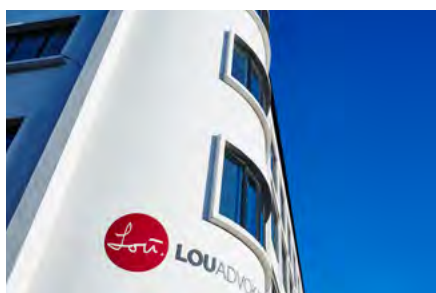


INVESTING AND DOING BUSINESS IN DENMARK

LEGAL OVERVIEW



Lou.

LOUADVOKATFIRMA

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INTRODUCTION

This guide was written to familiarize foreign investors with the Danish legal framework, and to describe some of the benefits of setting up businesses and making investments in Denmark.

LOU Advokatfirma can provide assistance on all the legal matters mentioned in this handbook, and our experienced team includes specialists in all of the relevant areas.



I DENMARK - YOUR NORTHERN EUROPEAN HUB

A base in Denmark will give your company easy access to the entire EU market.

Denmark is especially known for well-established clean tech, life science, alternative energy, and maritime sectors.

The Danish business landscape is entering a period of change, with many of the 40–60 thousand family-owned SME's on the lookout for new owners or investors. That gives foreign investors a unique opportunity to enter the Danish market through either acquisitions or generational transfers.

I WHY DENMARK?

If you are looking to expand your business activities abroad, why should you consider Denmark?

The answers are many. Denmark boasts one of the world's most open yet stable economies. It is a highly transparent society in which corruption and nepotism are virtually unknown. The Danish government actively encourages foreigners to invest in the country. And while production costs may seem high at first glance, other factors make the overall conditions for production, trade, and other business activities quite attractive.

"Best Country for Business in 2014"
Forbes Magazine

Denmark also has a strong tradition for high-quality products and a highly skilled workforce. The labor pool is well educated, highly productive, and very flexible. Unlike most other European countries, Denmark has a "flexicurity" system that allows employers to adjust the size of their blue-collar workforce at short notice with minimal cost.

The vast majority of the population have an excellent verbal and written command of English, which is the primary second language in the country. Most large-scale Danish companies use English as their corporate language. Most Danes also speak a third language, typically German, Spanish, or French.

Finally, the financial markets in Denmark are stable, well developed, and completely integrated into the world markets.

I THE DANISH LEGAL SYSTEM

Denmark has a system of civil law that is similar to those found in the rest of continental Europe.

The court system

The Danish courts perform a variety of administrative functions in connection with their judicial powers. These functions include the handling of probate matters, bankruptcies, the enforcement of claims and judgments, and land registration.

The court system comprises the Supreme Court, two high courts, the Maritime and Commercial Court, the Land Registration Court, and 24 district courts.

The Supreme Court

The Supreme Court is the final court of appeal in Denmark and is situated in Copenhagen. It reviews judgments and orders made by the High Court of Eastern Denmark, the High Court of Western Denmark, and the Maritime and Commercial Court.

The Supreme Court reviews both civil and criminal cases and is the final court of appeal (third-tier) in probate, bankruptcy, enforcement, and land registration cases. In criminal cases, the Supreme Court does not review the question of guilt or innocence. There are no lay judges on the court. Only in exceptional cases is there a right of appeal to the Supreme Court.

The high courts

There are two high courts in Denmark – the High Court of Western Denmark and the High Court of Eastern Denmark. Appeals from a district court are made to one of the high courts. Civil and criminal cases are tried by the district courts, but under certain conditions a civil case may also be referred to a high court.

The district courts

Besides civil and criminal cases, district courts also hear enforcement, probate, and bankruptcy cases.

The Maritime and Commercial Court

The Maritime and Commercial Court hears cases involving the Trademark Act, the Designs Act, the Marketing Practices Act, and the Competition Act, as well as cases that concern international trade conditions and other commercial matters.

In addition, the court's bankruptcy division hears cases from the greater Copenhagen area that have to do with bankruptcy, suspension of payments, compulsory debt settlement, and debt rescheduling.

Alternative dispute resolution

In commercial matters, the parties to a dispute often agree to submit to arbitration.

The Danish Institute of Arbitration operates with its own set of procedural rules, which are comparable to the arbitration rules used in other countries.



Denmark is especially known for well-established clean tech, life science, alternative energy, and maritime sectors



I THE DANISH COMPANIES ACT

Denmark has two different types of limited liability company – the public LLC (abbreviated A/S) and the private LLC (ApS).

Incorporating a corporate entity

All Danish corporate entities must be registered with the Danish Business Authority.

Corporate entities can be registered via the Business Authority's online registration system, Webreg. Through Webreg, it is possible to incorporate a new company in just a few hours. The online registration service is only available to law firms and other providers of incorporation services.

However, online registration cannot be done through Webreg when the company founder is not a Danish legal entity. As a consequence, many corporate providers will found and register companies that they then let international clients acquire.

New companies may also be incorporated and registered by mail. This process usually takes two to four weeks.

Branch offices

Foreign limited liability companies may also register a branch office. If a foreign entity wishes to register a branch office, it must file copies of its articles of incorporation and appoint a branch manager. When any changes are made to the articles of incorporation, the company must notify the Danish Business Authority.

The Companies Act

The Danish Companies Act regulates both public and private LLCs. The act was modernized in 2009.

Capital requirements

Public LLCs must maintain a minimum capital stock of DKK 500,000. Stock may also be issued in euros or, upon obtaining permission from the Business Authority, other currencies.

A private LLC (ApS) must maintain a minimum capital of DKK 50,000.

Shares

In Danish LLCs, all shares carry equal rights. The articles of incorporation may nonetheless provide for different share classes. In that case, the articles of incorporation must specify the differences between the different share classes and the size of each share class.

All shares carry voting rights. However, the articles of incorporation may provide that certain shares carry no voting rights, and that the voting power of certain shares differs from that of others.

Shareholder register

Corporations are required to maintain a non-public shareholder register. The articles of incorporation must specify the place where the register is to be kept if not the company's registered office.

