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# **DOING BUSINESS IN DENMARK**

## Introduction and Disclaimer

Denmark is often considered an easy and attractive place in Europe to set up a company and to do business. This is in no small part due to the country's constant political and cultural situation as well as the relatively simple and predictable legal situation. As a foreign business or investor about to do business in Denmark, there are however still a number of fundamental legal rules and principles to take into account.

This guide provides a general introduction to certain legal issues which we believe are relevant to know based on our experience with international companies contemplating doing business in Denmark. This guide is not an exhaustive list of all the requirements that might apply to international companies and it is not a substitute for legal advice. We recommend that international companies that contemplate doing business in Denmark seek legal advice tailored to the specific business and industry in order to be successful in their business ventures in Denmark.

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## 1. The Danish political and legal Structure

The Kingdom of Denmark is a democracy and a constitutional monarchy. The executive power is exercised by the cabinet government lead by the Prime Minister. The Danish Parliament (in Danish: *Folketinget*) performs the legislative functions of the Kingdom. The judiciary in Denmark is independent and highly professional.

The Danish legal system is generally based on civil law and it has the typical characteristics of a Scandinavian country, namely the mixture of statutory and case law.

Danish legislation is based on the Constitutional Act of Denmark (in Danish and hereinafter: *Grundloven*), first adopted in 1849 and in its current form adopted in June 1953. Grundloven contains the fundamental principles applicable to Danish society, including Human Rights and the duties of all citizens. Any and all legislation in Denmark must comply with Grundloven.

Given the Danish membership of the European Union, EU legislation is a part of the Danish legal system.

Iceland, Greenland, and the Faroe Islands are former Danish colonies of The Kingdom of Denmark. Today, Iceland is an independent country, while Greenland and the Faroe Islands have home rule governments and are effectively self-governing in regards to domestic affairs.

## 2. Business Structures and Methods

A foreign company contemplating doing business in Denmark may do so with or without a permanent establishment. If a foreign company wishes to have a permanent establishment in Denmark, there are several options. The most common option is to establish a limited liability subsidiary in Denmark. In this situation, the limited liability subsidiary may be a private limited liability company or a public limited liability company.

Any new company can be registered directly into the IT system of the Danish Business Authority, making it possible to establish and register a company in just a day.

It is also possible to establish a branch office. In order to register a branch office, a physical application form must be filled out which essentially means that the registration procedure is longer.

### 2.1 Establishing a Company or Branch Office in Denmark

#### 2.1.1 Private limited Liability Company (ApS)

The most common type of company in Denmark is the private limited liability (in Danish: *anpartselskab* or *ApS*). To establish a private limited liability company, the founder must raise starting capital of at least DKK 50,000, either in cash or in the form of assets which can e.g. be an existing business.

The private limited liability company offers the most flexibility in terms of management structure; it can be led by one or more managers and may or may not have a board of directors or a supervisory board. Furthermore, the private limited liability company offers the most flexibility in the decision making process.

It should be noted that no nationality requirements apply with respect to the members of the registered management, and accordingly all the members of the board of directors, the supervisory board and the manager may be nationals of any country and may reside anywhere in the world. However, the company must have a Danish address.

## 2.1.2 Public limited Liability Company (A/S)

The public limited liability company (in Danish: *aktieselskab*) functions much like the private limited liability company, however, the minimum contribution of share capital required for incorporation is DKK 500,000 (DKK 400,000 from 1 July 2018), and the public limited liability company must have a board of directors or supervisory board consisting of at least three members in addition to the management. As with the ApS, no nationality or residential requirements apply to these persons.

## 2.1.3 Branch Office

Unlike a subsidiary, there is no minimum capital requirement for a branch office in Denmark, but a branch office cannot have limited liability. A branch office is subject to most of the same filing requirements as subsidiaries. The branch office is not required to file an annual report, but must file the annual report of the establishing foreign company.

## 3. M&A/Takeovers

Danish regulation on takeover bids is based on three pillars:

- the Danish Capital Markets Act (in Danish: *Kapitalmarkedsloven*);
- the Danish Executive Order on Takeover Bids; and
- the Danish Financial Services Authority's (in Danish: *Finanstilsynet*) Guide on the interpretation of the Danish Executive Order on Takeover Bids.

