

# Legal 500

## Country Comparative Guides 2024

**Denmark**

**International Arbitration**

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Denmark.

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## Denmark: International Arbitration

### 1. What legislation applies to arbitration in your country? Are there any mandatory laws?

According to the Danish Arbitration Act (Voldgiftsloven), arbitration may be conducted without the involvement of official institutions or with the involvement of the Danish Institute of Arbitration (Voldgiftsinstituttet). However, there are several mandatory clauses in the Danish Arbitration Act. These include entire chapters, including the general provisions of the Danish Arbitration Act in Chapter 1, the rules on the arbitration agreement in Chapter 2, the setting aside of the arbitral award in Chapter 8 and the recognition and enforcement of the arbitral award in Chapter 9. In addition, the Danish Arbitration Act contains a number of individual paragraphs that are mandatory.<sup>1</sup>

Footnote(s):

<sup>1</sup> Being § 11 (3), § 13 (3), § 14 (1), § 16 (3), § 27, § 34 (3), § 12, § 18, § 16 (4) and § 31 (1) (3).

### 2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Denmark is a signatory to the New York Convention, without any reservations.

### 3. What other arbitration-related treaties and conventions is your country a party to?

In addition to the New York Convention, Denmark is a party to the Geneva, Paris and Washington Conventions. However, only the New York Convention has any relevance in practice.

### 4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The Danish Arbitration Act is based on the UNCITRAL Model Law, but the Danish Arbitration Act has not been updated to reflect the 2006 changes to the UNCITRAL Model Law regarding interim measures granted by the

arbitral tribunal.

### 5. Are there any impending plans to reform the arbitration laws in your country?

No.

### 6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

There are two arbitration institutions in Denmark, the Danish Institute of Arbitration dealing with all general matters, which last amended its rules on 13 April 2021, and the Danish Building and Construction Arbitration Board dealing with construction and building matters, which last amended its rules on 1 October 2015. No amendments are under consideration.

### 7. Is there a specialist arbitration court in your country?

Yes, the biggest being The Danish Building and Construction Arbitration Board, but Denmark also has smaller specialized arbitration courts for various sectors.

### 8. What are the validity requirements for an arbitration agreement under the laws of your country?

Agreement – whether verbal or written – are legally enforceable, with no strict formalities required for their creation or modification. However, written contracts are typically favored for clarity and evidentiary purposes, unless proven otherwise. This flexibility extends to arbitration agreements as well, which can be formed either before or after a dispute arises. For consumer disputes, arbitration agreements may only be entered into after the dispute has occurred.

### 9. Are arbitration clauses considered separable from the main contract?

As a main rule, an arbitration agreement remains valid even if the main contract that established the legal

relationship between the parties is deemed invalid. This ensures that the arbitration agreement is considered independent and separate from the main contract.

**10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?**

The courts in Denmark will ex officio verify that the claim has been submitted in a way that permits a judgment to be made on its basis.

**11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

The Danish Arbitration Act does not specifically cover multi-party arbitration agreements. But it is possible to consolidate all parties into a single case and resolve all disputes collectively, as long as all parties involved agree to this arrangement.

**12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**

In Denmark, third parties or non-signatories can be bound by an arbitration agreement under specific circumstances. Generally, for a third party to be bound by an arbitration agreement, there needs to be a clear legal basis or contractual link demonstrating that the third party should be considered as part of the agreement.

A third party may also become bound by the agreement if the subject matter covered by the agreement is transferred to them through subrogation.

**13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?**

Under Paragraph 6 of the Danish Arbitration Act, disputes involving legal matters that the parties are free to resolve themselves can be settled through arbitration, unless otherwise restricted by law or agreements. However family law disputes, residential lease disputes, consumer

disputes and the like where one or two parties are not professionals cannot be agreed to undergo arbitration before a dispute has arisen and the parties can make an informed decision.

**14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?**

No, not to the extent of our knowledge.

**15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?**

Paragraph 28 (1) of the Danish Arbitration Act, dictates that the tribunal must resolve the dispute based on the legal rules chosen by the parties to govern the case. If the parties do not specify applicable law, Paragraph 28 (2) requires the tribunal to apply the law determined by the conflict of laws rules deemed relevant.

**16. In your country, are there any restrictions in the appointment of arbitrators?**

Arbitrators must be impartial, independent from the parties, and qualified for the task at hand. According to Paragraph 12(1) of the Danish Arbitration Act, each arbitrator must disclose any circumstances that might affect their impartiality or independence before accepting the role. Within these guidelines, the parties have the freedom to select and appoint arbitrators.