Shareholders must notify the company if the voting rights attached to their shares represent at least 5 % of the voting rights of the capital stock, or if their shares represent at least 5 % of the capital stock. They must also inform the company whenever their voting rights or holdings change such that they reach or fall below the 5 %, 10 %, 15 %, 20 %, 25 %, 33½ %, 50 %, 66⅔ %, 90 % or 100 % thresholds.

General meeting

Corporations must hold at least one annual general meeting in order to approve the annual report.

Extraordinary general meetings may be held as needed or required, for example in connection with the dismissal of a CEO or a change in the company's capital stock.

Denmark earns top rankings in the international transparency index

The Danish Corporate Code allows both ordinary and extraordinary general meetings to be held electronically, completely or in part. Note that a company's articles of incorporation may restrict this possibility.

All shareholders have the right to attend general meetings – ordinary as well as extraordinary – and to vote in accordance with the voting rights attached to their shares. Note that a company is not allowed to exercise any of the voting rights attached to its own share holdings.

Shareholders are also entitled to attend general meetings by proxy.

Articles of incorporation

The Danish Corporate Code specifies minimum requirements for the contents of the articles of incorporation. Danish legislation provides for considerable freedom of contract. As a result, shareholders are allowed to organize their corporations as they best see fit.

When incorporating a business, the articles of incorporation must be filed with the Business Authority.

Shareholders are free to include any provisions in the articles of incorporation, so long as the provisions are in compliance with the Corporate Code.

Due to the Business Authority's public disclosure of articles of incorporation, most companies employ standard articles of incorporation when in-corporating a company and leave the detailed provisions to be governed by a shareholders' agreement (see the next section). For the vast majority of companies, a standard set of articles will suffice.

The Danish Companies Act provides companies with a quick and easy way to change their company name and adopt new articles of incorporation via Webreg.

“The Danish labor market is characterized by the Flexicurity Model. A golden triangle with three elements; a flexible labor market, social security, and active labor market policy, creating a dynamic and competitive labor market”

Shareholders' agreements

Shareholders in Danish corporations are free to enter into shareholders' agreements. Shareholders' agreements are merely an agreement among the shareholders and have no binding effect on the company's actions. Unlike with articles of incorporation, the Business Authority does not make shareholders' agreements publically accessible.

The content of shareholders' agreements does directly affect decisions made at general meetings, but since they regulate the internal relationship among shareholders, such agreements can have an indirect impact.

Most shareholders' agreements contain restrictive provisions on the transfer of shares, voting rights, and non-competition. These provisions regulate the shareholders' internal rights in case of unsolicited offers for capital stock.

Increasing or decreasing the capital stock

The capital stock of LLCs may be increased or decreased at an ordinary or extraordinary general meeting if a qualified majority, representing 2/3 of the total votes and at least 2/3 of the capital stock, is represented at the meeting. Note that the articles of incorporation may establish stricter requirements for such changes in the capital stock.

If there are a limited number of shareholders, it is fairly simple to call an extraordinary general meeting with the assistance of a legal advisor.

Note that for a public limited liability company (A/S), the capital stock may not be decreased below a minimum value of DKK 500,000.

Management of limited liability companies

The Companies Act offers shareholders two possible management structures.

In the first, a board of directors is responsible for overall management and strategy. The board of directors must appoint an executive board to be in charge of the day-to-day operations; the members of the executive board are designated as the company's executive officers. The executive board may include people who are also members of the board of directors. In a public LLC (A/S), the majority of the members of the board of directors

must not also be executive officers. In addition, the chair and vicechair of the board of directors must not be executive officers.

In the second management structure, the limited liability company is managed by an executive board. In a public LLC (A/S), the executive board is appointed by a supervisory board. No member of the executive board may be a member of the supervisory board. The management structure with a supervisory board was first introduced in 2009 with the modernization of the Corporate Code. However, it still remains to be seen if the structure will ever become a real alternative to the first option; at this time it has hardly been used at all.

In a public LLC, the board of directors or the supervisory board must have at least three members.

Employee representation

Employees of a company branch located in another EU/EEA country are considered company employees. LLCs that have averaged 35 or more employees during the preceding three years are obliged to have the employees elect at least half the members of the company's highest management body. Employees are entitled to elect at least two representatives and alternates.



I MERGERS AND ACQUISITIONS

I MERGERS

The Danish merger control regime is largely based on the principles of EU merger control regulation. Merger regulation in the Danish Competition Act is interpreted in accordance with EU laws and practice from the European Commission and the EU courts.

Merger by absorption

A limited liability company may be dissolved without liquidating it by transferring its entire assets and liabilities to another LLC in return for payment of consideration to the shareholders of the non-surviving company.

Merger by formation

In a merger by formation, two or more LLCs merge into a new LLC. The transfers are not subject to creditor consent.

For each company in such a merger, an application to register the resolution to implement the merger must be submitted to the Danish Business Authority within two weeks of the resolution being passed by all the LLCs involved. The new LLC may also apply to register the merger on behalf of the participating companies.

I ACQUISITIONS

In general, Danish acquisitions are regulated by the Sale of Goods Act and the Companies Act. However, the Sale of Goods Act is merely the default rules of law, and as such it represents what is generally recognized as the ordinary rules of contract law. Other regulations, such as those governing intellectual property, antitrust, labor law, and taxation, may also affect the transaction.

The corporate tax rate will be reduced to 22 % by 2016

Regardless of whether shares or assets are acquired, the parties to the transaction are free to agree upon both its structure and the covenants of the agreement. Other than some extremely large acquisitions in which merger control rules and antitrust rules are applicable, there are no specific rules or regulations that govern these two areas.

However, labor laws must be taken into consideration when assets are acquired. In addition, it is important in any type of acquisition to bear tax laws in mind.

I TAXES AND VAT

Taxes on corporate income and gains

Corporate income tax

For tax purposes, a company incorporated in Denmark is considered a resident company. The Danish tax authority also regards a company incorporated abroad as a resident company if it is managed and controlled from within Denmark.

All resident companies that are part of the same group must be included in a mandatory joint taxation arrangement, regardless of whether the individual companies are subject to full or limited tax liability in Denmark. This arrangement must cover any Danish-affiliated companies, as well as any permanent establishments or real estate located in Denmark.

