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ARTICLES

International Arbitration in Denmark

by C. Kaare Pedersen*

I. INTRODUCTION

Parties to international commercial matters have demonstrated the increased need to settle disputes through international arbitration. This growing demand has prompted consideration of whether to further improve existing arbitration institutes or to establish new courts of arbitration. Thus "The Arbitration Institute of the Stockholm Chamber of Commerce" (SCC), which was established in 1917,1 was reorganized in 1976 to affect its more extensive use.2

As a consequence of its widespread participation in international trade, Denmark was considered a desirable location for an international arbitration institute. Demark also provides a natural base for an international court of arbitration. Along with U.S. legislation and some English legislation, Danish legislation serves as a highly advantageous framework for referring matters in dispute to arbitration.

After several years of planning the institute was established in October of 1981. Along with other duties, it served the function of organizing

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1 See STOCKHOLM CHAMBER OF COMMERCE, ARBITRATION IN SWEDEN 8 (1977).


For information concerning arbitration in Sweden see generally ARBITRATION IN SWEDEN, supra note 1; Holmback & Mangard, Sweden 3 Y.B. COM. ARB. 161 (1978) (International Council for Commercial Arbitration); 1 P. SANDERS, INTERNATIONAL COMMERCIAL ARBITRATION 423 (1956). The current statutes governing Swedish arbitration are reprinted in ARBITRATION IN SWEDEN, supra note 1, at 192.

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and administering a permanent international court of arbitration. This article examines the background for establishing this court of arbitration and the actual rules governing its operation.

II. DESCRIPTION OF THE DANISH ARBITRATION INSTITUTE

A. Basis for the Establishment of an Arbitration Institute

The newly established Danish arbitration institute bears the name 'Det Danske Voldgiftsinstitut' [hereinafter referred to as Copenhagen Arbitration]. The institute is an independent institution and its registered office is in Copenhagen. The institute was set up by the Danish Lawyers Union (Det Danske Advokatsamfund), to which all Danish practing lawyers, and the members of the Danish Society of Chemical, Civil, Electrical and Mechanical Engineers (DIF) belong. These societies appoint the members of the governing bodies.

Copenhagen Arbitration has been set up in close collaboration with the Danish Judges Union (Den Danske Dommerforening), whose members are judges in the ordinary courts. For more independence the Society of Judges did not formally set up the institute, but the society actively participated in the preparation of rules which apply when disputes are referred to arbitration. In addition, the society appoints a member to the board. The major trade organizations are also intended to be involved in the work of the institution. The participation of the Lawyers Union and the Judges Union in the establishment of the institute is understandable, however, participation by the Society of Engineers as joint founders of the institute must be more fully explained. Such an explanation also provides an historical account of the establishment of a general arbitration institute in Denmark.

As early as 1899 general rules for settling legal disputes in building and civil engineering works in Denmark were introduced with public ap-

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5 The enabling legislation was passed on October 29, 1981, Statut for Det Danske Voldgiftsinstitut (Copenhagen Arbitration)[hereinafter cited as Statute]. An unofficial English translation is set out in Appendix A and the official Danish text is reproduced in Appendix B. Rules governing domestic arbitrations, Regler for behandling af sager ved Den Almindelige Voldgiftsret i Danmark, and international arbitrations, Regler for behandling af sager ved Den Internationale Voldgiftsret i København [hereinafter cited as International Rules] were established simultaneously with the enactment of the enabling legislation. This article will focus on the rules regarding international arbitrations. An unofficial English translation of the international rules appears in Appendix C and the official Danish text is reprinted in Appendix D. (The Journal wishes to thank the author for allowing us to reproduce the texts of the statute and the international rules and extends a special thank you to Stephen J. Di Cioccio of our staff for his translations of the Danish texts.)

6 Statute, supra note 3, at §1.
proval, on the basis of agreements between the parties. These rules did not constitute legislation, but they were increasingly used in forming agreements between the parties. The use of these general rules became widespread, and they have for several years been included in almost all agreements for building and construction projects in Denmark. These general rules have included an arbitration clause according to which disputes arising between the builder and the contractor and other parties to the building contract may not be submitted to the ordinary courts but were settled by arbitration.

The arbitration agreement referred matters in dispute to an institutional arbitration, which was organized and administered by the Society of Engineers. Normally three arbitrators, all of whom were appointed by the Society, participated in the procedure. Ordinarily the arbitration panel was composed of one legal judge and two graduate engineers. The court of arbitration of the Society of Engineers was very successful due to its combination of legal and technical expertise which the panel represented. In 1972 the court of arbitration was reorganized due to revision of the general rules and its name was changed to the Court of Arbitration for Building and Civil Engineering Works (Voldgiftsretten for Bygge- og Analægsvirksomhed). In principle, this new court of arbitration corresponded to the court of arbitration of the Society of Engineers. However, the possibility of appointing the two technical arbitrators from experts other than graduate engineers was formulated. In several important respects this new court was virtually a continuation of the former arbitration institution. It maintained the same Secretariat and the same headquarters in Copenhagen. The general rules are widely used within the field of building and construction. Since its creation an appreciable number of disputes, ranging from widely different technical to legal matters, have been submitted to arbitration. All matters in question, however, have been related to building and construction works. Therefore considering its long and outstanding experience, the Society of Engineers in


8 Since 1975, awards of the court deemed to have precedential value have been published in Kendelser om Fast Ejendom (Decree Orders on Real Property). Judicial decisions regarding arbitration awards are published in Ugeskrift for Rettsvaesen (Journal of Legal Affairs).
Denmark was naturally involved in the organization and the administration of the new Copenhagen Arbitration.

B. Organization

The highest authority of the body rests with a committee composed of representatives to the institute, to which the founding organizations and other specifically designated organizations appoint members.\(^9\) The institute is supervised by a board consisting of a chairman and six other board members.\(^10\) The chairman is appointed by the committee of representatives. He must possess all professional qualifications required to serve as a judge, and he must preferably fill a post of judge of the Supreme Court.\(^11\)

The Lawyers Union, the Society of Engineers, and the Judges Union each appoints a member to the board, and the last three members of the board are appointed by the committee of representatives.\(^12\) A Secretariat deals with the day to day administration.\(^13\)

C. Legal Basis

The Arbitration Act of 1972 serves as the legal basis for the functions of the court of arbitration.\(^14\) This Act is very similar to modern U.S. arbitration acts.\(^15\) Thus, an arbitration agreement is binding on the parties and can only be set aside on the basis of specific grounds of nullity. Once a dispute has been submitted to arbitration, any question of the compe-

\(^9\) Statute, supra note 3, at §3.

\(^10\) Id. at §6.

\(^11\) Id. The present chairman is Jorgen Trolle, a former Chief Justice of the Supreme Court who has significant international arbitration experience.

\(^12\) Id.

\(^13\) Id. at §14. The Secretariat is located at 29, Vester Farimagsgade, DK-1606 Copenhagen V, the former address of the Society of Engineer's arbitration court.


tence of the arbitration tribunal will be determined by the tribunal itself.\footnote{18} The special grounds of nullity include: (1) invalidity of the arbitration agreement, (2) inadequate composition of the arbitration tribunal together with an insufficient hearing of the matter in dispute, (3) the fact that the arbitration tribunal has acted \textit{ultra vires}, and (4) conflict between the award and public order.\footnote{17} According to the 1972 Act, a Danish arbitration award may be enforced according to the general rules applicable to the enforcement of judgments in a court of law.\footnote{18}

Overall the Danish Act is characterized by a high degree of informality. The parties themselves may decide which procedure shall be followed when the dispute is submitted to arbitration.\footnote{19} The international court of arbitration in Copenhagen settles disputes if both sides so agree.\footnote{20} There are no further conditions. In order to submit a dispute to arbitration in this court the parties must simply include an arbitration agreement containing a reference to the Danish Arbitration Institute (Det Danske Voldgiftsinstitut) or Copenhagen International Arbitration Court (Den Internationale Voldgiftsret i København).\footnote{21} There are no formal requirements regarding the agreement between the parties. The parties may arrange for certain procedural and substantive rules to be applied, however, such arrangement is not a prerequisite for the court to function. If the parties have made no other agreements, Danish law, including Danish international private and procedural law, will be applied.\footnote{22}

As a consequence of the prevailing principle of \textit{lex fori} the decision of the parties to submit a dispute to Danish arbitration in the absence of other agreements will result in the application of doctrines of law under Danish procedural law during the proceedings. The court of arbitration is not legally bound to employ Danish procedure, but the decisions under
Danish law will guide the court. Danish private international law will be applied in determining which substantive rules are to be applied in the settlement of the dispute. The doctrines of law under Danish private international law are essentially similar to the corresponding rules of the major European legal systems, including those of England, and to the basic legal principles of the United States. If the parties have made no agreement regarding the system of state law to be applied, the arbitration tribunal will have to determine which law will be applied based on the nature of the matter in dispute.

