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## Arbitration in the Faroe Islands by T. Cole

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# **Arbitration in the Faroe Islands**

Tony Cole<sup>1</sup>

## **1. The Interviews**

The interview on which this report is based was performed as part of a research project funded by the United Kingdom's Economic and Social Research Council. Interviews were performed in 47 countries, including 127 cities and 1,042 interviewees.<sup>2</sup> Further information on the project is available on the project website (<https://commercialarbitrationineurope.wordpress.com>).

One interview was performed in the Faroe Islands, involving 1 participant, taking place in Tórshavn on 20 June 2024. The interview was performed by the author. Potential interviewees were identified through a combination of legal guides (WhosWhoLegal, Chambers, Legal500), recommendations, and internet research. A list of interviewees in the research project who have chosen to be publicly identified is available on the project website.

The interview lasted 60-90 minutes and was semi-structured, drawing from a list of topics but guided by the discussion as it evolved. Notes were taken during the interview and then submitted to the interviewee post-interview for comment. In addition to this discussion, during the interview the participant was asked to name three “leaders” of arbitration in the Faroe Islands (domestic or international) and three “leaders” of arbitration internationally (whether or not Faroese), and to discuss what characteristics qualified them as “leaders”.

## **2. The Arbitration Market**

Arguably the most surprising thing about arbitration in the Faroe Islands, given the Faroes' small population<sup>3</sup> and isolated location<sup>4</sup>, is that it does indeed occur, and with some regularity. However, the interviewee confirmed that those arbitrations overwhelmingly relate to construction disputes, with other types of commercial arbitration being much rarer. Nonetheless, the Faroe Islands provides an interesting

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<sup>2</sup> As of 3 February 2025. A limited number of additional interviews will be performed prior to conclusion of the research in August 2025.

<sup>3</sup> The population of the Faroe Islands is currently estimated to be around 54,000 people. “Faroe Islands profile”, at <https://www.bbc.co.uk/news/world-europe-20424993> (last visited 3 February 2025).

<sup>4</sup> The nearest significant city to Tórshavn, the capital of the Faroe Islands, is Reykjavik, Iceland, a great circle distance of 803km, as per Great Circle Mapper, <https://www.greatcirclemapper.net/>.

example of how local social and political considerations can both support a local arbitration practice and limit it.

While formally part of Denmark, the Faroe Islands constitutes an autonomous territory within Denmark, with substantial self-governance. Indeed, under the Takeover Act of 2005,<sup>5</sup> the Faroe Islands has the right to take over legislative and administrative authority with respect to all but five specified areas.<sup>6</sup> Moreover, despite being part of Denmark, the Faroe Islands is not part of the European Union,<sup>7</sup> has its own language (Faroese) that serves as the native language for 95% of the population,<sup>8</sup> and has an ongoing political discussion regarding independence from Denmark.<sup>9</sup> This Report will suggest that this self-consciousness of a distinctiveness from Denmark, and a consequent desire to maintain control over local disputes, can be seen in the way that the Faroese arbitration market has developed.

With respect to the law, the Faroe Islands has its own parliament, with the authority to pass its own laws on matters within the Faroes' competence.<sup>10</sup> The Court of the Faroe Islands sits within the Danish court system as equivalent to a Danish district court, with appeals going to the Eastern High Court in Copenhagen, one of the two Danish courts of appeal, and then to the Danish Supreme Court.<sup>11</sup> The interviewee described the practice of Faroese lawyers as being focused on the Faroe Islands, rather than on Denmark more broadly, particularly given that different laws will often apply in the rest of Denmark. Nonetheless, there is no formal barrier to Faroese lawyers practicing elsewhere in Denmark, and the interviewee noted that there are some non-Faroese Danish lawyers who also practice in the Faroe Islands.

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<sup>5</sup> Act no. 578 from the 24th of June, 2005.

<sup>6</sup> The Constitution; Citizenship; The Supreme Court; Foreign, security and defence policy; Foreign exchange and monetary policy. *Id.*

<sup>7</sup> "Faroe Islands profile", *supra* n.3.

<sup>8</sup> Edit Bugge, "Attitudes to variation in spoken Faroese", 22 *Journal of Sociolinguistics* 312, 314 (2018).

