

Case C-214/89

Powell Duffryn plc

v

Wolfgang Petercit

(Reference for a preliminary ruling
from the Oberlandesgericht Koblenz)

(Brussels Convention — Agreement conferring jurisdiction — Clause in the
statutes of a company limited by shares)

Report for the Hearing	I - 1746
Opinion of Mr Advocate General Tesauro delivered on 20 November 1991	I - 1756
Judgment of the Court, 10 March 1992	I - 1769

Summary of the Judgment

- 1. Convention on Jurisdiction and the Enforcement of Judgments — Prorogation of jurisdiction — Agreement conferring jurisdiction — Concept — Independent interpretation — Clause conferring jurisdiction contained in the statutes of a company limited by shares — Included — Validity as against shareholders — Conditions
(Convention of 27 September 1968, Art. 17, as amended by the 1978 Accession Convention)*
- 2. Convention on Jurisdiction and the Enforcement of Judgments — Prorogation of jurisdiction — Agreement conferring jurisdiction — Scope — Disputes arising from a given legal relationship — Dispute between a company and its shareholders as such
(Convention of 27 September 1968, Art. 17, as amended by the 1978 Accession Convention)*

1. The concept of 'agreement conferring jurisdiction' in Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be regarded as an independent concept.

A clause contained in the statutes of a company limited by shares and adopted in accordance with the provisions of the applicable national law and those statutes themselves conferring jurisdiction on a court of a Contracting State to settle disputes between that company and its shareholders constitutes an agreement conferring jurisdiction.

The formal requirements laid down in Article 17 of the Convention must be

considered to be complied with in regard to any shareholder, irrespective of how the shares were acquired, if the clause conferring jurisdiction is contained in the statutes of the company and those statutes are lodged in a place to which the shareholder may have access or are contained in a public register.

2. The requirement that a dispute arise in connection with a particular legal relationship, for the solution of which Article 17 of the Convention permits the assignment of jurisdiction by agreement, is satisfied if the clause conferring jurisdiction contained in the statutes of a company may be interpreted by the national court, which has exclusive competence in that regard, as referring to the disputes between the company and its shareholders as such.

REPORT FOR THE HEARING in Case C-214/89*

I — Facts and procedure

Powell Duffryn plc (hereinafter referred to as 'Powell Duffryn') is an undertaking governed by English law which subscribed for registered shares in the capital of IBH Holding AG (hereinafter referred to as 'IBH'), an undertaking governed by German law, when it increased its capital in September/October 1979. On 28 July 1980, it took part in the proceedings of a general

meeting of IBH, during which, by a show of hands, the shareholders resolved to amend the statutes of the company by inserting the following provision (now contained in Article 4 of the amended Statutes):

'By subscribing for or purchasing shares or interim certificates the shareholders submits, with regard to all disputes with the company

* Language of the case: German.