The use of foreign law forms a critical part of the facts that the parties in principle are to disclose. Therefore, in the alternative, the court of arbitration will apply substantive laws under Danish law if the parties are unable to procure reliable information about foreign law. The use of substantive laws under Danish law will generally not harm the interests of the parties. As a consequence of its size and dependence on foreign countries, the Danish legal system is largely influenced by other European systems. The freedom to contract and the resultant legally binding contracts form essential parts of the Danish legal system. Even though a linguistic interpretation of a contract is of great importance, the courts will, in debatable cases, make an overall evaluation of the wording of the contract and interpret it according to the presumptions of the parties and in light of the circumstances in which the contract was made.

Preceptive rules are comparatively rare and only exist in fields in which the need for protection of the individual is particularly strong. Denmark has no general rules guiding the courts in decisions based on equitable principles or similar criteria. Such guidelines are not necessary at the present time. The parties themselves may decide which state law is to be applied to a particular dispute. They can also decide that the arbitrators shall act as ‘amicable compositeurs’ thereby settling the dispute largely according to equitable considerations. The very limited possibility of the Courts to review the award gives the arbitrators a great amount of freedom in their interpretation of the law.


24 See Trolle, supra note 3D, at 36; see generally Philip, General Course on Private International Law, [1978] 2 RECUEIL DES COURS 1 (discussing factors to be considered when a tribunal makes choice of law decisions).

Unless the parties have agreed on the applicable law, the validity of the arbitration agreement shall be decided according to the laws of the country where the award will be rendered. Executive Order No. 117, supra note 7, at §11. Thus, in a dispute submitted to Copenhagen Arbitration, the validity of the arbitration agreement will be decided according to Danish law.

25 See Trolle, supra note 3D, at 36.
D. Proceedings

1. Establishment of an arbitration tribunal

Proceedings are instituted when a written application is submitted to the court of arbitration.\textsuperscript{26} The application must contain a clear description of the subject matter of the dispute and must be accompanied by the agreement between the parties.\textsuperscript{27} Similarly, sufficient information must be provided to enable the arbitration institute to select the best qualified arbitrators to settle the dispute and to determine whether one single arbitrator would be preferable.\textsuperscript{28}

Normally the court of arbitration appoints three members to the arbitration tribunal;\textsuperscript{29} the chairman of the tribunal being a jurist. He is generally assumed to be a judge from the ordinary courts (judges from local city courts, from one of the two high courts, or from the supreme court) depending on the nature and size of the dispute. If the dispute is of theoretical importance or if the claim involves a large sum, the chairman will usually be a supreme court judge. The adopted rules do not stipulate any formal requirements for the professional experience of the two other members of the arbitration tribunal. However, the members should be generally acknowledged within their sphere and should have a perfect command of the language of procedure, which is English.\textsuperscript{30} By agreement of the parties, the arbitration tribunal may consist of a single arbitrator. The arbitration institute may propose a single arbitrator if the dispute does not concern any fundamental matters and if only small claims are involved.\textsuperscript{31} Both parties, however, must agree to the use of a single arbitrator.

Alternatively the tribunal can be supplemented with two additional members, making a total of five, if the parties so agree, or if the arbitration institute proposes this solution at the request of either party.\textsuperscript{32} If the arbitration tribunal is enlarged because the dispute seems complex or problematic from a legal point of view, the two extra members will also be judges. If, on the contrary, the increase is caused by complex technical or commercial matters or questions of accountancy, \textit{inter alia}, the arbitration institutes will appoint a number of arbitrators who will strengthen the expert knowledge of the court in these particular fields. If the enlargement stems from the amount of money involved it is very likely that

\begin{itemize}
  \item \textsuperscript{26} International Rules, \textit{supra} note 3, at §4.
  \item \textsuperscript{27} \textit{Id.} at § 5.
  \item \textsuperscript{28} \textit{Id.}
  \item \textsuperscript{29} \textit{Id.} at §6.
  \item \textsuperscript{30} \textit{Id.} Section 26 provides that English is the court's procedural language.
  \item \textsuperscript{31} \textit{Id.} at §7.
  \item \textsuperscript{32} \textit{Id.} at §6.
\end{itemize}
the extra members will be drawn from the judiciary. This conforms with the former practice of the Court of Arbitration for Building and Civil Engineering Works.

It is unusual for the parties to participate in the appointment of arbitrators to the tribunal. They must first provide the arbitration institute with all relevant facts and information to enable it to make the most appropriate selection of arbitrators. When the parties have been informed of the composition of the arbitration tribunal they may, however, within certain time limits, raise objections to the legal capacity of the arbitrators.\textsuperscript{33}

At this point, the parties are empowered to make another agreement. They may agree that each party shall appoint an arbitrator, while the arbitration institute appoints the third arbitrator; in this case the latter will be the chairman of the arbitration tribunal.\textsuperscript{34} The parties must provide security for all costs that the proceedings in arbitration may involve.\textsuperscript{35} As soon as the scope of the arbitration procedure has been determined, the arbitration institute will decide the nature and the size of that deposit.\textsuperscript{36} This assessment is normally made in conjunction with the original establishment of the arbitration tribunal. Generally the same deposit will be required from both parties.\textsuperscript{37} The adopted rules do not cover the implications of a refusal by one set of the parties to provide the requisite security deposit. However, where the claimant refuses to provide security, the matter in dispute will probably be dismissed. Nevertheless, no definitive conclusion can be drawn to indicate the consequences of the defendant’s refusal to provide the required security. Any such determination depends on the specific circumstances of the case and particularly whether the reason is lack of money or a spiteful intent on the part of the defendant. Generally, the arbitration can proceed regardless of the absence of a deposit on the part of the defendant. In this case the parties are jointly and severally liable for the costs of the arbitration.\textsuperscript{38}

2. Pleadings

Proceedings are partially written and partially oral. The inquiry begins with a statement prepared by the claimant. This statement must contain the claim presented by the claimant, alleging the facts on which he bases his claim and indicating the documents on which he relies.\textsuperscript{39} The defendant then produces a defense, in which he may also make a counter-

\begin{footnotes}
\item[33] Id. at §10.
\item[34] Id. at §8.
\item[35] Id. at §11.
\item[36] Id.
\item[37] Id.
\item[38] Id. at §27.
\item[39] Id. at §12.
\end{footnotes}
claim, if any.\textsuperscript{40} Next, the claimant has an opportunity to rely, however, 
the claimant is under no obligation to do so. If the claimant waives reply, 
the pleadings are terminated. If the claimant replies, the defendant also 
may deliver a written statement in rejoinder after which no pleading is 
generally permitted.\textsuperscript{41} The various pleadings are to be delivered within 
the time limits fixed by the Court of Arbitration.

In principle all claims, allegations, or objections must be stated in the 
pleadings. After the conclusion of the pleadings, claims cannot be 
amended without the consent of the opponent, unless the court of arbi-
tration makes a exception.\textsuperscript{42} The court has the discretion to find sufficient 
reason for allowing a party to amplify the claim, especially if extenuating 
circumstances caused that party to forgo such amplification before the 
conclusion of the pleadings.\textsuperscript{43} After similar consideration the court also 
has discretion to allow new allegations and objections.

Generally, conditions for amplifying claims or making new allegations 
are quite limited. Permission will only be granted on very rare occasions. 
The exceptions are cases in which a refusal would inflict a loss of rights 
on the party concerned and in which the party concerned had no oppor-
tunity during the pleadings to raise the claim in question to make the 
allegations or objections in question. However, when these questions are 
considered, the court recognizes the fact that the award is final without 
the possibility of an appeal.

3. Oral pleadings

After the conclusion of the pleadings, a time and place for the hear-
ing is fixed.\textsuperscript{44} To aid in the preparation of the arbitration or study, an 
investigation may be made. The investigation can be conducted by all 
members of the arbitration tribunal or solely by the expert arbritors.\textsuperscript{45} If either party, because of the special character of the matter in dispute, 
requests an expert appraisement from experts other than the members of 
the arbitration tribunal, the tribunal may grant permission and submit 
the question to the opinion of experts appointed by the court.\textsuperscript{46} In this 
case the experts' written reply to questions from either party will be in-
cluded in the pleadings. Similarly, the experts may be examined as ex-
pert witnesses during the oral pleadings.

The applicable rules on the arbitration tribunal do not specify the

\textsuperscript{40} Id. at §13.
\textsuperscript{41} Id. at §14.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
\textsuperscript{44} Id. at §19.
\textsuperscript{45} Id. at §17.
\textsuperscript{46} Id.
procedure to be followed in the oral proceedings. Therefore, as a guideline, the ordinary rules of procedure in force in Denmark under the Administration of Justice Act are followed. Other procedural rules may be adopted if appropriate and accepted by the parties.

According to normal procedure in Denmark, after the names of the participants in the arbitration have been filed, each party sets up his claim. In special cases, the parties may at this point in time make a brief opening statement of their chief arguments. The claimant is then allowed to present the case. This presentation should be an objective statement of the facts of the case combined with a reading of the relevant portions of documents in the case. The claimant's representative is required to disclose all relevant facts to the court, whether those facts will be favorable to the claimant or the defendant. After the claimant has presented the case the defendant's representative may produce corrective or supplementary information. In principle, such correction will only be necessary if the claimant's presentation of the case has been inadequate.

