



## **Rules on arbitration 2018**

### **Part 1 General provisions**

1(1) The following provisions apply if the parties have agreed to AB 18, ABR 18, ABT 18, AB Abridged and ABR Abridged (collectively referred to as AB in these provisions), or if the parties have otherwise agreed on dispute resolution by arbitration arranged by the Danish Building and Construction Arbitration Board in accordance with these provisions.

(2) Arbitration arranged by the Arbitration Board is subject to the Danish Arbitration Act.

(3) A stipulation on arbitration in consumer contracts is not binding on the consumer if the contract was made before the dispute arose.

### **Part 2 Commencement of arbitral proceedings**

2(1) An arbitral case is initiated by the submission of a statement of claim to the Arbitration Board.

(2) An arbitral case may not be commenced until four weeks after the parties have concluded an agreed negotiation procedure about the dispute.

(3) An arbitral case may not be commenced if mediation, conciliation, speedy resolution or a decision about security provided in a case concerning the same dispute is pending.

(4) The Arbitration Board makes sure that the conditions set out in subclauses (1) to (3) are met and will, if necessary, render a decision in that respect.

### **Part 3 Communication**

3(1) A statement of claim will be considered to have been filed at the time when it received by the Arbitration Board. This also applies to other submissions.

(2) All correspondence, submissions and other material pertaining to the case must be sent to the Arbitration Board in digital form, and digital copies must be sent to the other parties.

(3) In special circumstances the Arbitration Board may request or permit the submission of hardcopies of written material.

(4) The claimant's documents must be numbered in consecutive order (1, 2, etc), and the respondent's documents must be marked with letters in ascending order (A, B, etc). If there is more than one respondent, the documents submitted by the first respondent must be designated Indkl.1-A, Indkl.1-B, etc. If a third party is joined in the proceedings, the documents submitted by the party having issued the third-party notice must be called Adc.-1, Adc.-2, etc, and the third party's documents must be designated Adc.-A, Adc.-B, etc. It must be stated which case documents the party intends to rely on.

(5) The Arbitration Board may lay down specific guidelines for digital communication, the management of documents and the layout of case bundles.

### **Part 4 Composition of the arbitral tribunal**

4(1) The arbitral tribunal comprises two technical arbitrators and one legal arbitrator who presides over the tribunal, unless the parties agree on another distribution of technical and legal arbitrators.

(2) At the request of a party, two additional arbitrators may be appointed. They must be legal arbitrators unless the parties agree on another distribution of technical and legal arbitrators.

(3) The arbitral tribunal may have only one arbitrator if the parties agree on it and on whether that arbitrator should be a technical arbitrator or a legal arbitrator.

(4) If it is considered desirable that the arbitral tribunal has only one technical arbitrator or if a technical arbitrator has already been appointed, the Arbitration Board may – if justified by the nature of the case – determine that the arbitral tribunal be composed of a legal arbitrator instead or be extended to an arbitral tribunal composed of three arbitrators as set out in subclause (1).

(5) If the arbitral tribunal is composed of a single technical arbitrator, that arbitrator may consult the Arbitration Board or a member of the Arbitration Board's college of legal arbitrators about legal matters.

5(1) Technical arbitrators are appointed by the Arbitration Board, whereas legal arbitrators are appointed by the chair of the Arbitration Board Presidium.

**6(1)** Arbitrators are appointed after consultation of the parties to the case within a period of two weeks, unless another deadline is determined by the Arbitration Board.

(2) Objections to the qualifications and/or competence of an arbitrator must be filed within the deadline stated in subclause (1). If a party does not become aware of circumstances that give rise to objection until later on, the objection must be filed immediately after those circumstances became known.

(3) In connection with his or her appointment and during the proceedings, an arbitrator must immediately disclose information about circumstances that may give rise to reasonable doubt about his or her impartiality or independence.

(4) If objections are filed against an arbitrator before his or her appointment, it is up to the party making the appointment to decide whether the objections are to be accommodated.

(5) If objections to an arbitrator are filed after his or her appointment, the arbitral tribunal will decide whether the objections are to be accommodated, unless the arbitrator withdraws or the opposing party concurs that the arbitrator's assignment is to be discontinued.