The income of resident companies that is generated by foreign permanent establishments and real estate located abroad are not included in the statement of taxable income in Denmark, unless Denmark is granted the right to tax such income under an applicable tax treaty or other international agreement, or unless the income is subject to CFC (controlled foreign corporation) taxation.

Branches of foreign companies located in Denmark are taxed only on trading income and on chargeable capital gains derived from the disposal of trading assets located in Denmark and related to a Danish permanent establishment.

Corporate tax rate

For the 2014 income year, corporations are taxed at a flat rate of 24½% on all corporate income, including capital gains.

Capital gains

Capital gains derived from a sale of shares in a group company (group shares), shares in a subsidiary (subsidiary shares), and own shares (shares issued by the company) are exempt from tax, regardless of the ownership period. At the same time, losses incurred on such shares are not tax deductible.

Dividends paid

In general, dividends paid to a foreign entity are subject to a 27% withholding tax. However, the withholding tax is reduced or eliminated on dividends paid to companies if the Danish shares qualify as subsidiary shares and the withholding tax must be reduced or eliminated under the EU Parent-Subsidiary Directive or a double tax treaty. For a company that owns Danish shares which are group shares rather than subsidiary shares, reduction or elimination is also applicable if the withholding tax would have been reduced or eliminated under the EU Parent-Subsidiary Directive or a double tax treaty if the shares had been subsidiary shares. In both cases, the recipient of the dividends must be beneficial owner of the dividends.

Sales tax

The current sales tax rate in Denmark is 25%.

Most business transactions are subject to sales tax. One major exemption is real estate transactions.



From Denmark, you have easy access to several European markets

I BANKRUPTCY AND RESTRUCTURING

Danish bankruptcy law covers two types of proceedings: bankruptcy and restructuring. Both are governed by the Danish Bankruptcy Act.

I BANKRUPTCY

Bankruptcy is the creditors' final resort for collecting outstanding debts. According to the Bankruptcy Act, all of a debtor's assets must be realized and the proceeds distributed to the creditors in accordance with a priority ranking of claims.

Filing for bankruptcy

Either a debtor or its creditors may commence bankruptcy proceedings. It is up to the bankruptcy court to determine whether or not a debtor is insolvent or not.

Insolvency test (Section 17 of the Bankruptcy Act)

A debtor is regarded as insolvent if the debtor is unable to meet their obligations as they fall due for payment, unless the inability to pay is considered to be of a temporary nature. The final decision is based on an assessment of the debtor's liquidity (a cash flow test).

Foreign companies setting up business in Denmark benefit from an easy plug and play registration

Bankruptcy trustee

The bankruptcy court will appoint a lawyer as trustee to act on behalf of the bankruptcy estate as soon as proceedings have commenced against the company.

Typically, the trustee will be appointed at the request of one or more creditors. If so, the trustee will be elected by one or more of the unsecured creditors that are likely to receive some dividend.

Secured creditors and creditors who are not likely to receive any dividend are allowed to suggest a trustee, but they are not eligible to vote on the trustee. Once bankruptcy proceedings have commenced, the trustee appointed takes charge of the company and assumes the duties of its board of directors and executive board.

Creditor information

When a company has been declared bankrupt, the bankruptcy court will publish a bankruptcy decree in the Danish Law Gazette ["Statstidende"].

Immediately after the declaration, the bankruptcy trustee is obliged to distribute a circular letter to all known creditors.

Filing of creditors' claims

Creditors should file their claims with the trustee of the estate. In the circular letter, the trustee will encourage them to do so within four weeks from the bankruptcy declaration. Creditors are nevertheless permitted to file claims throughout the entire bankruptcy period.

When filing for a claim, a creditor must include substantial documentation for the claim. Legal assistance is often required for such filings.

Priority ranking of creditors

Sections 93–98 of the Bankruptcy Act divide the unsecured claims into various categories.

Claims under section 93

The following claims must be paid in equal shares prior to all other debts:

- (i) costs incidental to the commencement of the bankruptcy proceedings
- (ii) costs incidental to the administration of the estate
- (iii) debts incurred by the estate in the course of its administration, except for income tax claims payable by the debtor.

Claims under section 94

The following claims must then be paid in equal shares:

- (i) reasonable costs incidental to attempting to procure a total solution with respect to the debtor's financial affairs by means of re-structuring, winding up, composition, or another way;
- (ii) other debt incurred after the reference date by the debtor with the consent of a restructuring administrator appointed by the bankruptcy court;
- (iii) reasonable costs incidental to commenced solvent liquidation of a public or private LLC; and
- (iv) court fees.

Claims under section 95

Section 95 of the Danish Bankruptcy Act deals with employee's claims. The vast majority of employee claims for the payment of wages – except for claims by CEOs et al. – are compensated by the Danish Employee Guarantee Fund ("Lønmodtagernes Dyrtidsfond"). Upon payment of a fee, the fund will assume the employees right to file a claim with the estate.

After the claim in section 94, the following claims must be paid in equal shares:

- (i) claims for wages and other remuneration for work performed in the debtor's service that have fallen due in the period from 6 months prior to the reference date until the date of the bankruptcy order – including claims for contributions to non-interest-bearing savings schemes;

- (ii) claims for damages for interrupted employment, excluding damages for wages and other remuneration that would have fallen due more than 6 months prior to the reference date;
- (iii) claims for compensation for the termination or interruption of employment that took place within the last 6 months prior to the reference date;
- (iv) claims for holiday pay; and
- (v) claims as mentioned in (i)–(iii) above that are older than stipulated in these provisions where, in the assessment of the bankruptcy court, the creditor has attempted to pursue the claim without undue delay but has been unable to compel payment obtain satisfaction from the estate.



Claims under section 96

After employee claims have been satisfied, certain suppliers' excise duty claims will be made good.

Claims under section 97

All remaining claims – except for the claims mentioned in section 98 – will then be paid in equal shares.

Section 97 encompasses the majority of filed claims, including for instance debts to suppliers, unsecured loans and potentially unsecured parts of loans, and taxes.

Voidable transactions

Like most legal systems, the Danish Bankruptcy Law contains rules regarding voidable transactions. A transaction is considered voidable if the transaction is deemed an impediment to the satisfaction of the creditors in general, or if the transaction is deemed detrimental to one or more specific creditors.

