



Arbitration Guide  
IBA Arbitration Committee

# **DENMARK**

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## **I. Background**

### **(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

In Denmark, it has long been common to solve commercial disputes by arbitration.

One advantage is that arbitration proceedings are often faster than a normal civil proceeding.

Another advantage is that the parties can freely choose whom they want to be the arbitrators of the case. This means that the parties can choose arbitrators with specific knowledge in the area of the case. In the civil courts in Denmark, the judges are often generalists.

A third advantage is that the arbitration award does not have to be published, contrary to civil judgments.

A final main advantage is that an arbitration award is final and cannot be appealed. However, this is considered both as an advantage and as a disadvantage; the parties get a final result faster, but it limits the parties' opportunity to get the case viewed by several decision-makers.

### **(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?**

Most arbitration in Denmark is arbitrated in specialized arbitration systems, especially when it comes to labour disputes and building and construction disputes. For example, the Danish standard contract for construction (AB92) contains an arbitration clause that states that all disputes shall be referred to the Building and Construction Arbitration Court.

In other commercial matters, the Danish Institute for Arbitration (DIA) is the biggest institution for institutional arbitration in Denmark. Each year DIA deals with about 100 national and international arbitration cases.

### **(iii) What types of disputes are typically arbitrated?**

With reference to the section I (ii) above, Denmark has special arbitration systems in cases about labour and building and construction. Disputes in these areas are generally solved by arbitration.

Apart from these, a broad spectrum of commercial disputes are solved by arbitration, especially commercial disputes with an international element.

**(iv) How long do arbitral proceedings usually last in your country?**

There do not exist any statistics that can give a clear answer to the question. The length of an arbitral proceeding depends very much on the complexity of the case and the behavior or wishes of the parties. As a general rule arbitral proceedings last approximately one to one-and-a-half years.

**(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

No. See Section V.(iii) below.

## **II. Arbitration Laws**

**(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The Danish Arbitration Act (in Danish: *Voldgiftsloven*) governs the arbitration proceedings, for both domestic and international arbitrations as long as the arbitration takes place in Denmark. The Danish Arbitration act is framed in accordance with the UNCITRAL Model law.

**(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

The Arbitration Act applies to both domestic and international arbitration, as long as the arbitration proceedings take place in Denmark. All arbitration proceedings taking place in Denmark are treated the same, and thus there is no distinction between domestic and international arbitration.

**(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Denmark has adopted the New York Convention, the Geneva Convention, the Hague Convention and the Washington Convention.

**(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

According to the Danish Arbitration Act, Section 28 (2), if the parties have not agreed to what law shall apply to the merits of the dispute, it is up to the arbitrators to use the choice-of-law-rules they find the most fitting.

### III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

In Denmark there are no formal or legal requirements for entering into agreements; both an oral and written agreement is binding, and this also applies to arbitration agreements. According to the Danish Arbitration Act, Section 7, parties can agree to arbitration for disputes already arisen, or for future disputes in a certain legal relationship.

An arbitration agreement can be an arbitration clause in a contract or in a separate agreement.

In consumer cases, an arbitration agreement entered into before the dispute has arisen is not binding for the consumer.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an award will not be enforced?**

According to the Danish Arbitration Act, Section 8 (1), if an action is brought before a court in a matter that is subject to an arbitration agreement, the court must, if one of the parties requests it, refer the case to arbitration unless the court finds the arbitration agreement null and void, inoperative or incapable of being performed. Only disputes concerning a legal relationship that the parties are free to dispose of can be submitted to arbitration. For example, in cases of divorce and paternity disputes, the parties do not have a right of disposition.

The Danish Arbitration Act, Section 37, stipulates various grounds on which a court will set an arbitral award aside. The Danish Arbitration Act does not contain provisions about situations where the courts will not enforce an arbitral award. On the contrary, the Danish Arbitration Act, Section 38, stipulates that an arbitral award rendered in Denmark can be enforced in accordance with the Danish Administration of Justice Act (in Danish: *Retsplejeloven*).

- (iii) **Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are still not very common in Denmark, although they are seen from time to time.

There is contractual freedom under Danish law, and thus if parties agree that a dispute should first be resolved by mediation, secondarily by arbitration, the agreed procedure must be respected, and the agreement to do so is enforceable according to general Danish contract principles.

- (iv) **What are the requirements for a valid multi-party arbitration agreement?**

The Danish Arbitration Act does not contain specific provisions about multi-party arbitration agreements.

According to general Danish contract rules about contractual freedom, there are no specific requirements for such types of agreements. Thus, it should be expressed in the arbitration clause between the two or more parties who are bound by the agreement.