After this initial presentation of relevant documents, parties may present oral testimony subject to cross examination. The arbitrators may raise supplementary questions. The party who has called the witness will examine the witness, then the opponent may ask questions. In Denmark, no special rules deal with cross-examination. Both parties can ask any questions they may consider relevant. Leading questions are allowable but the court may bar misleading or improper questions such as questions which may mislead the witness on the assumption that a denied fact has been substantiated. The examination should give a clear and truthful explanation of the facts and circumstances of the case. After the examination of the parties, the witnesses and the experts, if any, the production of evidence is completed, and it will normally be impossible to bring forward further facts for the judgment of the case. Normally both parties then present oral pleadings beginning with the claimant. The defendant is always entitled to deliver the last pleading.

4. Voting and award

After the proceedings, the dispute is set down for judgment. The award must be made with the least possible delay, preferably not later than three months after the dispute has been set down for decision.47

The adopted rules do not deal with the voting. The arbitration tribunal follows the normal procedure in Denmark, according to which each arbitrator has an opportunity to make a plea. The pleadings are then openly discussed and when this consultation has been completed, the dispute is put to a vote. In case of divergence between the arbitrators, the

47 Id. at §25.
dispute is settled on a majority vote. 84

The award must contain a decision on the points in dispute. 49 The award normally contains a statement of the facts of the dispute, the evidence, and the arguments of the parties. The statement of the grounds of the judgment also contains a description of the factual and legal circumstances that the tribunal deems relevant. 50 Finally, the award will contain the conclusion arrived at by the tribunal, and it may also decide how and by whom the costs of the arbitration are to be paid. The arbitration tribunal may order one party to pay the costs of the arbitration proceedings to the other party. 51

5. Costs

The decision of the arbitration tribunal is final as regards which of the parties will pay the costs of the reference and the award (which include administrative expenses and arbitrator’s fees), whether one of the parties will pay the costs of the arbitration proceedings to the other party, and in which proportion the costs are to be divided between the parties. 52 The parties are jointly and severally liable, notwithstanding the division of the costs. That party which may have to pay the costs on behalf of the other party has a right of recourse against that party. 53

After the arbitration has been concluded, the arbitration tribunal sends an account of the costs involved in the arbitration proceedings to the arbitration institute. 54 The amount of the arbitrator’s fees must be approved by the institute, which will then make a final accounting of the costs involved in the entire arbitration proceedings. 55

Since the establishment of the arbitration institute, no decision has been made regarding the amount of the costs of the arbitration. In principle, the costs payable to the arbitration tribunal will be fixed according to an overall evaluation of the extent of the work and the importance of the matter in dispute. The money involved in the claim is, however, only meant to be used as a guide, especially when the size of the deposit has already been determined and when the final costs are fixed. The total amount of costs collected by the arbitration institute in an ordinary three-member tribunal covers all administrative services, office accommodations provided by the institute, and arbitrators’ fees. The following observations assume an ordinary composition of the arbitration tribunal, i.e.

48 Id. at §26.
49 Id. at §25.
50 Id.
51 Id.
52 Id. at §27.
53 Id.
54 Id.
55 Id.
reference to three arbitrators.

In compliance with the former practice in the Court of Arbitration for Building and Civil Engineering Works in Denmark, the total amount of costs payable to the arbitration tribunal in minor disputes is fixed in accordance with the tariffs in matters of procedure applicable to lawyers in Denmark, multiplied by one and one-half.66

The scale is degressive up to a subject matter in dispute of U.S. $27,500. If the subject matter exceeds this amount, an additional fee of procedure of three percent is charged on to the excess amount. Thus, if a lawyer would receive $2,100 on a $27,500 case, the cost of an arbitration would be approximately $3,200.67 Currently, a precise estimate of the costs involved in cases with subject matters in dispute exceeding U.S. $500,000 cannot be given. The costs payable to the arbitration tribunal simply cannot be calculated on a straight percentage basis of four and one-half percent of the amount of the subject matter in dispute which exceeds U.S. $500,000. If the arbitration institute used percentage figures, they are likely to be substantially lower.68 When tariffs are calculated, the tariffs in force for the SCC Institute are assumed to be based directly on the Danish tariffs.

6. Enforcement

Danish arbitration awards may be enforced according to the rules of enforcement of judgments under the Administration of Justice Act. The arbitration award does not have to be tested in the law courts. A notice requiring enforcement of the award may be filed in the sheriff's department.69 If one of the parties claims that the award is a nullity, the objections must be made to the sheriff.70

The adopted rules make no provisions for a formal procedure for the enforcement of an award in another state. Arbitration awards are generally recognized by both parties, but it is imperative to make them enforceable. During the first years of its existence, the arbitration institute will consider each individual case in collaboration with the board, the secretariat, and the arbitration tribunal. This review will only apply to the

66 Minor cases are understood to include disputes of less than $500,000. The applicable tariffs are not dispositive, and they may vary depending upon the amount of work required.
67 This figure is derived by multiplying the tariff fee of $2,100 by a factor of 1.5. A case involving $500,000 would incur arbitration fees of about $24,500.
68 The tariff formula is based on the assumption that the cost of an arbitration should reflect the amount in dispute. This assumption, however, does not necessarily reflect the amount of work required by the arbitration tribunal. It seems eminently reasonable to tie the fees to the amount of work involved, particularly in cases where large sums are in dispute, rather than to the amount of money involved.
69 Danish Arbitration Act, supra note 7, at §9.
70 Id.; cf. Arbitration in Sweden, supra note 1, at 168-70.
formal portion of the award with a view to its enforcement. The responsibility for the contents of the award is solely that of the arbitrators.

7. Publication of awards

Arbitration awards made by the international arbitration tribunal in Copenhagen will not be published by the arbitration institute, and the records of the institute are not open to the public. Even though the rules do not so specify, the awards will, in practice, remain private. However, the chief points in leading cases may be published if the identity of the parties involved is not thereby disclosed. The awards may naturally be published anonymously if the parties consent.

Opinions differ on whether arbitration awards should be published. The parties involved generally stress the importance of not publishing the awards. One of the advantages of submitting a dispute to arbitration is that the awards are kept confidential. On the other hand, the only way in which to properly judge an arbitration institution is by studying its results: its awards. If all awards are kept strictly private, the individual arbitration institution cannot be evaluated. In that case, an arbitration institute will be judged solely on the basis of the statements of the parties to a dispute, which may be biased according to their position in the concerned case. Therefore, perhaps parties should be encouraged to consent to an anonymous publication of the award.

III. Choosing Copenhagen Arbitration

Choice of the proper forum for an international arbitration involves several important factors. Initially the parties must decide whether they prefer an ad hoc arbitration, with procedures explicitly stated in the contract, or a proceeding under the auspices of an established arbitration institute.61 If the parties favor institutional arbitration, they face the formidable task of choosing the most appropriate institution. Presently, five commercial arbitration centers dominate the international scene: the American Arbitration Association (AAA), the International Centre for Settlement of Investment Disputes (ICSID), the London Court of Arbitration (LCA), the Court of Arbitration of the International Chamber of Commerce (ICC), and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC).62 The birth of the Danish Arbitration Institute offers parties engaging in international business transactions a significant

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61 The choice between ad hoc and institutional arbitration is a subject beyond the scope of this article. For a brief discussion of the issue see 2 J. WETTER, THE INTERNATIONAL ARBITRAL PROCESS 244-46 (1979).

62 Id. at 120-243 (describing and comparing the five institutions); see also HANDBOOK OF INSTITUTIONAL ARBITRATION IN INTERNATIONAL TRADE 1, 17, 187, 225, 249 (E. Cohn, M. Domke, F. Eisemann eds. 1977).
alternative to the existing institutions.

The precise considerations which militate in favor of one or another arbitration center vary from case to case. Several general factors, however, are common to most arbitrations: a neutral site; a qualified and impartial decisionmaker; procedural rules which foster an expeditious, yet fair result; and reasonable and predictable costs. The Danish Arbitration Institute satisfies each of these prerequisites.

First, the Institute offers a neutral site, particularly for disputes involving East-West trade or relations between developed and developing countries. Danish law, like its Swedish counterpart, evolved from the major European legal systems, but none of them had a decisive influence. Danish legal traditions appear less formal than Swedish rules, both procedurally and substantively. The critical factor, however, is that Denmark, like Sweden, has laws and legal institutions free from the political taint of either East or West.6

Second, the Institute provides well qualified, impartial arbitrators as evidenced by the close cooperation between Copenhagen Arbitration and the judges of the ordinary courts. The International Rules do not require that the presiding judge be a professional jurist, however, in disputes of some importance, the president of the court will ordinarily be a judge of the Supreme Court or the High Courts.64 The use of professional judges ensures the proper conduct of the arbitration. Furthermore, should a practicing lawyer be appointed president of the court, he would probably have had significant arbitration experience.