**17. Are there any default requirements as to the selection of a tribunal?**

Typically, the parties involved in arbitration have the freedom to decide on both the qualifications and the number of arbitrators, as well as the process for their appointment. If they choose to have a single arbitrator, they should, whenever possible, make the appointment together.

In cases where the parties cannot agree, the sole arbitrator is appointed by the Institute handling the matter if the arbitration proceedings are conducted before an institute.

For tribunals the default arrangement is a tribunal of three arbitrators. Each party will select one arbitrator

within a month of receiving a request from the other party. These two appointed arbitrators will then collaborate to choose a chair or the institute will choose a chair.

For disputes handled by the Danish Building and Construction Arbitration Board, please refer to Chapter 4 of the Board's Rules. These tribunals usually consist of three members: one legal arbitrator and two technical arbitrators, as outlined in Paragraph 2. The technical arbitrators are selected by the Danish Building and Construction Arbitration Board, while the legal arbitrators are chosen by the chair of the Danish Building and Construction Arbitration Board Presidium after consulting with the parties involved.

### **18. Can the local courts intervene in the selection of arbitrators? If so, how?**

If the parties are unable to reach an agreement on the appointment of one or more arbitrators, they may seek assistance from the courts in accordance with Paragraph 11(3) of the Danish Arbitration Act.

### **19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?**

The appointment of an arbitrator may be contested if there are grounds to doubt the arbitrator's impartiality, independence, or qualifications, as per Paragraph 12(2) of the Danish Arbitration Act.

According to Paragraph 13(1) of the Danish Arbitration Act, the parties are free to agree on a procedure for challenging an arbitrator's impartiality and independence. In the absence of such an agreement, the procedure outlined in Paragraph 13 must be followed, which states the following:

- A party must submit a written, reasoned challenge to the tribunal within 15 days of becoming aware of both the arbitrator's appointment and the circumstances justifying the challenge.
- If a challenge under the agreed-upon procedure is unsuccessful, the challenging party may request that the courts decide on the challenge within 30 days of receiving notice of the rejection.

While the court's decision is pending, the arbitral tribunal,

including the challenged arbitrator, may continue with the proceedings and render an award.

### **20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?**

No, not to the extent of our knowledge.

### **21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?**

The tribunal, including the challenged arbitrator, is allowed to continue the proceedings even if a challenge against one of the arbitrators is still pending.

However, if an arbitrator steps down for any reason other than a challenge, a substitute arbitrator must be appointed in accordance with the same rules that applied to the appointment of the original arbitrator, as outlined in Paragraph 15 of the Danish Arbitration Act.

### **22. Are arbitrators immune from liability?**

The Danish Arbitration Act does not provide specific rules regarding the liability or immunity of arbitrators. Therefore, an arbitrator may be held liable for acts or omissions in the performance or attempted performance of their duties, provided that the general conditions for liability are met.

However, in arbitration proceedings conducted by the Danish Building and Construction Arbitration Board, Paragraph 42 of the Board's Rules stipulates that neither the arbitrators, the Danish Building and Construction Arbitration Board, nor its employees can be held liable for any act or omission related to the proceedings or their outcome.

Similarly, Paragraph 51 of the Danish Institute of Arbitration Rules provides that members of the tribunal, the tribunal secretary, and any individuals appointed by the Danish Institute of Arbitration or the tribunal, along with their employees, cannot be held liable for acts or omissions related to the proceedings or their outcome, except where such limitations are prohibited by applicable law. The Danish Institute of Arbitration Rules apply to Danish Institute of Arbitration proceedings unless otherwise agreed by the parties.

### 23. Is the principle of competence-competence recognised in your country?

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### 24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Under Paragraph 8(1) of the Danish Arbitration Act, if one party requests it, the local court must refer the case to arbitration, unless the court determines that the arbitration agreement is null, void, inoperative, or incapable of being enforced.

### 25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

According to Paragraph 4 of the Danish Arbitration Act, courts do not have jurisdiction over disputes that fall within the scope of an arbitration agreement.

Paragraph 25 of the Danish Arbitration Act specifies that if a party fails to respond, attend a hearing, or produce required documents without a valid reason, the tribunal may proceed with the arbitration and issue an award. Similar provisions are found in both the Danish Building and Construction Arbitration Board Rules and the Danish

Institute of Arbitration Rules.