As with most parts of Danish capital markets law, the Danish rules on takeover bids are based on EU legislation. The relevant EU legislation is mainly the EU Directive 2004/24EC on takeover bids and the European Securities and Markets Authority's (ESMA) interpretation hereof.

The Danish takeover regime regulates mandatory bids and voluntary bids.

While in some areas regulation on the two types of takeovers overlap, in others it differs greatly. In general, the mandatory bids are more heavily regulated than voluntary bids.

## 3.1 General Principles

The Danish regulation on takeover bids is based on certain fundamental principles which can be identified in Danish capital markets law.

These fundamental principles include:

i) Equal treatment of the shareholders:

The shareholders of the target company are to be treated equally in relation to the takeover bid. Among others things, this means that the offer price must at a minimum correspond to the highest price which the offeror or persons acting in concert with the offeror have paid for shares already acquired in the six months preceding the date on which the offer is made.

ii) The acquirer must ensure that he/she is able to fulfil any cash consideration in full:

In order to avoid false market disruption, the acquirer must ensure that he/she is able to fulfil all his obligations in accordance with the takeover process, e.g. being able to pay consideration.

iii) The board of directors must act in the interest of the company:

As follows from the Danish Companies Act (in Danish: *Selskabsloven*), the board of directors must act in the interest of the company throughout the takeover process. Thus, the board and the offeror may not enter into any agreement or change existing agreements on bonuses and similar benefits.

iv) Transparency and shareholder protection:

The shareholders must be given sufficient time and information to enable themselves to reach a properly informed decision on the bid. Among others things, this means that the shareholders must have reasonable time to assess the takeover bid and that strict requirements to the content of the offer document apply.

## 3.2 Sanctions

Any person violating Danish legislation on takeover bids may be subject to a fine.

Any legal person may also incur criminal liability according to the Danish Criminal Code.

## 4. Listing on the Danish Stock Exchange

The primary Danish stock exchange is NASDAQ Copenhagen. All stock exchanges and all listed companies are subject to supervision by the Danish Financial Supervisory Authority. The bulk of Danish capital markets regulation is in conformity with EU regulation.

Any company completing an initial public offering (IPO), or any listed company completing a subsequent capital increase and/or public offering, must – with some exceptions – prepare a prospectus which must be approved by the Danish Financial Supervisory Authority before any offers are made to the public.

Any listed company must continuously comply with the Danish Capital Markets Act and the market's guidelines. The obligations for the listed company include i) on-going disclosure obligations; ii) ban on insider trading; and iii) major shareholders' duty of disclosure. The Danish Financial Supervisory Authority can – and often will – request that the listed company describes the circumstances surrounding recent events to ensure that these regulations have been complied with.

The most fundamental obligations of the listed company is i) a continuous duty to disclose any price-sensitive information or events to the market immediately; ii) a ban against insider trading covering any party in possession of not-published, price-sensitive information (insider information) who may, according to the ban, not buy or sell shares in the relevant company; and iii) an obligation for major shareholders to immediately give notice to the listed company in the event that the shareholder crosses certain shareholding thresholds in a listed company. The thresholds correspond to the time at which certain Danish company minority protection rules or qualified majority decisions become available.

## 5. Insolvency

The Danish Insolvency Act (in Danish: *Konkursloven*) regulates both the proceedings of restructuring and the winding up of a business.

Both natural and legal persons may become subject to insolvency proceedings. Any creditor or the entity itself may file for restructuring or winding up proceedings, provided that the entity is not able to pay its obligation as they fall due.

The Danish Insolvency Act is based on the principle of even distribution of the values of the estate among the creditors, both in the event of restructuring or winding up proceedings. Thus, it contains provisions governing the actions (and omissions) of the entity prior to the filing for bankruptcy which serves to ensure that the values of the estate will be distributed evenly among the creditors.

