dispute resolution framework in construction projects balances efficiency with legal certainty. That balance is best achieved not merely by selecting arbitration or litigation, but by understanding the implications of that choice and adjusting the framework accordingly. These are aspects to consider when negotiating dispute resolution mechanisms in such contracts.



Punct CASTRÉN & SNELLMAN WIKBORG|REIN Westerberg

Denmark Finland Norway Sweden

CHALLENGING ARBITRAL AWARDS IN THE NORDICS 2024 SURVEY

1. Introduction

This is the second report on challenging arbitral awards in the Nordics, encompassing Denmark, Finland, Norway and Sweden.

It is a recurring publication with a goal to facilitate the development of arbitration in the Nordics.

Separate in-depth country reports on challenges of arbitral awards may be released for respective countries, in which case they will be made available on the homepages and social media accounts of the contributing firm.

This year's report has a special focus on the Nordic approach to excess of mandate as a ground for setting aside arbitral awards.

2. Executive summary

The survey shows that the number of challenges to arbitral awards continues to be low. Although the number of successful challenges increased during 2024 due to the annulment of multiple intra-EU investment arbitration awards, successful challenges remain rare.

The four Nordic countries take a similar approach to excess of mandate as a ground for setting aside arbitral awards. In all countries, it constitutes excess of mandate if an arbitral tribunal decides an issue not covered by the arbitration agreement, awards a party more or something else than has been requested or bases the award on facts not invoked.

3. Methodology

In Denmark the data was collected by contacting the Danish Institute of Arbitration (DIA) as well as the Danish Building and Construction Arbitration Board in combination with outreach to the Danish arbitration community via social media, the newsletter of the DIA and through search in published court rulings.

In Finland the data was collected by contacting all courts of first and second instance. The courts were asked to provide all judgments and decisions rendered in 2024 concerning the set-aside and annulment of arbitral awards. The Finnish Legal Register Centre was also contacted for judgments and decisions on the same topic. Cases decided by the Supreme Court of Finland were obtained from relevant databases.

The authors of this report note that Finnish courts and the Legal Register Centre have implemented a new case management system during the course of the year 2024, which currently lacks the functionality to conduct searches using keywords. As a result, this year's case information for Finland may be incomplete, as it is possible that some relevant cases have not been identified due to current limitations in the search functionalities.

To address this, the authors of this report have reached out to the largest law firms in Finland specialising in arbitration matters to identify any cases that were not provided directly by the courts. We have also been informed that the search capabilities of the courts' new case management system

are actively being developed, and we anticipate that any incomplete information may be supplemented in the 2025 survey.

Like in Finland, the data in Norway was collected by contacting the courts of first and second instance and asking them to provide all judgments and decisions rendered in 2024, concerning challenges to arbitral awards. Cases decided by the Supreme Court of Norway were obtained directly from the database lovdata.no.

In Sweden the data was collected by contacting all six courts of appeal, being the first instance in challenge proceedings, and the Supreme Court. The courts were asked to provide all judgments and decisions rendered in 2024 concerning challenges to arbitral awards. The data was then cross-checked with the information available in legal databases. Statutory arbitrations such as compulsory redemption under the Swedish Companies Act have not been included.

The authors of this report are mindful that the information gathered may not be complete, but it is deemed being sufficiently robust for the purposes of this report. All feedback and any further unaccounted case information is welcome.

4. The Nordic approach to excess of mandate as a ground for setting aside arbitral awards

In this year's report, we focus on common features in the Nordic courts' assessment of excess of mandate as a ground for setting aside an arbitral award. This section aims to provide a brief summary of the topic and an outline of key cases that illustrate the Nordic approach to assessing whether the arbitral tribunal has exceeded its mandate.