However, an arbitral award may be overturned if the challenging party can demonstrate that they did not receive proper notice of the arbitrator's appointment or the arbitration proceedings, or if they were otherwise unable to present their case, as outlined in Paragraph 37(2)(1)(b) of the Danish Arbitration Act.

This right is grounded in the fundamental legal principle that parties must be informed of the case against them and be given an opportunity to respond to the claims and arguments of the other party, as also reflected in Paragraph 18.

### 26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

A third party may only participate in the arbitration proceedings if the parties involved agree to their involvement and the tribunal grants permission.

### 27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Under Paragraph 9 of the Danish Arbitration Act, a court may, upon request from a party, issue an order for interim measures of protection or enforcement, even if the dispute is subject to arbitration. The court will provide these interim measures according to the provisions set forth in the Danish Administration of Justice Act, provided the necessary conditions are met.

Additionally, Paragraph 17 of the Danish Arbitration Act allows a party to request the tribunal to grant interim measures directly.

### 28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Under Danish law, anti-suit injunctions are not permitted as an interim measure.

### 29. Are there particular rules governing evidentiary matters in arbitration? Will the local



### **courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?**

Choosing arbitration in Denmark typically means opting out of the standard Danish procedural law and civil procedure norms of the Danish courts. As a result, courts are generally not involved in the arbitration process.

On 28 October 2010, the Danish Arbitration Association adopted the IBA Rules on the Taking of Evidence in Arbitration. Parties often incorporate these rules into their arbitral procedural agreements, and arbitration is conducted according to these rules. If the IBA rules are not included in the procedural agreement, they are assumed to apply where necessary.

However, under Paragraph 27 of the Danish Arbitration Act, the tribunal or the parties (with the tribunal's approval) may seek court assistance in certain situations, such as when requiring a third party to disclose documents or provide a witness statement.

### **30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

The Danish arbitration Act does not prescribe specific ethical codes or professional standards for counsel and arbitrators involved in proceedings. As a result, counsel and arbitrators are governed solely by the ethical codes or professional standards relevant to their respective jurisdictions or professional associations.

### **31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?**

The Danish Arbitration Act does not address confidentiality explicitly, meaning it must be negotiated and agreed upon by the parties involved.

In contrast, arbitration proceedings under the Danish Building and Construction Arbitration Board are inherently confidential, although the final award may be published by the Danish Building and Construction Arbitration Board in an anonymized format if neither party raises an objection, as stated in Paragraph 43 of the Board's Rules.

Moreover, the Danish Institute of Arbitration Rules offer a structured approach to confidentiality. Paragraph 28(4) provides that, upon request from a party, the tribunal can make decisions regarding the confidentiality of the arbitration proceedings. Furthermore, Paragraph 50 ensures that all members and the secretary of the arbitral tribunal must maintain confidentiality concerning all aspects of the arbitration.

### **32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?**

Under Paragraphs 34 and 35 of the Danish Arbitration Act, the tribunal is responsible for determining how the costs of the arbitration are allocated between the parties. Typically, the losing party is required to cover these costs.

The costs associated with an arbitration case may include:

**Arbitrator's Fees and Charges:** The Danish Arbitration Act does not specify detailed rules for calculating these fees. Generally, fees are determined based on customary and reasonable practices, unless the parties have agreed to the Danish Institute of Arbitration Rules. In such cases, the arbitrators' fees and the Danish Institute of Arbitration's charges are set according to the Danish Institute of Arbitration's Schedule of Fees and Charges.

**Reimbursement of Arbitrator's Expenses:** This includes any costs incurred by the arbitrators in the course of their duties.

Additionally, the tribunal may require one party to pay all or part of the costs incurred by the other party as a result of the arbitration. These costs can include:

**Legal Costs:** Fees for legal representation, including advocates and legal advisors.

**Other Costs:** Expenses necessary for the proper conduct of the case, such as expert evaluations, witness statements, reasonable travel and accommodation costs for witnesses, translation services, and similar expenses.

### **33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?**

In order to be recognised and enforced, the decision of the arbitral tribunal must be issued as an arbitral award. According to Paragraph 31 of the Danish Arbitration Act, the general requirements for an arbitral award are as follows: it must be dated, signed by the arbitrators (at least two if the arbitral tribunal consists of three arbitrators) and the place of arbitration must be specified. In addition, unless otherwise agreed by the parties, the award must state the reasons on which it is based. In addition, the party seeking to invoke or enforce the award must produce a duly certified copy of the award and, where applicable, of the written arbitration agreement. These documents shall be accompanied, if necessary, by a certified translation into Danish.

