

Decree No. 117 of 17 March 1973 Regarding Recognition And Enforcement Of Foreign Arbitral Awards And International Commercial Arbitration - Denmark

- [Chapter 1. Recognition and Enforcement of Foreign Arbitral Awards](#) 1
- [Chapter 2. International Commercial Arbitration](#) 2
- [Chapter 3 Other provisions](#) 4

Under Section 10 of the Arbitration Act No. 181 of 24 May, 1972, the following is hereby ordered.

Chapter 1. Recognition and Enforcement of Foreign Arbitral Awards ➔

- **Section 1**

Foreign arbitral awards are binding in this country where they relate to a dispute which, under Danish law, can be arbitrated, and where recognition is not manifestly incompatible with Danish public policy.

- **Section 2**

1. Awards regarding commercial disputes which are binding in this country and which have been rendered in a country party to the New York Convention of 10 June 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, can be enforced in this country.
2. Enforcement takes place under the rules applicable to the enforcement of Danish arbitral awards. The bailiff may demand that a certified translation of the award and the arbitration agreement is attached to the request for enforcement.

- **Section 3**

1. Recognition or enforcement may upon request be refused where:
 1. the parties could not have entered into the arbitration agreement under the law of their country of habitual residence, or where the agreement is invalid under the law which the parties have stipulated shall govern the agreement, or where the agreement - failing such stipulation - is invalid under the law of the country where the award was rendered,
 2. the party claiming that the arbitral award be set aside has not been properly notified of the appointment of arbitrators or of the arbitral proceedings or has not been able, for some other reason, to safeguard his interests during the proceedings,
 3. the arbitral award decides issues not included in the arbitration agreement; to the extent to which the award also decides issues included in the arbitration agreement it shall, however, be recognized and enforced where the latter decisions can be separated from decisions not included in the agreement,
 4. the composition of the arbitration tribunal or its hearing of the case has not been in accordance with the agreement of the parties or - in the absence of such agreement - with the law of the country where the arbitration took place, or

5. the arbitral award is not yet binding upon the parties or has been set aside or suspended by a competent authority either in the country where the award was rendered or in the country under the law of which the award was rendered, cf., however, paragraph 2 below.
2. Where a country in which an arbitral award has been set aside or suspended, cf. paragraph 1 No. 5 above, is a party to the European Convention of 21 April, 1961, on International Commercial Arbitration (The Geneva Convention), recognition or enforcement shall be refused only where the setting aside or suspension is based upon one of the grounds enumerated in paragraph 1 Nos. 1 to 4.

Chapter 2. International Commercial Arbitration ➔

• **Section 4**

1. The provisions of this Chapter apply to commercial arbitration between individuals, corporations, or the like, which, at the time the agreement was entered into, had their habitual residence or seat in different countries parties to the European Convention of 21 April 1961, on International Commercial Arbitration (The Geneva Convention).
2. An arbitration agreement shall be signed by the parties or appear from an exchange of letters, cables, or communications by teleprinter. Where the law of the countries in which the parties have their habitual residence or seat do not make a written agreement mandatory the agreement is, however, binding provided it complies with the law of the countries in question.
3. The seat of a company shall be the place where the branch of the company entering into the agreement is located.

• **Section 5**

Where the parties shall appoint arbitrators they shall do so within 30 days from the time when claimant has notified the defendant that he requests arbitration. Should a party having his habitual residence or seat in this country fail to appoint his arbitrator the arbitrator shall, in the absence of any other agreement, upon request of the other party be appointed by the Danish National Committee of the International Chamber of Commerce. These provisions apply likewise to the appointment of a person to replace a previously appointed arbitrator.

• **Section 6**

1. Where the arbitration agreement does not regulate the appointment of the chairman of the arbitration tribunal and where the parties fail to agree thereon, the chairman shall be elected by the arbitrators appointed. Where the agreement does not regulate the place of arbitration nor the procedure to be followed and where agreement thereon cannot be obtained the necessary decisions shall be taken by the arbitration tribunal.
2. Where the parties cannot agree upon the appointment of a sole arbitrator or where the arbitrators appointed cannot reach agreement on the matters dealt with in paragraph 1 and where arbitration, under the agreement of the parties, shall take place in this country, the claimant may request that the Danish National Committee of the International Chamber of Commerce takes the steps required. This provision is likewise applicable in other situations where the parties have agreed upon the place of arbitration, provided the defendant has his habitual residence or seat in this country.
3. Where the place of arbitration has not been agreed upon and where the defendant has his habitual residence or seat in this country the claimant may request that the steps required be taken by the Danish National Committee of

the International Chamber of Commerce or the Special Committee dealt with in the annex to the Geneva Convention.