<sup>9</sup> See, e.g. Rebecca Adler-Nissen, "The Faroe Islands: Independence dreams, globalist separatism and the Europeanization of postcolonial home rule", 49 *Cooperation and Conflict* 55, 56 (2014) ("Denmark has already handed over substantial autonomy to the Faroese parliament in Tórshavn, but support for an independent Faroese state has become widespread; past years consistently show about 50% Faroese are in favour of independence from Denmark"). More recently see Rólant Waag Dam, "Faroese independence is suddenly back on the table", *available at* <http://www.nordiclabourjournal.org/nyheter/news-2024/article.2024-04-26.9060091860> (last visited 3/2/25).

<sup>10</sup> José María Lorenzo Villaverde, "The Unsettled Question of the Constitutional Framework and the Interpretative Authority in the Danish Rigsfællesskab", 15 *Perspectives on Federalism* 1, 4 (2023) ("The Faroese assembly (Løgting) and the executive (Landsstýri) hold the legislative and administrative authority, respectively. The laws passed by the Løgting are named løgtingslove or laws of the Løgting.") (quotation marks omitted),

<sup>11</sup> "The Danish judicial system", at <https://www.domstol.dk/om-os/english/the-danish-judicial-system/> (last visited 3 February 2025). See also Steffen Pihlblad, Christian Lundblad & Louise Parker, *Arbitration in Denmark* (2nd ed. 2024) at 5 ("Decisions of the court in the Faroe Islands may be appealed to the Eastern High Court.").

As already noted, arbitration occurs in the Faroe Islands with some regularity, with the interviewee commenting that they personally had been involved in five arbitrations in the past five years, and that they knew other practitioners with even greater engagement. Nonetheless, Faroese arbitration practice was reported to be very restricted in scope, focusing almost exclusively on construction disputes arising under ABF06, a form contract developed for use in construction and civil engineering<sup>12</sup> and adapted from the Danish AB92 form contract.<sup>13</sup>

Perhaps unsurprisingly, given that these arbitrations arise from a specifically Faroese form contract, the interviewee described ABF06 arbitrations as standardly domestic, involving two Faroese parties, rather than international or even just involving a non-Faroese Danish party. The interviewee was also aware of one arbitration that had instead been administered by the Danish Building and Construction Arbitration Board,<sup>14</sup> a specialised construction arbitration institution in Copenhagen that is the designated institution for arbitrations under AB92, but they stated that this is unusual.

In terms of the source of these arbitrations, the interviewee identified Faroese government construction projects as particularly important, due to the use of ABF06 in projects for the construction of roads and tunnels, as well for other significant construction projects. Nonetheless, while this is the most important source of arbitrations, it is not the exclusive source, and ABF06 was described as also used more broadly in the Islands.

### 3. Arbitration Institutions

There is no arbitral institution in the Faroe Islands. Moreover, because arbitrations arising under ABF06 are ad hoc, they proceed without the involvement of either the Danish Institute of Arbitration<sup>15</sup> or the Danish Building and Construction Arbitration Board, the two leading Danish institutions. Indeed, the text of ABF06 shows this to have been a conscious decision, as Section 47 of the Danish AB92, which refers disputes to the Danish Building and Construction Arbitration Association, is expressly amended in ABF06 to provide for ad hoc arbitration. While no information is available on the rationale for this decision, it is notably consistent with a desire to keep the resolution of these disputes internal to the Faroe Islands.

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<sup>12</sup> A copy of ABF06 is on file with the author.

<sup>13</sup> Id.

<sup>14</sup> <https://voldgift.dk/the-danish-arbitration-board/?lang=en> (last visited 3 February 2025).

<sup>15</sup> <https://voldgiftsinstituttet.dk/en/> (last visited 3 February 2025).

## 4. The Arbitration Community

Despite the existence of regular arbitration in the Faroes, the interviewee confirmed that there are no arbitration-related events held with any regularity, and nothing resembling an arbitration community. However, given that the entire population of the Faroe Islands is only approximately 50,000, those lawyers involved in arbitration are nonetheless aware of who else is involved in such work.

More notably, the interviewee stated that Faroese arbitration practitioners do not generally see themselves as part of the larger Danish arbitration community, and they could not recall anyone they knew having gone to an arbitration or other legal event in mainland Denmark. Indeed, a stronger affiliation was identified with Iceland, which was described as somewhat of a “big brother” to the Faroes, with Icelandic companies regularly doing business in the Faroes. However, the description of this “familial” connection did not include an account of any arbitration-related work in Iceland or travel to arbitration events in Iceland.

