



## DOING BUSINESS IN DENMARK

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 contemplating doing business in Denmark, there is, 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 considering doing business in Denmark seek legal advice tailored to the specific business and industry so as to be successful in their business ventures in Denmark.

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## **1. 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.

### **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:

- 1) **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 act-

ing in concert with the offeror have paid for shares already acquired in the six months preceding the date on which the offer is made.

- 2) 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.

- 3) 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.

### 3.2 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.

### 3.3 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. Financial Law**

Many acquisitions in Denmark happen as leveraged buyouts (“LBO”), i.e. acquisition of the target company by taking on a significant amount of debt. The LBO can be financed by way of a bank loan or a bond, albeit bank loans are more common in Denmark.

The bank loan agreements follow the Loan Market Association (LMA) standard to a wide extent. Traditionally, the bank loan will be standalone senior secured loan, and the combination with mezzanine or super senior loans is rare, however with the latter gaining ground on the Danish loan market.

Whether the LBO is financed by a bond or bank loan, the financing institution or bondholders generally demand guarantees and security in shares and intra-group loans. Floating charges and security in assets are often not included in the security package due to excessive registration fees, cf. below.

Perfection of floating charges and liens on real estate, movable assets and intellectual property require registration with the Danish Registration Court. Each registration often triggers a massive registration fee of DKK 1,750 plus 0.6 per

cent of the secured principal for real estate and DKK 1,750 plus 1.5 per cent for other asset groups.

The Danish rules on financial assistance restrict companies from directly or indirectly advancing funds, make loans or provide security for a third party's acquisition of shares in itself or a parent company. This restriction covers loans, guarantees and other forms of financial assistance granted to parent companies by companies comprised by the Danish Companies Act, i.e. public limited liability companies (in Danish: *aktieselskaber* abbreviated *A/S*), private limited liability companies (in Danish: *anpartsselskaber* abbreviated *ApS*) and limited liability partnership companies (in Danish: *partnerselskaber* abbreviated *P/S*). White-wash procedures and debt push down schemes can remedy unlawful financial assistance, albeit the former is rarely used as the procedure require the borrower to, inter alia, disclose the purchase price to the public.

Moreover, a corporate benefit and/or ultra vires doctrine applies to determine validity of security and/or guarantees by subsidiaries. This generally imply that companies can only grant security and guarantees, if this is in the interest of the company itself and not of the whole group.

For the above reasons, extensive limitation language will be found in credit facility agreements involving Danish obligors.

## **6. Venture Capital**

Denmark has over the recent many years developed a strong startup environment with both many private investors and institutional investors have placed investments in Danish companies in different stages of their journey.

There is a set of common documents which are to be completed under a normal investment between the investor and the company.

These documents include (i) a shareholders' agreement, governing the joint ownership of the company between the existing owners, hereunder the founders, and the investors, (ii) an investment agreement governing the investment in the company and the terms related hereto, (iii) service agreements for key employees in the company (typically for the CEO, or other C level persons), (iv) a warranty catalogue (which in some cases is included in the investment agreement) and (v) corporate documents for completion of the investment, hereunder

minutes of an extraordinary general meeting, revised articles of association and an updated register of shareholders.

One of the most essential documents to be careful about is the shareholders' agreement, where both parties (the founders and the investors) need to be careful and diligent around the drafting of the provisions contained in the agreement.

There are many considerations to be made when drafting the shareholders' agreement, such as reverse vesting of the founders' shares, any possible liquidation preference for the investors, material decisions by the company, protection of intellectual property, etc. These are only to mention a few to be particularly careful about drafting.

There may also be a need for due diligence if the investors wish to obtain prior insight into the business of the company they invest in. This due diligence investigation has no material differences from a due diligence under larger deals, apart from that due diligence under a venture capital investment is less time consuming and gives rise to less considerations and issues.

## **7. 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 creditors. The restructuring proceedings are initiated immediately after receipt of the petition to initiate the restructuring proceedings. The process is ordinarily carried out within seven months 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 and two years.

## **8. 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. This also includes rights related to tenancy rights.

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 18", "ABR 18" and "ABT 18" 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.

## 8.1 Leases

The Danish Business Rent Act and the Danish Rent Act provide the tenants with a high level of mandatory protection in the contractual relationship with the landlord, notwithstanding the contents of the contract.