(6) If an objection to an appointed arbitrator is not accommodated, the party who made the objection may ask a court of law to decide whether the objection should be accommodated. Such a request must be submitted to a court of law within thirty calendar days after the opposing party was informed of the decision. While the request is being considered by the court, the arbitrator against whom the objection was filed may continue the hearing of the case and make decisions.

## **Part 5**

### **Case proceedings**

**7(1)** The parties must be treated equally, and both parties must be given full opportunity to present their case. The arbitral tribunal must ensure that arbitration is completed within a reasonable period of time and in an efficient and cost-effective manner.

**8(1)** The arbitral tribunal will process cases in accordance with these provisions. If a certain aspect is not regulated by these provisions, it will be decided at the arbitral tribunal's discretion in a manner that the tribunal finds expedient in the light of agreements between the parties and any wishes expressed by the parties.

(2) The arbitral tribunal may decide, for example, which evidence may be presented and which factual circumstances should be taken into account in the tribunal's ruling.

**9(1)** The statement of claim must include the following:

- a) Data about the parties to the case, including their names, business registration numbers, addresses, email addresses and telephone numbers.
- b) Information about the contractual basis.
- c) The claimant's claim, statement of case and a reason for the claim.
- d) All necessary documents on which the claimant bases the claim.
- e) Information about completion of agreed negotiation procedure.
- f) Information as to whether it is desirable that the case be considered in accordance with the rules on simplified arbitration.
- g) Any wishes regarding the number of arbitrators and their profiles, including the qualifications of technical arbitrators.

(2) The respondent must state any wishes concerning the number of arbitrators and their profiles at the time of the submission of the statement of defence at the latest.

**10(1)** The respondent must submit the respondent's statement of defence within four weeks, unless another deadline is determined by the Arbitration Board.

(2) The statement of defence must contain the following information:

- a) The respondent's claim, possibly supplementary particulars of defence and reasons for the points of defence.
- b) Necessary documents on which the respondent bases the defence.

**11(1)** The parties may submit a reply or a rejoinder within four weeks unless the Arbitration Board lays down another deadline.

(2) In exceptional circumstances the parties may submit additional pleadings. The arbitral tribunal will determine the pertinent deadlines.

**12(1)** As soon as possible after the initial exchange of pleadings, further proceedings will be organised, including:

- a) a plan for additional exchange of pleadings
- b) a plan for expert appraisal, if any
- c) the date for the conclusion of preparations
- d) the time and date of the oral hearing, which will usually be determined after the submission of the claimant's reply, and
- e) the organisation of the oral hearing, including a plan for the submission of pleadings, case summaries and the case bundle.

(2) In cases where there is no need for specific organisation as set out in subclause (1), including plans for the exchange of pleadings, the proceedings will be conducted in accordance with these provisions.

**13(1)** The arbitral tribunal may decide that one or more preparatory meetings are to be held in the arbitral case with the purpose of discussing the parties' position on factual, legal or procedural matters, including determination of the matters set out in clause 12.

(2) Preparatory meetings will be in the form of telephone conferences, video conferences or the like, unless otherwise decided by the arbitral tribunal.

3) The arbitral tribunal will keep records of preparatory meetings and negotiations before the arbitral tribunal, stating the time and place of such meetings and negotiations and giving an account of what was discussed and decided. Information about initial steps in the proceedings may be included, for example information about extension of time limits, the reasons for such extension and settlement negotiations. A transcript of the record will be sent to the parties after each meeting.

**14(1)** The parties may change their claims, present new allegations and submissions and refer to new evidence.

(2) New evidence presented less than two weeks before the oral hearing will not be taken into consideration unless special circumstances apply.

**15(1)** Time limits already fixed will generally not be extended.

(2) Notwithstanding subclause (1) the arbitral tribunal – or the Arbitration Board if no arbitral tribunal has been appointed – may extend a time limit if a party is unable to meet the deadline for unforeseeable reasons. A time limit can only be extended more than once in special circumstances. A request for extension of a time limit must be submitted no later than one week before the expiry of the time limit and must be accompanied by a statement setting out the reasons for the request and containing a motivated proposal for a specific extension.

(3) If a party fails to submit a pleading within the time limit granted, the arbitral tribunal may determine that the pleading will not be admitted and that the preparations will continue without the pleading in question or will be concluded, so that the decision will be made on the basis of the evidence at hand. The same applies to other preparatory legal processes, including the submission of case exhibits, requests for expert appraisal and the submission of supplementary questions to the expert appraiser.