Ultimately, while arbitration may be a somewhat consistent feature of legal practice in the Faroes, it involves relatively few individuals, constitutes only a proportion of the legal work of even those individuals, and is focused on an inwardly-directed dispute resolution practice that does not naturally connect with arbitration elsewhere in Denmark. As a result, there is little need for any sort of formalisation of a local arbitration community, since everyone involved in arbitration practice in the Faroes already knows one another and there are no new connections to be made at networking events. In turn, there is little incentive to connect with the broader Danish arbitration community given the distance to mainland Denmark and that Faroese arbitration practitioners are unlikely to be attractive in disputes that do not involve a Faroese party – but such arbitrations will overwhelmingly take place in the Faroes.

## 5. Arbitration Procedure and the Courts and Arbitration

Perhaps the most distinctive element of Faroese arbitration procedure is the level of involvement of Faroese courts. Indeed, rather than arbitrations being commenced by notifying the other party of the intent to arbitrate, as would be usual for *ad hoc* arbitrations, under Section 47 of ABF06 an arbitration is commenced by submitting a complaint to the “Sorinskrivarin”, the judge at the Court of the Faroe Islands,<sup>16</sup> a copy also being sent to the other party.

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<sup>16</sup> Section 47(2).

Arbitrations will standardly involve a tribunal of three arbitrators,<sup>17</sup> although a single arbitrator is possible,<sup>18</sup> and after the complaint is submitted to the Court, the Respondent then has only 14 days to appoint their own arbitrator, with the Court making the appointment if this deadline is not met.<sup>19</sup> In turn, if no agreement is reached on the identity of the Chair, the Chair will again be appointed by the Court.<sup>20</sup> Most notably, however, the interviewee stated that standard practice is that the judge at the Court will simply appoint themselves as Chair.

While the preceding is standard for an ABF06 arbitration, the interviewee confirmed that if an arbitration is not based on ABF06 it will be commenced in a standard manner, with both parties nominating one arbitrator, and those arbitrators then agreeing on the Chair. Recourse is then available to the Court of the Faroe Islands for appointment of the Chair if no agreement is reached.<sup>21</sup> It is not clear if it the practice of the judge at the Court appointing themselves as Chair also applies in this context, or only in the context of ABF06.

Perhaps unsurprisingly, given the likely involvement of a judge as Chair and that arbitration will only form a portion of any lawyer's or arbitrator's dispute resolution work, the majority being litigation, the interviewee described Faroese arbitration procedure as fundamentally just a more flexible version of Faroese court procedure. Moreover, arbitrations were described as usually proceeding quite slowly, unless both parties had a reason for an arbitration to be faster.

The involvement of the Court in arbitration does not, however, end with arbitrator appointment and with the judge often serving as Chair. Rather, while not formally part of an arbitration, the interviewee identified another element of Faroese dispute resolution practice as central to Faroese arbitration practice, namely a court-based expert determination process, that focuses on resolving factual disputes, rather than legal disputes. In this process, the Court itself appoints an expert, who then answers questions approved by the Court relating to factual matters in dispute between the parties. As already noted, this process does not formally constitute part of an arbitration, but the interviewee noted that it would often precede an arbitration, on the rationale that the determinations reached in that process might facilitate settlement or at least narrow the scope of the dispute. While arbitrators are not formally bound by the expert's determinations, the interviewee confirmed that they will usually be highly persuasive.

Unsurprisingly, given the small size of the Faroe Islands, the interviewee confirmed that identifying an arbitrator with no conflicts of interest can often be

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<sup>17</sup> Section 47(1).

<sup>18</sup> Section 47(6).

<sup>19</sup> Section 47(1).

<sup>20</sup> Section 47(1).

<sup>21</sup> Danish Arbitration Act, Sections 5, 11.

difficult, with the existence of personal connections between a proposed arbitrator and a party or its lawyers being a regular source of disagreements. Nonetheless, they did not see this as undermining confidence in the arbitral process. In some cases, it could lead to appointments being made of an arbitrator from mainland Denmark, although this was not described as the standard practice.

While the preceding aspects of Faroese arbitral procedure may be interesting in and of themselves, they arguably link together in a way that reflects the distinctive context of a small community with a strong sense of independence. Specifically, while the practice of the judge of the local Court appointing themselves as Chair might initially be surprising, it is more comprehensible as a solution to the problem of conflicts of interest that is unavoidable in a small community. Similarly, while a sitting judge serving as Chair and an arbitral process that fundamentally resembles court procedures might seem to undermine a traditional rationale for choosing arbitration, it arguably provides the benefit of keeping Faroese disputes within the Faroes. That is, were the dispute to be heard at the Court of the Faroe Islands, rather than in an arbitration with the same judge as Chair, an appeal on the substance of the decision would then be possible to the Eastern High Court in Copenhagen, or even ultimately the Danish Supreme Court. That would mean a decision being delivered on the dispute by non-Faroese judges who lack a deep understanding of the local Faroese context, and that the interviewee stated are not obligated to defer to the interpretations of Faroese law delivered by the Court of the Faroe Islands.