Restructuring proceedings must be initiated for the purpose of transferring the business, wholly or partly, or a compulsory composition. A restructuring must be approved by the majority of the credi-

tors. The restructuring proceedings are initiated immediately after receipt of the petition to initiate the restructuring proceedings. The process is ordinarily carried out within seven month after the bankruptcy courts decide on the petition to initiate restructuring proceedings, but the bankruptcy courts have the authority to extend the deadline for reaching an agreement with the creditors by up to four months, in total approximately 11 months.

The winding up of the estate is carried out by a trustee (ordinarily an attorney-at-law) who acts on behalf of the estate and has the authority to bind the estate in all matters. The primary objective of the trustee is to monetize the values of the estate.

Despite the above, the distribution among the creditors is not evenly distributed. Firstly, the cost of winding up of the estate will be paid. These costs include the cost of the trustee, insurance, bookkeeping, etc.

Secondly, costs related to the restructuring of the estate are covered by the values of the estate. If no restructuring efforts have been made, no payments will have to be made.

Thirdly, all claims from employees for unpaid salaries and related obligations will then have to be paid. Finally, claims from ordinary creditors will be covered by the remaining values of the estate. The values will be distributed relatively among the creditors in proportion to their claims in the estate.

The winding up of the estate is often a long-term process in which the amount and complexity of the assets affects the duration of the winding up. Ordinarily the process takes between one to two years.

## 6. Real Property

Foreigners' access to purchase real estate in Denmark is restricted by law. It is easier for citizens and companies from the EU/EEA than for citizens and companies from outside of the EU/EEA to purchase real estate in Denmark.

Prior to the purchase of real estate, a thorough due diligence investigation should be carried out by the buyer, in general involving, at a minimum, an investigation of i) whether any third party rights to the property exist; ii) whether there are any potential or pending disputes regarding the property; and iii) the environmental status of the property, considering that pollution of the property may have severe financial consequences for the owner.

Transfers of real estate must be registered with the Danish Land Register in order to be valid in relation to third parties. When purchasing real estate, the parties to the agreement usually sign a purchase agreement and a deed of conveyance electronically. The purchase agreement contains the entire agreement and a copy is kept by both the parties, while the deed of conveyance only contains the material

provisions of the transfer agreement and is used for the purpose of registering the conveyance with the Danish Land Register.

The Danish Land Register is a digital register of all real estate in Denmark. In addition to registering ownership of real estate, the rights of third parties to real estate are also registered in the Danish Land Register, such as mortgages, etc. A buyer must respect any third parties' rights registered with the Danish Land Register, but is ordinarily not obligated to respect any rights that have not been duly registered with the Danish Land Register and of which the purchaser has no knowledge. It is therefore extremely important that rights related to real estate are registered with the Danish Land Register.

Accordingly, the Danish Land Register should always be consulted before purchasing real estate, whether or not an actual due diligence investigation is carried out. It is, however, important to be aware that certain rights do not require registration in order to enjoy the protection that the registration with the Danish Land Register provides. Such rights include usual rights of usage as well as certain claims by tax authorities and other public authorities.

Mortgaging of up to 80% of the value of the piece of real estate may generally be obtained through a mortgage credit institution for private houses and of up to 70% for commercial real estate. The remaining part of the financing is usually obtained by way of a bank loan.

With the exception of procedures based on the Public Procurement Directive and the Danish Procurement Act (in Danish: *Licitationsloven*), no specific Danish legislation exists on the matter of construction agreements/contracts. Instead, most Danish construction contracts are based on the contract documents "AB 92", "ABR 89" and "ABT 93" agreed upon by the Danish construction industry and widely accepted and used. These contract documents are used for both small private construction agreements and major construction contracts, irrespective of the nationality of the contractor.

## 7. Laws affecting Business and Investments

### 7.1 Taxation

Taxation in Denmark is generally based on a direct taxation of companies and individuals.

Companies are subject to a flat tax rate while individuals are subject to a progressive tax rate. Branches, agencies etc. established in Denmark are generally also liable to company taxation, although this may vary depending on the activities and the set-up of the entity in question.

In addition to the above, a number of indirect taxes exist, such as a general 25% VAT and various other indirect taxes on different goods. Certain goods and services are entirely exempt from VAT. Costs for social security etc. are usually covered by the state on the basis of the taxes paid.