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

In principle it is possible to make such an agreement. In cases where it would seem highly unreasonable, the courts can set aside the agreement.

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

Generally, only parties to the arbitration agreement are bound by it.

However, in accordance with general Danish contract rules about succession, an arbitration agreement can sometimes bind a non-signatory. This happens in cases of insolvency or death, so-called universal succession. When universal succession occurs, a total transfer of rights and obligations takes place. In some situations of singular succession, a non-signatory can be bound by an arbitration agreement if the singular succession concerns a contract containing an arbitration agreement. Singular succession is the transfer of one single or more rights and obligations of a person or a legal entity to another person or legal entity, contrary to universal succession, which is the transfer of all rights and obligations of a person or a legal entity.

#### IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

A dispute can only be submitted to arbitration if the parties are free to dispose of the case. Cases where the parties do not have a right of disposition of the case, such as family disputes (divorce, paternity cases etc), are considered to be of general public interest, and thus must be decided by the ordinary courts and cannot be arbitrated.

The tribunal itself decides whether the matter is capable of being submitted to arbitration. Such ruling by the tribunal is not final, as a party can initiate court proceedings to have the issue decided by the courts.

The lack of arbitrability is a matter of the arbitral tribunal's jurisdiction.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If a case is brought before a court in a dispute that should, according to an agreement, be decided by arbitration, the action should be dismissed upon the application of one of the parties.

According to the Danish Administration of Justice Act (in Danish: *Retsplejeloven*), Section 357 (2), a claim to dismiss a case must be made in writing, or in the first pre-trial meeting between the parties.

If a claim for dismissal is made, the court must first decide whether there is a valid arbitration agreement that covers the dispute in question. If the court finds that there is a valid arbitration agreement, the action must be dismissed and sent to arbitration.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

The Danish Arbitration Act is based on the principle of competence-competence. Thus the arbitral tribunal rules on its own jurisdiction, and the ordinary courts act with limited assistance and control during the arbitral proceedings.

According to the Danish Arbitration Act, Section 4 (which corresponds with article 5 of the Model Law), the courts have no jurisdiction over disputes which are covered by an arbitration agreement.

The assistance provided to arbitral tribunals by the courts is laid out in the Danish Arbitration Act, Section 5. According to Section 5, the following applications can be made to the ordinary court:

- appointment of arbitrators;
- challenges to an arbitrator's independence and impartiality;
- termination of an arbitrator's appointment;
- examination of the arbitral tribunal's jurisdiction;
- the taking of evidence; and
- the fixing of the fees and expenses of the arbitral tribunal.

## V. Selection of Arbitrators

### (i) How are arbitrators selected? Do courts play a role?

The parties are free to agree on a procedure for appointing the arbitrator or arbitrators. Failing such an agreement, in an arbitration with three arbitrators, each party shall appoint one arbitrator within 30 days of a request to do so from the other party. The two appointed arbitrators then appoint the third arbitrator within 30 days, and the third appointed arbitrator shall act as president or chairman of the arbitral tribunal.

It is also possible for the parties to request the ordinary courts to appoint arbitrators.

### (ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

According to the Danish Arbitration Act, Section 12 (1), prior to appointment as an arbitrator, the candidate must disclose all circumstances which could give rise to justified doubts about his impartiality or independence.

If the arbitrator becomes aware of circumstances that could raise doubt to his impartiality or independence during the procedure of the case, he or she must immediately inform the parties.



According to the Danish Arbitration Act, Section 12 (2), it is possible for a party to challenge the appointed arbitrator. However, the arbitrator can only be challenged if the party has justified doubts as to the arbitrator's impartiality, independence or qualities agreed to by the parties.

According to the Danish Arbitration Act, Section 13, the parties are free to agree on a procedure for challenging an arbitrator. Failing such agreement, the challenge of the arbitrator must be made within 15 days after becoming aware of the appointment of the arbitrator and the circumstances giving rise to the challenge. The party must submit to arbitral tribunal a written statement of the reasons for the challenge. The tribunal shall then decide on the challenge.

If a challenge is not successful, within 30 days after receiving notice of the rejection of the challenge the challenging party can request the courts to decide on the challenge. While the request is pending, the arbitral tribunal (including the challenged arbitrator) may continue the arbitral proceedings.

**(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?**

In relation to personal qualifications, there are no requirements for an arbitrator to have any specific qualifications, unless otherwise agreed by the parties.

The only mandatory qualifications an arbitrator must possess is independence and impartiality.

**(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

There are no specific rules concerning conflicts of interest in Denmark.