Excess of mandate constitutes a ground for setting aside arbitral awards in all Nordic countries. The data from our first two surveys in 2023 and 2024 on challenging arbitral awards in the Nordics indicates that this has been one of the most common grounds invoked in set-aside actions. According to a survey of Swedish set-aside cases during 2004 – 2023, it is also the most commonly successful ground.[1]

Arbitral tribunals' excess of mandate can be viewed from two perspectives. First, the tribunal's mandate is limited by the boundaries set by the arbitration agreement. For example, certain types of disputed issues may not be covered by the arbitration agreement. Assessing whether a tribunal has exceeded its mandate therefore often involves interpreting the parties' arbitration agreement. As a starting point, this interpretation is made in accordance with general rules of contract interpretation.

This is sometimes referred to as the outer frame of the tribunal's mandate.

In Sweden and Norway, absence of a valid arbitration agreement is a separate ground for setting aside an arbitral award.

Second, the tribunal's mandate is limited to the parties' procedural positions, such as requests for relief, invoked legal grounds and facts. This can be described as the inner frame of the tribunal's mandate. An arbitral tribunal may not award a party more or something else than has been requested. Furthermore, an arbitral tribunal exceeds its mandate if it bases its award on legal

[1] Westerberg Arbitration Tracker 2024. Download.

grounds that have not been invoked by the parties. In determining the arbitral tribunal's mandate, it is therefore necessary to consider the parties' requests for relief, invoked grounds and facts, as well as the parties' procedural agreements and instructions to the arbitral tribunal. The following case law is illustrative of the topic:

In the **Finnish Supreme Court precedent KKO 2008:77, the Supreme Court assessed whether an arbitral tribunal had exceeded its mandate by relying on legal arguments not specifically invoked by the parties.** In the underlying arbitration, the claimant had requested the arbitral tribunal to disregard a contractual clause where it had been agreed that the claimant was not entitled to compensation in the event of termination of the contract and to order the respondent to pay compensation for the termination of the said contract. The arbitral tribunal upheld the validity of the clause but adjusted it under Section 36 of the Finnish Contracts Act so that the claimant received reasonable compensation for the termination.

The Supreme Court considered that the arbitral tribunal, by adjusting the contractual clause under Section 36 of the Finnish Contracts Act without the claimant explicitly invoking the said section, had not exceeded its mandate. In the reasons of its decision, the Supreme Court held that the tribunal had not awarded anything other than the claimant had requested nor based its award on facts that were not invoked by the claimant. The Supreme Court further noted that arbitrators were not bound by the legal considerations presented by the parties as the basis for their claims. The Supreme Court thus held that the contract clause could be adjusted under Section 36 of the Finnish Contracts Act based on the facts invoked as grounds for the invalidity of the contract clause.

In the **Danish Supreme Court Case No. U.2022. 1117H, the Supreme Court assessed whether the arbitral tribunal had relied on an argument not invoked by the parties when deciding on a question of fraud in a contractual relationship** (Section 30 of the Danish Contracts Act).

In relation to the question of excess of mandate, this case concerned the question of whether the arbitral tribunal in the question of fraud in contractual relations had relied on an argument which had not been advanced by the parties.

The arbitration concerned a dispute between A and B regarding two contracts concluded in 2007. During the arbitration, A presented an argument of invalidity according to section 30 of the Danish Contracts Act (fraud), but the arbitral tribunal held that the subjective conditions for this provision were not met.

Before the Supreme Court, A argued that the arbitral tribunal in its award regarding the question of invalidity according to section 30 of the Danish Contracts Act, had considered an argument, which had not been raised by the parties. According to A, B had not addressed that, in assessing the subjective condition in section 30 of the Danish Contracts Act, it was significant that A's original contracting party was B's Danish subsidiary and not the German company, which according to B was responsible for the alleged fraud. The Danish subsidiary was merged with the German company in 2008, but according to the majority of the arbitral tribunal, B's previous division into separate legal entities meant that the subjective condition in section 30 of the Danish Contracts Act was not met.

The minority of the arbitral tribunal highlighted in its reasoning that none of the parties had commented on the question. B argued that the arbitral tribunal's reasoning regarding section 30 of the Danish Contracts Act could not lead to invalidity of the arbitral award, either in whole or in part, since A during the arbitration argued that fraud had been committed in the formation of the

contract, which B contested. B further argued that both the majority and the minority of the arbitral tribunal concluded that A's contracting party was B's then Danish subsidiary, and that A had not met its burden of proof to show that the Danish subsidiary had been involved in the alleged fraud. Therefore, according to B, the arbitral tribunal did not rule based on an argument which the parties had made.