**16(1)** If expert appraisal has been requested during an arbitral case, the 2018 Expert Appraisal Rules of the Arbitration Board apply.

(2) The arbitral tribunal will exercise the competences that are vested in the Arbitration Board under the 2018 Expert Appraisal Rules of the Arbitration Board.

(3) If a party requests it, or if the arbitral tribunal finds it expedient, the expert appraiser must participate in the oral hearing after the submission of the expert appraiser's report to answer questions relating to the report.

**17(1)** A party may present evidence in the form of a declaration from a special expert about specific matters of a technical, financial or similar nature that the party has obtained before proceedings were commenced, unless the content of the declaration, the circumstances relating to its preparation or other matters justify its dismissal after an objection has been made. If a party has submitted such a declaration, the opposing party is entitled to submit a similar declaration, even if such declaration has been obtained after proceedings were commenced.

**18(1)** Following a joint request by the parties, the arbitral tribunal may accept that, as a supplement to or instead of expert appraisal, the parties submit declarations that each of them has obtained from special experts about matters of a technical, financial or similar nature.

(2) In connection with the examination of experts who have submitted declarations of the kind mentioned in subclause (1), the experts are generally allowed to be present during the examination of other special experts and expert appraisers, if any, and the arbitral tribunal may allow the experts to consult with each other before they give their answers.

**19(1)** In special circumstances the arbitral tribunal may allow the submission of declarations in addition to those mentioned in clauses 17 and 18, but must then allow the opposing party to do the same on the same conditions.

**20(1)** The arbitral tribunal may on its own initiative or if requested to do so inspect the building or structure that is the subject-matter of the dispute.

**21(1)** Procedural matters can be decided by the presiding arbitrator alone.

**22(1)** The arbitral tribunal may at any point in time during the proceedings mediate a settlement.

**(2)** The arbitral tribunal may ask the Arbitration Board to appoint a mediator or conciliator with a view to settling the dispute in accordance with the Arbitration Board's 2018 Mediation and Conciliation Rules. In such a scenario the arbitral case will be put on halt until the mediation or conciliation is concluded.

**23(1)** The oral hearing will be conducted wherever it is geographically and financially practical and where decided by the arbitral tribunal, but in the case of arbitral cases in eastern Denmark usually at the premises of the Arbitration Board.

**(2)** The oral hearing is conducted in a manner that the arbitral tribunal finds expedient.

**(3)** After consulting the parties, the arbitral tribunal may decide that the matter should be dealt with in writing.

**(4)** Not later than two weeks before the oral hearing the parties must submit pleadings or case summaries as well as a time schedule agreed between the parties.

**(5)** Not later than two weeks before the oral hearing each party must inform the arbitral tribunal and the other party of the names of people who will appear as representatives of the party and the names of people who the party wishes to examine as a representative of a party or as a witness. The parties should make sure that people who are to make statements will show up at the oral hearing.

**(6)** Not later than four weeks before the oral hearing the claimant must forward a case bundle that has been coordinated with the other parties. The case bundle must be composed in accordance with the Arbitration Board's guidelines; see clause 3(5).

**(7)** A number of copies of the case bundle equivalent to the number of arbitrators must be sent to the Arbitration Board, together with a copy for the Arbitration Board itself.

**(8)** The arbitral tribunal will keep a record of the oral hearing; see clause 13(3).

**(9)** The arbitral tribunal may resume the oral hearing after the matter has been set down for ruling if some information that is desired in connection with the determination of the case is missing. The arbitral tribunal must inform the parties of this and allow them to provide the missing information and comment on the supplementary material.

**24 (1)** If a party fails to show up for the oral hearing without reasonable cause, or if a party fails to provide information or otherwise assist in the furtherance of the case, the arbitral tribunal may make a decision on the basis of the evidence available.

**(2)** If the respondent fails to show up or is declared bankrupt without the bankruptcy estate exercising its right to act as a party to the case, the arbitral tribunal may in certain circumstances and after consulting the parties decide that the case be decided by the presiding arbitrator alone.

## **Part 6**

### **Conclusion of case**

**25(1)** Generally, the arbitral tribunal must set down the matter for ruling after conclusion of the oral hearing.

**(2)** The arbitral tribunal must make an award as soon as possible and must insofar as possible do so no later than four weeks after the matter was set down for ruling.