Individuals residing in Denmark are subject to a progressive income tax on all income earned in Denmark and abroad. Special tax rates apply to capital income and income from shares.

More favourable tax regimes exist for foreign employees who are either highly specialised or earn a certain minimum salary. However, this regime may only be used by the individual in question and for a limited period of time.

In principle, dividends are subject to taxation. However, a number of exemptions apply to this rule in the case of companies receiving dividends. One important exemption implies that any Danish company may generally receive tax free dividends, provided that the company holds at least 10% of the company paying the dividend. Another exemption applies in certain situations where the companies are checked for US tax purposes. It is important to be aware that taxation of dividends received from tax havens etc. may be treated differently.

Capital gains on shares in Danish companies are ordinarily subject to taxation. However, a number of important exemptions apply, e.g. to foreign companies which are usually not liable to pay Danish taxes on such capital gains. Another important exemption applies with respect to most unlisted shares.

The deductibility of interest is subject to the limitations imposed by Danish thin capitalization rules regarding controlled debt and it may be further limited by Asset and EBIT limitations, which apply to debt in general.

In accordance with relevant EU and OECD guidelines, transfer pricing rules apply, according to which transactions must be carried out at an arm's length basis.

## 7.2 Environmental Law

Most of the Danish environmental regulation is based on EU directives as implemented through a number of acts, such as the Environmental Protection Act (in Danish: *Miljøbeskyttelsesloven*), the Contaminated Soil Act (in Danish: *Jordforureningsloven*), the Nature Protection Act (in Danish: *Naturbeskyttelsesloven*), and the Planning Act (in Danish: *Planloven*). The enforcement of environmental laws is divided between governmental, regional and local authorities.

A number of activities are subject to environmental regulation and may further require a permit from the relevant authority. Separate permits may be required in case of expansion or change of an existing activity. Further, projects that might significantly affect the environment require that an environmental impact assessment is carried out prior to the commencement of the project in question.

A central part of environmental protection relates to the mapping of contaminated areas and this is usually performed by the regional authorities. The results of these mappings decide whether the soil may be used for habitation or business, or whether an order to clean up the contamination should be issued.

In case of contamination of real estate, Danish law generally applies a “Polluter Pays” principle. The polluter is either i) the person who, for a commercial or public purpose, manages the relevant activity or uses the plant from which the pollution derives, provided that the pollution, or part of it, is from that specific point in time; or ii) other persons who may have caused the pollution through unreasonable behaviour or other behaviour that, due to other provisions, leads to liability. Accordingly, environmental due diligence and appropriate representations and warranties are essential parts of any acquisition involving ownership or use of real estate.

It is also of importance to note that recent legislation has deviated from the “Polluter Pays” principle with respect to companies that have obtained an environmental permit. Companies carrying out activities requiring such permits must carry out a “baseline study” mapping out such contamination, and subsequent operators may be liable for any contamination that does not appear from the “baseline study” report, regardless of whether the operator was the actual polluter. This further highlights the need for the above-mentioned due diligence, representations and warranties.

With respect to the ongoing operations of any business, compliance with regulation regarding the prevention of pollution of air, water and soil must be ensured. Further, compliance with the provisions on the level of noise generated by the business and the disposal of waste etc. must be ensured.

Limitations regarding the use of real estate may also apply from other regulation, such as zoning regulations and regulations regarding habitats of wild birds and other animals.

## 7.3 Competition/Antitrust

The main competition or antitrust legislation in Denmark is the Danish Competition Act (in Danish: *Konkurrenceoven*) which is modeled on the provisions of EU competition law and regulates the following four core subject matters: prohibition on anti-competitive agreements; prohibition on the abuse of a dominant position; merger control regime; and state aid. The main competent authorities which enforce competition law in Denmark are the Competition Council (in Danish: *Konkurrencerådet*) and the Competition and Consumer Authority (in Danish: *Konkurrence- og Forbrugerstyrelsen*). Infringements of the Danish Competition Act can result in significant fines and, in relation to cartels, prison sentences.