The Supreme Court found that it had not been proven that the arbitral tribunal's award on the issue of fraud was outside the scope of the pleas under section 30 of the Danish Contracts Act. This is an expression of the Supreme Court applying an understanding of the parties' pleas, where a general plea is sufficient for the tribunal to be able to consider that plea in detail.

In the **Supreme Court of Sweden Case No. NJA 2016 p. 51 ("Saltkråkan"), the Supreme Court assessed whether the arbitral tribunal had based its award on a material fact not invoked by the party.** The underlying arbitral award concerned a licensing agreement regarding a show on ice. During the contract period, the licensor had demanded changes to the music of the show as a condition for the show to continue. The licensee refused to pay royalties under the contract, following which the licensor cancelled the contract. The licensee requested damages on the basis that the actions of the licensor constituted breach of contract or anticipated breach of contract. The tribunal held that the actions of the licensor did not constitute breach of contract or anticipated breach of contract. As part of its assessment, the tribunal considered that the licensor had believed that it had the right to demand changes to the show.

The licensee as set-aside claimant requested that the award was to be set aside on the basis that the tribunal had based its award on a non-invoked material fact, i.e. that the licensor had believed that it had the right to demand changes to the show. The Supreme Court noted that it constituted excess of mandate to base an award on a material fact that had not been invoked. However, the Supreme Court held that the licensor's belief that it had the right to make demands was not a material fact. Rather, the tribunal's reasoning in this regard was part of its assessment of whether statements made by the licensor constituted a declaration that it no longer considered itself bound by the contract. The Supreme Court therefore held that the tribunal had not exceeded its mandate.

There is an interesting Norwegian court case dealing with excess of mandate in the cases collected for this year's report. In the **Borgarting Court of Appeal Case LB-2024-33117, the court assessed whether the claim was covered by the arbitration agreement.** The underlying arbitration related to a financial settlement between a company and its former partner that had been concluded after the partner withdrew from the partnership. The former partner and the company had entered into a partnership agreement that did not contain an arbitration clause, and three share purchase agreements that each included an arbitration clause.

The Court of Appeal noted that the determination of whether a claim is covered by an arbitration clause requires an objective interpretation of the clause's wording, unless there is evidence of a common subjective understanding at the time of the agreement. As no mutual subjective understanding was demonstrated, the Court of Appeal relied on an objective interpretation of the wording of the arbitration clause.

The Court of Appeal found that the financial settlement dispute arose "in connection with" the share purchase agreements, and therefore, fell within the scope of the arbitration clause. This, in turn, meant that the tribunal had not exceeded its mandate.

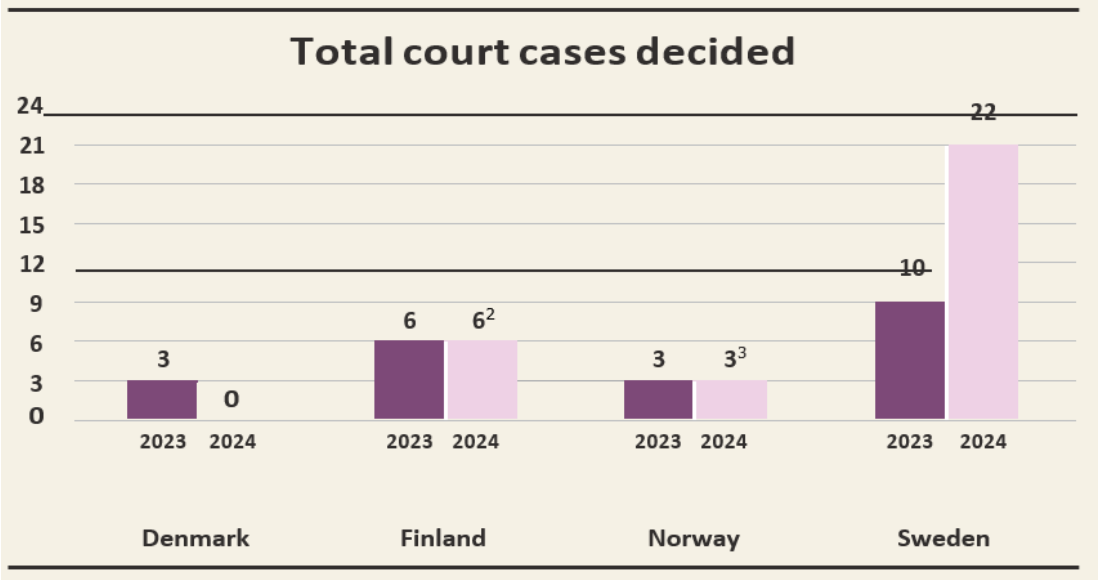
The above case law illustrates that Nordic courts rarely set aside an arbitral award on the ground that the arbitral tribunal has exceeded its mandate. The courts' assessment seems to be based on a