**(3)** The arbitral award must contain information about written material produced in the case, including pleadings and case exhibits, as well as information about any inspections made. In addition, the award must set out the claims of the parties, the outcome and the grounds for the award, unless the parties have agreed that no grounds are needed.

**(4)** The arbitral award must be in writing, dated and signed by the members of the arbitral tribunal. It must state where the oral hearing took place. The arbitral award will be considered to have been made at that place.

**(5)** In the event of disagreement between the arbitrators, the matter will be decided on the basis of a majority vote.

**(6)** Each arbitrator may demand that the award should include information about the various opinions presented in connection with the voting.

(7) The award will be sent to the Arbitration Board, which will forward it to the parties to the case.

**26(1)** The arbitral case will be concluded

- a) when an arbitral award is made,
- b) if the matter is settled between the parties, including on the basis of an oral or written interim award made by the arbitral tribunal,
- c) if the arbitral tribunal makes a decision as set out in subclause (2), or
- d) in the event of non-payment of the deposit mentioned in clause 28.

(2) The arbitral tribunal will make a decision concerning the conclusion of the case if

- a) the claimant waives his claim, unless other parties object to the case being concluded and the arbitral tribunal finds they have a legitimate interest in a decision regarding the dispute,
- b) the parties agree to conclude the arbitration case, or
- c) the arbitral tribunal finds that continuation of the case is unnecessary or impossible for other reasons.

(3) The jurisdiction of the arbitral tribunal ceases when the case is concluded; though see clause 27.

**27(1)** Within a period of four weeks after receipt of the award a party may ask the Arbitration Board to make the arbitral tribunal correct calculation errors, typing errors or similar in the award. The other parties must be consulted about such corrections. If the arbitral tribunal finds the request justified, the corrections must be made within four weeks after receipt of the request.

(2) Within a period of four weeks after having issued the award, the arbitral tribunal may on its own accord correct errors of the type mentioned in subclause (1).

(3) Within a period of four weeks after receipt of the award a party may ask the Arbitration Board for a supplementary award by the arbitral tribunal regarding claims presented during the proceedings but not mentioned in the award. Other parties must be consulted about this. If the arbitral tribunal finds the request justified, the supplementary award must be made within eight weeks after receipt of the request.

(4) If necessary, the arbitral tribunal may extend the time limits set out in subclause (1), last sentence, and subclause (3), last sentence.

(5) The provisions of clause 27 (1) to (4) apply similarly to a correction or a supplementary award.

## **Part 7**

### **Security and legal costs**

**28(1)** The parties must pay a deposit to cover all costs relating to the processing of the case; see clause 30(2).

(2) The Arbitration Board decides the deposit amount and may increase that amount later on. The deposit must be paid at the Arbitration Board's request.

(3) If the claimant fails to pay a deposit as requested, the case will be dismissed.

(4) If the respondent fails to pay a deposit as requested, the claimant must pay the full deposit. The Arbitration Board may conclude the case if the deposit is not paid.

**29(1)** The arbitral tribunal decides how the costs of the case are to be distributed between the parties.

(2) The arbitral tribunal may demand that a party compensate the other party fully or partly for the costs that the other party has incurred in connection with the arbitral case (legal costs).

(3) If the arbitral tribunal has been supplemented by two additional arbitrators (see clause 4(2)), the resulting additional costs will be taken into account in the distribution of the costs of the proceedings and when determining legal costs. The arbitral tribunal may decide that the additional costs are to be paid by the party that requested the additional arbitrators if the arbitral tribunal is of the opinion that the request was not sufficiently motivated.

(4) When distributing the costs of the proceedings and when determining legal costs, the arbitral tribunal may take into account that a party has complicated the case, has delayed the processing of the case, has failed to contribute to the furtherance of the case or has failed to meet fixed deadlines.

**30(1)** On conclusion of the arbitral case, the arbitral tribunal will send a statement of expenses, etc that have been incurred in relation to the arbitral case. The fee of the arbitral tribunal must be approved by the Arbitration Board.

(2) The Arbitration Board will then prepare a statement of the costs of processing the case, including the fees of the arbitral tribunal, charges and duties payable to the Arbitration Board and any other expenses incurred.