Liability of directors

The liability of the board of directors and management

of companies in financial difficulties is governed by provisions in the Companies Act.

If members of the board of directors or management intentionally or through gross negligence cause financial injury to the company or its creditors, they may be forced to assume personal liability for damages.

Board directors and management are rarely made personally liable in Denmark, a statement supported by Danish case law. The most common situation in which they incur liability is when they have continued to run the business after it has become obvious that the company cannot go on operating without inflicting further losses upon creditors.

Danish non-recognition of foreign bankruptcies

Denmark has not implemented the EU Regulation on Bankruptcy Proceedings (1346/2000), due to the country opting out of legal coordination with the rest of the EU. Nor has Denmark entered into any bilateral agreements that recognize foreign bankruptcies other than

those occurring in the other Scandinavian countries.

An older ruling made by the Supreme Court holds that Danish creditors who seek satisfaction individually may do so even if a foreign bankruptcy has been declared for the debtor.

However, the consequences of this non-recognition are different for bankruptcies declared against companies and those declared against physical persons. Even though a foreign bankruptcy estate does not exist in its own capacity according to Danish law, it is generally agreed that a bankruptcy trustee for a bankrupt company has the same powers as its management would have if the bankruptcy had not been declared. That conclusion derives from the fact a company's management is regulated in accordance with the laws of its home country. If the bankrupt entity is a living person, the bankruptcy trustee can only exercise his or her powers in Denmark with a power of attorney from the bankrupt individual.

Secured assets

Security over assets may be obtained by agreement between creditor and debtor. Protection from third-party claims calls for the security interest to be perfected, depending upon the nature of the asset involved.

Security over real and personal property

Security granted for real and personal property, including motor vehicles, must be recorded in the official registry.

Floating charges

It is common for a Danish company to establish a floating charge, which provides the creditor with security over the various assets owned by the debtor at different times.

The most common asset in a floating charge is the company inventory, but a floating charge can also be granted in form of a receivables charge, providing security over the sums owed to the company at different times.

Creditors can protect floating charges against third-party claims by registering them with the official registry.

I RESTRUCTURING

Objective

The purpose of restructuring is to either (i) allow a company to continue operating its business through compulsory composition or through transferring some of the company assets, (ii) terminate the business of the company by transferring the business, or (iii) terminate the business through compulsory composition.

Restructuring must contain at least one of the following elements: (i) compulsory composition or (ii) business transfer.

Appointment of trustees and nominees

The bankruptcy court will immediately appoint a trustee and a nominee to administrate the company. Material transactions cannot be carried out without prior approval of the trustee.

The nominee assists the company in financial matters.

Compulsory composition

Compulsory composition may take the form of a percentage reduction or a lapse of the claims against the debtor. Compulsory composition may also entail a postponement of payments. Compulsory composition may be subject to part or all of the debtor's property being distributed among the creditors.

No restrictions apply in regards to overtime work in Denmark

Business transfers

A business transfer may take the form of a transfer in ownership of the debtor's going concern, in full or in part. Transfers preserve the identity of the transferred business entities and enable them to continue being economically active.

Employees

A restructured company continues to operate on a normal basis. However, the trustee and the management of the company may decide if it is necessary to dismiss some or all of the company's employees.



I DEBT COLLECTION

Debt enforcement proceedings are handled by a local bailiff's court. They can only take place when there is a judgment or a written acknowledgement of the debt due from a debtor. The bailiff will try to establish a payment arrangement with the debtor. The bailiff will also investigate whether the debtor has any assets that can be seized as security for the debt and sold by the creditor in accordance with specific rules.

All debt collection costs are chargeable to the debtor.

I CLAIM SIZE

Less than DKK 50,000

For smaller debts, a creditor can file an action directly with the bailiff's court. When the debt is not disputed, the bailiff will issue a payment order, the equivalent of a judgment. This procedure is the most cost-efficient method of legal action to enforce collection. It is also the most time-efficient, typically requiring 6 to 12 months. If the debt is disputed, the case is assigned to trial.

More than DKK 50,000

Legal advice is required to file a claim for debts larger than DKK 50,000. A judgment has to be obtained before enforcement proceedings can be carried out. The cost of obtaining a judgment will depend on the size of the debt and require an average of 6 to 12 months. If a judgment is obtained and the debtor still does not pay, the case will be handed over to the bailiff's court for enforcement.

Required documentation

To comply with the legal requirements, a creditor must submit copies of the relevant contract and invoices and a clear statement of account, indicating any payments or credit notes that have been entered against the outstanding invoices.

In 2014, more than 4000 foreign companies are settled in Denmark

In case a legal procedure needs to be initiated, copies of the complete contractual documentation should be available, starting with the contract, orders, order confirmations, delivery notes, and invoices. Every stage of the relationship between the parties should be provable by documentation. Any notes and correspondence between creditor and debtor should be retained and, in case of a dispute, provided to the lawyer handling the case.



I INTELLECTUAL PROPERTY RIGHTS

Patents

In Denmark, it is possible to file for a 20-year patent. The patent will protect an invention so that other manufacturers cannot use it. For a patent to be approved, the invention must:

- be new on a global scale
- differ from prior art in some essential way
- have commercial applicability.

Patents can be granted for products, methods, apparatuses, and applications.

When a patent application is processed, both a novelty search and a patentability examination are performed. The applicant will receive a reply within 6 to 10 months of filing. If the reply is favorable, it is possible for the applicant to proceed with a patent application in other countries – either by filing an international application (PCT), European application (EP), or a national application in another country – and claim priority from the Danish filing. Such applications must be filed within 12 months of the filing date for the Danish application.

The basic fee for a patent application is DKK 3000, plus additional costs.

80 % of the Danish population speak English - half the Danes speak German

Trademarks

Trademarks are used to distinguish commercial companies from each other.

A trademark typically consists of a word, word combination, number or letter combination, name, product shape or packaging. The mark must be distinctive and not merely describe the goods.

A trademark right can be established in multiple ways. It is possible to register a trademark in accordance with Danish regulations, and if there are no obstacles the trademark will be granted. Another way of establishing a trademark is by using the mark in Denmark as a sign for some specific goods.

