

Translation (8 August 2005)

DANISH ARBITRATION ACT 2005

Act no. 553 of 24 June 2005 on Arbitration

Chapter 1 General provisions

Section 1.

- (1) This Act applies to arbitration, including international arbitration, if the place of arbitration is in this country.
- (2) The provisions of s. 4, chapter 2, s. 16(4) 2nd clause and s. 27(1) also apply if the place of arbitration is in a foreign country, or if the place of arbitration has not yet been determined.
- (3) Where at least one of the parties is domiciled in this country, chapter 3 also applies if the place of arbitration has not yet been determined.
- (4) Chapter 9 also applies to recognition and enforcement of foreign arbitral awards.
- (5) This Act shall not apply to disputes which, under a collective labour agreement or s. 22 of the Labour Court Act, are to be resolved according to the "norm for regler for handling af faglig strid" [code of rules for the resolution of labour disputes], as adopted by the Joint Committee of 17 August 1908, or corresponding provisions of a collective labour agreement. This Act shall not apply to disputes submitted to arbitral tribunals established by statute for the resolution of disputes in relation to particular matters.

Section 2.

- (1) Chapters 3-7 apply only if not derogated from by agreement.
- (2) However, the provisions of ss. 11(3), 13(3) 1st clause, 14(1) 2nd clause, 16(3) 2nd clause, 27 and 34(3) concerning applications to the courts, as well as the provisions of ss. 12, 16(4) 2nd clause, 18, 31(1) and (3) and 33(5), may not be derogated from by agreement.

Section 3.

A party who knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating an objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived the right to object.

Section 4.

In disputes which are to be resolved by arbitration, no court shall intervene except where so provided in this Act.

Section 5.

- (1) Applications under ss. 11(3), 13(3) 1st clause, 14(1) 2nd clause, 16(3) 2nd clause, 27(2) and 34(3) shall be submitted to the court where proceedings were to have been commenced if the parties had not agreed to arbitration. Where, under Danish law, no Danish court has jurisdiction, the application shall be submitted to the court of the applicant's domicile or, if the applicant is not domiciled in this country, in Copenhagen.
- (2) The application shall be in writing. The applicant shall forward a copy of the application to the other party and to the arbitral tribunal or, if the arbitral tribunal has not yet been formed or has been dissolved, the appointed arbitrators. In case of an application under s. 13(3) 1st clause, the applicant shall also forward a copy of the application to any third party or institution which has appointed the challenged arbitrator.
- (3) The court shall set a time-limit within which the other party and, if relevant, any other interested person may submit a written answer. The court may order the submission of further written pleadings. The court may order a hearing.
- (4) The court shall make its decision by order, which shall be subject to appeal in accordance with the provisions of chapter 37 of the Administration of Justice Act. However, a decision under s. 11(3) shall be subject to no appeal.

Chapter 2 Arbitration agreement

Section 6.

Disputes concerning legal relationships in respect of which the parties have an unrestricted right of disposition may be submitted to arbitration unless otherwise provided.

Section 7.

- (1) The parties may agree to submit to arbitration disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) In case of a consumer contract, an arbitration agreement concluded before the dispute arose shall not be binding on the consumer.

Section 8.

- (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests, refer the parties to arbitration unless it finds that the

agreement is null and void, inoperative or incapable of being performed. However, if the action has been brought after the commencement of arbitral proceedings, the court shall have jurisdiction to rule on the jurisdiction of the arbitral tribunal only in respect of whether the subject-matter of the dispute is capable of settlement by arbitration.

- (2) Where an action referred to in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Section 9.

The courts may, at the request of a party, grant an order for an interim measure of protection or for enforcement even if the parties have agreed to submit the dispute to arbitration.

Chapter 3 Composition of arbitral tribunal

Section 10.

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Section 11.

- (1) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators.
- (2) Failing such agreement, in an arbitration with three arbitrators, each party shall appoint one arbitrator within thirty days of a request to do so from the other party. The two arbitrators thus appointed shall, within thirty days of their appointment, appoint the third arbitrator, who shall act as presiding arbitrator.
- (3) Where, under an appointment procedure agreed upon by the parties or pursuant to subsection (2), the arbitral tribunal is not successfully constituted, any party may request the courts to appoint the arbitrator or arbitrators who have not been appointed. The courts, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

Section 12.

- (1) When a person is approached in connection with a possible appointment as an arbitrator, that person shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of the appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by the arbitrator.

- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him or her, or in whose appointment he or she has participated, only for reasons of which he or she becomes aware after the appointment has been made.

Section 13.

- (1) The parties are free to agree on a procedure for challenging an arbitrator.
- (2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal and of the circumstances on which the challenge is based, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If a challenge under any procedure agreed upon by the parties or under the procedure of subsection (2) is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the courts to decide on the challenge. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.
- (4) A challenge may not later be invoked in support of an application for setting aside or refusing recognition or enforcement of the arbitral award.

