

BEST PRACTICE GUIDELINES OF NORDIC OFFSHORE AND MARITIME ASSOCIATION (GUIDELINES)

1. Introduction

- 1.1 The aim of these guidelines is to ensure a predictable, transparent, cost-efficient and fair arbitration process, within the framework of the Rules of NOMA (the Rules). At the appropriate stage of the proceedings each party shall be given a reasonable opportunity to present its case. The arbitral tribunal shall, in exercising its discretion, conduct the proceedings in a manner avoiding unnecessary delay and expense and to ensure a fair and efficient process for resolving the parties' dispute. The arbitral tribunal shall take these Guidelines into consideration when exercising its discretion.
- 1.2 The arbitral tribunal shall not make orders contrary to any agreement reached between the parties to the proceedings unless such agreement is contrary to due process or mandatory rules.
- 1.3 The language of arbitration shall be either in English, a Scandinavian language or a combination thereof, see the Rules Article 17 and otherwise as set out below. The language shall be determined at the first case management conference or in a subsequent procedural order, see Clause 3 hereof.
- 1.4 Following the establishment of an arbitral tribunal in accordance with the Rules Articles 6, 7 and 8, the sole arbitrator or the panel of arbitrators shall conduct the arbitration in accordance with these Guidelines.

2. Commencement of arbitration

- 2.1 As soon as practicable after its constitution, the arbitral tribunal shall in consultation with the parties make such orders and directions as set forth in these Guidelines, and the parties shall follow these Guidelines subject to any agreement between the parties or orders by the arbitral tribunal to the contrary. All communications between the arbitral tribunal and each party shall be communicated by that party to the other parties to the proceedings.
- 2.2 The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.
- 2.3 If the parties have not previously agreed upon the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
- 2.4 If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal may hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be

conducted on the basis of documents and other materials. If a party request an oral hearing for presentation of evidence and arguments, and provided the arbitration agreement does not provide for written proceedings only, the arbitral tribunal shall allow an oral hearing before making its award.

3. Case management conference ("CMC")

- 3.1 When the arbitral tribunal has been constituted, the presiding arbitrator of the arbitral tribunal shall as soon as possible convene a case management conference ("CMC"). In cases of minor complexity or if the case shall be decided without an oral hearing, a CMC shall only be called if deemed to be proportional to the costs, time and value of the claim(s).
- 3.2 The object of a CMC is to agree on the procedure to be followed to ensure a prudent and cost-effective resolution of the dispute, within a reasonable time, taking into account the size and complexity of the claim(s), and giving each party the opportunity to present its case.
- 3.3 A CMC can be conducted through a physical meeting, video or telephone conference or by similar means. A CMC shall be held as many times as appropriate
- 3.4 At the start of the first CMC, both parties should give a short description of the nature of the dispute if same has not been given in the letter of appointment of the arbitrators.
- 3.5 During the first CMC, the following matters should be discussed and sought to be agreed upon:
 - a) Whether the whole or parts of the decision can be determined on documents only;
 - b) Whether separate issues or claims should be subject to decided separately;
 - c) The length of the main hearing;
 - d) Scheduling of the main hearing;
 - e) Venue for the main hearing;
 - f) Language;
 - g) Translations of evidence and sources of law;
 - h) Deadlines for statement of claim, statement of defence, subsequent pleadings, and for presentation of new arguments and evidence pursuant to 3.7 e) hereof, etc.;
 - i) Whether any of the parties intends to present written witness statements;
 - j) Expert witnesses and potential expert reports, and if a joint expert should be appointed;
 - k) Possible allocation of time during the case preparation for mediation/settlement discussions;
 - l) Security for the arbitrators' fees and cost;
 - m) Potential termination fee to the arbitral tribunal;

- n) Document management during the case preparations;
- o) Confidentiality of the Award; and
- p) Other items to facilitate a quick and cost-effective procedure to achieve a resolution of the dispute.

To assist the arbitral tribunal and the parties in their preparations and handling of the above matter at the first CMC, the attached CMC matrix should be used as basis and guidance.

3.6 Following a CMC, the arbitral tribunal shall issue a Procedural Order (PO) or a Minutes of Meeting reflecting the agreement reached in the CMC or any orders given by the arbitral tribunal.

3.7 Subject to agreement in the CMC, or POs given by the arbitral tribunal, the following guidelines shall apply:

- a) Statement of claim shall be submitted within 28 days after the first CMC;
- b) Statement of defence and possible counter claim shall be submitted within 28 days following the submission of the statement of claim;
- c) Reply to statement of defence (and counter claim) shall be submitted within 21 days thereafter;
- d) Statement from the Respondent (rejoinder) shall be submitted within 21 days thereafter;
- e) The time limit for presentation of new arguments and new evidences is 14 days prior to the date of the oral hearing. Even if new arguments and evidences are submitted before the 14-day period, the arbitral tribunal may decide that such new arguments and/or evidences will not be admissible if they are submitted too late for the other party to be able to submit counter-arguments and evidence in time for the hearing, and the party providing the new arguments or evidence should have submitted the arguments or evidence earlier; and
- f) Provided an oral hearing is agreed, the hearing shall be scheduled as soon as reasonably possible and in any case no later than 6 months from commencement of the arbitration if the hearing is estimated to be 4 days or less, or within 12 months if the hearing is estimated to last for more than 4 days.