A tenant's rights following from the Danish Business Rent Act and the Danish Rent Act are protected from subsequent purchasers or the landlord's creditors without registration as long as no extraordinary rights are granted the tenant under the contract. By registering their contract, or part thereof in the Danish Land Register protection can also be provided to the tenants regarding more extensive rights following from the contract. Such step should therefore be considered when entering into a lease agreement.

## 8.2 What limitations exist on private leases?

Termination of the contract by the landlord may only occur under specific conditions, such as the tenant's failure to pay the rent, the tenant's non-contractual use of the premises etc. In addition, certain circumstances give the landlord the possibility to terminate a lease, e.g. if he wishes to use the premises himself.

Increase in rent requires certain conditions to be met. As a general rule, the rent cannot be increased (or set when the lease is commenced) to a level higher than the "value of the rented premises", which in some situations is much lower than what commercial parties would consider market rent.

If a lease concerns premises located in a regulated district such as Copenhagen, certain additional regulations of the Danish Act on Temporary Regulation of Housing Conditions can apply depending on the character of the lease. As a consequence, certain matters, such as fixing of the rent, may be subject to stricter regulation than what follows from the Danish Rent Act.

## 8.3 What limitations exist on commercial leases?

Although The Danish Business Rent Act seeks to reflect the fact that the parties in question are commercial parties and thus giving these a degree of freedom of

contract, some significant exceptions apply, such as provisions and restrictions on the termination of the lease.

Also, unless otherwise agreed, increases in rent may only take place if a four-year increase period is respected. The rent based on the “market rent” is then increased with an equally large amount each year during this four-year period, until the final increase is reached.

If the parties agree to permit the landlord to require changes, in the terms of the lease, for example the size of the rent or other significant changes, tenants are protected from new changes for eight years.

## **9. Dispute Resolution**

The Danish court system is composed of three levels: the District Court ("Byretten"), the Western and Eastern High Courts (Vestre and Østre Landsret, together "Landsretten") and the Supreme Court ("Højesteret").

Additionally, there are a number of specialised courts. For certain commercial and maritime matters, The Maritime and Commercial High Court can be chosen as venue if the case in question requires specific knowledge of e.g. international business, competition law, marketing law or IP law.

The two major acts that regulate dispute resolution in Denmark are the Administration of Justice Act (in Danish: *retsplejeloven*) and the Danish Arbitration Act (*voldgiftsloven*).

Cases will always be tried as first instance in the District Court, unless the case is of fundamental importance and has an overall influence on the application and development of law or otherwise substantially impacts the society, in which case a party can request that the case is referred to and adjudicated by the High Courts.

A court case is, as a general rule, decided by one judge. However, the court may decide that three judges should attend the main hearing, e.g. when the matter of the case is of a principle nature or is particularly extensive.

The parties to a court case in Denmark are responsible for collecting and presenting the relevant evidence for the judges. As a result, the judges cannot take

into consideration anything else than what the parties present. Moreover, the parties have a right to view and comment on any material that the other party presents. A trial usually consists of two parts: 1) The written preparation and 2) the oral trial hearing.

### 9.1 The written preparation

In the written preparation, the parties present in writing their respective perceptions of the actual course of events or the facts relevant to the case. Furthermore, the parties present their claim, evidence and legal view of the case. These writings are usually drafted by the attorneys and are called the writ of summons, statement of defence, reply and rejoinder. The case begins with the plaintiff's filing of the writ of summons to the relevant court via the court's digital platform. When the writ of summon is filed, the defendant(s) is usually given 2-4 weeks to respond with the statement of defence.

In some cases, the court may decide to arrange a preparatory hearing between the parties, where the attorneys and the judge can discuss and plan the process for the case and set the time for the oral trial hearing. This may also be relevant in order to determine, for example, if an expert valuation is needed.

The written preparation will typically be completed with each party submitting a final statement, summarizing the party's views on facts, evidence and law. When the written preparation is completed the party cannot, as a general rule, present new evidence or legal arguments in the case.

### 9.2 The oral trial hearing

The trial hearing is the final meeting in the court, where the attorneys, parties, and witnesses meet with the judge directly to present and argue their case. The trial hearing will begin with the plaintiff's attorney objectively presenting the facts of the case. The defendant's attorney has the opportunity to supplement the presentation, however, the presentation will often be agreed between the parties before the trial hearing.