### 7.3.1 Prohibition on anti-competitive Agreements

Agreements or “hardcore” practices such as price fixing, bid rigging and resale price maintenance (“RPM”) are likely to be prohibited. Other anticompetitive or restrictive agreements may also be prohibited, unless they are not of sufficient importance (de minimis) or have pro-competitive effects (e.g. involve efficiencies or technical advancements that are passed on to consumers). It should be noted that certain categories of agreements, for example relating to exclusive distribution and supply, are exempted from the prohibition against anti-competitive agreements if they fall under one of the current “block exemptions”. Also, in addition to breaching the Danish Competition Act, prohibited agreements are generally null and void and cannot be enforced.

### 7.3.2 Prohibition on Abuse of a dominant Position

It is not against the law to hold a dominant position, but it is prohibited to abuse that position by, for example, imposing unreasonable sales prices. A dominant position may be attained by a single or more companies collectively. There is a rebuttable presumption that an undertaking holds a dominant position where it has a market share of 40% or more. Collective dominance may arise where separate companies adopt the same conduct in the market.

### 7.3.3 Merger Control Regime

A concentration, such as an acquisition, merger or full-function joint venture (one which performs all the functions of an autonomous economic entity on a lasting basis), involving undertakings with turnover in Denmark above certain thresholds can trigger a mandatory requirement for notification to the Competition and Consumer Authority, and the parties may not complete such a transaction before it has been cleared by the Competition Council. Notified transactions will usually be approved, unless they are considered likely to significantly impede effective competition in the market such as through the creation or strengthening of a dominant position. If necessary, conditions or remedies, such as the divestiture of certain assets or other owner interests, may be attached to the approval to eliminate competition concerns.

### 7.3.4 Competent Authorities

The principal enforcer of competition law in Denmark is the Competition Council which consists of a chairman and seven members appointed by the minister for business and growth (in Danish: *erhvervs- og vækstministeren*). In practice, however, the Competition and Consumer Authority, which is the secretariat of the Competition Council, is in charge of the day-to-day administration of the Danish Competition Act and prepares decisions for the Competition Council.

Any gross negligent or intentional infringement of the Danish Competition Act may result in the imposition of significant fines by the Competition Council. In order to bring prohibited agreements or behavior to an end, the Competition Council may also accept binding commitments from the undertakings or issue orders. Furthermore, in relation to cartels, prison sentences of up to six years can be imposed. It is possible for “whistleblowers” to avoid penalties or have their fines reduced under the leniency programme for cartel infringements.

Decisions of the Competition Council, including in relation to mergers, may generally be appealed to the Competition Appeals Tribunal (in Danish: *Konkurrenceankenævnet*) and its decisions may in turn be brought before the ordinary courts by the undertakings.

### 7.3.5 Greenland

Greenland has its own competition regulation, and the Greenlandic Competition Act was amended in relation to merger control and in July 2014, the regime became similar to the Danish and European systems.

## 7.4 Public Procurement

The Danish regulation of public procurements can mainly be found in executive orders, each implementing a number of EU Directives into Danish law, such as the classic directive (in Danish: *Udbudsdirektivet*), the utilities directive (in Danish: *Forsyningsvirksomhedsdirektivet*) and the defence and security procurement directive (in Danish: *Forsvars- og Sikkerhedsdirektivet*). In addition to this, the Danish Tender Act (in Danish: *Tilbudsloven*) deals with public contracts outside the scope of the EC directives. A new procurement directive was adopted by the European Parliament and Council in 2014. The new procurement directive (in Danish: *det nye udbudsdirektiv*) was implemented in Denmark by the Public Procurement Act (in Danish: *Udbudsloven*) which came into force 1 January 2016.

#### **7.4.1 The Obligation to call for Tenders**

State, regional and local authorities are obliged to call for tenders. Accordingly, private entities are generally under no such obligation. In the event that the value of the contract exceeds any EU threshold, the tender will be governed by the EU rules. If the contract does not exceed any threshold, the public authority or entity must still respect the general European principles, such as the principle of equal treatment and transparency when putting a contract up for tender.