It is possible for both physical and legal persons to obtain a trademark.

A trademark right protects the owner of the right so that the owner is the only one allowed to use the trademark. The right prohibits others from using the trademark or a similar mark for similar goods or services and thereby risking confusion of their source.

Unlike patents and copyright, a trademark right does not expire on a certain date. However, if the trademark has not been used for five years, the right is no longer protected by Danish law and the registration will be revoked.

It is also possible to register for an EU trademark, which will be valid in all EU member states.

Copyright

People who create artistic or literary work – such as books, articles, music, films or paintings – are protected by copyright law. Their copyrights are protected in Denmark for 70 years after their death.

Performing artists are also protected by Danish copyright law, including actors, vocalists, musicians, music and film producers, radio and TV broadcasters, and photographers. The rights to their work are protected for 50 years after the first performance or publication of the individual work. In addition, catalogues and databases enjoy copyright protection for 15 years after a work first becomes publically accessible.

A Danish copyright can only be granted to a physical person. It prevents other people from any unauthorized reproduction or public dissemination of copyrighted material.

A work is protected from the moment it is created, and its legal protections come into force without the satisfaction of any formal requirements. There is no public register of copyrights.

Designs

Denmark passed the Designs Act to implement EU Directive 98/71 on the Protection of Designs.

The resulting regulations can be used to protect the appearance of a product with respect to contours, colors, lines, shapes, textures, and/or materials.

There are two ways of protecting a design in Denmark:

- register the design in Denmark; or
- register it in the EU, in which case EU rules will protect it if it is made public within the EU.

To register a design in Denmark, the design must qualify as both new and original. It will only be considered new if no identical design has been made available to the public at the time of the registration application. It will be considered individual if an informed consumer can distinguish it from other designs.

The creator of a registered design obtains design rights. The provisions of the Designs Act give the owner of the design the right to use it exclusively and preclude others from any unauthorized commercial use.

Protection of designs registered in Denmark or the EU expires 25 years after registration. An unregistered EU Design expires 3 years after publication.

I COMMERCIAL LAW

Freedom of contract

The predominating principle that governs Danish contract law is freedom of contract.

Because freedom of contract informs contract law to such a high degree, the Danish Sale of Goods Act specifies few rules for the formation and content of contracts between businesses. Business entities are free to negotiate, draft, and enter into contracts as they wish, so long as the contracts do not violate any third-party rights or public regulations, such as those in competition law.

Different areas of business have their own rules and regulations, which parties to a contract must also respect.

The Sale of Goods Act

The Sale of Goods Act applies to the sale of goods between parties having their place of business in Denmark.

The UN Convention on Contracts for the International Sale of Goods (CISG)

Denmark adopted the CISG rules on March 1st, 1990. The rules apply to contracts for the sale of goods between parties whose respective places of business are located in different countries when:

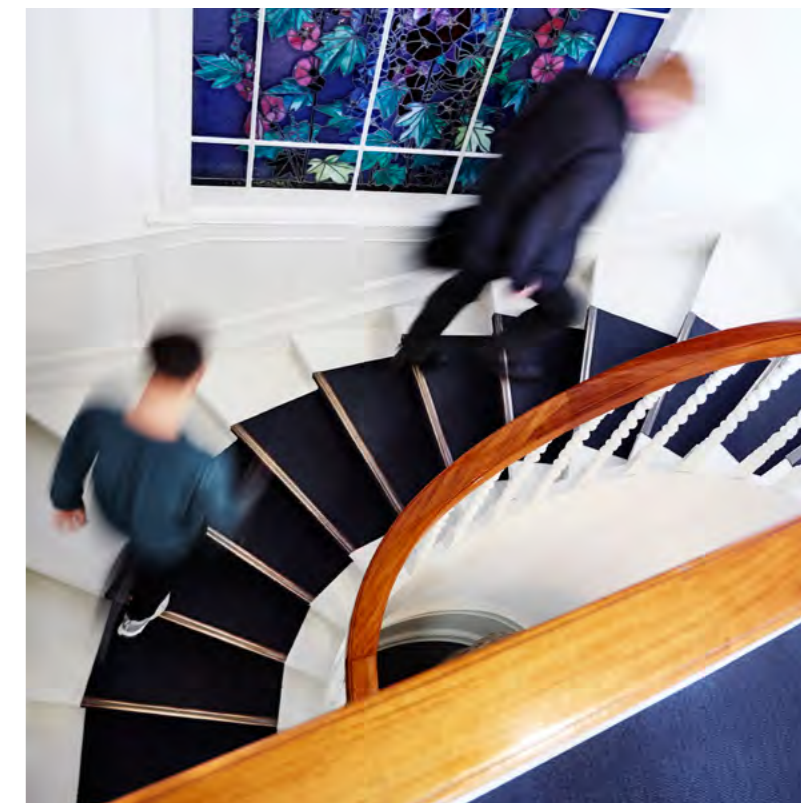
- the two countries have both adopted the CISG rules; or
- private international law would result in the application of the law of the contracting country.

The parties to a contract for sale of goods may choose to elect CISG as the governing law. In that instance, the CISG rules set the Danish Sale of Goods Act aside.

The CISG rules do not apply when the parties have their place of business in the same country. In addition, the CISG rules do not apply to the sale of goods to consumers.

Inter-Scandinavian sale of goods

The CISG rules do not apply to the sale of goods within Scandinavia, for which the domestic sale of goods acts will apply.



I MARKETING PRACTICES

The Danish Marketing Practices Act applies to private business activities and, to the extent products and services are offered to consumers, to public business activities as well.

The Marketing Practices Act utilizes the term “good marketing practice.” Sellers of goods and services who are subject to the act must adhere to good marketing practice with respect to consumers, other businesses, and the public interest.

“Good marketing practice”

The requirements set out in the act’s general clause entail a positive commitment on the part of a business, insofar as business and trade are required to follow good marketing practice with respect to consumers, other businesses, and the public interest.

Misleading and unjustified claims

Businesses may not use misleading or unjustified claims or omit material information with the intention of significantly distorting the economic behavior of consumers or of other businesses.