After the presentation, the plaintiff and the defendants provide their statement of evidence. First, the plaintiff is questioned by his/her attorney and then by counterparty's attorney. Then the defendants are questioned. Subsequently, there is the witness questioning. The parties may, in the preparation of the case, state which witnesses they wish to question. A witness is a person who is not a party

to the case and who gives an oral explanation. In Denmark we have a duty to testify. This means that anyone who is called to testify must testify.

The trial hearing ends with the lawyers' oral procedure in which the attorneys present and summarize the relevant arguments that support their views on how the case should be decided.

### 9.3 Verdict

The court will decide on their verdict as soon as possible after the conclusion of the trial hearing. In cases involving one judge, the court shall give a verdict within four weeks of the date the case is admitted for judgment. In cases involving multiple judges, the court gives judgment within two months of the case being admitted to judgment.

A trial in the first instance typically lasts between 8 and 18 months from the writ of summons is filed to the verdict, depending on how complicated the case is, how many witnesses and parties that need to be heard and the court's other case.

The parties have 4 weeks to appeal the verdict. As a general rule, a party can only appeal a court ruling once to a higher court unless specific circumstances are present, which calls for an additional trial of the case at the Supreme Court.

### 9.4 Arbitration

The parties can agree on Alternative Dispute Resolution. In Denmark, we have a well established arbitration institute, the Danish Institute of Arbitration (in Danish: *Voldgiftsinstituttet*), with experience in both national and international arbitration. Their rules are reminiscent of those of the International Chamber of Commerce's. The arbitrators are selected by the parties and confirmed by the institute on a case to case basis.

The costs of a proceeding with the institute are: a registration fee of EUR 1,300, a fee to the arbitrators plus an administrative charge, which both depend on the total amount in dispute.

With arbitration, the parties have a greater opportunity to affect the procedure. Several parts of the courts typically require clear legal authority and an adequate budgetary framework. The parties have the opportunity to appoint arbitrators who possess special knowledge in the specific area of the dispute. While judges

in the courts are generally generalists, arbitration opens up the establishment of a private court consisting of specialists. For example, appointed lawyers with special expertise, e.g. in maritime law, construction law or other special areas of law, just as persons with a special industry knowledge or with a certain technical or professional insight can be appointed. Unlike the courts, where the language of the proceedings follows the nationality of the court, the parties may by arbitration agree on the language of the case.

The arbitration verdict is final. In contrast to court proceedings, where a judgment can, as a general rule, be appealed, the parties in an arbitration case agree almost without exception that the ruling is final and thus cannot be appealed to an "appeal" arbitral tribunal.

## **10. Laws affecting Business and Investments**

### 10.1 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.

## 10.2 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.

The European Union implemented “the polluter pays” principle in April 2004 by Directive 2004/35/EC. The directive aims to enforce the polluter pays principle, which states that companies responsible for environmental damage to land, soil, water resources, natural habitats and protected species are responsible for bearing the full cost of preventive and remedial action.

## 10.3 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: *Komiteen 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 programs that take into account Danish and foreign legislation, such as the UK Bribery Act and US Foreign Corrupt Practices Act.

#### 10.4 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.

The 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.

##### 10.4.1 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.

##### 10.4.2 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.

##### 10.4.3 Procurement procedures

The three most common procurement procedures in Danish law are:

1. open procedure, where any business may submit a tender. This procedure is normally used for simple contracts;

2. restricted procedure, where any business may ask to participate but only those who are preselected will be invited to submit a tender. This procedure is normally used in more complex cases;
3. 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.

#### 10.4.4 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.

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.

## 10.5 Residing and working in Denmark

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.

## 11. Data Protection and GDPR

The General Data Protection Regulation (“GDPR”) concerns the regulation of personal data protection within the EU. The regulation went into effect on 25 May 2018. GDPR is implemented in Denmark in the Danish Data Protection Act (in Danish: *dataskyttelsesloven*). The Data Protection Acts replaces the Danish Act on Processing of Personal Data (in Danish: *persondataloven*).