The IBA Guideline on Conflicts of Interest in International Arbitration is widely recognised and applied in Denmark.

## **VI. Interim Measures**

**(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Interim measures can be requested by a party before and during the arbitration proceedings, with the assistance of the arbitration tribunal or the ordinary courts.

The arbitral tribunal can require a party to provide security before imposing or granting the interim measure.

A decision made by an arbitral tribunal on interim measures is not enforceable by Danish courts.

According to the Danish Arbitration Act, Section 9, a party who wants to enforce interim measures in Denmark must request the ordinary courts to grant an order for an interim measure.

The civil court will then issue – if the conditions for doing so are fulfilled – the interim measures according to the rules in the Danish Administration of Justice Act.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

A party may request interim measures at the ordinary courts before and during the arbitral proceedings. The courts decide how long the interim measure will remain in force, often for the duration of the arbitral proceedings.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

Measures where courts grant evidentiary assistance, for example, where the witness has to give testimony under oath, can only be obtained by request from a party to the court. Before a party can send the request to the court, the party must first obtain consent from the arbitral tribunal.

## **VII. Disclosure/Discovery**

- (i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The parties have the freedom to agree on evidentiary procedures. If there is no agreement between the parties, at the request of a party the arbitral tribunal may order the other party or a third party to produce certain documents. An order from the tribunal to order a party to produce a document is not enforceable.

- (ii) **What, if any, limits are there on the permissible scope of disclosure or discovery?**

The IBA Rules on the Taking of Evidence in International Arbitration is a guideline on this subject. Production orders must be specific and relevant in the sense that they should be used to prove a fact in the case.

- (iii) **Are there special rules for handling electronically stored information?**

Electronically stored information is handled in the same way as physical documents; that is, there are no special rules.

### **VIII. Confidentiality**

- (i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

The Danish Arbitration Act does not contain specific provisions about confidentiality, hence confidentiality must be agreed upon between the parties.

- (ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

No.

- (iii) **Are there any provisions in your arbitration law as to rules of privilege?**

No.

### **IX. Evidence and Hearings**

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

On 28 October 2010 the Danish Arbitration Association adopted the Rules on the Taking of Evidence in Arbitration. These rules are influenced by international arbitration practice, and in particular the IBA Rules on the Taking of Evidence in International Arbitration. These rules are often referred to in arbitration in Denmark. However, if the parties want to follow the rules embodied in the Danish Administration of Justice Act (in Danish: *Retsplejeloven*) regarding the taking of evidence, they can agree to that.

**(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?**

There are no formal limitations. The parties can agree to limit the tribunal's procedural authority regarding hearings, but it is unusual. It is mandatory that the tribunal treat the parties equally and give them a fair opportunity to present their cases. This follows the universal principle of equality of arms.

**(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

The parties are free to choose how they want the witness testimony to be presented. If the parties have not agreed upon the matter, it is up to the arbitral tribunal to decide (often after consulting the parties). Often the witness testimony will be presented in writing, that is, as a written witness statement submitted during the arbitral proceedings. Cross examination during an oral hearing is permissible and normal. The arbitrators are free to question the witnesses.

**(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

According to article 3.2 of the Evidence Rules, any person may make a statement before the arbitral tribunal, subject to exceptions made by the tribunal. Usually the tribunal allow all witnesses that the parties wish to present, even when the witness's testimony may seem irrelevant. No one has the obligation to give testimony before an arbitration tribunal.

In oral statements, according to article 7.3 of the Evidence Rules, everyone must tell the truth. Sometimes in practice the tribunal will remind a witness to tell the truth.

If it is important for a witness to give testimony on oath, the ordinary courts must be requested to take the evidence.

**(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

There is no difference.

**(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert evidence is often presented in the form of written reports that constitute the examination in chief. Cross examination during an oral hearing is permissible and normal. The arbitrators are free to question the experts.

The expert reports must contain an introduction of the expert (including any relationship with the parties, advisers, tribunal arbitrators etc), and a description of their qualifications. It must also contain a description of the facts on which the opinions in the report are based, and a description of the methods used. The expert must affirm that the report is correct, true and fair, and it must be signed and dated.

**(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

According to article 5.1 of the Evidence Rules, the tribunal has jurisdiction to appoint one or more experts to report to the tribunal. This also follows from most institutional rules. It is normal for the tribunal to consult the parties first. The tribunal may appoint an expert on its own motion, but this is very rare. It is more common that the tribunal appoints an expert on a request from one of the parties.

The evidence is normally provided in a report, and the expert normally appears at the oral hearing to give oral testimony and answer the parties' questions.