Section 14.

- (1) If an arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay, the arbitrator's mandate terminates if the arbitrator withdraws from office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the courts to decide on the termination of the mandate.
- (2) If, under subsection (1) or s. 13(2), an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in subsection (1) or s. 12(2).

Section 15.

Where the mandate of an arbitrator terminates under s. 13 or 14 or because of the arbitrator's withdrawal from office for any other reason or because of the revocation of the arbitrator's mandate by agreement of the parties or in any other case of termination of the arbitrator's mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Chapter 4

Jurisdiction of arbitral tribunal

Section 16.

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he or she has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- (3) The arbitral tribunal may rule on a plea referred to in subsection (2) either as a preliminary question or in an award on the merits. If it is ruled as a preliminary question that the arbitral tribunal has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the courts to decide the matter. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.
- (4) A plea that the arbitral tribunal does not have jurisdiction may not later be invoked in support of an application for setting aside or refusing recognition or enforcement of the arbitral award, unless the subject-matter of the dispute is not capable of settlement by arbitration. However, a consumer shall not be deemed to have waived the right to raise a plea that the arbitration agreement is not binding on the consumer, unless the consumer proceeds with the arbitration after having been informed that the arbitration agreement is not binding.

Section 17.

The arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

Chapter 5 **Conduct of arbitral proceedings**

Section 18.

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his or her case.

Section 19.

- (1) The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Section 20.

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of subsection (1), the arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Section 21.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a written request for that dispute to be referred to arbitration is received by the respondent.

Section 22.

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Section 23.

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall submit a statement of claim which includes:
 - (1) a statement of the relief or remedy sought,
 - (2) a statement of the facts and legal points supporting the claim, and
 - (3) a reference to the documents or other evidence on which the claimant intends to rely.
- (2) Within the period of time agreed by the parties or determined by the arbitral tribunal, the respondent shall submit a statement of defence which includes:

- (1) the respondent's reply to the claim,
 - (2) any counter-claim,
 - (3) a statement of the facts and legal points supporting the reply and any counter-claim, and
 - (4) a reference to the documents or other evidence on which the respondent intends to rely.
- (3) Either party may amend or supplement the claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Section 24.

- (1) The arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Section 25.

- (1) If, without showing sufficient cause, the claimant fails to communicate the statement of claim in accordance with s. 23(1), the arbitral tribunal shall terminate the proceedings.
- (2) If, without showing sufficient cause, the respondent fails to communicate the statement of defence in accordance with s. 23(2), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.
- (3) If, without showing sufficient cause, any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Section 26.

- (1) The arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal. The arbitral tribunal may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for the expert's inspection.
- (2) If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of the written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and to present expert witnesses in order to testify on the points at issue.

Section 27.

- (1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the courts assistance in taking evidence in accordance with the provisions of the Administration of Justice Act.
- (2) If the arbitral tribunal considers that a decision on a question of European Union law is necessary to enable it to make an award, the arbitral tribunal may request the courts to request the Court of Justice of the European Communities to give a ruling thereon.

Chapter 6**Making of award and termination of proceedings****Section 28.**

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Section 29.

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Section 30.

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. If requested by the parties and not objected to by the arbitral tribunal, the arbitral tribunal shall record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of s. 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Section 31.

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under s. 30.
- (3) The award shall state its date and the place of arbitration. The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with subsection (1) shall be delivered to each party.

Section 32.

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (2), s. 25(1), 30(1) 1st clause or 36(1) 2nd clause.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (1) the claimant withdraws the claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute,
 - (2) the parties agree on the termination of the proceedings, or
 - (3) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of ss. 33 and 37(5).

Section 33.

- (1) Within thirty days of receipt of the award, a party may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature. The request shall also be communicated to the other party. If the arbitral tribunal considers the request to be justified, it shall make the correction within thirty days of receipt of the request.
- (2) The arbitral tribunal may correct any error of the type referred to in subsection (1) on its own initiative within thirty days of the date of the award.
- (3) Within thirty days of receipt of the award, a party may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. The request shall also be communicated to the other party. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days of receipt of the request.

- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction or an additional award under subsection (1) or (3).
- (5) The provisions of s. 31 shall apply to a correction or to an additional award.

Chapter 7

Costs and security

Section 34.

- (1) The arbitral tribunal shall determine its own fees and the settlement of its expenses. The amount shall fall due for payment thirty days after the termination of the arbitral proceedings.
- (2) The parties shall be jointly and severally liable for the costs of the arbitral tribunal.
- (3) Within thirty days after having received notice of the costs, any party may request the courts to review the determination of the costs of the arbitral tribunal. Any reduction of the costs of the arbitral tribunal shall also be given effect in respect of a party who did not bring the issue before the courts.

Section 35.

- (1) The arbitral tribunal shall allocate the costs of the arbitral tribunal between the parties.
- (2) The arbitral tribunal may order a party to cover all or part of the costs of another party.