(3) The Arbitration Board will pay the costs mentioned in subclause (2) out of the deposits paid and will then settle with the parties.

(4) The parties are jointly and severally liable for the costs irrespective of how the costs are distributed in the award and of whether the amount exceeds the deposits paid. If the joint and several liability means that a party has to pay more than that party has been ordered to pay, the party in question has recourse against the party who should have paid.

**31(1)** In the event of a settlement, the arbitral tribunal may at the joint request of the parties make a decision on the distribution of the costs of the case proceedings and may determine legal costs.

**32(1)** A party may bring the determination of costs payable to the arbitral tribunal before a court of law as a separate case within thirty calendar days after the party was notified of the costs. If the costs of arbitration are reduced, the reduction will also apply to a party who has not brought the matter before a court of law.

## **Part 8**

### **Simplified arbitration**

**33(1)** Simplified arbitration means that the matter subjected to arbitration will be considered in accordance with these provisions with the exceptions set out in this Part 8.

(2) An arbitral case will be processed in accordance with the rules on simplified arbitration if

- a) the parties agree on it, or
- b) one of the parties requests it and the claim presented in the case does not exceed DKK 1 million.

(3) If justified by the nature of the case, the arbitral tribunal may subsequently decide that the matter is to be considered in an ordinary arbitral case.

**34(1)** It must be endeavoured to conclude simplified arbitration proceedings not later than six months after receipt of the statement of claim.

**35(1)** Notwithstanding the provisions of clause 4(1), the arbitral tribunal in simplified arbitration cases will have one technical arbitrator, unless the parties agree that the tribunal should have one legal arbitrator; though see subclause (2).

(2) The arbitral tribunal will have two or three arbitrators if the parties agree on it. An arbitral tribunal with three arbitrators must be composed as stated in clause 4(1), whereas an arbitral tribunal with two arbitrators must be composed of a legal arbitrator, who presides over the tribunal, and a technical arbitrator.

3) In the event of disagreement in an arbitral tribunal composed of two arbitrators, the presiding arbitrator has the casting vote.

**36(1)** In simplified arbitration proceedings the reply and the rejoinder, if any, must be submitted within two weeks, irrespective of clause 11(1), unless the arbitral tribunal lays down another deadline.

(2) Notwithstanding the provision of clause 11(2), first sentence, the parties are not allowed to submit additional pleadings unless accepted by the arbitral tribunal.

**37(1)** In simplified arbitration proceedings a request for expert appraisal must be filed not later than two weeks after submission of the statement of defence. The arbitral tribunal decides whether the request can be granted.

(2) In special circumstances the arbitral tribunal may decide to grant a request for expert appraisal even if the request was made more than two weeks after submission of the statement of defence.

(3) Expert appraisal is conducted in accordance with the Arbitration Board's 2018 Expert Appraisal Rules and as specifically decided by the arbitral tribunal with regard to time limits.

(4) If a party wishes to ask supplementary questions after the filing of an expert appraiser's report, the arbitral tribunal will decide whether such supplementary questions are to be answered in writing by the expert appraiser in the form of a supplementary report or orally during the oral hearing.

**38(1)** The provision in clause 18 concerning declarations by experts does not apply to simplified arbitration.

**39(1)** After consultation, the arbitral tribunal decides whether a matter is to be processed orally or in writing, including a decision concerning the procedure for any oral hearing to be conducted.

**40(1)** In simplified arbitration proceedings the arbitration award must be made as soon as possible and insofar as possible not later than two weeks after the matter has been set down for ruling.

## **Part 9**

### **Miscellaneous provisions**

**41(1)** If an arbitration case involves more than two parties, the provisions of clauses 1 to 40 also apply to the relationship between the parties.

**42(1)** Neither the arbitrators nor the Arbitration Board

and its employees can be held liable for an act or omission in relation to the proceedings or the outcome of them.

**43(1)** Case proceedings are confidential.

(2) The Arbitration Board may publish awards, partial awards and other decisions in anonymised form, unless one of the parties objects to it.

## **Part 10**

### **Adoption and entry into force**

**44** (1) These rules were adopted by the board of directors of the Arbitration Board on 17 December 2018 in accordance with the statutes of the Arbitration Board (2017).

**45** (1) These rules come into force on 1 January 2019 and will, as from that date, apply to arbitral cases brought before the Arbitration Board under the rules.