The purpose of GDPR and the Danish Data Protection Act is to promote and secure the protection of personal data by companies. They contain very restrictive rules and obligations for the company regarding the collection, processing, transfer, storage and disclosure of personal data. One of the biggest requirements for companies is the requirement to document that all personal data is processed according to the rules. As a general rule, all personal data must be collected for explicit and legitimate purposes and must not be processed in a manner incompatible with those purposes. Thus, the companies are advised to keep a record and document that the principles of good data processing are complied with.

The rules on protection of personal data are supervised by The Danish Data Protection Agency (“DPA”), which is an independent authority. DPA advises and guides companies and person, processes complaints and supervises authorities and companies.

Companies are obligated to notify DPA, and, if relevant the customers, if a security breach occurs. The notification must be made without undue delay and, if possible, within 72 hours of the data controller becoming aware of the breach.

A violation of the Danish Data Protection Act by the supervisory entity may result in a fine of up to 4% of the entity’s 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 Data Protection Act.

## 12. Competition/Antitrust

The main competition or antitrust legislation in Denmark is the Danish Competition Act (in Danish: *konkurrenceloven*) which is modelled 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.

### 12.1 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 anti-competitive 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.

## 12.2 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.

## 12.3 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.

## 12.4 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 behaviour 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 "whistle-blowers" 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.

#### 12.5 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.

### 13. Labour Laws

Danish employment and labour law is based on Danish legislation, collective bargaining agreements between the employers' organizations 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 Danish 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.

The employees' holiday is regulated in by the Danish Holiday Act. Generally, all employees are entitled to five weeks of holiday during the "holiday year" of which three weeks must be held consecutively (the main holiday). 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. The new holiday year is from 1 September to 31 August. The employees earn 2.08 days' paid holiday per each month they are employed, which can be used on an ongoing basis. The main difference in the new holiday law is the way in which the holidays are earned. The employees will have the opportunity to earn and take holiday in the same period - unlike before, where you could only take the holiday you had earned in the previous vesting 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.

For salaried employees, the notice of termination follows the general rules for notifications laid down in the Danish Act on Salaried Employees. Termination by the employer must be made with at least 1 months' notice for resignation at the end of one month in the first 6 months after employment and with 3 months' notice for resignation at the end of one month after 6 months of employment. The notice of termination is increased by one month for every three years of employment to a maximum of six months.

In case of large scale of redundancies, The Act Danish Act on Collective Redundancies applies. The act imposes an obligation for the employer to negotiate with the staff and to notify the redundancies to the regional labor market councils.

The rules must be applied when, for a 30-day period, a notice of dismissal has been - or is expected to be - given to:

1. at least 10 people in institutions with over 20 and fewer than 100 employees
2. at least 10%. of employees in institutions with at least 100 and fewer than 300 employees
3. at least 30 people in institutions with at least 300 employees.

The Act Danish Act on Collective Redundancies also sets out rules for compensation and fines for non-compliance with the act.

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

### 13.1 Employee incentive programs

An employee incentive program is an agreement between a company and its employee, which is a part of the employee's total remuneration that is dependent on the achievement of predetermined goals.

If the predetermined objective is met, an incentive program can either result in a cash payment or by the allocation of share-based instruments such as employee shares, convertible bonds, options, warrants etc. An employee incentive is used

as an instrument to get employees to have a direct interest in the company's financial development on an equal footing with the shareholders and giving the employees an interest in a long-term association with the company.

On January 2019 the amended Danish Stock Option Act went into force. The scope of the Danish Stock Option Act relates to agreements that give an employee the right to subscribe for shares at a later date as part of an employment relationship.

The amended Danish Stock Option Act establishes freedom of contract to regulate what applies in respect of unused subscription rights to shares or shares in connection with termination of employment. Thus, it is possible to agree that the employee loses the right to exercise allotted purchase or subscription rights for shares if the employment terminates due to the termination of the employer.

## **14. Intellectual Property**

The area of intellectual property law is subject to detailed statutory regulation. The purpose of the regulation is the protection of rights to various types of intellectual property such as science, logos, literature, art etc.

Danish law also prescribes means of enforcement of IP rights.

### **14.1 Copyright**

Copyright is established when a literary or artistic work, which is the result of the creator's own intellectual contribution, is created. The area is regulated by the Danish Copyright Act (in Danish: *ophavsretsloven*), which is based on various EU directives. It is neither necessary, nor possible, to register a copyright in Denmark.