In the building and civil engineering field, Copenhagen Arbitration has special expertise. As mentioned above, Copenhagen Arbitration evolved from the existing national court of arbitration for building and civil engineering works.65 The practice of submitting such disputes to arbitration before a professional judge and two technical experts, generally graduate engineers, is well established. Many Danish engineers have international contracts and have performed substantial tasks abroad. Thus, Copenhagen Arbitration offers tribunals combining legal expertise and technical knowledge with arbitration experience. In engineering disputes of fundamental importance, the arbitral tribunal will consist of a judge of the Supreme Court and two engineers,66 one of whom may have considerable practical experience, while the other may have a more theoretical

63 Sweden's non-aligned stance played a significant role in the choice of Sweden as the forum for trade disputes involving the Soviet Union and the United States. See 3 J. Wetter supra note 22, at 456-57.
64 See International Rules, supra note 3, at §6.
65 See supra notes 5-7 and accompanying text.
66 The International Rules provided that the panel of three arbitrators may be supplemented by two additional members. International Rules, §6.
orientation. Often a manager of a contracting firm and a senior partner of a consulting engineering firm will serve. This composition ensures that the requisite expertise is available in the form of highly qualified, impartial arbitrators.

Third, Copenhagen Arbitration is characterized by modern procedural provisions which guarantee a full and fair airing of the issues, both written and oral in an efficient and expeditious manner. The efficiency of the institution is an important consideration. Under the International Rules the preliminary proceedings, including the pleadings, must be completed within specified time limits. Regard for efficiency, however, must be balanced against the need for an exhaustive hearing of the case. The arbitration must command the confidence of the parties. If an unsuccessful party is left with the feeling that relevant facts were not sufficiently considered, the tribunal's credibility is weakened, and the party may seek to avoid the award. The Danish Arbitration Institute strikes an admirable balance between efficiency and the appearance of fairness.

Finally, the cost of arbitration at the Institute, though not yet established, will be reasonable and predictable. Charges for an arbitration probably will be based on tariffs similar to those adopted by the Danish lawyers or the SCC. Although the use of tariffs may inflate the price above the actual cost, a problem inherent in using such standards, the tariffs are generally accepted as reasonable. Moreover, the general inaccuracies attending tariffs are alleviated in the eyes of most parties by the predictability of tariff-based charges.

IV. CONCLUSION

Copenhagen Arbitration is an attempt to provide parties seeking arbitration of private international disputes with an attractive alternative to the existing arbitral fora. The modern procedural rules, highly qualified arbitrators, and reasonable tariffs bode well for success of the institute in international arbitration of all kinds. Furthermore, the neutral status of Danish law and legal institutions makes Denmark a desirable site for East-West trade disputes. The founders of Copenhagen Arbitration envision a healthy competition with the SCC for such disputes. Finally, and perhaps most importantly for the initial growth of the institute, Copenhagen Arbitration offers a forum for building and engineering disputes with which it has had long and distinguished experience. Given time, the international community should reap a bountiful harvest from

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67 See supra notes 26-51 and accompanying text.
68 International Rules, supra note 3, at §13. The time limits may be expanded in exceptional cases. Id. at §14.
69 See supra notes 56-58 and accompanying text.
the small yet fertile seed sown in Copenhagen in October, 1981. Copenhagen Arbitration will occupy a prominent place in the international arbitration arena.
Appendix A

Statute For The Danish Arbitration Institute (Copenhagen Arbitration)*

Name and Location

§ 1
1. The Institute’s name is “The Danish Arbitration Institute (Copenhagen Arbitration).”
2. The Institute is an independent institution located in Copenhagen.

Aims

§ 2
1. The Institute’s aim is to create, organize and administer an established international arbitration court under the name: “The International Arbitration Court in Copenhagen.”
2. The Institute, furthermore, has the aim to create, organize, and administer an established arbitration court for Danish civil disputes under the name “The General Arbitration Court in Denmark.”
3. The Institute shall elaborate and publish general rules for the management of arbitration matters by the arbitration courts mentioned in subsections one and two, together with set prices for the use of the institute’s arbitration facilities. The Institute shall oversee that its rules of procedure are adhered to and shall take the necessary initiative to revise them.
4. In particular, the Institute shall appoint arbitrators to the arbitration courts named in subsections one and two (above) in accordance with the rules set forth in sub section three.
5. The Institute may promote education and instruction in Danish, foreign, and international arbitration law.

Representative Body

§ 3
1. The Institute’s highest authority is the Representative Body.
2. The Representative Body shall be composed of a designated member and substitute from each of the founding organizations. The Representative Body, with a simple majority, can invite other organizations each to designate a representative and substitute.
3. The Administration may summon the Representatives on 14 days notice to a meeting of the Representative Body which shall be held annually.

* Unofficial English Translation.
in Copenhagen before the end of May with the following agenda:
1. The Administration's Report
2. Presentation of the Accounts
3. Election of the Chairman
4. Election of the Administration
5. Election of the Accountant
6. Contingencies

4. An extraordinary Representative Body meeting may be called by the Administration with 14 days notice, and shall be called when three Representatives propose an agenda.

§ 4
1. Each Representative has one vote at the Representative Body meetings.
2. All resolutions and elections shall be decided by a simple majority vote, except resolutions amending the Institute's statute or dissolving the Institute, (compare sections 16 and 17).
3. Every Representative has a right to have a specific subject addressed at the Representative Body meeting, if he conveys to the Administration a timely written proposal, before April 1 for the annual Representative Body meeting.

§ 5
1. The Representative Body meeting shall be led by a director elected from the Representative Body.
2. A record shall be kept of the proceedings of the Representative Body meeting and each Representative may request a transcript.

Administration

§ 6
1. The Institute shall be governed by an Administration consisting of a Chairman and six other Administration members.
2. The Chairman, who shall satisfy the professional conditions for a judge-preferably a Superior Court Judge-shall be elected by the Representative Body to a two year term before the remaining administration members are selected. Reelections can take place.
3. The founding organizations, the Danish Lawyers Union and the Danish Engineers Union, each shall appoint a member to the Administration of the Institute. The Danish Judges Union shall also appoint a member.
4. The remaining Administration members are elected by the Representative Body at its annual meeting from among the representatives or candidates outside that group. The election term is for one year at a time. Reelections can take place.
5. In the event of vacancies the Administration may supplement itself until the next Representative Body meeting. In the case of a vacancy amongst the Administration members mentioned in subsection three, the right to appoint a new member remains with the organizations mentioned in subsection three.

§ 7

1. The Administration shall hold meetings at the request of the Chairman or two other Administration members.
2. The Administration shall elect a Vice-Chairman.
3. The Administration determines its own agenda. All matters are determined by a simple majority vote; in the event of a tie vote, the Chairman's vote is decisive. The Administration is empowered to act only where there is a quorum of either the Chairman and at least three Administration members or when at least five Administration members are present.
4. During the Administration proceedings a record is prepared.

§ 8

1. All Institute actions must be signed by either the Chairman and three Administration members or by five Administration members.

§ 9

1. The position of Representative is not compensated.
2. The positions of Chairman and Administration member may be compensated with an honorarium, if the Representative Body so decides after nomination from the Administration.

The Institute's Revenue, Capital, Accounting, and Auditing

§ 10

1. The Institute's activities shall be financed by fees collected from arbitration proceedings in the Institute's arbitration courts.
2. The Institute may accept contributions and gifts from public authorities, the founding or other organizations, and inheritances in accordance with testamentary bequests. The Institute, with due regard for impartiality and independence, shall be prohibited from accepting contributions of any kind from business firms or, if living, from private individuals.
3. The Institute's expenses shall be defrayed totally by its income, with the single exception being the receipt of short-term loans.
4. The Institute's own funds are responsible for its obligations.

§ 11

1. The Institute's funds, apart from the necessary daily cash reserve,
shall be invested after the Administration's decision to deposit them in a commercial or savings bank.

2. Capital, which the Institute's Administration finds sufficient to set apart in the long run, may be invested in such securities as the Legislature deems appropriate for trust investments.

§ 12
1. A careful accounting of the Institute's activities shall be kept according to the Legislature's rules.
2. The annual accounts shall be submitted to the Representative Body at the annual Representative Body meeting.

§ 13
1. The annual accounts shall be audited by a licensed state accountant chosen at the Representative Body meeting.
2. The accountant is chosen for one year at a time, and may be reelected.

The Daily Administration

§ 14
1. The Administration may employ the necessary assistance for attending to the daily administration of the Institute’s activities of a Secretariat for the Institute's arbitration courts.
2. Alternatively, the Administration may agree with one of the organizations affiliated with the Representative Body about providing Secretariat assistance.

§ 15
1. The Administration conducts the management of the Secretariat and its leader (Director).
2. To carry out this management the Administration may appoint from its members a board of directors consisting of the Chairman and at least one of the members of the organizations named in section six, subsection three.
3. All fundamental administrative questions shall be submitted for disposition by the Secretariat's leader (Director).
4. The Secretariat's leader (Director) shall be a jurist with practical experience in solving legal disputes.

Statutory Amendment - Dissolution

§ 16
1. The amendment of this statute requires passage in the Representative Body meeting, where at least three quarters of the total Representatives
participate, and at least three quarters of those voting shall vote for the amendment.

