

NORWAY

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Most disputes in Norway are resolved before the ordinary courts. Nonetheless, arbitration plays an important role in the country's dispute resolution system. It is of importance in large and complex cases and is often used in the oil and gas sector, offshore and onshore construction and the shipbuilding and maritime sector. Arbitration is often chosen as the dispute resolution mechanism in contracts because of the possibility to set a panel of arbitrators with the desired professional background.

Key places of arbitration in the jurisdiction	Oslo
Civil law/common law environment?	Norway is primarily a civil law jurisdiction, but generally has more common law features than many other civil law countries. As Norway is a member of the European Economic Area (EEA), Norwegian laws are substantially influenced by regulation from the European Union, including (but not limited to), for instance, competition law.
Confidentiality of arbitrations?	If no agreement regarding confidentiality exists, the arbitral proceedings and the award are as a starting point not confidential. The parties are, however, free to agree on confidentiality arrangements for the dispute which has materialized. It is commonly presumed that the courts may accept an agreement on confidentiality in the arbitration clause as well.
Requirement to retain (local) counsel?	There is no requirement to retain (local) counsel.
Ability to present party employee witness testimony?	The parties may present witness testimony from employees of a party.
Ability to hold meetings and/or hearings outside of the seat?	Although the seat of arbitration is Norway, there are no restrictions to conduct meetings or hearings outside of Norway as part of the arbitral proceedings.
Availability of interest as a remedy?	The arbitral tribunal may award interest in accordance with the law applicable to the dispute.
Ability to claim for reasonable costs incurred for the arbitration?	The parties are jointly liable for the tribunal's costs. The arbitral tribunal may order security for its own costs, but not for the parties' costs. The arbitral tribunal may order a party to pay the other party's costs to the extent it deems appropriate.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Conditional fee is permitted in Norway. Contingency fees for attorneys are permitted only to a limited extent. The Code of Ethics for Lawyers contains a general prohibition against percentage share fees; a fee based on a share of the outcome or subject matter of the action is not permitted, while non-excessive success fees are accepted.
Party to the New York Convention?	Yes

Other key points to note	φ
WJP Civil Justice score (2017-2018)	Norway's Civil Justice score is 0.89 and ranks as number 2.

ARBITRATION PRACTITIONER SUMMARY

In Norway, ad hoc arbitral tribunals are, by far, the most commonly used. In cases of institutional arbitration, the parties often opt for the SCC or ICC rules. The Oslo Chamber of Commerce has an institute for arbitration and alternative dispute resolution, which recently gained some attraction. The status of international arbitration in Norway has remained mostly unchanged in recent years. With the international trend of an increasing number of cross-border contractual relationships and the increased costs associated with the large arbitration institutions, the number of international arbitrations in Norway may increase in the years ahead.

Date of arbitration law?	The Arbitration Act 2004 was enacted on 14 May 2004 and governs arbitration seated in Norway.
UNCITRAL Model Law? If so, any key changes thereto?	The Arbitration Act is based on the UNCITRAL Model Law with some adjustments. The Arbitration Act governs both international and domestic arbitration.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There are no specialised courts in Norway handling arbitration-related matters.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Norwegian courts may decide on interim measures even though the dispute is governed by an arbitration clause.
Courts' attitude towards the competence-competence principle?	The tribunal has competence to decide on its own jurisdiction and any objections to the existence or validity of the arbitration agreement. In case the tribunal renders a decision on jurisdiction before the final award, that decision may be brought before the ordinary courts
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The Arbitration Act upholds the pro-enforcement bias, as set out in the New York Convention. Enforcement of the award may be refused on the same grounds as set out in the New York Convention which essentially are the same grounds that would render an award invalid. In addition, enforcement may be refused if the award is not yet binding on the parties or the award has been overturned by a court in the state where the award was rendered.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	In case legal action is taken before the ordinary courts regarding the validity of an arbitral award, Norwegian courts have a discretionary power to stay enforcement of the award. In practice, the courts will evaluate the allegations and submissions regarding the invalidity of the award when assessing whether staying enforcement is appropriate.
Other key points to note?	The main rule in Norway is that the parties jointly nominate all three arbitrators. If the parties cannot agree on a panel, the parties will choose one arbitrator each, and the two chosen arbitrators then appoint the third arbitrator who acts as the chairperson of the arbitration

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model law?