rather pragmatic approach: instead of an overly strict interpretation of the wording of the parties' arbitration agreement and submissions, the courts seem to take into account whether the arbitral tribunal has acted in accordance with the reasonable expectations of the parties. Thus, only a clear departure from the mandate of the tribunal as defined by the parties may warrant the setting aside of an arbitral award due to excess of mandate.

5. 2024 data

Court cases decided

During 2024 there were a total of 31 challenge cases decided in all four countries. This represents an increase compared to 2023, during which 22 cases were decided. The increase is attributed to Sweden, which more than doubled its number of decided cases compared to 2023.



Successful cases

Eight challenge cases were successful, all in Sweden.

(i) Five awards were annulled as being contrary to Swedish public policy due to the prohibition to conduct intra-EU investment arbitration.

(ii) Two successful challenges were partial set-asides due to excess of mandate.

(iii) One was a default judgment. It was later revoked and is now being retried as a new case.

By comparison, in 2023 two arbitral awards were successfully challenged, both in Sweden.

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[2] Unlike in 2023, only three decided cases were judgments on the merits, two were decisions following withdrawals and one was a court of appeal decision to deny consideration of a district court appeal.

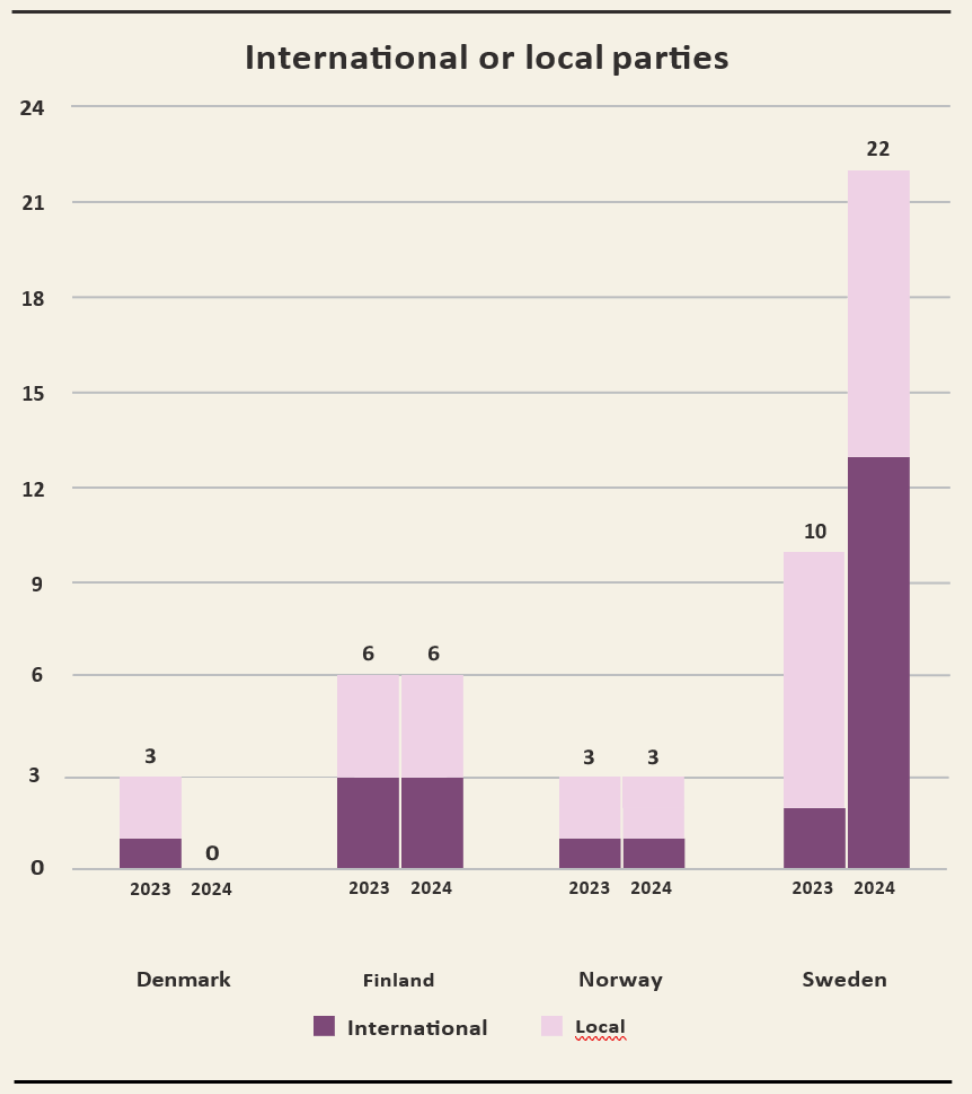
[3] In 2024, one decided case was a decision to write off the case following a withdrawal.

Settled cases

Three challenge cases were settled, all in Sweden. This can be compared to 2023, during which four challenge cases were settled. As opposed to 2023, no settlement in 2024 resulted in the arbitral award being set aside.

International or local parties

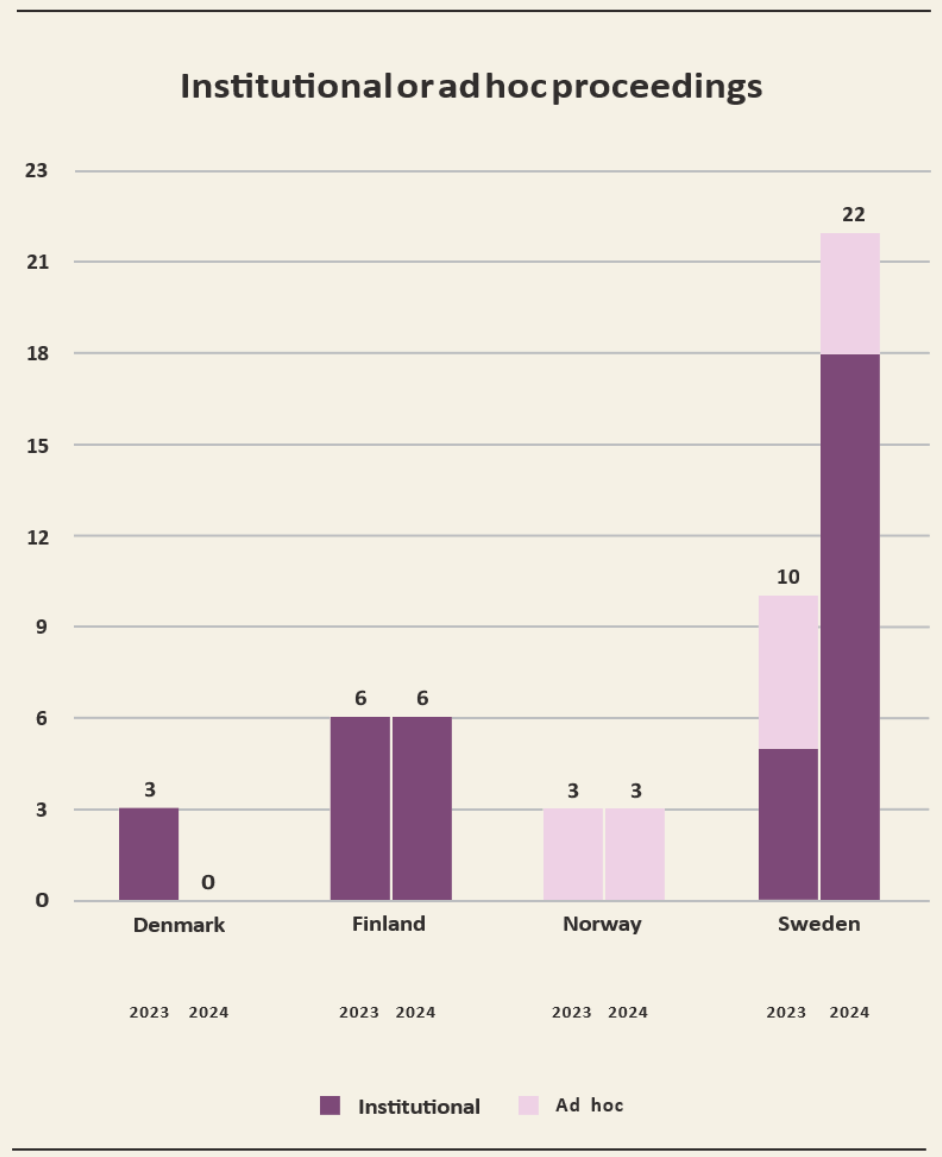
Out of the 31 decided cases, 17 were international, with one or both of the parties incorporated abroad, and 14 were local. Compared to 2023, this constitutes an increase in the number of international cases.