#### **7.4.2 Contracts requiring Tender Offers**

The answer to the question of whether tenders for a contract must be invited to and which rules must be followed is generally found by looking at the value of the contract in question. If the contract is equal to or exceeds certain thresholds, the rules of the directives above apply. The thresholds vary according to the type of contract and also depend on the contracting authority or entity in question. In the case of the EU threshold the tender is governed by the EU rules, and in the case of the Danish threshold the tender is governed by the Danish Tender Act. In such cases, more flexible procurement procedures are provided by Danish law.

#### **7.4.3 Procurement Procedures**

The three most common procurement procedures in Danish law are:

- open procedure, where any business may submit a tender. This procedure is normally used for simple contracts;
- restricted procedure, where any business may ask to participate but only those who are pre-selected will be invited to submit a tender. This procedure is normally used in more complex cases;
- competitive dialogue, which is normally used for particularly complex contracts such as large infrastructure projects where it is not possible to define the technical specifications at the outset.

In case the contracting authority or entity is free to decide whether the result of the tender is to be based on lowest price or the most economically advantageous tender. If the result is to be based on the most economically advantageous tender, the contracting authority or entity must specify the criteria and qualities that will be taken into account when evaluating the tenders.

When evaluating the received tenders, it is very important that the contracting authority or entity follow these criteria and select the best tender on an impartial basis.

If no tenders match the criteria or no tenders have been received during the procedure, the contracting authority or entity is, as a main rule, entitled to cancel the procurement procedure.

#### **7.4.4 Procedure Violations**

A complaint may be filed with the Complaints Board for Public Procurement (in Danish: *Klagenævnet for Udbud*) which has a number of remedies at its disposal, including the possibility of awarding compensation.

The Danish Competition Authority does generally not deal with complaints about specific cases but will, in certain cases, assess whether public procurement rules have been violated and has the right to bring cases before the Complaints Board for Public Procurement.

A complaint may also be brought directly before the courts. However, the procedure of the Complaints Board for Public Procurement is generally faster and less costly, often making it preferable not to bring the case directly before the courts instead of bringing it before the Complaints Board for Public Procurement .

#### **7.5 Data Protection**

The main data privacy legislation in Denmark is the Act on Processing of Personal Data Act (in Danish: *Persondataloven*) which is based on an EU directive which seeks to harmonize the protection of the fundamental rights and freedom of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States. The Danish Processing of Personal Data Act sets out general data protection principles, including the following, that are applicable to all processing of personal data: a) Processing of data must be in accordance with good practices; b) collection of personal data must only be undertaken for specified, express and legitimate purposes; c) personal data must be relevant, sufficient and not excessive in relation to the purposes for which the data is collected and processed. Furthermore, specific rules exist regarding the processing of personal data to countries outside of the European Union. It should be noted that special legislation applies within certain business sectors, such as financial services and telecommunications, and regarding children under the age of 16.

A violation of the Danish Processing of Personal Data Act by any natural person or legal entity may result in a fine of up to 4% of the global income. In addition to this, a data controller must compensate the registered person for any damage caused by the processing of the personal data in violation of the Danish Processing of Personal Data Act.

#### **7.6 Residing and working in Denmark**

Any Any person who is a citizen of a country outside the Nordic countries or the EU/EEA intending to reside or work in Denmark must hold a residence and work permit in order to reside and work in Denmark.

The person intending to reside or work in Denmark is responsible for obtaining any required permit. Also employers employing foreign workers are obligated to make sure that foreign workers have a sufficient working permit before any work is initiated. In case of foreign workers working for a Danish employer without sufficient working permit, both the employee and the employer are in risk of receiving a fine.

Certain advantageous rules apply to highly qualified professionals who wish to come to Denmark to seek work and subsequently work in Denmark; to employees offered a job within professions currently experiencing a shortage of qualified professionals; and persons who have been offered a job with an annual pay above a certain limit, giving such professionals particularly easy access to the Danish labour market.

Furthermore special rules apply to employees in a company outside Denmark to be stationed in the company's Danish subsidiary, parent or sister company or similar for a period of time.