The arbitration law is based on the UNCITRAL Model Law of 1985 with some adjustments. The subsequent amendments to the UNCITRAL Model Law, which were adopted in 2006, have however not been implemented.

1.1.1 If yes, what key modifications if any have been made to it?

Contrary to the Model Law, the Arbitration Act applies to both domestic and international disputes. Another modification that has been made in relation to the UNCITRAL Model Law is that in case the parties to a dispute failed to designate the applicable law, the tribunal may apply Norwegian conflict of laws rules. Where the Arbitration Act deviates from the provisions of the UNCITRAL Model Law, the parties are free to agree upon alternative solutions which are in line with the Model Law.

1.2 When was the arbitration law last revised?

The Arbitration Act has not been revised since it came into force on 1 January 2005.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The main rule is that the tribunal shall apply the rules of law chosen by the parties. In the absence of such agreement, the tribunal will apply the conflict of laws rules, set out in Norwegian private international law. These rules generally are not provided for in statutes but follow from case law. The rules in Norwegian private international law are influenced by the rules governing the choice of law issued by the European Union (*e.g.*, the Rome Regulations). As a result, Norwegian private international law includes mandatory rules of law to protect certain interest, for example, consumers.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

The parties may enter into an arbitration agreement by producing a written arbitration agreement, either in a separate document or within the agreement from which the dispute arises. Although not recommended, an arbitration agreement may also in principle be made orally. An arbitration agreement may be incorporated by reference to one of the parties' general terms and conditions, provided that the other party has accepted them explicitly or implicitly.

The doctrine of separability is codified in Section 18 of the Arbitration Act. Arbitration agreements are regarded as separate agreements, independent from other parts of the contract. An arbitral tribunal may declare the contract void without any automatic influence on the arbitration agreement even though the arbitration agreement is included in the contract.

2.3 What are formal requirements (if any) for an enforceable arbitration agreement?

There are no formal requirements for an arbitration agreement to be enforceable under Norwegian law. The party submitting a dispute to arbitration must nevertheless be able to substantiate that arbitration has been agreed between the parties. The dispute must be within the parties' contractual autonomy.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

A non-signatory party to the contract containing an arbitration clause cannot as a starting point be bound by it. A party may bring a non-signatory to the proceedings if the arbitration agreement so prescribes or by consent from both parties. Even if a party is not a party to the arbitration agreement, that party, based on the circumstances, may be held to have impliedly consented to be bound by the contract. In addition, and unless otherwise prescribed, the arbitration agreement will follow the assignment of the main contract.

2.5 Are there restrictions to arbitrability?

In general, the parties may subject a dispute to arbitration if they are free to settle the matter through an agreement. Parties may not arbitrate a matter of criminal law or of public administrative law. In matters regarding family law, the contractual autonomy is more limited. You cannot arbitrate questions like divorce, parenthood and child custody, but you may arbitrate economical settlement following a divorce. The same applies to IP rights. You cannot arbitrate the validity of IP rights, but you may arbitrate claim for compensation for alleged IP infringements. The contractual autonomy regarding labour disputes is also limited compared to Norwegian civil law. There is, however, a possibility to submit a dispute concerning dismissal of a company's chief executive to arbitration.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

If there is a valid arbitration agreement covering the dispute – regardless of the seat of the arbitration – the courts shall dismiss the lawsuit that is subject to arbitration, provided that a party raises the existence of the arbitration agreement at the latest when addressing the merits of the case. Conversely, where a party fails to request dismissal in due time, the court will have jurisdiction to resolve the dispute notwithstanding the valid arbitration clause. Where the arbitral proceedings have been initiated and a party requests the dismissal of the case, the court will continue the proceedings only if it finds the arbitration agreement invalid or if the arbitration cannot be conducted for other reasons.