2. If a proposed statutory amendment is passed by three quarters of those voting, but without at least three fourths of the total Representatives having participated in the meeting, the statutory amendment may be enacted by the stated majority at a new Representative Body meeting regardless of the number of members present. Such a new meeting shall be summoned with 14 days notice after the first mentioned Representative Body meeting.

§ 17

1. The passage of proposals concerning the Institute’s dissolution requires the same majority as a statutory amendment, (compare Section 16).

2. If a proposal concerning dissolution is passed, the Representative Body meeting concerned will choose a liquidator, who shall settle and close the Institute’s estate and determine the use of the Institute’s funds which can be distributed only to one or more public utilities or public charitable institutions recognized by the Legislature.

Resolution carried unanimously at the Founding Meeting of the Representative Body in Copenhagen, 1981
Appendix B

STATUT

for

Det Danske Voldgiftsinstitut

(Copenhagen Arbitration)

Navn og hjemsted

§ 1

Stk. 1: Instituttets navn er Det Danske Voldgiftsinstitut (Copenhagen Arbitration).

Stk. 2: Instituttet er en selvejende institution og har hjemsted i København.

Formål

§ 2

Stk. 1: Instituttet har til formål at oprette, organisere og administrere en fast international voldgiftsret under navnet: Den Internationale Voldgiftsret i København.

Stk. 2: Instituttet har videre til formål at oprette, organisere og administrere en fast voldgiftsret for danske civile tvistemål under navnet Den Almindelige Voldgiftsret i Danmark.

Stk. 3: Instituttet skal udarbejde og offentliggøre generelle regler for behandlingen af voldgiftssager ved de i stk. 1-2 nævnte voldgiftsretter samt fastsætte og offentliggøre vejledende tasker for benyttelsen af instituttets voldgiftsorganer. Institutte påser de fastlagte voldgiftsreglers overholdelse og tager om nødvendigt initiativ til revision af disse.

Stk. 4: Instituttet skal specielt forestå udpegning af voldgiftsmaend til de i stk. 1-2 nævnte voldgiftsretter i overensstemmelse med de efter stk. 3 givne regler.

Stk. 5: Instituttet kan støtte oplysning og undervisning i dansk, udenlandsk og international voldgiftsret.

Repræsentantskab

§ 3

Stk. 1: Instituttets øverste myndighed er repræsentantskabet.

Stk. 2: Til repræsentantskabet udpeger hver af de stiftende organisationer, hvis navne fremgår af vedhæftede stifterfortegnelse, ét medlem og én suppleant. Repræsentantskabet kan med simpel majoritet indbyde andre organisationer til at udpege hver én repræsentant og én suppleant.

Stk. 3: Repræsentanterne indkaldes af bestyrelsen med 14 dages varsel
til ordinaert repræsentantskabsmøde, som afholdes i København hvert år inden udgangen af maj måned med følgende dagsorden:
1. Bestyrelsens beretning
2. Forelæggelse af regnskab
3. Valg af formand
4. Valg af bestyrelse
5. Valg af revisor
6. Eventuelt

Stk. 4: Ekstraordinaert repræsentantskabsmøde kan kræves indkaldt med 14 dages varsel af bestyrelsen og skal indkaldes af denne, når det forlanges af tre repræsentanter med angivelse af dagsorden.

§ 4

Stk. 1: Hver repræsentant har én stemme på repræsentantskabsmøderne.
Stk. 2: Alle beslutninger træffes og alle valg afgøres ved simpel stemmepløven, bortset fra beslutning om ændring af instituttets statut eller om opførelse af instituttet, jfr. §§ 16 og 17.
Stk. 3: Enhver repræsentant har krav på at få et bestemt emne behandlet på repræsentantskabsmødet, hvis han overfor bestyrelsen fremsætter skriftlig krav herom i god tid, for det ordinaere repræsentantskabsmødes vedkommende inden 1. april.

§ 5

Stk. 1: Repræsentantskabsmødet ledes af en af repræsentantskabet valgt dirigent.
Stk. 2: Over forhandlingerne på repræsentantskabsmødet føres en protokol, af hvilken enhver repræsentant kan begære udskrift.

Bestyrelse

§ 6

Stk. 1: Instituttets ledelse varetages af en bestyrelse, som består af en formand og seks andre bestyrelsensmedlemmer.
Stk. 2: Formanden, som skal opfylde de faglige betingelser for udnaevnelse til dommer og fortrinsvis beklæde stillingen som højesteretssdommer, vælges af repræsentantskabet for to år ad gangen, saeskilt og forud for valget af de øvrige bestyrelsensmedlemmer. Genvalg kan finde sted.
Stk. 3: De til instituttet initiativtagende organisationer Det Danske Advokatsamfund og Dansk Ingeniørforening udpeger hver ét medlem af bestyrelsen, det samme gælder Den Danske Dommerforening.
Stk. 4: Ælvere bestyrelsensmedlemmer vælges af repræsentantskabet på repræsentantskabsmødet blandt repræsentanterne eller udenfor disse

Stk. 5: I tilfælde af vakance kan bestyrelsen supplere sig selv for tiden indtil næste repræsentantskabsmøde, idet dog suppleringsretten ved vakance blandt de i stk. 3 nævnte bestyrelsesmedlemmer tilkommer de der nævnte organisationer.

§ 7

Stk. 1: Bestyrelsen holder møde, så ofte formanden eller to øvrige bestyrelsesmedlemmer begærer bestyrelsesmøde indkaldt.

Stk. 2: Bestyrelsen vælger af sin midte en næstformand.

Stk. 3: Bestyrelsen fastsætter selv sin forretningsorden. Alle anliggende afghøres ved simple stemmelighed; i tilfælde af stemmelighed er formandens stemme udslaggive. Bestyrelsen er kun beslutningsdygtig, hvis enten formanden og mindst 3 bestyrelsesmedlemmer eller i alt mindst 5 bestyrelsesmedlemmer er tilstede.

Stk. 4: Over bestyrelsens forhandlinger føres en protokol.

§ 8

Instituttet tegnes i alle retsforhold af formanden i forbindelse med 3 bestyrelsesmedlemmer eller af 5 bestyrelsesmedlemmer i forening.

§ 9

Stk. 1: Hvervet som repræsentant er uønsket.

Stk. 2: Hvervet som formand og bestyrelsesmedlem kan vederlægges med et honorar, hvis størrelse fastsættes af repræsentantskabet efter indstilling fra bestyrelsen.

Instituttets indtaegter, formue, regnskab og revision

§ 10

Stk. 1: Institutets virksomhed forudsætter finansieret gennem de for voldgiftsbehandling ved instituttets voldgiftsretter fastsatte afgifter.

Stk. 2: Institutet skal kunne modtage bidrag og gaver fra offentlige myndigheder, de stiftende eller andre organisationer samt arv i henhold til testamentariske bestemmelser. Institutet skal derimod, af hensyn til dets uvildighed og uafhængighed, være afskåret fra at modtage bidrag af nogen art fra erhvervsvirksomheder eller - i levende live - fra privatpersoner.

Stk. 3: Institutets udgifter skal afholdes af dets indtaegter og kun helt undtagelsesvist ved optagelse af lån og i så fald kun for en kortere periode.
Stk. 4: For instituttets forpligtelser haefter alene instituttets egen formue.

§ 11

Stk. 1: Instituttets formue skal - bortset fra den nødvendige daglige kassebeholdning - anbringes efter bestyrelsens bestemmelse som indskud i bank eller sparekasse.

Stk. 2: Kapital, som instituttets bestyrelse finder det forsvarligt at hensette på længere sigt, kan bestyrelsen lade anbringe i sådanne værdipapirer, som efter lovgivningen kan tjene til anbringelse af legatmidler.

§ 12

Stk. 1: Over instituttets drift føres et omhyggeligt bogholderi efter lovgivningens regler.

Stk. 2: Årsregnskabet forelægges repræsentantskabet på det ordinaere repræsentantskabsmøde.

§ 13

Stk. 1: Årsregnskabet revideres af en af repræsentantskabsmødet valgt statsautoriseret revisor.

Stk. 2: Revisor vælges for ét år ad gangen, men kan genvælges.

Den daglige administration

§ 14

Stk. 1: Bestyrelsen kan antage den nødvendige sekretariatsbistand til varetagelse af den daglige administration af instituttets virksomhed som sekretariat for instituttets voldgiftsretter.

Stk. 2: Bestyrelsen kan alternativt træffe aftale med en af de til repræsentantskabet knyttede organisationer om dennes ydelse af sekretariatsbistand.

§ 15

Stk. 1: Bestyrelsen fører tilsyn med sekretariatet og dets leder (direktør).

Stk. 2: Til at udføre dette tilsyn kan bestyrelsen af sin midte nedsætte et forretningsudvalg bestående af formanden og mindst ét af de i § 6, stk. 3 nævnte bestyrelsesmedlemmer.

Stk. 3: Alle væsentlige spørgsmål skal sekretariatslederen (direktør) forelægge for bestyrelsen.

Stk. 4: Sekretariatslederen (direktør) skal være en jurist med praktisk
erfaring for løsning af retstvister.