Companies that employ foreign workers on a regular basis may apply for a fast track certification. The fast track certification is a kind of pre-approval of the company allowing the company to start employing a given foreign worker even before the working permit has been issued by the authorities but based on the company's historical compliance with these rules.

## 7.7 Labour Laws

Danish employment and labour law is based on Danish legislation, collective bargaining agreements between the employers' organisations and the employees' unions, and the individual agreements between employers and employees. The number of employees who belong to an association or a union is quite high, and this is something which any Danish employer should take into consideration.

The rules that apply will depend on whether the involved employees are salaried employees or blue-collar workers. As a main rule, salaried employees are subject to the individual employment agreement and the Danish Salaried Employees Act (in Danish: *Funktionærloven*) while blue-collar workers are usually covered by their relevant collective bargaining agreements.

Collective bargaining agreements basically stipulate all rights and obligations of the employers and the workers regarding e.g. minimum wages, pension scheme contributions, working hours, termination notices, holidays, overtime payment, etc.

In addition to the collective bargaining agreements, local agreements are often entered into between the employers and the local departments of the workers' unions. Local agreements contain specific and local rights and obligations which are the responsibility of the employer and of the workers.

The Danish Act on Salaried Employees stipulates a substantial number of principal terms of employment applicable to salaried employees (popularly: white-collar workers). While collective bargaining agreements are sometimes entered into in relation to salaried employees, normally the Act on Salaried

Employees renders the collective bargaining agreements less important in relation to salaried employees.

The Act on Salaried Employees sets out the minimum obligations resting on the employers in respect of the salaried employees, such as notice of termination; severance payments; compensation for the employer's non-objective termination of the employment contract; absence due to illness; and requirements to the contents of competition and customer clauses; etc.

Generally, all employees are entitled to five weeks of holiday during the "holiday year" which runs from 1 May to 30 April. For now the right to paid holiday is earned during the calendar year preceding the holiday year in question. Consequently, if an employee has not qualified for the right to pay during holiday in that year, the employee will not be entitled to paid holiday, but will be merely be entitled to an unpaid leave. On September 1 2020 a new Holiday Act will enter into force introducing a principle of simultaneity meaning that employees will qualify for pay during holiday on a monthly basis and accordingly will be entitled to earn and take paid holiday within in the same year.

As regards termination, any employer must in principle state an objective reason for the termination of any employment. If no such objective reason can be given, the employer may be obliged to pay compensation to the employee in question as a result of unfair dismissal pursuant to the Act or a collective bargaining agreement.

Furthermore, Danish non-discrimination legislation puts restrictions on terminations. Non-discrimination legislation applies to all employees.

Apart from paying salary to the employees, Danish employers are – with a few exceptions, cf. below – not obliged to pay social benefit contributions on behalf of the employees. The Danish State covers costs for medical treatment etc.

## 7.8 Anti-bribery

Denmark consistently ranked among the least corrupt countries in the EU and is a top performer in terms of transparency, integrity and control of corruption.

The main anti-bribery legislation is the Danish Criminal Code (in Danish: *Straffeloven*) which also covers other offences that might be associated with the concept of corruption, such as embezzlement, fraud and abuse of office. The Danish Criminal Code prohibits active bribery which involves a natural or legal person unduly granting, promising or offering another person exercising a public office or function a gift or other privilege in order to induce that person to do or fail to do anything related to that person's official duties. The Danish Criminal Code also prohibits passive bribery which involves an individual unduly receiving, demanding or accepting the promise of a gift or other privilege while exercising a public office or function. Furthermore, the Danish Criminal Code prohibits bribes among private entities in the form of kickbacks, which include a situation where a person accepts, in his or her capacity as trustee of any property of another person, a pecuniary advantage which is concealed from that other person whose interests he or she is protecting. It should be noted that the Danish Criminal Code

is applicable to bribery conducted by individuals or companies in Denmark as well as by Danish individuals or companies abroad. Authorities in Denmark and other countries have generally been increasingly cooperating across borders, particularly since the implementation of the Bribery Act in the United Kingdom in 2011, with the aim of ensuring that individuals and companies operating on export markets refrain from involvement in corruption.