There are no requirements about experts being selected from a particular list.

**(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

It is up to the parties to decide on the manner in which witnesses give testimony during an oral hearing. However, as a general rule all witnesses are questioned separately and may not hear the statements of prior witnesses, unless agreed by the parties.

After giving the parties an opportunity to comment on the proposed procedure, the tribunal can decide to hear the witnesses together. The parties decide the order of the witness statements. If the parties cannot agree, the tribunal decides the order. The tribunal may ask questions any time.

- (ix) **Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no rules that require the use of an arbitral secretary. The use of an arbitral secretary is common in bigger and more complex cases, though it is usual to consult the parties in advance.

## **X. Awards**

- (i) **Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

The arbitration award must be drafted in accordance with the minimum requirements of the Danish Arbitration Act and any other requirements that may have been agreed upon by the parties.

The award must be in writing and must be signed of all the arbitrators. The award shall set forth all the reasons for the ruling. It must be dated and set where the arbitration took place. The award must be sent to the parties.

- (ii) **Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

The final award must contain decisions only on the questions and claims the parties have raised in the case. Thus, for example, to award damages, damages must have been a claim from one of the parties.

Further, it is not possible for the arbitral tribunal to grant relief that is against the Danish *ordre public*.

- (iii) **Are interim or partial awards enforceable?**

Interim awards rendered by the arbitral tribunal are not enforceable.

Partial awards are enforceable if they meet the requirements regarding the form of the award (see Section X.(i)).

- (iv) **Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

Arbitrators are allowed to issue dissenting opinions. There are no requirements regarding the form and content of dissenting opinions.

**(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

If the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. According to the Danish Arbitration Act, Section 30, if requested by the parties, and if the arbitral tribunal does not object, the arbitral tribunal shall record the settlement in the form of an arbitration award.

According to the Danish Arbitration Act, Section 25, if the claimant fails to communicate the statement of the claim, the arbitral tribunal shall terminate the proceedings.

**(vi) What powers, if any, do arbitrators have to correct or interpret an award?**

Within a certain time period, an arbitral award can be corrected at the request of one of the parties or on the tribunal's own initiative.

According to the Danish Arbitration Act, Section 33 (1), the arbitral tribunal may, within 30 days, correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature. Usually this deals with obvious errors, such as misspelling of the name of a party. The tribunal may not correct an award because it thinks it has applied the law incorrectly.

## **XI. Costs**

**(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

It follows from the Danish Arbitration Act, Section 34 and 35, that the tribunal determines the allocation of the costs between the parties. The general rule is that it is the unsuccessful party who bears the costs.

**(ii) What are the elements of costs that are typically awarded?**

The costs of the tribunal consist of the fees of the arbitrators and reimbursements of their expenses.

The Danish Arbitration Act does not contain a system for calculating arbitrators' fees. Unless otherwise agreed by the parties, the fees must be set in accordance with 'normal practice', and must be reasonable in the particular case. When determining the costs, the tribunal may take into consideration the complexity of the case. If the parties have agreed to have the case conducted under the DIA, then the DIA Rules about fees apply, including the calculation thereof.

- (iii) **Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

According to the Danish Arbitration Act, it is up to the tribunal to decide its own costs.

- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

The tribunal has wide discretion to apportion the costs between the parties. See Section XI.(ii) above.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

A party can request the civil courts to review the tribunal's decision on costs within 30 days of receiving notice of the costs. See Danish Arbitration Act, Section 34 (3). Therefore, the fees of the arbitrators and their reimbursements for expenses can be reviewed by the courts. It is only the total amount of the costs that can be reviewed by the courts, not only the arbitrator fees, for example.

## **XII. Challenges to Awards**

- (i) **How may awards be challenged and on what grounds? Are there limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

An arbitration award may be challenged only on the following grounds, according to the Danish Arbitration Act, Section 37:

- The arbitration agreement was not valid under the law to which the parties have subjected it, or a party to the arbitration agreement was, under the law of the country in which that party was domiciled at the time of the conclusion of the contract, under some incapacity;
- The party making the application was not given proper notice of the appointment of an arbitrator or the proceedings, or was otherwise unable to present his or her case;
- The award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement; or
- The court finds that:



- The subject matter is not capable of settlement by arbitration or
- The award is manifestly contrary to the public policy of Denmark.

An arbitration award cannot be set aside on other grounds. Further, the award can only be challenged if the party who wants to challenge the award has stated the ground on which he or she wishes to challenge the award, and has done so according to normal principles of proof.

In relation to the fourth bullet point above, it is the court who has to make a judgment ex officio about the validity of the arbitration award.