The protected works, subject to the main rule under the Danish Act on Copyright, may for instance be literature - including maps, drawings and computer programmes – or art expressed in various forms, such as fictional or descriptive representation, graphical works, a work of fine art, applied art or architecture. The basic requirement for a work to be protected under the Copyright Act is “originality”. A work possesses originality when it expresses the creator's independent and creative effort.

Neighbouring rights, such as sound and moving picture recordings, radio and TV broadcasts, catalogues, databases, photographic pictures, press releases and the performance of literary or artistic work are also protected by the act. The neighbouring rights may lack protection as copyright but are nevertheless protected under the act's special provisions.

The copyright belongs to the creator and the copyright protection applies for 70 years after the creator's death. Generally, the protection period is shorter for neighbouring rights.

The creator may assign the copyright to others. The assignment may be conducted in full or in part, i.e. by assigning a specific right of use of the protected work.

## 14.2 Design

The Danish Designs Act (in Danish: *designloven*) regulates the protection of designs. Contrary to copyright protection, design protection may be registered. However, if the design meets the requirements in the Danish act on Copyrights to obtain copyright, the design may also be protected by the Danish Act on Copyright, thus making registration unnecessary.

Registration may be obtained by application for registration to the Danish Patents and Trademark Office or the European Office for Harmonization in the Internal Market (OHIM).

The appearance of a product or a part of a product, particularly concerning shape, structure, lines, colours, or materials as well as three-dimensional products may be design protected.

The design must possess novelty and have individual character. A design is considered to possess novelty if no identical design has been made publicly available. A design should be regarded as identical if the features only differ in immaterial details. A design is considered to have individual character if the overall impression of the design given to an informed user differs from the overall impression such a user gets from other designs.

Registered designs are protected for a period of five years renewable for a period of up to 25 years.

Unregistered designs – intended for short-lived products e.g. fashion clothing – are protected for a non-renewable period of three years by EU regulation when such designs have been brought into commercial circulation within the EU. The protection is only valid against copying.

Designs may be transferred in whole or in part. On request, the transfer of a design must be entered into the design register, although this is not a requirement for the validity of the transfer.

#### 14.3 Patents

Patent protection is regulated by the Danish Patents Act (in Danish: *patentloven*), the act protects patentable inventions. Patent registration results in exclusive right to commercial use of the invention. Thus, private use does not infringe a registered patent. Furthermore, a person who made commercial use of an invention before a patent application was filed may continue to use the invention, provided that the use does not constitute evident abuse in relation to the applicant.

#### 14.4 Utility models

There are certain requirements for the invention in question to be patentable and moreover one needs to apply for registration of the patent. The requirements for the invention in question are as follows:

1. it must be susceptible of industrial application;
2. it must possess novelty;
3. it must involve an inventive step and;
4. it must be possible to describe and reproduce.

Certain subject matters are excluded from protection, e.g. discoveries and scientific theories. Computer programmes as such are also excluded as these are subject to Danish copyright law and not patent law.

A patent in Denmark may be obtained by:

1. submission of a purely national application to the Danish Patent and Trademark Office (in Danish: *Patent- og Varemærkestyrelsen*);
2. designation of Denmark in an application in accordance with the Patent Cooperation Treaty or;
3. a European application to the European Patent Office - EPO.

Since all three methods ensure protection on the Danish territory, the choice between them depends mainly on the number of countries where patent protection is necessary and the different fees and other costs associated with each method.

As a main rule, a patent may be protected for a maximum of 20 years from the date of the original application, subject to payment of annual fees.

Patents may be transferred in whole or in part. On request, the transfer of a patent must be entered into the patent register, although this is not a requirement for the validity of the transfer. If the patent holder has given license to commercial use of the patent, the licensee may not transfer the license to another licensee, unless it has been agreed with the patent holder.

The Utility Models Act (in Danish: *brugsmodelloven*) complements the Danish Patents Act. The Utility Models Act protects creations. A creation is similar to an invention in many ways, but as opposed to patents, the requirements of inventive steps are lower. In addition, the requirements for obtaining protection of utility models are easier met than the requirements for obtaining a patent.

