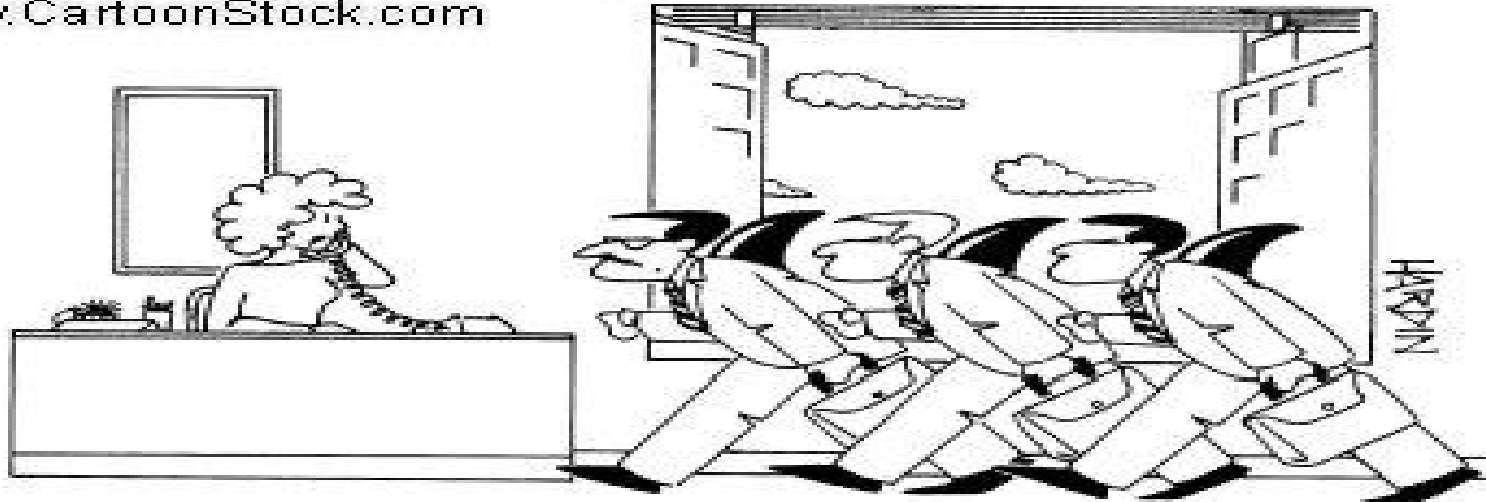


# **M&A voldgift – processuelle problemstillinger**

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## The lawyers have arrived ... but which lawyers?

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"Mr. Covington—the lawyers have arrived."

## Overblik

- **Voldgiftsklausul**
  - Forhandlingsmæssig rolle
  - Personelle forhold (target, SPV, koncernforbundne)
  - Omfang ("any disputes, controversies or disagreements")
- **Voldgiftsret**
  - Ekspertise og habilitet
  - "Baggrundsret"
- **Bevisførelse**
  - Dokumenter og arkiv
  - Vidner og loyalitet
  - Partsudpegede eksperter

## SPA om Closing Financial Statements

“... either the Purchaser or the Seller may request the Institute of State-Authorised Public Accountants (“Foreningen af Statsautoriserede Revisorer”) to appoint a **certified public accountant** and partner of a well-reputed international auditing firm not servicing - or having done so within the last five years - any of the Parties or the Company, and this certified public accountant shall then **with binding effect, absent manifest error, finally and conclusively determine the matter**. The certified public accountant in question shall be obliged to render his/her resolution within **30 days** of the appointment. The appointed certified public accountant shall also decide on **the payment of costs** incurred in connection with the resolution.”

## SPA om Arbitration

“**Any** disputes, controversies or disagreements arising out of or in connection with this Agreement including **any** question regarding the understanding of or the extent or scope of this Agreement, which cannot be settled amicably between the Parties, cannot be brought before a Court of Justice, but **shall be referred to and resolved finally and binding by a Arbitration Tribunal** under the rules of Copenhagen Arbitration.”

## Expert determination og voldgift – dansk vinkel

- Expert determination kategoriseret
  - Voldgift
  - Tilnærmet voldgift
  - Rent kontraktlig institution
- Fair trial og væsentlige retsgrundsætninger
  - UfR 1997.889 H + voldgiftslovens § 18
- Efterprøvelse, jf. UfR 1980.737 H
  - ”... grundlag for at kritisere de principper, hvorefter vurderingen er foretaget”?
  - ”... grundlag for at forkaste dens resultat som åbenbart urimeligt”?