Instead, by agreeing to arbitration, parties ensure that the dispute remains in the Faroe Islands, decided by Faroese practitioners and the judge of the local court, all of whom will understand the local context of the dispute and can be expected to apply Faroese law in a manner expected by the Faroese themselves. Any appeal of that decision to courts outside the Faroes is then only available on the very limited, and generally non-substantive, grounds for appeal of arbitration awards.

Arbitration in the manner described above, that is, with the involvement of the judge at the local Court and the adoption of litigation-like procedures, can perhaps be seen as providing a mechanism for creating a virtual “Faroese court”, rather than as a way of avoiding court altogether. It thereby aligns with a broader Faroese desire for self-determination and an emphasis on the importance of local perspectives and traditions.

## 6. The Arbitration Law

Since 1 January 2016, arbitration in the Faroe Islands has been governed by the Danish Arbitration Act 2005.<sup>22</sup> Section 44 of the Act explicitly excludes the Faroes from

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<sup>22</sup> Pihlblad et al., *supra* n.11, at p. 25.

coverage by the Act unless a “Royal Order” is passed “with such derogations as the particular circumstances of the Faroe Islands require”, but this Royal Order was issued in 2015.<sup>23</sup> The “derogations” referenced in Section 44 that were included in the 2015 Royal Order largely relate to requiring that arbitration-related court cases be commenced at the Court of the Faroe Islands, with the substantive provisions of the Act being unchanged.<sup>24</sup>

## 7. Arbitration Education and Entry into Arbitration Practice

Faroese lawyers qualify as Danish lawyers, and there is no separate qualification for practicing in the Faroe Islands. Traditionally, Faroese students wishing to qualify as lawyers were required to study in mainland Danish universities for 5 years, obtaining both a Bachelor and a Master’s in Law.<sup>25</sup> A Masters of Arts in Law was established at the University of the Faroe Islands in 2013, but this degree was focused on students who did not already possess a Bachelor in Law, and so it did not qualify those students to practice as lawyers.<sup>26</sup> However, in 2019, the University launched a Bachelor of Laws degree,<sup>27</sup> with a Master of Laws degree commencing in 2022.<sup>28</sup> As a result, it is now possible for students to complete their legal training entirely at the University of the Faroe Islands. Admission to both the Bachelor of Laws and the Master of Laws programme is only possible once every 2 years,<sup>29</sup> the first Master of Laws class having graduated in 2024, and priority for admission to the LLM is given to students who have graduated from the Bachelor of Laws programme at the University.<sup>30</sup>

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<sup>23</sup> Royal Decree No 1254 of 17 November 2015, cited in Pihlblad, et al., *supra* n. 11, at p. 24.

<sup>24</sup> Pihlblad, et al., *supra* n. 11, at p. 25.

<sup>25</sup> Or their equivalent, depending on the period in question.

<sup>26</sup> Prospectus for Bachelor Program in Law and Revision of Master Program in Law, University of the Faroe Islands, at p. 4, *available at* <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://setur.cdn.fo/savn/7446/prospectus-19-07-ensk-u-tg-english-version.pdf%3Fs%3DJkvD9aculp4xcFzoHOH2K2BG8x4&ved=2ahUKEwj2ut236KeLAXVTWUEAHVYVPTgQFnoECBcQAQ&usg=AOvVaw2rLC-NAQKjaL6cyCaNVQMy> (last visited 3 February 2025).

<sup>27</sup> Curriculum, Bachelor of Laws, University of the Faroe Islands, *available at* [https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://setur.cdn.fo/savn/6810/curriculum-b-l-13-06-2019-english-ed.pdf%3Fs%3DMsM5BZAu-FScmo2pmgi94e03\\_TA&ved=2ahUKEwju8JGS6aeLAXXZVEEAHTrYE9wQFnoECB0QAw&usg=AOvVaw2t3qw3HY5N8IAQeZikZ6kM](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://setur.cdn.fo/savn/6810/curriculum-b-l-13-06-2019-english-ed.pdf%3Fs%3DMsM5BZAu-FScmo2pmgi94e03_TA&ved=2ahUKEwju8JGS6aeLAXXZVEEAHTrYE9wQFnoECB0QAw&usg=AOvVaw2t3qw3HY5N8IAQeZikZ6kM) (last visited 3 February 2025).