### **34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?**

The estimated timeframe for recognition of an award and enforcement typically takes between a couple of weeks to months but may vary depending on the type of asset involved and the court's processing time. Interim measures may also be available.

A party may not bring a motion for the recognition and enforcement of an award on an ex parte basis.

### **35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

Paragraph 38 of the Danish Arbitration Act dictates that the award, whether made in Denmark or abroad, is binding in Denmark and may be enforced in accordance with the provisions on the enforcement of judgments in the Danish Administration of Justice Act.

### **36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?**

In general, the Danish Arbitration Act does not limit the remedies that can be awarded. However, there are circumstances in which an award may be considered unenforceable.

Reference is made to question 37 below.

### **37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?**

An arbitral award is final and non-appealable. However, it may be challenged on certain grounds as set out in Paragraph 37 of the Danish Arbitration Act. To succeed in such a challenge, the applicant must prove that:

a) one of the parties to the arbitration agreement lacked legal capacity under the law of the country in which he was domiciled at the time the agreement was concluded, or that the arbitration agreement is null and void under the law which the parties have chosen for it or, in the absence of such choice, under Danish law

(b) the party seeking the setting aside was not duly notified of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case; or

(c) the award deals with a dispute not covered by the arbitration agreement or resolves issues that are not covered by the arbitration agreement; or

(d) the composition of the arbitral tribunal or the conduct of the arbitral proceedings was not in accordance with the agreement of the parties or with this Act; or

In addition, an award may be set aside if the court finds that:

a) the nature of the dispute is such that it cannot be settled by arbitration; or

b) the award is manifestly inconsistent with the legal order of the country.

An application to set aside an award must be made within three months of the date on which the applicant received the award.

### **38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?**

The parties cannot agree to allow an appeal or waive their right to challenge the award.

### **39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the**

## recognition of an award?

The arbitral tribunal does not normally have jurisdiction over third parties who have not signed or entered into the arbitration agreement. However, in certain cases, such as succession, third parties may be deemed to be parties bound by the arbitration agreement. Third parties cannot challenge an award.

### 40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

No, not to the extent of our knowledge.

However, it can be said that it follows from the Danish Institute of Arbitration Rules: paragraph 20 (4) that a party must immediately inform in writing the Secretariat, the Arbitral Tribunal and the other parties of the identity of any third party, which has entered into an arrangement regarding funding of any costs in relation to the case and under which it has an economic interest in the outcome of the case.

### 41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The Danish Arbitration Act does not cover the use of emergency arbitrators, but the concept of emergency arbitrator relief is recognized, particularly under the rules of major arbitration institutions such as the Danish Institute of Arbitration. The parties must adhere to the decisions issued by the emergency arbitrator.

### 42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The Danish Arbitration Act does not include specific provisions for handling small claims.

However, the Danish Building and Construction Arbitration Board offers a simplified arbitration process under Chapter 8 of the Board's Rules for disputes valued up to DKK 1 million, provided both parties agree to this option. This streamlined procedure is designed to expedite the resolution of disputes, but it is at the parties' discretion whether to utilize it.

Similarly, the Danish Institute of Arbitration framework

provides an option for simplified dispute resolution that can be used for claims of any value, according to its general rules.

### 43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

While the Danish Arbitration Act does not deal with gender or diversity, but is neutral in its composition, both arbitration institutes strive to promote diversity in their arbitrator appointments. The Danish Institute of Arbitration, in particular, has made a concerted effort to increase the representation of female arbitrators by actively suggesting female candidates for appointments.

While gender diversity has been and continues to be a prominent focus, it is important to note that it is not the sole aspect of diversity being addressed.

### 44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

To the extent of our knowledge no recent court decisions have been made in terms of setting aside an award that has been rendered in another jurisdiction.

### 45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

No, not to the extent of our knowledge.

### 46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

In April 2021, the Danish Institute of Arbitration updated its rules to ensure that nearly all communications and exchanges between the parties, the arbitral tribunals, and the Danish Institute of Arbitration are conducted electronically.

### 47. Have arbitral institutions in your country



**implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?**

The 2021 revision of the Danish Institute of Arbitration Rules was partly aimed at adopting a more digitalized process.

**48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?**

There is an increasing focus on climate change and human rights issues, extending beyond dispute resolution.

**49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?**

No, not to the extent of our knowledge.

**50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?**

No, not to the extent of our knowledge.

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