**Statutaendringer - opbøsning**

§ 16

Stk. 1: Til ændringer i denne statut kræves vedtagelse på et repræsentantskabsmøde, hvor deltager mindst tre fjerdedele af samtlige repræsentanter, hvorhos mindst tre fjerdedele af de afgivne stemmer skal stemme for ændringen.

Stk. 2: Såfremt et forslag om statutaendring er vedtaget af tre fjerdedele af de afgivne stemmer, men uden at mindst tre fjerdedele af samtlige repræsentanter har deltaget i afstemningen, kan statutaendringerne vedtages ved den angivne majoritet uanset antallet af fremmødte repræsentanter på et nyt repræsentantskabsmøde, som inden 14 dage efter det førstnævnte repræsentantskabsmøde skal indkaldes til afholdelse med 14 dages varsel.

§ 17

Stk. 1: Til vedtagelse af forslag om instituttets opbøsning kræves sammen majoritet som til statutaendring, jfr. § 16.

Stk. 2: Vedtages et forslag om opbøsning, vælger det pågældende repræsentantskabsmøde en likvidator, som skal opgøre og afslutte instituttets bo samt træffe bestemmelse om anvendelse af instituttets formue, som dog alene kan udledes til en eller flere af de i lovgivningen som sådanne anerkendte almennyttige eller almentvælgsrende institutioner.

Appendix C

Rules For Treatment of Actions Before The Copenhagen International Arbitration Court*

§ 1

The Arbitration Court settles disputes which the parties have agreed shall be brought before this arbitration court.

§ 2

The Arbitration Court’s home location is Copenhagen. The Arbitration Court is administered by the Danish Arbitration Institute (Copenhagen Arbitration), and is thus managed by the Secretariat of the Arbitration Court.

§ 3

Requests for settlement of arbitration matters are presented by either one or both of the parties to the Danish Arbitration Institute in Copenhagen. The Arbitration Court’s Secretariat notifies the non-complaining parties immediately.

§ 4

All correspondence between the Arbitration Court and the parties passes through the Secretariat. All communications and proclamations from the Institute or Arbitration Court shall be considered binding on the party upon receipt, when they are sent forth by registered mail to a party’s address or last known address.

§ 5

The claim shall be presented in writing. It must contain a clear statement of what the dispute involves and include the agreement entered into by the parties and other information, such that the Arbitration Institute will be in a position to select the judges who are best suited to decide the matter as well as decide if they ought to propose settlement by a single arbitrator in accordance with §7.

One party’s acceptance of the arbitration clause, which includes a reference to the “Danish Arbitration Institute” (Copenhagen Arbitration), “The Copenhagen International Arbitration Court” or “The General Arbitration Court in Denmark”, will be considered to be an agreement to arbitrate in accordance with the Arbitration Courts established procedural rules every time.

* Unofficial English Translation.
When the arbitration is agreed to, (compare §1), the Arbitration Court shall carry out the matter, regardless of whether one party refuses to participate in the proceedings or fails to appear.

The Arbitration Court determines its own competence and also all questions about the fundamental validity of the arbitration clause.

Where the contract contains an arbitration clause, the Arbitration Court shall be considered to preserve its competence, even if one of the parties or the Arbitration Court considered the contract to be invalid. In the latter case the Arbitration Court shall be competent to determine the legal effects thereof on the parties.

If a party—or before the arbitration process is started or during the arbitration process—requests the ordinary law courts or other judicial authorities to prohibit, stop performance, or carry out other temporary legal measures, he is not deemed thereby to have waived his right to have the matter handled by arbitration. The Institute shall be notified about such measures.

§ 6

The Arbitration Court is appointed by the Danish Arbitration Institute in Copenhagen and normally consists—unless otherwise agreed upon by the parties—of three members, whose chairman is a jurist. The members shall enjoy general prominence within their field and have a command of the procedural language, (compare §26).

If the parties agree to it, or the Institute finds a party's request reasonable, the court may be supplemented with two additional members.

§ 7

The Arbitration Court consists solely of one member, where the parties are agreed to this. The parties by right can request the Institute to appoint a sole arbitrator.

When the dispute does not involve fundamental questions and only minor sums are involved, and the remaining determinations are appropriate, the Institute can suggest to the parties that the matter shall be decided by a single arbitrator.

§ 8

If the parties' decision to arbitrate embodies an agreement that each party and the Institute designate a member, and the member designated by the Institute is the chairman.

Within 30 days after the written complaint is filed, the parties must come forward with the names and addresses of those they selected as members of the Arbitration Court.

If one of the parties fails to designate a member, that member will be
designated by the Institute.

§ 9

As soon as the members of the Arbitration Court are chosen and have declared themselves willing to assume the task, the parties are notified by registered letter that the selection has taken place. At the same time, each party is sent a copy of the current rules.

§ 10

Each of the parties can raise objections to an arbitrator's competence. Such objections must be raised before the Institute within 14 days after the party has notice of the appointment in question or, however, within 14 days after the party has notice of the circumstances on which the allegation of incompetence is based. The Administration takes the position that the Institute ought to comply with an objection to competence. In that case, as in the case where a member must withdraw on other grounds, a new member is appointed. The Arbitration Court decides to what extent the negotiations will proceed.

§ 11

The parties have a duty to post security for all estimated arbitration expenses, including a fee to the Danish Arbitration Institute to settle the administrative expenses of handling the matter.

As soon as the scope of the matter is determined, the Institute decides the amount and nature of the security to be posted. Generally, the same security is required of both parties. The security must be furnished immediately. If the scope of the matter later proves to be larger than originally assumed, the Institute can demand that the amount of security be increased.

§ 12

If a written complaint was not presented with the request for arbitration, the plaintiff shall submit his written complaint no later than four weeks after receipt of notice of appointment of the arbitral tribunal.

The written complaint shall contain the plaintiff's allegations, a statement of the facts on which the allegations rest, and a list of the documents which the plaintiff intends to plead. The documents shall be enclosed. Generally, five copies of the written complaint and the affixed documents shall be submitted, one of which will be forwarded to the other litigant.

In the event the Arbitration Court consists of a sole arbitrator, the number of copies is reduced to three, and matters before five arbitrators
increase it to seven.

§ 13

When the written complaint and documents submitted to the Institute are forwarded to the other litigant, a time limit is given within which he shall appear with a corresponding number of copies of the written reply and documents which he will plead.

Counterclaims shall be specified in the written reply or in a possible rejoinder with a statement of those circumstances upon which the counterclaim is based. The party against whom the counterclaim is raised shall have an adequate time in which to answer the reply in writing or an additional independent pleading. When the counterclaim is set forth in writing, the party raising it can request that the counterclaim be handled by the Arbitration Court, even though the other party should have raised the matter.

§ 14

The parties can exchange additional replies and rejoinders, before the matter is set for an oral hearing. These written pleadings shall be submitted to the Arbitration Court within a fixed time.

The plaintiff's allegations in the written complaint and his reply denying those allegations cannot be revised after the written pleadings are concluded without the opposing party's consent, unless, in an exceptional case, the Arbitration Court permits it when it finds that overwhelming considerations demand that the plaintiff be permitted to revise the allegation and that it is excusable that the plaintiff did not amend before the conclusion of written pleadings. This same rule applies to the defendant's ability to amend his allegations or to set up a counterclaim after the conclusion of the written pleadings.

Statements or objections, which are not set forth before the closing of the written pleadings, can be pleaded with the opposing party's consent or the Arbitration Court's permission, which can be given under the same conditions as cited in the second paragraph.

The written pleadings are understood to be concluded upon:

a) defendant's delivery of the written answer, provided that the plaintiff waives his right to reply, or the time for delivery of the written answer expires;

b) defendant's delivery of a rejoinder or the time allowed for it expires, provided that the plaintiff has delivered his reply;

c) the Arbitration Court's finding that the written pleadings are concluded, where the Arbitration Court, in the exceptional case, may have permitted the parties to deliver more than two pleadings for each party.

Where a party, later than four weeks before the oral arbitration pro-
ceeding, receives information about the testimony of a witness or copy of a document, which the other party wishes to introduce as evidence, the Arbitration Court decides whether the oral hearing nevertheless should proceed as originally scheduled, or if the hearing should be postponed with the party requesting the evidence paying the resulting expenses, or if during the hearing on the matter the recently discovered evidence should be excluded.

§ 15

If a party is unable to comply with the time fixed in sections 12 - 14, he must send, in good time before the period expires, a justification for the request of an extension to a fixed, later time.

The Institute—or if there is an arbitration tribunal established, then it—shall decide, possibly after having asked for an opinion from the opposing party, whether the request in whole or in part can be granted.

§ 16

All original documents, exhibits, and the like will be returned upon request of the parties when the matter is finally concluded and the expenses of the arbitration proceeding are paid (compare §27). Everything else presented in the matter, particularly all the statements of the matter and declarations concerning the matter, become the property of the Danish Arbitration Institute. The Institute can request authenticated copies of all the documents which the parties can demand be returned.