<sup>28</sup> Program Description for the Master of Laws (LLM), University of the Faroe Islands, *available at* [https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://setur.cdn.fo/savn/zhwbweh3/namsskipan-fyri-embl-i-log-enskt-12042024-heitid-broytt-til-llm.pdf%3Fs%3DzyWY70RP\\_c\\_DjDiViPQzdBkD4Oo&ved=2ahUKEwjt7NHB6aeLAXUSVUEAHYBxErQQFnoECBMQAw&usg=AOvVaw3YI3u4\\_-L0\\_2WUkaZtvB8R](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://setur.cdn.fo/savn/zhwbweh3/namsskipan-fyri-embl-i-log-enskt-12042024-heitid-broytt-til-llm.pdf%3Fs%3DzyWY70RP_c_DjDiViPQzdBkD4Oo&ved=2ahUKEwjt7NHB6aeLAXUSVUEAHYBxErQQFnoECBMQAw&usg=AOvVaw3YI3u4_-L0_2WUkaZtvB8R) (last visited 3 February 2025).

<sup>29</sup> Curriculum, Bachelor of Laws, *supra* n. 27, at p. 5; Program Description for the Master of Laws, *supra* n. 28, at p. 5.

<sup>30</sup> Program Description for the Master of Laws, *supra* n. 28, at p. 5.



Notably, the program descriptions for both the Bachelor of Laws and Master of Laws degrees specifically emphasise the goal of providing a legal education “within a curriculum adapted to the Faroese context, with most teaching in Faroese, giving special attention to matters of law and governance in a small polity, and supported by the development of Faroese teaching materials and the development of Faroese legal language.”<sup>31</sup> Both degrees also include courses dedicated specifically to Faroese law, and all three courses are also open to the general public, who (if admitted) will sit alongside regular students in the same classes.<sup>32</sup>

Under Danish law, after graduation from the LLM (or an LLM at another Danish university), it is generally necessary to spend three years gaining experience in legal work, usually as an “assistant attorney”, before qualifying as a lawyer.<sup>33</sup> The interviewee confirmed that this experience can be gained anywhere in Denmark, and does not formally have to be gained in the Faroe Islands. However, given the small Faroese legal market, there is obviously a benefit to be gained from pursuing this legal experience within the Faroes, rather than attempting to enter that market without any close connection to local practitioners or experience in working in the Faroes.

At a practical level, the centrality of ABF06 to arbitration in the Faroe Islands means that involvement in arbitration practice in the Faroe Islands is largely inseparable from involvement in construction disputes. Moreover, the small size of the Faroese legal market means that a focus on arbitration is not a realistic goal, as while there is regular arbitration, there is not sufficient arbitration work to form more than a fraction of any lawyer’s practice. In turn, while it is technically possible for a Faroese practitioner to seek additional arbitration work in Copenhagen, the interviewee was unaware of this having been done, and the “localisation” of arbitration work through ABF06 means that arbitrations involving Faroese parties will only rarely take place in Copenhagen – a significant limitation given that the divergence between substantive Faroese laws and those in the remainder of Denmark brings into question the existence of any demand for the involvement of Faroese arbitration practitioners in arbitrations not involving a Faroese party.

The consequence of all the preceding is that to the extent there is a path into arbitration practice in the Faroe Islands, that path likely involves study at the University of the Faroe Islands, work as an assistant attorney at a law firm in the Faroe Islands, and

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<sup>31</sup> Curriculum, Bachelor of Laws, *supra* n. 27, at p. 5; Program Description for the Master of Laws, *supra* n. 28, at p. 6.

<sup>32</sup> Program Description for the Master of Laws, *supra* n. 28, at 6 (“In addition, the degree programs on law (BL, MA, and LLM) open some basic law teaching to the interested general public, for the continuing education and professional enhancement of those working in legal services or public administration who are not enrolled in any of the degree programs, and service courses for other programs within the university (such as history, political science, and public health).”).

<sup>33</sup> Danish Administration of Justice Act, Section 119, quoted in the Rules of the Danish Bar and Law Society.

then active development of a specialisation in construction disputes, with the expectation that any arbitration practice will be focused on ABF06 procedures and entirely or almost entirely restricted to the Faroe Islands.