Even though the dispute is subject to arbitration and without depriving the arbitral tribunal of any competence in these respects, the courts have power to grant preliminary or interim relief. The ordinary courts may also assist in securing evidence.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

The courts will not stay proceedings because arbitrators enjoin the parties to do so. However, it is within the power of the parties to invoke before the courts that legal action before the ordinary courts shall be dismissed because the case is subject to arbitration.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction?

It follows from the Arbitration Act that the courts shall only have jurisdiction over disputes subject to arbitration to the extent provided by the Arbitration Act. Thus, the courts may not intervene in arbitrations seated outside of Norway.

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

There are no provisions in the Arbitration Act regarding qualifications or other requirements for legal representatives. Parties may, but are not obliged to, retain attorneys or other counsel to act on their behalf during the proceedings.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

The Arbitration Act requires arbitrators to be independent and impartial. The Arbitration Act requires the arbitrators to *ex officio* disclose any circumstances which may be likely to give rise to doubts as to the arbitrators' impartiality or independence.

A challenge of an arbitrator shall, unless otherwise agreed by the parties, be submitted to the arbitral tribunal. The arbitral tribunal decides on the challenge.

In case a challenge is not successful, the challenging party may, unless otherwise agreed, bring the issue before the courts within one month. The court shall determine the issue by way of an interlocutory order. The order cannot be appealed. The fact that an arbitrator has failed to disclose relevant information may be considered relevant, but not decisive, by the court. Such challenge may not subsequently constitute a basis for invalidity or an objection in respect of recognition and enforcement of the award.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

If the arbitral tribunal cannot be constituted pursuant to the agreement or the parties fail to appoint the arbitrators, each of the parties may request that the courts make the outstanding arbitrator appointment or appointments.

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Courts have the power to issue interim measures in connection with the arbitration.

4.4.1 If so, are they willing to consider *ex parte* requests?

The courts may consider requests from the parties.

4.5 Other than arbitrator's duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Arbitral proceedings are not subject to confidentiality, unless the parties agree otherwise when the dispute has materialized. The parties may enter into an agreement on confidentiality when the dispute has materialized. It is commonly presumed that the courts may accept an agreement on confidentiality in the arbitration clause as well.

4.5.2 Does it regulate the length of arbitration proceedings?

The Arbitration Act has no regulations on the length of arbitration proceedings. Please note that subject to the arbitration agreement fundamental rules of legal proceedings (e.g. fair trial requirement pursuant to article 6 of the European Convention on Human Rights as well as other rules pursuant to the Norwegian Civil Procedure Act considered to be of fundamental nature) apply which indirectly offer tools against a party (or a tribunal) that are blocking the process.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

As regards the place of arbitration, this is determined by the parties in the arbitration agreement. Failing an agreement on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal itself.

Irrespective of the seat of arbitration, the arbitral tribunal may, unless otherwise agreed by the parties, meet wherever the tribunal considers appropriate to deliberate among its members, to examine witnesses, experts or parties, or to assess evidence.

4.5.4 Does it allow for arbitrator to issue interim measures? In the affirmative, under what conditions?

Unless the parties agree otherwise, the arbitral tribunal may, upon a party's request, order any party to take such interim measures as the arbitral tribunal considers necessary based on the subject matter of the dispute. There are no specific limitations as to the nature of the measure. An interim measure imposed by the arbitral tribunal is however not enforceable. Furthermore, the arbitral tribunal is empowered to order security for potential liability which the relief may cause.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The parties may submit any evidence they wish. Unless the parties agree otherwise, the arbitral tribunal may reject evidence that obviously has no significance for the case. Moreover, the arbitral tribunal may limit the production of evidence based on proportionality. In addition, as the arbitral tribunal shall ensure fundamental rules of legal proceedings, the tribunal may rely on principles and rules in the general Norwegian law if it deems appropriate in the case at hand.