In relation to bribery, penalties that may be imposed under the Danish Criminal Code include significant fines and the following maximum prison sentences for individuals: i) six years for active bribery in the public sector and, ii) four years for bribery in the private sector. It should be noted that there is no comprehensive whistleblowing protection for employees in the public or private sector in Denmark. However, in relation to listed companies, the Danish Committee on Corporate Governance (in Danish: *Komitéen for god selskabsledelse*) has recommended that the management of the company considers establishing procedures to ensure the confidential and constructive reporting of offences and misconduct. Many Danish top tier companies have already made great efforts to implement policies and compliance programmes that take into account Danish and foreign legislation, such as the UK Bribery Act and US Foreign Corrupt Practices Act .

## 8. Specialized Industry Regulation

### 8.1 Banking

Banking in Denmark is heavily regulated with regard to establishment, structural regulation and the ongoing interaction with customers. In all areas of bank regulation, the bulk of the Danish regulation conforms with EU regulation. The main supervisory body of banks is the Danish Financial Services Authority.

#### 8.1.1 Establishment

The requirements to establish a bank in Denmark are set out mainly in the Danish Financial Business Act (in Danish: lov om finansiel virksomhed). This applies whether the bank is established as a separate entity or as a branch of a foreign bank. The bank must fulfil a number of requirements to its capitalization, business plan and management (fit and proper requirements). A bank that is not a branch office of a foreign bank must be a private limited liability company (A/S).

#### 8.1.2 Structural Regulation

Denmark adheres to the Basel I, Basel II and Basel III accords which imply that Danish banks must comply with certain minimum capital requirements, minimum liquidity requirements and reporting requirements.

#### 8.1.3 Interaction with Customers

In its on-going business with customers, any Danish financial institution must comply with certain requirements depending on the type of customer. Denmark has implemented both Markets in Financial

Instruments Directives ("MiFID" and "MiFid II") and MiFIR and is generally diligently compliant with all ESMA and EBA guidelines and policies. Also, Danish financial institutions must comply with EU standard KYC/AML requirements as well as US based FATCA requirements when dealing with customers.

## 8.2 Energy

The relevant authority for handling public procurement is the Danish Energy Agency ([www.ens.dk](http://www.ens.dk)) (in Danish: *Energistyrelsen*).

### 8.2.1 Law and Regulation

Energy is regulated by various environmental laws, EU directives and regulations and the Kyoto protocol, depending on which type of energy trade is relevant.

The main legislation for renewable energy is the Promotion of Renewable Energy Act (Act no. 1392 of 27 December 2008) (in Danish: *Lov om fremme af vedvarende energy*).

The Danish Environmental Protection Act regulates the responsibilities and permissions for heavy industries. Furthermore, EU directive 2008/1/EC regulates environmental aspects on integrated pollution prevention and control. CO2 quotas are specifically regulated in the Danish CO2 Allowances Act (in Danish: *Lov om CO2-kvoter*) based on the EU Emission Allowance Directive 2003/87/EC.

The Danish subsidy regimes, requirements regarding local citizens, and loss of value schemes are relevant factors to be aware of before beginning any business

## 8.3 Gambling

The Danish gambling market has been liberalized since 1 January 2012. Since then, a significant number of gambling providers have entered the Danish market to provide namely casino and betting services.

In order to provide gambling services in Denmark, including doing marketing and sponsor activities, a gambling licence is required. There are nine different types of licences which depend on the type of gambling activity. Licences are granted by the Gambling Authority (in Danish: *Spillemyndigheden*).

The availability of a licence depends on the type of gambling in question, e.g. lottery, betting or casino. Some types of gambling licences are exclusive and are only granted to a sole provider, including lottery or betting on horse and dog racing licences which have been granted exclusively to Danske Spil A/S, while other types may be granted on an ongoing basis to an indefinite number of providers, including betting, land-based casino and online casino.

Gambling revenues are subject to three different types of taxation, depending on the type of gambling in question, i.e. taxation of the gross gambling income, taxation of winnings and taxation of the payment sums.

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