Section 36.

- (1) The arbitral tribunal may order the parties to provide security for the fees and expenses of the arbitral tribunal. The arbitral tribunal may terminate the arbitral proceedings if such security is not provided.
- (2) If a party fails to provide security as ordered, the other party may provide the security in full.

Chapter 8

Recourse against award

Section 37.

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with subsections (2)-(4). Where, apart from this Act, no Danish court has jurisdiction to rule on an application for setting aside an arbitral award, the application shall be submitted to the court of the applicant's domicile or, if the applicant is not domiciled in this country, in Copenhagen.
- (2) An arbitral award may be set aside only if:
 - (1) the party making the application furnishes proof that:

- (a) a party to the arbitration agreement was, under the law of the country in which that party was domiciled at the time of conclusion of the contract, 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 Danish law,
 - (b) the party making the application 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,
 - (c) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, or
 - (d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or with this Act, or
- (2) the court finds that:
- (a) the subject-matter of the dispute is not capable of settlement by arbitration, or
 - (b) the award is manifestly contrary to the public policy of this country.
- (3) If a ground for setting aside concerns only part of the arbitral award, only that part may be set aside.
- (4) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award.
- (5) The court, when asked to set aside an award, may, at the request of a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.
- (6) Where an arbitral award is set aside, the arbitration agreement shall, unless otherwise agreed by the parties or inconsistent with the judgment setting aside the arbitral award, again become effective.

Chapter 9

Recognition and enforcement of awards

Section 38

- (1) Subject to the provisions of s. 39, an arbitral award, irrespective of the country in which it was made, shall be recognized as binding and shall be enforced in accordance with the provisions of the Administration of Justice Act on the enforcement of judgments.
- (2) The party relying on an award or applying for its enforcement shall supply a duly certified copy of the award, and of the arbitration agreement if the agreement is in writing. The documents shall, if necessary, be accompanied by a duly certified translation into Danish.

Section 39.

- (1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:
 - (1) at the request of the party against whom it is invoked, if that party furnishes proof that:
 - (a) a party to the arbitration agreement was, under the law of the country in which that party was domiciled at the time of conclusion of the contract, 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,
 - (b) the party against whom the award 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,
 - (c) the award deals with a dispute 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,
 - (d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or 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 court of the country in which, or under the law of which, that award was made, or
 - (2) if the court finds that:
 - (a) the subject-matter of the dispute is not capable of settlement by arbitration under Danish law, or
 - (b) the recognition or enforcement of the award would be manifestly contrary to the public policy of this country.
- (2) If a ground for refusing recognition or enforcement concerns only part of the arbitral award, only that part may be refused recognition or enforcement.
- (3) If an application for setting aside or suspension of an award has been made to a court referred to in subsection (1)(1)(e), the court where recognition or enforcement is sought may adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Chapter 10

Entry into force etc.

Section 40.

- (1) This Act shall enter into force on 1 July 2005 and shall apply to arbitral proceedings commenced after the entry into force of the Act, subject til subsections (2)-(5). [*Provision concerning the entry into force of s. 43 not included here.*]

- (2) Section 7(2) shall apply to arbitration agreements concluded after the entry into force of this Act.
- (3) Chapter 8 shall apply to arbitral awards made after the entry into force of this Act.
- (4) Chapter 9 shall apply where a request for recognition or enforcement is made after the entry into force of this Act.
- (5) In respect of arbitration agreements concluded for the purpose of settling disputes arising from international trade between physical or legal persons having, when concluding the agreement, their habitual place of residence or their seat in different States parties to the European convention of 21 April 1961 on international commercial arbitration (the Geneva Convention), this Act shall apply to the extent that the provisions of the Act are not in conflict with the provisions of ss. 3(2) and 4-14 of Order no. 117 of 7 March 1973 on the recognition and enforcement of foreign arbitral awards and on international commercial arbitration.

Section 41.

- (1) Act no. 181 of 24 May 1972 on arbitration shall be repealed, subject to subsections (2) and (3).
- (2) The provisions of ss. 3(2) and 4-14 of Order no. 117 of 7 March 1973 on the recognition and enforcement of foreign arbitral awards and on international commercial arbitration shall remain in force until repealed by the Minister of Justice.
- (3) Order no. 870 of 13 October 1994 on the recognition and enforcement of arbitral awards concerning contracts financed by the European Development Fund (EDF) shall remain in force until repealed by the Minister of Justice.

Section 42.

[Amendment of the Court Fees Act not included here.]

Section 43.

[Amendment of the Criminal Code not included here.]

Section 44.

This Act shall not apply to the Faroe Islands or Greenland, but ss. 1-41 may by Royal Order be put into effect for these parts of the Kingdom with such derogations as the particular circumstances of the Faroe Islands or Greenland require, and s. 43 may by Royal Order be put into effect for the Faroe Islands with such derogations as the particular circumstances of the Faroe Islands require.