The challenge of the award must be started within three months after the parties have received the arbitration award.

- (ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

No.

- (iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

Arbitration awards cannot be appealed. They can be challenged, but only under limited grounds. See Section XII.(i) above.

- (iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

A court can remand proceedings concerning the challenge of an award to give the arbitrators an opportunity to address the grounds on which the award is being challenged.

### **XIII. Recognition and Enforcement of Awards**

- (i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

To make a claim based on an arbitration award or to request enforcement of an award, a party must present a certified copy of the arbitral award and the arbitration agreement. The documents shall be accompanied by a certified Danish translation, though it is usually considered to be enough to have an uncertified translation unless the courts decides otherwise.

Enforcement of an arbitral award is regarded the same as enforcement of a judgment and is thus regulated in the Danish Administration of Justice Act, Section 478 (1). It is a condition for enforcement that the decision of an arbitral tribunal is in the form of an award. The competent court is the bailiff's court.

Section 39 in the Arbitration Act states that recognition and enforcement of arbitral awards only may be refused if:

- A party to the arbitration agreement was under some incapacity;
- The arbitration agreement is invalid;
- The party against whom it is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present his or her case;
- The dispute was outside the scope of the arbitration agreement;
- The composition of the arbitral tribunal and the arbitral procedure was not in accordance with the arbitration agreement;
- The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made;
- The subject matter is not capable of resolution by arbitration under Danish law;
- Recognition and enforcement of the award would be against the public policy of Denmark.

**(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

According to the Danish Arbitration Act, Section 38 (1), the arbitration award, whether rendered in Denmark or abroad, can be enforced by the Danish courts pursuant to the Danish Administration of Justice Act (in Danish: *Retsplejeloven*).

The procedure for the party who wishes to enforce the award is to send the signed arbitration award and the arbitration agreement, translated into Danish, to the Danish court (the bailiff's court).

**(iii) Are conservatory measures available pending enforcement of the award?**

Yes.

- (iv) **What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

The Danish Arbitration Act, Section 39, lists some situations where the Danish court will refuse enforcement. See Section XIII.(i) above.

Typically the Danish courts will not enforce foreign awards set aside by the courts at the place of arbitration.

- (v) **How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

In a normal situation where the award is not challenged, enforcement will take approximately two months. There are no formal time limits.

#### **XIV. Sovereign Immunity**

- (i) **Do State parties enjoy immunities in your jurisdiction? Under what conditions?**

Denmark is a party to the United Nations Convention on Jurisdictional Immunities of States and Their Property. However, the Convention has not yet been incorporated into Danish law.

In Danish legal literature, it is assumed that Denmark acknowledges a state's immunity in cases concerning sovereign activities, but not in commercial activities.

- (ii) **Are there any special rules that apply to the enforcement of an award against a State or State entity?**

No.

#### **XV. Investment Treaty Arbitration**

- (i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Yes, Denmark has been a party to the Washington Convention since 1968.

- (ii) **Has your country entered into bilateral investment treaties with other countries?**

Yes, Denmark has entered into several bilateral investment treaties with countries all over the world.

## **XVI. Resources**

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

- The Danish Arbitration Act.
- The Danish Institution for Arbitrations' rules.

Literature in English:

- Pihlblad, Lundblad and Søgaaard-Christensen: 'Arbitration in Denmark', (2014, Djøf Publishing).

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The Danish Institute of Arbitration organizes different events and presentations about arbitration.

Law students studying at the University of Copenhagen can take the course 'International Arbitration'.

## **XVII. Trends and Developments**

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

Yes, among the alternative dispute resolution options, arbitration is clearly the main alternative to civil proceedings. This may be because arbitration has been used as a way to solve disputes for hundreds of years in Denmark. There were provisions about arbitration dating back to the old Danish Law 1-6-1 from 1664. For many years, there have been well-established arbitration institutions, and the arbitral proceedings are supported with the cooperation of the ordinary courts.

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

There does not yet seem to be much regarding other ADR procedures. However, in long-term business relationships, mediations are starting to be more common.

**(iii) Are there any noteworthy recent developments in arbitration or ADR?**

In 2008 the European Parliament adopted a Directive on certain aspects of mediation in civil and commercial matters. However, Denmark chose not to become part of the directive.

With the directive on mediation, it is likely that mediation as an alternative dispute resolution mechanism will grow within the European Union. In Denmark this development does not seem to be expanding radically. Arbitration is still by far the most dominant ADR procedure.

In recent years the interest in arbitration has grown significantly. Among other things, the Danish Arbitration Association has been created to promote the knowledge of arbitration both nationally and internationally.