3.8 The arbitral tribunal may amend the dates for submitting statement of claim, statement of defence and any further pleadings. The arbitral tribunal shall be cautious to accept request for significant postponement if the other party objects to the request.

3.9 The arbitral tribunal may be entitled to a termination fee if the case is settled or terminated prior to a hearing or shortly after the hearing has commenced. The terms of such fees ought to be decided at a CMC. The termination fee will be paid in addition to the compensation payable for actual time spent by the arbitral tribunal up to the termination of the case.

4. Deposit and costs

- 4.1 The arbitral tribunal may request the parties to deposit equal amounts as security for the costs referred to in the Rules Article 35, paragraphs 2 (a) to (c).
- 4.2 The arbitral tribunal may at any time request supplementary deposits from the parties.
- 4.3 If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
- 4.4 If the Respondent does not pay the deposits required, and same is paid by the Claimant, may request that the arbitral tribunal issue a partial award concerning the deposit payment(s) the Claimant has made on behalf of the Respondent.
- 4.5 After a termination order or when the final award has been made, the arbitral tribunal shall render an account to the parties of the deposits received and return any positive balance to the parties.

5. Language and translations

- 5.1 Unless agreed otherwise by the parties, the arbitral tribunal decides the language to be used in the proceedings. English language shall normally be used, unless the parties, their representatives, and the arbitrators are Scandinavian. The arbitral tribunal may decide that each party may submit pleadings and other written statements in Norwegian, Swedish or Danish. This also applies to any oral statement during the proceedings.
- 5.2 The arbitral tribunal may order that any document submitted in its original language shall be accompanied by a certified or office translation into English or the language determined by the arbitral tribunal.
- 5.3 The arbitral tribunal will normally not order legal precedents, judgements etc. in the Scandinavian languages to be translated.

6. Statement of claim

- 6.1 The Claimant shall communicate its statement of claim in writing to the Respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal.
- 6.2 The statement of claim shall include the following:
 - a) The names and contact details of the parties (if not already communicated same to the other party and the arbitral tribunal);
 - a) A statement of the facts supporting the claim, containing a reasonable degree of specification;

- b) Evidence upon which the Claimant intends to rely. Documents offered as evidence and available to the party relying on them shall be filed as exhibits to the written submissions;
- c) The points at issue;
- d) The legal grounds or arguments supporting the claim; and
- e) The relief or remedy sought.

6.3 A copy of any contract or other legal instrument which form the basis of the claim, and a copy of the arbitration agreement shall be annexed to the statement of claim.

7. Statement of defence

7.1 The Respondent shall communicate its statement of defence in writing to the Claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal.

7.2 The statement of defence shall include the following:

- a) A reply to the particulars of clause 6.2 (b) to (f), including an admission or denial of the specific claim (or part of the claim) with a reasonable degree of specification;
- b) Evidence upon which the Respondent intends to rely. Documents, other than those exhibited to the statement of claim, offered as evidence and available to the party relying on them shall be filed as exhibits to the written submissions.
- c) In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the Respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
- d) The provisions of clause 6, shall apply to a counterclaim, or a claim relied on for the purpose of a set-off.

7.3 The arbitral tribunal shall reject the submission of the counterclaim if it is not within the scope of the arbitration.

8. Default

8.1 If, within the period of time fixed by the arbitral tribunal, without showing sufficient cause the Claimant has failed to communicate its statement of claim, and if the Respondent so requests, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

8.2 If the Respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the Claimant's allegations.

- 8.3 The provisions of clause 8.2 shall apply to a Claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
- 8.4 If a party, duly notified, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
- 8.5 If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without sufficient cause, the arbitral tribunal may proceed with the award on the evidence before it.

9. Subsequent pleadings

- 9.1 During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off. The arbitral tribunal may decide that it is inappropriate to allow such amendment or supplement of the claim having regard to the delay in making it, prejudice to other party, the risk of having to postpone the scheduled hearing, or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.
- 9.2 In subsequent pleadings the parties shall endeavour to narrow the issues in dispute. Each party can demand that the other party present evidence which may be relevant for the case. Such requests shall be as specific as reasonably possible. The arbitral tribunal may draw adverse inference from a party's failure to provide evidence without a justifiable cause. However, the arbitral tribunal shall evaluate all the evidence presented. The arbitral tribunal may state its opinion as to whether the request for documentation should be complied with.

