

Maritime Arbitration in Sweden – a reliable, swift and relatively cost-effective



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THE HISTORY of maritime arbitration in Sweden goes back many centuries. In fact, the Maritime Code of Visby of 1667 contained a provision on arbitration. But Sweden's reputation in arbitration circles is not so much linked with maritime disputes as with international commercial arbitration, especially the ones conducted under the auspices of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). The popularity of Sweden as an international arbitration venue came to the fore during the Cold War, when arbitration in Sweden became the favourite choice for parties involved in East-West trade. The SCC's caseload has continued to increase, and in 2009 some 215 cases were registered. The number of ad hoc arbitrations and arbitrations administered by other institutions is much more difficult to assess, but could at a rough estimate be at least the same number. Only a small portion of these arbitrations arise out of shipping contracts.

The proceedings

Sweden adopted a new arbitration act in 1999, which conforms closely to the UNCITRAL Model Law on Commercial Arbitration. This act provides the legal framework for arbitrations in Sweden, but also allows for considerable flexibility for the parties and the arbitrators regarding the conduct of the proceedings. This flexibility

Sweden has become one of the leading venues in the world for international commercial arbitration. However, arbitration in the maritime sector has not followed the developments in mainstream commercial arbitration, and London's position as the power house of maritime arbitration is unlikely to be seriously challenged in the foreseeable future.

This article seeks to give some flavour of what the parties who seek an alternative arbitration venue can expect from a maritime arbitration in Sweden, to explain how the proceedings may differ, and to suggest some reasons as to why parties might consider it appropriate to resolve their disputes here.

makes any generalisation dangerous when conducting a comparison with London arbitration. However, as a general observation, the arbitrations conducted under the rules of the London Maritime Arbitration Association (LMAA) remain very much English-style arbitrations in the common law tradition. The maritime arbitration service in London has been described by a distinguished English judge as a "domestic arbitration service for the world". Sweden is a much smaller country and has been forced to have a more international outlook. We cannot adopt the adage "when in Rome, do as the Romans do".

Although arbitrations in domestic cases with Swedish and Scandinavian parties are certainly influenced by the Swedish rules of procedure, this does not apply to the same extent in international disputes. The arbitration proceedings are generally adapted to bridge the gap between parties from different legal backgrounds who may well have different expectations of the procedure. If the arbitration is conducted in English (which accounts for most international arbitrations in Sweden), it would cause no eyebrows to be raised if a party is represented by a foreign counsel or appoints a non-Swedish arbitrator.

Types of dispute arbitrated in Sweden

When it comes to maritime arbitration, Sweden cannot even compare to the caseload of the LMAA. An account of maritime arbitration in Sweden will necessarily be tainted by anecdotal evidence and the experience from my own practice. Most of the maritime arbitrations in Sweden are ad hoc arbitrations and involve parties in Scandinavia or foreign parties with a business relationship with parties in the region. However, in recent years arbitration in Sweden appears to have become an increasingly popular choice for shipping companies with no relation to Sweden from countries with a traditional bias towards SCC arbitration, especially Eastern European and Chinese parties. International parties seem more inclined to provide for arbitration in Sweden in bespoke contracts, shipbuilding contracts and contracts in the offshore sector than in standard form charter parties.

Cost and efficiency

There is at least a perception that London arbitration is expensive and sometimes slow due to the workload of popular arbitrators. The possibility to appeal on a point of law in England, which may cause a dispute to run through three court instances, may of course result in something very different and more costly than the