4. Where the claimant fails to exercise his rights under paragraphs 2 and 3 they may be exercised by the defendant or by the arbitrators.

- **Section 7**

Where the Danish National Committee of the International Chamber of Commerce has not taken the pertinent steps within 60 days of receipt of a request under Section 5 or 6, the party in question may request that the Special Committee take the steps required.

- **Section 8**

Where the parties have agreed that a dispute shall be submitted to a permanent arbitration institution without specifying the particular institution and where the parties fail to reach agreement on this point, the claimant may demand that such institution be selected under the rules of Section 6.

- **Section 9**

Where it has not been agreed whether a dispute shall be submitted to a permanent arbitration institution or to ad hoc arbitration and where no agreement on this point can be reached, the claimant may demand that the issue be decided under the rules of Section 6. The competent authority may either refer the parties to an arbitration institution or suggest that they appoint their arbitrators within a fixed period of time and agree on whatever other steps are required. The rules of Sections 5 and 6 apply where the parties are referred to ad hoc arbitration.

- **Section 10**

1. The defence that an arbitration tribunal has no jurisdiction, be it because there exists no arbitration agreement or because the agreement is invalid or has lapsed, shall be made during the arbitration and no later than when reply on the substance of the case is submitted. The defence that the arbitration tribunal has exceeded its jurisdiction shall be submitted as soon as the issue in regard to which the lack of jurisdiction of the arbitration tribunal is alleged, has been brought up. The arbitration tribunal may, however, allow that a defence be made at a later stage where it finds the delay is excusable.
2. Defences which have not been made within the terms prescribed in paragraph 1 cannot be made at a later stage, neither during the arbitration nor in a subsequent court action nor in connection with enforcement of the award. A decision rendered by the arbitration tribunal on the point whether an objection is barred by limitation may, however, be reviewed by the courts.

- **Section 11**

1. The capacity of a party to enter into an arbitration agreement is governed by the law of the country in which he has his habitual residence.
2. Other issues regarding the validity of an arbitration agreement are governed by the law to which the parties have subjected it. Where no agreement has been made in this respect the issue shall be governed by the law of the country in which the arbitral award is to be rendered or – where that place cannot be established – by the rules which apply under Danish private international law.

- **Section 12**

1. Where there is no agreement on the law to be applied by the arbitration tribunal in relation to the substance of the case, that question shall be decided by the arbitration tribunal in accordance with the pertinent rules of private international law. Regardless whether there is agreement or not the arbitration tribunal shall take account of the terms of the contract and trade usages.

2. The arbitration tribunal shall decide the case on the basis of equity where the parties have so agreed and are entitled to do so under the law governing the arbitration.

- **Section 13**

The arbitral award shall contain reasons unless the parties have explicitly provided differently or have agreed upon rules of procedure under which it is not customary to give reasons for the award. In the latter situation a party may, however, demand that reasons be given in the award, provided a request to this effect has been submitted prior to the conclusion of the oral hearing or prior to the rendering of the award where the case is not heard orally.

- **Section 14**

The provisions of Section 5, Section 6, paragraphs 2 to 4, and Sections 7 to 9 do not apply to parties having their habitual residence or seat in countries which have acceded to the Convention of the Council of Europe of 17 December 1962. In such situations any difficulties which may arise regarding the composition or activity of the arbitration tribunal shall be submitted to the decision of the courts upon request by the claimant.

Chapter 3 Other provisions ➔

- **Section 15**

Where an action regarding the validity of an arbitration agreement or an arbitral award may be brought in this country and where no other Danish court has jurisdiction under the rules on jurisdiction the action may be brought before the Maritime and Commercial Court of Copenhagen or, insofar as Greenland and the Faeroe Islands are concerned, at the court for Greenland or at the court in Torshavn.

- **Section 16**

1. The text of the conventions, information as to which countries have acceded to the conventions and as to any reservations to them will be reported in "Lovtidende" (The Danish Law Gazette) 1973, section C.
2. Any additional ratifications etc. of the conventions will be reported in "Lovtidende C".

- **Section 17**

This order shall enter into force on 21 March, 1973.