Institutional or ad hoc arbitration

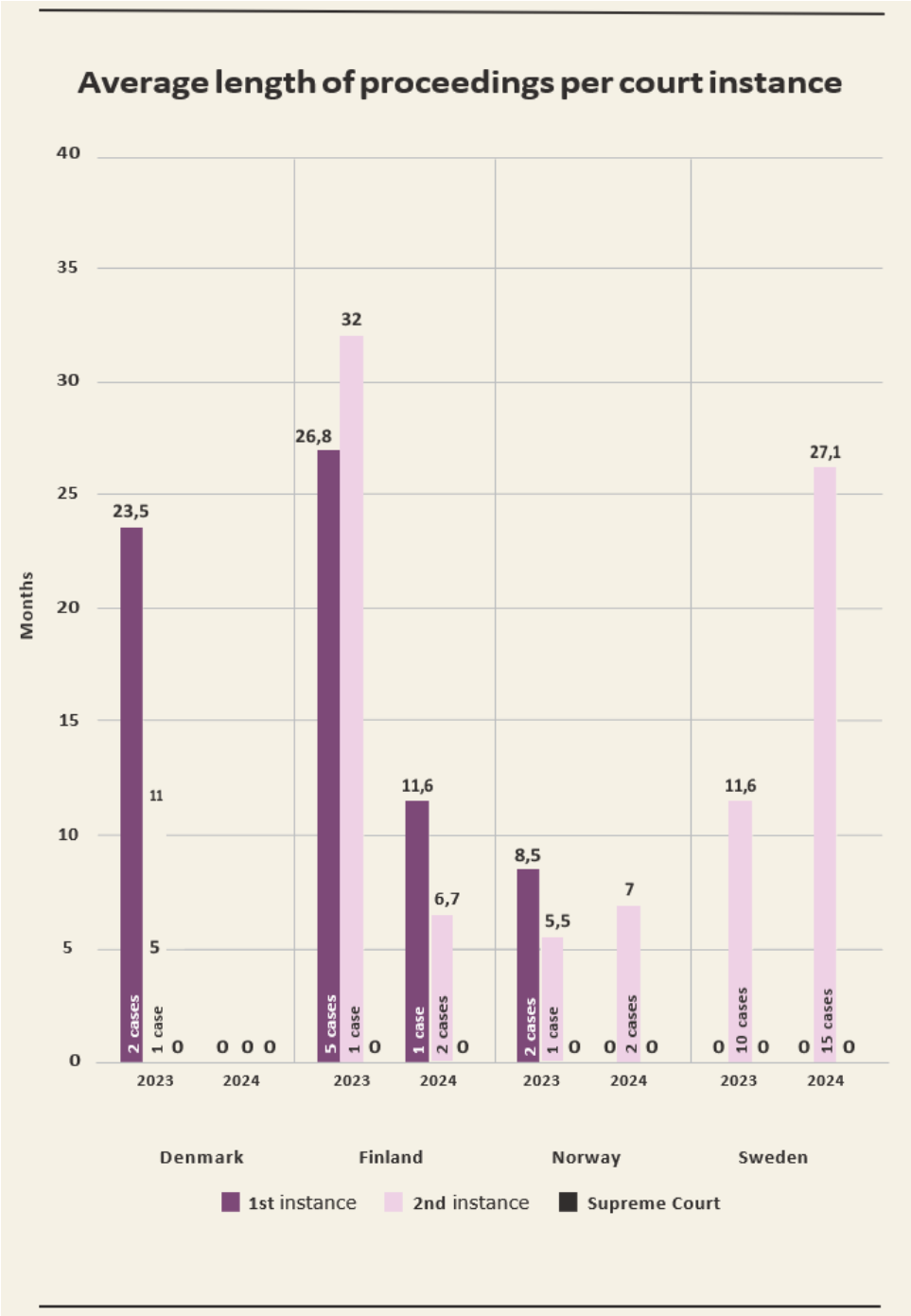
24 cases concerned arbitrations conducted under institutional arbitration rules and 7 cases concerned ad hoc proceedings. Also in 2023, the majority of decided cases concerned arbitrations conducted under institutional arbitration rules.