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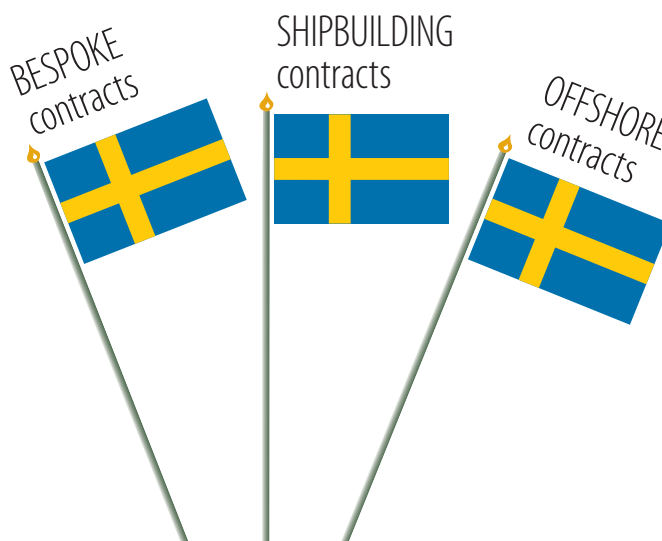
parties expected. But, when big sums are at stake, an arbitration will of course be costly anywhere. Although lawyers' fees are generally higher in London than in Sweden and the dual profession with solicitors and barristers may escalate costs, it is fair to say that this does not always mean that a maritime arbitration in Sweden will be cheaper. However, for disputes between Scandinavian parties, there seems little point in going to London to resolve their disputes. The LMAA has been successful in establishing cost-efficient small claims procedures for claims of lower value and complexity.

The corresponding "fast-track arbitration" in Sweden would be the SCC Expedited Arbitration Rules, according to which the dispute will be decided by a sole arbitrator and the award rendered within three months. Many parties adopt a combined clause which makes the Expedited Rules the default choice unless the dispute exceeds a certain amount, or the SCC secretariat, taking into account the complexity of the case, the amount in dispute and other circumstances, determines that the ordinary arbitration rules of the SCC shall apply.

Applicable law

The Swedish legal system can best be described as being somewhere in between common law and civil tradition. The maritime laws in all Nordic countries are very similar, and case law from other Nordic countries carries considerable weight in Sweden. English case law is frequently referred to by the parties, even when Swedish law applies to the substance, especially in charter party disputes. Even in arbitrations conducted in Sweden, English legal materials need not be translated into Swedish.

The parties are, of course, free to choose a law other than Swedish law to apply. I have, for instance, been involved in Swedish maritime arbitrations where the contract, by accident or by design, has been governed by English law. Whether it is



Typical Swedish arbitration cases

wise for the parties to make such a choice is, of course, another matter.

Arbitrators

Apart from the qualities that one would normally seek from an arbitrator in any international commercial arbitration, parties in maritime disputes expect the arbitrators to have a knowledge of maritime law and the shipping industry. Most arbitrators in maritime disputes would normally be practicing lawyers or academics specialising in maritime law but, in a panel with three arbitrators, the chairman is sometimes a court judge or an arbitrator with no shipping experience. As the maritime laws and the legal traditions are very similar in all the Scandinavian countries, lawyers from Norway, Denmark and Finland often serve as arbitrators on Swedish panels. In maritime arbitrations with international parties, the arbitrator could, of course, be from any part of the world (for instance, London QCs occasionally sit as arbitrators in Swedish maritime arbitrations).

Arbitration clause

When the Swedish Maritime Law Association discussed how best to serve the shipping industry with arbitration services, the members were decidedly against the idea of establishing a niche maritime arbitration centre, and it was recommended instead that the parties should refer to the rules of the SCC. This should ensure that the parties obtain the benefit of updated

arbitration rules and reliable institutional support. According to the standard SCC rules, the arbitrators must render their award within six months, and it is possible to calculate their fees in advance. The rules and proposed arbitration clauses are available via the SCC's website www.sccinstitute.com. The parties should also specify in the arbitration clause where they want the proceedings to take place. Apart from Stockholm, the city of Gothenburg is a popular place for arbitration in maritime disputes, being the home of the biggest port in Scandinavia and of many shipping companies. Incidentally, it is also where The Swedish Club's headquarter is situated.

Final words

It would of course be a mistake to claim that arbitration in Sweden will always be a better, more efficient or cheaper alternative than arbitration in London, New York or any other maritime arbitration venue. On the contrary, for some types of disputes arbitration in Sweden may not be the natural choice. However, parties in the shipping industry are encouraged to make an informed choice rather than going for the default options in the pre-printed forms, and do so by considering what kind of arbitration service they want and what would be the most appropriate for their contractual relationship. If they opt for Sweden, they can expect a reliable, swift and relatively cost-effective service.