10. Evidence

- 10.1 Both parties shall provide relevant evidence and information to enable the arbitral tribunal to resolve the dispute on a correct factual basis. This includes the production of evidence in the statement of claim (clause 6.3 above) and statement of defence (clause 7.2(b) above). Both parties shall endeavor to avoid any unnecessary increase of documents or evidence which may result in an unnecessary protraction of the proceedings.
- 10.2 The arbitral tribunal shall use the NOMA Rules on the Taking of Evidence. For the avoidance of doubt, it is noted that the NOMA Rules on the Taking of Evidence are not deemed to be binding on the arbitral tribunal.
- 10.3 Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise, may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party.
- 10.4 Testimony by expert witnesses shall be presented by a signed written statement unless otherwise directed by the arbitral tribunal.

- 10.5 The arbitral tribunal may direct that other witnesses be presented by signed written statements only if the arbitral tribunal is satisfied that, by having regard to all relevant circumstances, this contributes to an efficient and cost-effective resolution of the case.
- 10.6 At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within a period of time set by the arbitral tribunal.
- 10.7 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

11. Hearings

- 11.1 In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
- a) Witnesses, including expert witnesses, shall be heard and examined under the conditions and in the manner set by the arbitral tribunal.
 - b) Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not normally be asked to retire. The arbitral tribunal may allow witness, including an expert witness, who is closely connected to a party to the arbitration to be present.
 - c) The parties and/or their legal representatives shall be present at the hearing.
 - d) The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication (such as videoconference).
- 11.2 The arbitral tribunal may conduct a hearing for the presentation of evidence or for oral submissions on the merits of the dispute. Subject to the parties' right to present their case, and subject to any decision by the tribunal to the contrary, the time allowed during the hearing shall be allocated equally between the parties.
- 11.3 The arbitral tribunal may allow, refuse or limit the appearance of any witness, including expert witnesses.
- 11.4 The arbitral tribunal may allow that a witness's testimony, including testimonies from expert witnesses, is submitted in writing, e.g. as a signed statement, including rebuttal statements. In that case, any party may require that the witness attends the hearing for oral examination. If the witness fails to attend the oral examination, the arbitral tribunal may, if compelling reasons so require, and in its discretion, nevertheless accept the written statement as evidence in the case.
- 11.5 The hearing will normally consist of the following stages:
- a) The Claimant begins with an opening statement in which it frames the case for the arbitral tribunal by explaining the most important factual elements of the case, providing and explaining essential evidence and outlining key legal issues;

- b) The Respondent supplements the Claimant's presentation, and makes its defence;
- c) The Claimant's representative is examined. The Claimant initiates the questioning followed by the Respondent. The Claimant may thereafter ask additional questions, and the same applies to the Respondent. The arbitral tribunal may question and examine the Claimant's representative at any given time;
- d) The Respondents' representative is examined. The Respondent initiates the questioning followed by the Claimant. The Respondent may thereafter ask additional questions, and the same applies to the Claimant. The arbitral tribunal may question and examine the Respondent's representative at any given time;
- e) The Claimant's witnesses are examined. The Claimant initiates the questioning followed by the Respondent. The arbitral tribunal may question and examine the Claimant's witnesses at any given time;
- f) The Respondent's witnesses are examined. The Respondent initiates the questioning followed by the Claimant. The arbitral tribunal may question and examine the Respondent's witnesses at any given time;
- g) Expert witnesses are normally present during examination of other expert witnesses, e.g. by cross examination if the arbitral tribunal finds it appropriate;
- h) The Claimant present a closing statement in which the Claimant provides a summing-up of the evidences and legal arguments;
- i) The Respondent present a closing statement in which the Respondent provides a summing-up of the evidences and legal arguments;
- j) The Claimant present a short reply to Respondent's closing statement;
- k) The Respondent is allowed a short rebuttal to Claimant's reply to Respondent's closing statement; and
- l) The arbitral tribunal may give each party's representative a possibility to make a final closing remark without the interference of the parties' counsel.

12. The Award

- 12.1 When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
- 12.2 All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards within the time limit set by the tribunal, or otherwise without delay.
- 12.3 The arbitral tribunal shall state the reasons for its award including a short summary of the relevant facts, the facts on which the arbitral tribunal bases its award, and the legal principles and sources applied. If the award is not unanimous, the dissenting arbitrator shall state the reasons for the dissent.
- 12.4 The arbitral tribunal may make separate awards on different issues at different times.

- 12.5 An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
- 12.6 The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. The arbitral tribunal may apportion the costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 12.7 The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to the other party as a result of the decision on allocation of costs. In order to ensure adequate preparations and a smooth and effective arbitral process, the arbitral tribunal, when determining the allocation of costs, may take into account any unnecessary presentation of evidence or proceedings and/or whether the successful party has rejected a reasonable offer of settlement.

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