§ 17

If the parties or any one of them consider it desirable that the Arbitration Court, possibly the expert members, perform an investigation of the subject of the dispute even while the dispute is in preparation, they must state the reasons for the request in writing.

Regarding the request as well founded after asking for the opinion of the opposing party, the Arbitration Court will perform the investigation. After the demand, the Arbitration Court will be willing to consider if, and to what extent, the expert members, without prejudice to the dispute's resolution, will be able to render opinions to the parties concerning the facts which they may discover during the investigation.

§ 18

Should a party, because of the dispute's peculiar nature, consider necessary an investigation and opinion by someone other than the Arbitration Court's expert members, the Arbitration Court, after the opposing party has had the opportunity to express his views on the subject, can
grant permission to withdraw the investigation and opinion.

§ 19

When the parties have had the opportunity to express themselves and to produce the necessary information, the Arbitration Court shall schedule an oral hearing.

If it is found appropriate, the Arbitration Court can, however, after asking for the parties' opinions, decide that the matter shall be conducted in writing.

§ 20

The Arbitration Court can, when it shall consider it necessary to the clarification of the dispute, require that the parties appear in person at the oral hearing, if this will not cause disproportionate difficulties or expenses, and that the parties make every reasonable effort that persons who have had something to do with the present dispute, disclose evidence to the Arbitration Court.

§ 21

The oral hearing usually takes place at the Arbitration Court's headquarters. The parties may agree to another location so long as that location is practical.

§ 22

During the proceedings of the Arbitration Court a record, authorized by the Institute, is prepared.

Included in the record is information introduced concerning everything openly discussed at the negotiation meeting with a statement of time and place of the meeting, those individuals participating in the meeting, and the claims submitted by the parties and also all stated findings or entered agreements. The Arbitration Court decides to what extent a report of the oral proceedings shall be included in the record.

The parties can demand a transcript of the proceedings in the record.

§ 23

When the Arbitration Court finds that the dispute is sufficiently clarified, or that the parties have been given sufficient time to tend to their interests, the dispute is ready to be decided.

§ 24

If any party involved fails to appear or in any other manner shall show himself unwilling to cooperate with the resolution of the dispute, he may find himself in the position that the matter is decided on that basis
or the existing statements of the dispute and the other information.

§ 25

The decision is announced as soon as possible, and at the latest three months after the final presentation of the matter for decision. The judgment shall contain a decision of the disputed points and also the judgment shall reach a decision about how to defray the expenses incurred by the arbitration. The Arbitration Court can impose on one party the costs of the dispute for the other party.

§ 26

In case of disagreement between the Arbitration Court's members the matter shall be decided by a majority of the votes.

Danish law, including Danish international private and civil law, shall be used, unless the parties have otherwise agreed.

Provided that there is no other agreement or that the Court does not decide otherwise, the procedural language shall be English.

§ 27

At the arbitration dispute's conclusion, the Arbitration Court submits to the Institute a bill for the expenses incurred in the arbitration.

The amount of the honorarium for the Arbitration Court's members shall be approved by the Institute, which thereafter renders a statement of the total arbitration expenses, including those expenses named in section 11, subsection 1, and settles the account with the parties.

The parties are jointly liable for payment of the total costs without regard to how the expenses are apportioned by the decision or whether the amount may exceed the security deposited. If one of the parties should pay for the other because of this, he has recourse against that party.

§ 28

The judgments are final and binding on the parties.

§ 29

The Institute shall keep the judgment in the Institute's archives for at least 20 years.

Accepted by the Danish Arbitration Institute (Copenhagen Arbitration) Copenhagen, October 28, 1981
Appendix D

Regler for behandling of sager ved
Den Internationale Voldgiftsret i København

§ 1

Voldgiftsretten afgør tvister, hvor parterne har aftalt, at sagen indbringes for denne voldgiftsret.

§ 2

Voldgiftsretten hjemsted er København.

Voldgiftsretten administreres af Det Danske Voldgiftsinstitut (Copenhagen Arbitration), de således forestår voldgiftsrettens sekretariat.

§ 3

Begaering om nedsættelse af voldgiftsret indgives af sagens parter eller en af disse til Det Danske Voldgiftsinstitut i København. Om begaeringens indgivelse underretter voldgiftsrettens sekretariat straks de indklagede parter.

§ 4

Al korrespondance mellem voldgiftsretten og parterne foregår gennem sekretariatet.

Alle meddelelser og forkyndelser fra instituttet eller voldgiftsretten skal anses for gyldigt modtaget af en part, når de er fremsendt med anbefalet post til en parts adresse eller sidst kendt adresse.

§ 5

Begaeringen, der skal indgives skriftligt, må indeholde en tydelig angivelse af, hvad tvisten drejer sig om, og må være bilagt den mellem parterne indgåede aftale og andre oplysninger, der sætter voldgiftsinstituttet i stand til at vælge de dommere, der må anses for bedst egnede til at bedømmme sagen, og tillige at tage stilling til, om der bør foreslås afgørelse ved en enkelt voldgiftsmand i overensstemmelse med § 7.

En af parterne vedtaget voldgiftsklausul, der indeholder henvisning til Det Danske Voldgiftsinstitut (Copenhagen Arbitration), Den Internationale Voldgiftsret i København eller Den Almindelige Voldgiftsret i Danmark, betragtes som en vedtagelse af voldgift i henhold til de til enhver tid af instituttet for dets voldgiftsretter fastsatte procesregler.

Hvor voldgift er vedtaget, jfr. § 1, skal voldgiftsretten gennemføre sagen, unanset om den ene part nægter at deltage i sagens behandling eller undebliver.

Voldgiftsretten afgør selv sin kompetance og således også ethvert spørgsmål om den grundlæggende voldgiftsklausuls gyldighed.
Voldgiftsretten skal anses at bevare sin kompetance, uanset om den kontrakt, hvori voldgiftsklausulen findes, af en part hævdes at være eller af voldgiftsretten anses for at være ugyldig, i hvilket sidste tilfælde voldgiftsretten skal være kompetent til at fastlægge retsvirkningerne heraf for parterne.

Såfremt en part - enten før voldgiftssagens anlaeg eller under voldgiftssagens gang - måtte anmode de ordinaere domstole eller andre judicielle myndigheder om at nedlægge forbud, foretage arrest eller gennemføre andre forekøbige retsskridt, anses han ikke derved at have frafaldet sin ret til at fåsagen behandlet ved voldgift. Instituttet skal underrettes om sådanne skridt.

§ 6


Dersom parterne enes derom, eller instituttet efter en parts begaering måtte finde det rimeligt, kan retten suppleres med to yderligere medlemmer.

§ 7

Voldgiftsretten består alene af ét medlem, hvis parterne er enige herom. Parterne kan i begaeringen rette henstilling til instituttet om uppegning af en enevoldgiftsmand.

Når tvisten ikke angår principielle spørgsmål og kun drejer sig om mindre bekøb, og det i øvrigt skønnes hensigtsmaessigt, kan instituttet foreslå parterne, at sagen skal afgøres af en enevoldgiftsmand.

§ 8

Indeholder parternes aftale en bestemmelse om, at hver part udpeger ét medlem og instituttet ét medlem, er det af instituttet udpegede medlem formand.

Parterne må, inden 30 dage efter klageskrift er indgivet, fremkomme med navn og adresse på de af dem valgte medlemmer af voldgiftsretten.

Undlader en af parterne at udpege et medlem, udpeges dette medlem af institutte.

§ 9

Så snart medlemmerne af voldgiftsretten er valgt og har erklæreret sig villige til at overtage hvervet, underrettes parterne ved anbefalet brev om de stedfundne valg. Samtidig tilsendes der hver af parterne et eksemplar
af nærværende regler.

§ 10

Hver af parterne kan rejse indsigelse mod et voldgiftsretsmedlemms habilitet. Sådan indsigelse må rejses overfor instituttet inden 14 dage efter, at parten er kommet til kundskab om den pågældendes udpegning eller dog inden 14 dage efter, at parten er kommet til kundskab om de omstændigheder, hvorpå påstanden om inhabilitet grundes. Instituttets bestyrelse tager stilling til, om en habilitsindsigelse bør imødekommes. I bekraftende fald, samt hvor et medlem måtte fratraede af andre grunde, udpeges et nyt medlem. Voldgiftsretten afgør i hvilket omfang procesforhandlinger skal gå om.

§ 11

Parterne har pligt til at stille sikkerhed for alle udgifter, som voldgiften skønnes at ville foranledige, herunder en afgift til Det Danske Voldgiftsinstitut til dækning af udgifterne ved behandlingen af sagen.

Så snart sagens omfang er fastlagt, træffer instituttet bestemmelse om, hvor stor denne sikkerhed bør være og om sikkerhedens art. Der vil sædvanligvis blive forlangt samme sikkerhedsstillelse af begge parter. Sikkerheden må stilles straks. Viser sagens omfang sig senere at være større end oprindelig antaget, kan instituttet forlange, at sikkerhedens størrelse forhøjes.

§ 12

Såfremt begaeringen om nedsaettelse af voldgiftsretten ikke har form af et klageskrift, skal dette indleveres til instituttet senest 4 uger efter, at meddelelse om voldgiftsrettens nedsaetelse er tilgået klageren.