Marketing whose content, form, or methods used are misleading, are aggressive, or subject consumers or other businesses to unwarranted influence, and which lends itself to significantly distorting their economic behavior, is not permitted. When factual statements are made, they must be capable of being substantiated by documentation.

Danish consumers are among the world’s fastest to adapt new products and technologies

The Danish minister for business and growth has issued more detailed regulations for specific forms of marketing that are, pursuant to EU regulations, considered unfair under any circumstances in business-to-consumer matters.

Advertising

All advertising must be framed in such a way that it will be clearly understood to be advertising, irrespective of its form and the medium in which it is presented.

I REAL ESTATE AND CONSTRUCTION

The Danish real estate market is well organized and highly transparent. It is governed by a number of different statutes, the most noteworthy of which are mentioned below.

Virtually all properties in Denmark are freeholds, although leaseholds are used in certain sectors such as at port or airport facilities.

Every plot of land in Denmark, regardless of its size and situation, has been entered in accordance with statutory law into the cadastral system, a centuries-old system operated by the national government. Parcellation (sub-division) and other changes in the cadastral system are handled by owners and authorities in cooperation, and in general the process works smoothly and efficiently.

Zoning

As in all other developed societies, planning and zoning in Denmark play an important role in securing sufficient infrastructure and protecting the environment. Planning is carried out on three levels: national, regional, and local. In general, national and regional planning establish the premises on which local planning proceeds, and landowners rarely need to deal with any authorities other than the local planning department. Planning is almost always transparent, and all existing plans are available online.

Ownership restrictions

As a general rule, foreigners – whether individuals or legal entities – cannot own real estate in Denmark without obtaining ad hoc permission from the Ministry of Justice.

However, this poses no real obstacle to establishing a business in Denmark. Since there are no restrictions on foreign ownership of Danish corporations, and since a prudent investor will normally want to conduct its Danish business as a Danish LLC for a number of other reasons anyway, most foreign investors choose to incorporate in Denmark, which then allows them to own property.

Real estate transactions

Most real estate transactions are conducted through a purchase agreement. At closing, the purchase agreement is followed by a deed of transfer, which will then be entered into the land register.

Ownership structures

When buying Danish real estate, the most common forms of investment vehicles are ownership via a limited liability company, a limited partnership, or direct investment.

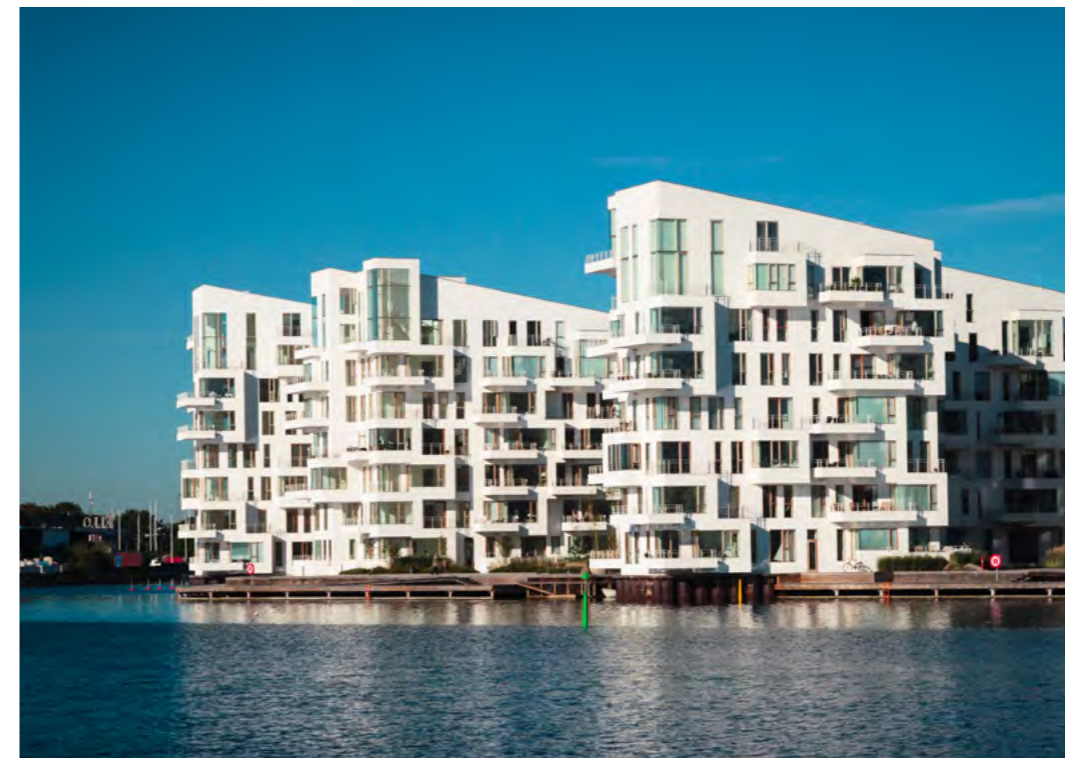
The ownership structure should be determined depending on the specific transaction.

The Danish Land Register

In accordance with statutory law, titles, mortgages, liens, easements, etc. are entered into a national online land register. The register is public, which allows every player in the market a reliable, easily accessible, virtually complete picture of the legal condition of any property in the country.

Leasing of real estate

Property leasing is highly regulated by law. The rules and regulations pertaining to the leasing of domestic property are complicated, and for the most part they are intended to protect the lessee as the weaker party in a leasing contract. A strict system of rent control is in effect for most domestic rental properties that were established prior to 1 January 1992. As this overview concentrates on the business environment, the following description is confined to commercial leases.



Denmark benefits from a very flexible labour market

Commercial leases

The Danish Business Lease Act permits a high degree of contractual freedom.

The provisions of the act may be deviated from by agreement of both parties. The provisions are assumed to be part of a leasing agreement, unless otherwise explicitly agreed upon between lessor and lessee.

I THE DANISH BUSINESS LEASE ACT

The lease agreement

If either party requests it, the lease agreement and other agreements pertaining to the leased premises have to be in writing.

