



UNIVERSITETET
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StatoilHydro

 SELMER

Choice of law clauses and their limitations

Enforcing foreign arbitral awards in Russia:

Restrictions due to company law, legal capacity and other issues of public policy

Tuesday, 26 May 2009

 ORKLA





<http://www.jus.uio.no/ifp/forskning/prosjekter/law-clauses/>

Choice of law clauses and their limitations

A project in cooperation with:

StatoilHydro





	Autumn 09	Spring 10	Autumn 10	Spring 11	Autumn 11	Spring 12	Autumn 12	Spring 13
Company law	(i) subst. rules (30 cts)	(ii) conflict rules (30 cts)						
		(iii) arbitr. (30 cts)						
Administrative Regulations	All three perspectives (60 cts)		All three perspectives (60 cts)					
Property			(i) subst. rules (30 cts)	(ii) conflict rules (30 cts)				
				(iii) arbitr. (30 cts)				
Insolvency					(i) subst. rules (30 cts)	(ii) conflict rules (30 cts)		
						(iii) arbitr. (30 cts)		
Contract law					All three perspectives (60 cts)			
Competition law							(i) subst. rules (30 cts)	(ii) conflict rules (30 cts)
								(iii) arbitr. (30 cts)
Labour law							All three perspectives (60 cts)	



9.00 Welcome

Prof. Kristin Normann, Advokatfirma Selmer DA



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Prof. Giuditta Cordero Moss, UiO

9.15 Enforcing foreign arbitral awards in Russia

Prof. Boris Karabelnikov

Moscow school of social and economic sciences

10.00 Break

10.15 Telenor's experience of foreign arbitral awards and Russian law

Attorney at law Morten Foss, Telenor ASA

Impact of local law on foreign awards: Yara, Dreth and western courts

Prof. Giuditta Cordero Moss, UiO

Practical steps to ensure that the award is enforceable in Russia

Attorney at law Jørgen Stubberud, UiO

11.40 Discussion

12.15 Lunch



New York Convention

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

CONVENTION

ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains

decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

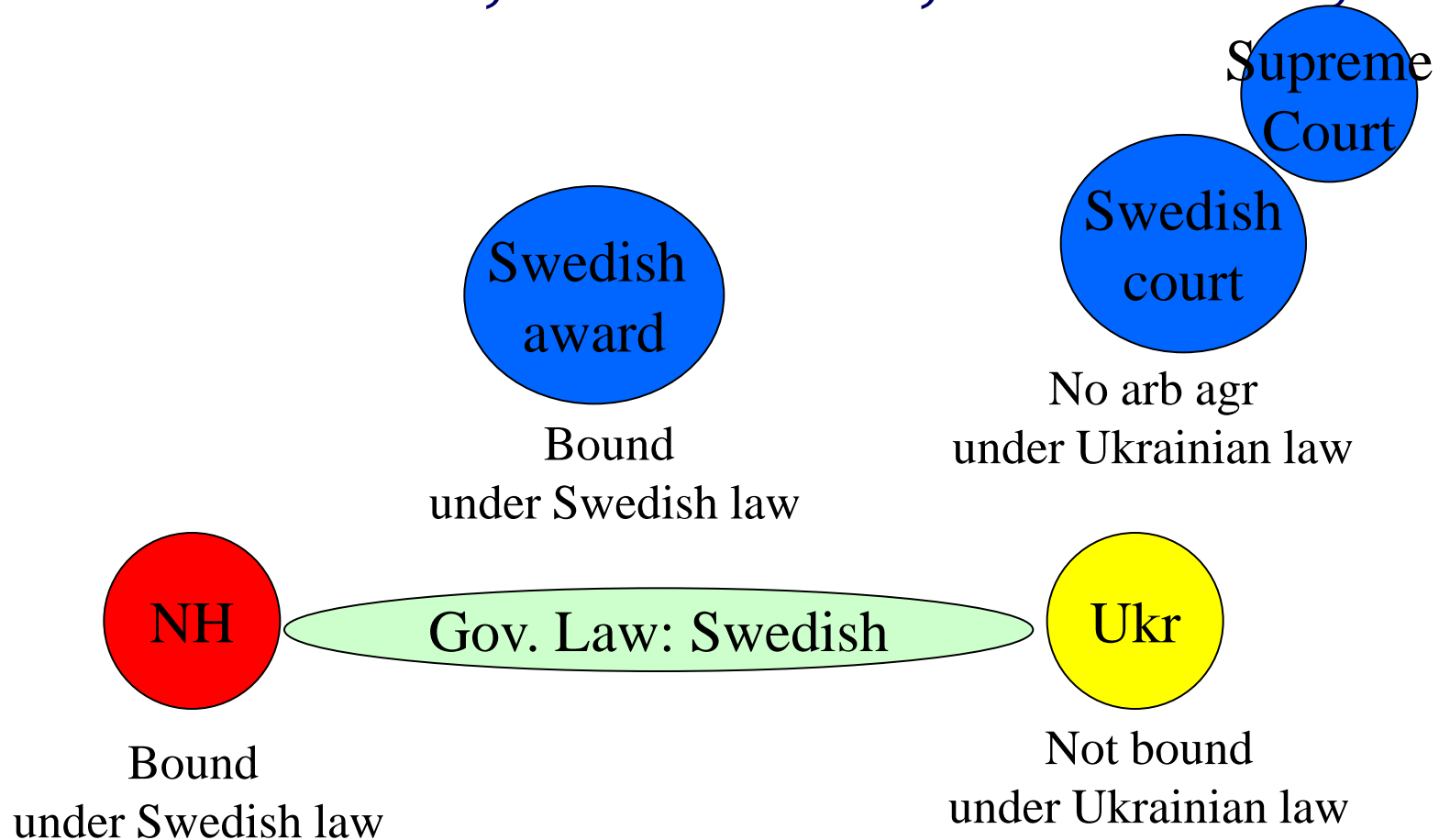
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.



State of Ukraine v Norsk Hydro ASA, Svea Hovrätt, 17.12.2007, T 3108-06,





Dallah Real Estate & Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan [2008] EWHC 1901 (Comm)

Court
of Appeal

High
court

French
award

Bound
under English law

No arb agr under
French/Pakistani law

DRETH

Bound
under English law

Gov. Law: English(?)

Pakistan

Not bound
under Pakistani law