Klageskriftet skal indeholde klagørens påstand, en fremstilling af de kendsgerninger, hvorpå påstanden støttes, og en angivelse af de dokumenter, klageren agter at påberåbe sig. Dokumenterne skal være bilagt. Klageskriftet og de dette vedlagte bilag skal indsendes i normalt 5 eksemplarer, hvoraf et vil blive videresendt til indklagede.

I tilfælde, hvor voldgiftsretten består af en enkelt dommer, nedsaettes antallet af eksemplarer til 3, og ved 5-mands sager forhøjes det til 7.

§ 13

Når klageskrift med bilag af instituttet fremsendes til indklagede, gives der denne en frist, inden hvilken han skal fremkomme med sit svarsskrift og de bilag, han vil påberåbe sig, i et tilsvarende antal eksemplarer.

Modkrav skal specificeres i svarsskriftet eller i en eventuel duplik med angivelse af de omstændigheder, hvorpå modkravet støttes. Den part, overfor hvem modkrav fremsættes, skal have en passende frist til at svare skriftligt herpå i replikken eller et selvstændigt yderligere processkrift.
Når modkrav er skriftligt fremsat, kan den part, der har fremsat det, kræve modkravet behandlet af voldgiftsretten, selv om den anden part skulle haève sagen.

§ 14

Parterne kan yderligere udveksle replik og duplik, inden sagen berammenes til mundtlig for handling. Disse skriftlige indlæg skal afgives inden en af voldgiftsretten i det enkelte tilfælde fastsat fastsat frist.

De af klageren i klageskiftet og i replikken nedlagte påstande kan efter skriftvekslingens slutning ikke udivides uden modpartens samtykke, medmindre voldgiftsretten undtagelsesvis måtte tillade dette, hvor den finder, at overvejende hensyn til klageren taler for at tillade udvidelse af påstanden, og det tillige finds undskydeligt, at klageren ikke har gjort dette inden skriftvekslingens slutning. Tilsvarende gælder om indklagedes adgang til at udvide sin påstand eller til at fremsætte modkrav efter skriftvekslingens slutning.

Ambringender eller indsigelser, som ikke er fremsat inden skriftvekslingens slutning, kan kun gøres gældende med modpartens samtykke eller voldgiftsrettens tilladelse, som kan gives, under samme betingelser som anført i stk. 2.

Ved skriftvekslingens slutning forstås:

a) indklagedes afgivelse af svarskrift, såfremt klageren frafalder replik, eller udløb af fristen for afgivelse af svarskrift,

b) indklagedes afgivelse af duplik eller udløbet af den herfor fastsatte first, såfremt klageren har afgivet replik,

c) voldgiftsrettens konstatering af, at skriftvekslingen er afsluttet, hvor voldgiftsretten undtagelsesvis måtte have tilladt parterne at afgive mere end to procesindlæg for hver part.

Hvor en part senere and 4 uger forud for den mundtlige voldgiftsforhandling har modtaget meddelelse om afbrøring af et vidne eller kopi af et dokument, der ønskes påberåbt som bevis, afgør voldgiftsretten, om der-mundtlige forhandling desuagtet skal gennemføres til det oprindeligt fastsat tidspunkt, eller om forhandlingen skal udsættes mod den bevisbøgærende parts betaling af de herved forvoldte udgifter, eller om der under sagens behandling skal bortes fra det før anmeldte bevismiddel.

§ 15

Såfremt en part ikke er istand til at overholde en i henhold til §§ 12-14 fastsat frist, må han i god tid inden fristens udløb fremsende en motiveret anmodning om fristforlængelse til et bestemt senere tidspunkt.

Instituttet - eller såfremt der er nedsat en voldgiftsret, da denne tager, eventuelt efter at have indhentet en udtalelse fra modparten, stil-
ling til, om anmodningen helt eller delvis kan imødekommes.

§ 16

Alle originaldokumenter, tegninger og lignende har parterne krav på at få tilbageleveret, når sagen er endelig afsluttet, og udgifterne ved voldgiftssagen er betalt, jfr. § 27. Alt andet i sagen fremlagt, saerlig alle sagsfremstillinger og erklæringer sagen vedrørende, bliver Det Danske Voldgiftsinstituts ejendom. Af alle aktstykker, som kan fordres tilbageleveret, kan instituttet forland bekræftede genparter.

§ 17

Såfremt parterne eller en af disse måtte anse det for ønskeligt, at voldgiftsretten, eventuelt alene dens sagkyndige medlemmer, foretager besigtigelse af sagsgenstanden allerede under sagens forberedelse, må der fremsættes skriftlig begrundet anmodning herom.

Anses anmodningen efter indhentet udtalelse fra modparten for velbegrundet, vil voldgiftsretten foretage sådan besigtigelse. Efter begaering vil voldgiftsretten være villig til at overveje, om og i hvilket omfang de sagkyndige medlemmer uden præjudice for sagens bedømmelse vil kunne afgive udtalelser til parterne om de kendsgerninger, de måtte konstatere under besigtigelsen.

§ 8

Skullen en part efter sagens særlige beskaffenhed anse syn og skøn ved andre end voldgiftsrettens sagkyndige medlemmer for nødvendigt, kan voldgiftsretten, efter at mod parten haft lejlighed til at udtale sig herom, meddele tillahelse hertil og udmelde syn og skøn.

§ 19

Når parterne har haft lejlighed til at udtale sig af til at tilvejebringe de nødvendige oplysninger, berammer voldgiftsretten en mundtlig forhandling.

Såfremt dette findes hensigtsmaessigt, kan voldgiftsretten dog efter at have indhentet parternes udtalelse herom bestemme, at sagen skal forhandles skriftligt.

§ 20

Voldgiftsretten kan, når dette må anses fornødent til sagens oplysning, fordre, at parterne giver personligt møde, hvis dette ikke vil medføre uforholdsmæssige vanskeligheder eller udgifter, og at parterne gør deres til, at personer, som har haft med den foreliggende sag at gøre,
afgiver vidneforklaring for voldgiftsretten.

§ 21

Den mundtlige forhandling finder saedvanligvis sted på voldgiftsrettens sæde, men kan finde sted på et andet, med parterne aftalt sted. hvor dette måtte være praktisk.

§ 22

Under forhandlingerne for voldgiftsretten føres en af instituttet autoriseret protokol.

I protokollen indføres oplysning om de i hver enkelt sag afholdte forhandlingsmøder med angivelse af tid og sted for mødet, de i mødet deltagende personer og de af parterne nedlagte påstande samt de i hver enkelt sag afsagte kendelser eller indgåede forlig. Voldgiftsretten bestemmer, i hvilket omfang der i protokollen skal optages referat af de mundtlige forhandlinger.

Parterne kan fordre udskrift af, hvad der er tilført protokollen.

§ 23

Når voldgiftsretten finder, at sagen er tilstrækkeligt oplyst, eller at der i alt fald er givet parterne tilstrækkelig tid til at varetage deres tarv, bliver sagen at optage til påkendelse.

§ 24

Såfremt nogen af parterne ved at udeblive eller på anden måde skulle vise sig uvillig til at medvirke til sagens oplysning, må han finde sig i, at sagen afgøres på grundlag af den eller de foreliggende sagsfremstillinger og sagens øvrige oplysninger.

§ 25

Kendelsen afsiges snarest, så vidt muligt senest 3 måneder efter den endelige optagelse af sagen til påkendelse. Kendelsen skal indeholde en afgørelse af de omtvistede punkter, ligesom der også i kendelsen skal træffes bestemmelse om, hvorledes der bliver at horholde med udredelsen af de ved voldgiften foranledigede udgifter. Voldgiftsretten kan pålægge en part at betale sagsomkostninger til den anden part.

§ 26

I tilfælde af uoverensstemmelse mellem voldgiftsrettens medlemmer afgøres sagen efter flertallet af stemmer.

Dansk ret, herunder dansk international privat-og processret, skal finde anvendelse, med mindre parterne har aftalt andet.

Såfremt ikke andet er aftalt, eller retten bestemmer andet, er
processprøget engelsk.

§ 27

Efter voldgiftssagens afslutning indsender voldgiftsretten til instituttet regning på de ved voldgiften foranledigede udgifter.

Størrelsen af honorarer til voldgiftsrettens medlemmer skal godkendes af instituttet, som derefter foretager en opgørelse af den samlede udgift ved voldgiftssagen, herunder den i § 11, stk. 1, nævnte afgift, og afregner med parterne.

For betalingen af den samlede udgift hæfter parterne solidarisk uden hensyn til, hvorledes udgifterne er fordelt ved kendelsen, eller om bekøbet måtte overstige den stillede sikkerhed. Den af parterne, der herved mulig kommer til at betale for den anden, har de regres til denne.

§ 28

Kendelsen er endelig og bindende for parterne.

§ 29

Instituttet opbevarer kendelser i instituttets arkiv i mindst 20 år.

Vedtaget af Det Danske Voldgiftsinstitut (Copenhagen Arbitration)
København, den 28.10.1981