As in 2023, an overwhelming majority of the cases under institutional arbitration rules were conducted under the auspices of the local institution.



Length of the proceedings[4]

The length of the proceedings is measured from the court's receipt of the application for summons until the date of the judgment.



[4] Only cases determined on the merits have been included in this data.

Legal grounds invoked	Denmark	Finland	Norway	Sweden	Total
Ruling on a non-arbitrable issue	0	2	0	6	8
Violation of public policy (*ordre public*)	0	4	0	10	14
No valid arbitration agreement	0	0	0	7	7
Invalid appointment of arbitrator	0	0	0	0	0
Lack of impartiality, independence or legal capacity	0	0	1	3	4
Tribunal's excess of mandate	0	2	2	13	17
Procedural irregularity & violation of due process	0	4	0	14	18
Award is not in writing or is not signed	N/A	0	N/A	0	0
Award rendered after agreed deadline	N/A	N/A	N/A	1	1
Award obscure or incomplete	N/A	1	N/A	N/A	1

6. Conclusions

The number of decided challenge cases increased considerably during 2024 due to an increase of cases in Sweden. While the overall number of decided cases in Finland and Norway remained the same, there was a decrease in judgments on the merits in both countries. This is explained by the fact that some of the challenges were terminated due to withdrawals or denial of considering appeals to district court judgments. Remarkably, no decisions on challenges of arbitral awards were found this year for Denmark.

The number of successful challenges increased compared to 2023. The increase was mainly attributable to a Swedish court rendering judgments in five cases where the arbitral awards were annulled due to the European policy change prohibiting intra-EU investment arbitration. Thus, arbitral awards are still set aside or annulled only in exceptional circumstances, pertaining to breaches of fundamental procedural principles.

Both cases with international parties and cases with local parties are challenged. In 2024, a slight majority of the decided cases pertained to international arbitration.

Institutional arbitration has a very strong position in Finland and Sweden. Norwegian set-aside actions continue to concern primarily ad hoc arbitrations.

In a clear majority of the cases, multiple legal grounds were invoked. In this year's survey, violation of due process and excess of mandate were the most commonly invoked grounds.

Challenging Arbitral Awards in the Nordics 2024 Survey

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