The lease agreement must specify which types of expenses, in addition to the rent, the lessee must pay to the lessor. However, that does not apply to types of expenses that are unknown when the agreement is drawn up. An estimated amount must be specified for each expense. The lessor is not entitled to charge any unspecified expenses, unless they are able to prove that their omission have not had a negative impact on the lessee's legal rights.

The provisions of the act uphold the lessee's rights, whether or not they are named in the agreement. That also applies to agreements on prepayment of rent, deposits, and the like, the total amount of which must not exceed 6 months' rent.

Within one year after the expiry of a lease agreement, the lessee must have started legal proceedings for any claim to be enforceable against an owner other than the party who owned the property when the claim fell due.

Rent adjustments and market rent

The amount of rent at the start of a lease and how it may be adjusted during the term of the lease are both subject to agreement.

When the size of the rent has not been determined, it is assumed to correspond to market rent.

Either party to a lease agreement may demand that the rent be adjusted to reflect market rent if the rent in question is significantly lower or higher than market rates. However, such adjustment cannot be made until 4 years after the beginning of the lease.

Termination

The lessor may only terminate a lease agreement if certain conditions apply, such as the lessee's failure to pay rent, the lessee's non-contractual use of the premises, or the lessor's intention to use the premises themselves.

Construction

In general, the construction market in Denmark functions the same way it does in other highly developed countries. However, there are a couple of points to be aware of that apply specifically to Danish construction conditions.

Perhaps most importantly, construction contracts are traditionally (but not statutorily) subject to a several agreements, as found in documents AB92, ABT93 and ABR89. These documents address such things as responsibilities and payment schemes, and they are almost always integrated into construction contracts.

In addition, Denmark has laws governing tenders and other offers pertaining to construction that are intended to secure competition in the market by applying a high degree of transparency.

“Denmark is constantly ranked among the happiest countries in the world”

I LABOR LAW

Terms of employment and salaries are generally regulated by collective bargaining agreements between trade unions and employer associations. That makes it important for foreign companies establishing themselves in Denmark to acquaint themselves with the pertinent collective bargaining agreements in force.

Denmark has some of the world's most flexible rules for hiring and dismissing employees. In practice, companies have the right to dismiss an employee without incurring any claims for compensation. The period of notice is typically 3 months, during which the employer can ask the terminated employee to continue working. This provision makes it easy for a company to adjust the size of its workforce.

Types of employment

Generally speaking, Danish labor law differentiates among three kinds of employees: executive officers, salaried employees (white-collar workers), and wage-earners (blue-collar workers).

Terms of employment and salaries are generally regulated by the collective bargaining agreements between trade unions and employer associations.

The Employment Contracts Act

An employer is obligated to inform every employee of the specific terms of employment. Moreover, the employer is obliged to provide the employee with written notification of these terms. It is important for the employer to comply with the Employment Contracts Act, as otherwise the employer may be liable to pay compensation. Recent case law shows that such compensation may be as high as 20 weeks' salary.

The Salaried Employees Act

The Salaried Employees Act establishes a minimum standard for salaried employment and regulates the employer-employee relationship. The provisions of the act cannot be opted out of, even by mutual agreement, if the opting out will be to the detriment of the salaried employee.

Salary

While Danish statutory law does not set any minimum salaries, the various collective bargaining agreements include provisions for minimum salaries and wages. Bonus schemes, as well as other incentives such as stock options and stock warrants, are common in Denmark but optional.

Termination

The minimum termination notice for salaried employees ranges from 1 to 6 months, depending on seniority, and extend to the end of a calendar month. Employees must give a minimum notice of one month, regardless of seniority.

Unfair dismissal

The Salaried Employees Act protects salaried employees from unfair dismissal. Employees with at least a year of seniority may be entitled to compensation of up to 6 months' salary if the termination is determined to be unfair.

Collective bargaining agreements

Employment conditions in Denmark are largely determined by the collective bargaining agreements that the various players in the labor market have agreed to. The collective bargaining agreements are specific to particular kinds of work. These agreements chiefly cover blue-collar workers.

For instance, the collective bargaining agreements determine working hours, minimum salaries and wages, and terms of notice. As mentioned above, Danish law does not stipulate a minimum wage. The various actors in the labor market are responsible for upholding the collective bargaining agreements.

The strength of these agreements governing the labor market is underpinned by the fact that 60% of Danish workers are members of a trade union. Foreign workers and companies are also eligible to join the relevant employee and employer organizations.

The law determines only a few aspects of working conditions. However, minimum requirements are dictated by a number of acts, including the Holiday Act, the Employment Contracts Act, the Act on Equal Treatment of Men and Women as Regards Access to Employment, and the Act on Benefits in the Event of Illness or Child-