4.5.6 Does it make it mandatory to hold a hearing?

The Arbitration Act does not make it mandatory to hold an oral hearing. The arbitral tribunal can decide whether the proceedings are to be oral or written, but each party is entitled to request an oral hearing during the proceedings. Oral hearing is commonly used in arbitrations in Norway.

4.5.7 Does it prescribe principles governing the awarding of interest?

The arbitral tribunal may award interest in accordance with the law applicable to the dispute. If the dispute involves a monetary claim, the prevailing party is entitled to penalty interest pursuant to the Interest on Late Payment Act. The penalty interest rate is currently 8.5% as of 1 January 2018 and is subject to adjustment twice a year. This applies when the dispute is governed by Norwegian law. If the dispute is governed by another law, interest must be based on this law.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Unless otherwise agreed between the parties, the arbitral tribunal determines its own remuneration. The parties are in principle jointly liable for the tribunal's costs, unless the tribunal deems that the losing party should cover all the costs related to the arbitral tribunal. According to the Arbitration Act, the tribunal may order a party to pay the other party's costs to the extent it deems appropriate. The main rule is that the party who has lost the dispute will be ordered to cover the other party's legal costs and the tribunal's remuneration and costs. In case a party only partially has succeeded, the tribunal may determine that the party is only to be awarded partial costs.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

Arbitrators do not benefit from immunity to civil liability. Arbitrators must perform their tasks pursuant to their appointment agreements. The agreements are subject to the general principles of contract law; thus, arbitrators may be held liable for breach of contract.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

On a general note, there are no concerns regarding criminal liability for any of the participants. However, in extreme circumstances, criminal liability cannot be excluded in cases of, for instance, fraud and corruption.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

The parties may waive the requirement for an award to provide reasons.

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The parties may not waive the right to seek the annulment of the award. This is based on securing the parties a minimum of legal protection during the arbitration proceedings.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

The arbitral award shall be put in writing and shall be signed by all arbitrators. The award must specify the date and place where it has been rendered. Furthermore, the arbitral tribunal shall send one signed copy of the arbitral award to the District Court for filing in the archives of the Court.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

Parties may, at any point, agree to appeal an arbitral award to another arbitral tribunal, but not to the national courts. This opportunity to appeal has, however, hardly ever been used.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Both Norwegian and foreign awards are recognisable and enforceable in Norway through the ordinary enforcement authorities. The enforcement request must be sent to the local enforcement authorities or to the local district court, depending on whether the arbitral award is Norwegian or foreign. There are no particular time-limits, however the general statute of limitation applies. A party must provide the original arbitral award or a certified copy thereof. Unless the arbitral award has been made in the Norwegian, Swedish, Danish or English language, the party shall also provide a certified translation hereof.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

If a legal action for setting aside an arbitral award has been brought before a court, the court may postpone the ruling on recognition or enforcement if it deems such action to be appropriate.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

A foreign award that has been annulled at its seat will not be enforced in Norway.

5.8 Are foreign awards readily enforceable in practice?

A foreign award shall be recognized and shall be enforceable in Norway regardless of the seat of arbitration.

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

There are no restrictions on third-party funding, while there are some restrictions to contingency fees for attorneys (see point a. below).

6.2 If so, what is the practical and/or legal impact of such restrictions?

Conditional fee is permitted in Norway. Contingency fees for attorneys are, however, permitted only to a limited degree. The Code of Ethics for Lawyers contains a general prohibition against percentage share fees; a fee based on a share of the outcome or subject matter of the action is not permitted, while non-excessive success fees are accepted.

7. Is there likely to be any significant reform of the arbitration law in the near future?

The legislator has not indicated any reform of the Arbitration Act.