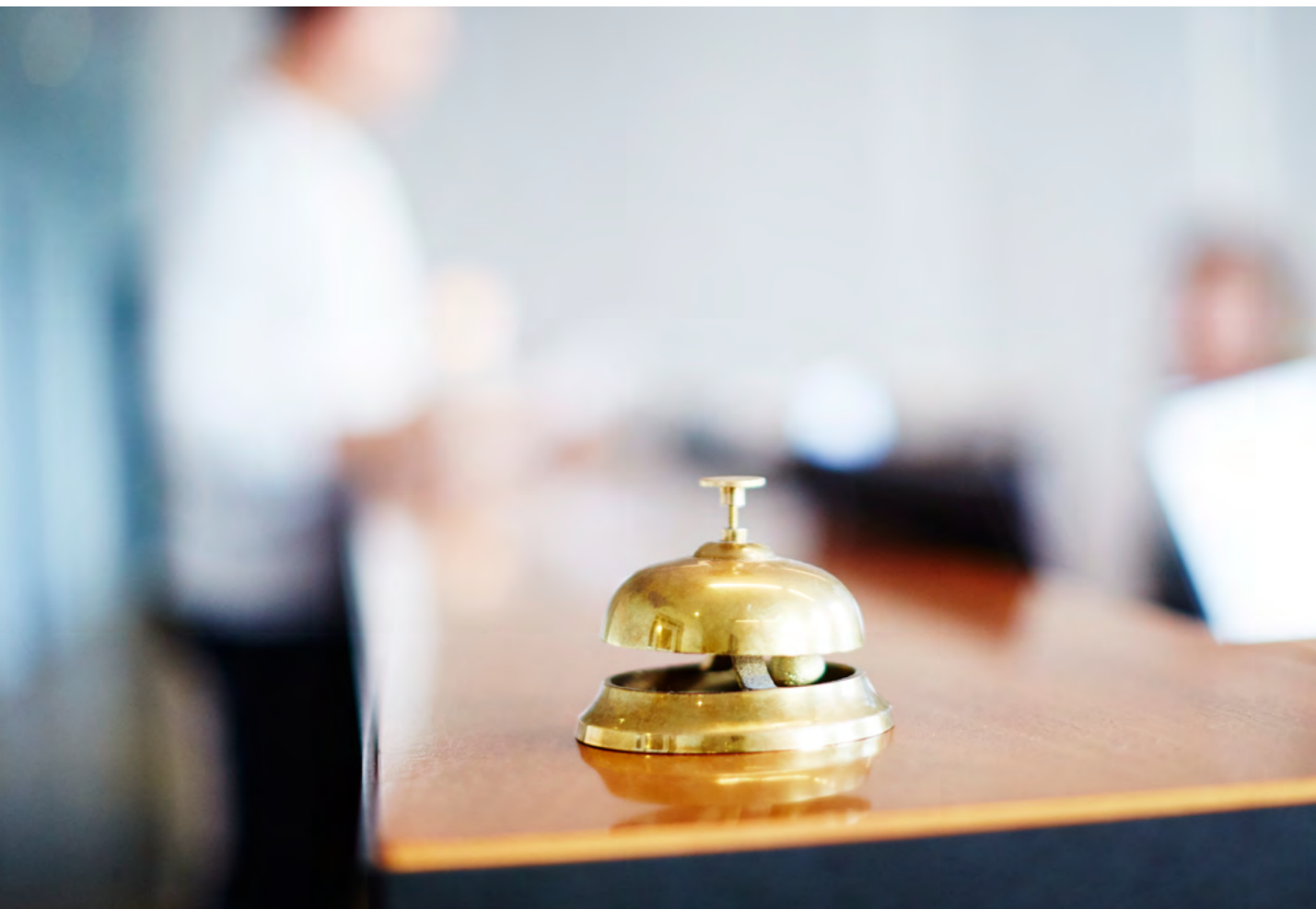
birth. If an employer is not a member of an employer organization or has not concluded an adhesion contract, the terms of employment are regulated by the contract agreed upon between the employer and employee and the legally stipulated minimum requirements.

An employer that is not a party to a collective bargaining agreement is often asked by the relevant trade union to sign an adhesion contract. While the employer may choose not to join the bargaining agreement or to enter into an adhesion contract, the trade union might then initiate an industrial action against the employer.

It is important to note that once a company has entered into a collective bargaining agreement with a trade union, it can prove difficult for the company to be released from the agreement again.

CEOs

CEOs are not covered by the Salaried Employees Act or the Holiday Act, meaning that the terms and conditions of their employment contracts are based upon individual agreements that address such things as notice periods, holidays, and non-competition clauses.



Pregnancy and parental leave

Employees are protected against dismissals related to pregnancy, maternity leave, or adoption.

The employer has to prove that a dismissal during pregnancy, maternity leave, or adoption is not – even in part – due to such circumstances. If the employer fails to prove that the dismissal is completely due to other factors, the employee is entitled to compensation. According to Danish case law, compensation is typically fixed between 6 and 12 months' salary. Pregnant employees are entitled to 4 weeks of leave prior to their expected delivery date.

Redundancies

According to the Act on Protection Against Dismissal Related to Trade Union Membership, an employer contemplating dismissals must begin negotiations with

the affected employees or employee representatives as soon as possible. The object of these negotiations is to reach an agreement, either to avoid or reduce the number of dismissals, or to mitigate the hardship of the dismissals through activities to replace or retrain the dismissed employees. Upon completion of negotiations, the employer must notify the regional employment authority of the dismissals. The dismissals may take effect no earlier than 30 days after such notification.

Restrictive provisions

The Salaried Employees Act regulates non-competition and non-solicitation clauses.



Lou.

ABOUT LOU LAW FIRM

I PROFESSIONALISM AND COMMITMENT

LOU Law Firm provides expert consultation and assistance to clients and business partners from both Denmark and abroad. The firm has 50 employees, including 20 attorneys with specific competences in corporate and commercial law, enabling us to offer highly professional services in these two core areas.

At LOU, we believe that one key to the success of our client relationships is mutual trust, and we familiarize ourselves with clients' business circumstances in order to provide them with the best possible legal advice. Their feedback helps us to continually improve customer satisfaction.

When we advise clients, we seek to provide real, directly measurable value grounded in their specific strategic needs. We have extensive expertise in all major areas of commercial activity, and our professional competencies and effectiveness have made LOU strongly competitive.

We work nationally ...

LOU provides legal advice and assistance throughout Denmark. With offices in Randers, Aarhus, and Copenhagen, we are glad to serve clients across the country. Our client roster also includes many foreign firms that do business in Denmark.

... and internationally

LOU Law Firm is an active member of the Geneva Group International, a professional network providing us with access to locally based legal and tax experts in most of the world. That enables us to provide highly knowledgeable international advising for all our clients, regardless of where they do business. In just the past two years, we have carried out assignments in Belgium, China, Cyprus, Germany, Ghana, India, Korea, Luxembourg, Spain, Sweden, Turkey, the United Arab Emirates, the UK, the US, and Uruguay.

I AMERICAN DESK

LOU Law Firm has established an American Desk. This greatly strengthens our efforts on behalf of both Danish companies operating in the US and American companies operating in Denmark. And it ensures that such work has the right focus, saving our clients time and money. Several of our attorneys have worked or studied in the United States, giving them an in-depth knowledge of both the American legal system and American culture – as well as an excellent US network. We are active in several networks that support business relationships between Denmark and the US, including the Danish-American Business Forum.

LEGAL DISCLAIMER

Please be aware that this legal overview is not for use in connection with particular transactions, etc. specific advice should be obtained instead.

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