An application for a utility model protection may constitute priority for an application for a patent and vice versa.

A creation susceptible to industrial application or providing a solution to a technical problem may be registered as a utility model provided that it possesses novelty and differs distinctly from prior designs.

Protection is obtained by registration at the Danish Patent and Trademark Office or the Patent Cooperation Treaty system, which may be used if an international utility model is desired. A subject matter statement of the desired utility model must be included in the application. Against payment of a fee, the Patent and Trademark Office may ensure that the requirements of novelty and distinction are fulfilled. However, if the fee is not paid, the Patent and Trademark office

does not check if the requirements are fulfilled. Thus, it is possible to have a non-valid registered utility model.

A utility model is protected for a period of three years from the date of the application. The protection may be renewed for two more periods of three and four years respectively.

#### 14.5 Trademarks

The Danish Trademarks Act (in Danish: *varemærkeloven*) protects trademarks. Trademarks are defined as distinctive signs for goods or services being used or intended for commercial use. Examples of trademark types include words, word combinations, letters, numerals, pictures and designs, or the shape, equipment or packing of goods, and trademarks may generally consist of any sign capable of distinguishing the goods or services of one company from those of other companies, provided that the trademark in question may be represented graphically (the main function of a trademark is to provide the origin of goods marketed under the trademark).

Trademarks describing the purpose of goods and other types of trademarks which due to their nature are excluded from registration may not be registered and will not be protected through use.

The EC Trademark Directive forms the basis of the Danish Trademarks Act.

A national trademark right may be established either by registration or through commercial use, making it an unregistered trademark. The registered trademark right is registered at the Danish Patent and Trademark Office, OHIM (Office of Harmonization in the Internal Market) or WIPO (World Intellectual Property Organization), while an unregistered trademark right is established by use of the trademark in question in Denmark for the goods or services for which it is to be used and for which it is continuously used. However, marketing activities are required.

An unregistered trademark confers equal rights to the registered.

For all trademarks, it is a fundamental requirement that they have distinctive character. A trademark that does not have distinctive character may obtain protection by regular usage through a period of time.

The benefits of registration of a trademark include evidence of its existence, and the extent of the right is often wider than that of the unregistered. It may also prevent future registered trademarks from coming too close to the holder's trademark.

The registration of a national trademark is published and opposition may be filed against the validity of the registration within two months from the date of the publication.

A registered trademark is protected for a period of 10 years from the date of registration. Registration may be renewed for a new 10 year period. There is no requirement of use of a registered trademark at the time of application. Thus, it is possible to register a trademark, with the sole purpose of preventing others from registering the trademark. However, registered trademarks may lose their protection if they have not been used for a period of five years. Trademarks established through usage remain in force as long as they are used continuously.

It is possible to obtain trademark rights in Denmark in accordance with the Madrid Protocol by designating Denmark in an application for international registration. Through an application and registration with OHIM, protection will have effect on the Danish territory as well as in the rest of the EU. However, if the trademark cannot be registered in all countries, registration will be denied.

Trademarks may be transferred in whole or in part. On request, the transfer of a registered trademark must be entered into the register of trademarks with the Danish Patent and Trademarks Office, although this is not a requirement for the validity of the transfer.

#### 14.6 What if a right is not covered by any of the above-mentioned statutes?

The above IP rights are supplemented by the Danish Marketing Practices Act (in Danish: *markedsføringsloven*), which provides a general clause prohibiting all acts which are against good marketing practices. Acts covered by the general clause might be protected against marketing of copies or close imitations of the product of another company.

In addition, the Danish Marketing Practices Act protects against unauthorised dissemination of trade secrets and technical drawings etc., and even though know-how is acknowledged under Danish law, it is not directly protected by any legislation. However, the standard of good marketing practises may generally be



invoked as a protection against an unauthorised dissemination of business know-how.

14.7 What are the means of enforcement of IP rights?

Effective and relatively fast means of enforcement of IP rights – including trademarks, copyrights, and patents – appear from the Danish Administration of Justice Act (in Danish: *retsplejeloven*).

An interlocutory injunction against infringements of IP rights may be issued by the Enforcement Courts (in Danish: *fogedretten*) thereby prohibiting an infringer from further infringement under criminal liability. The holder of the right may obtain assistance from the Enforcement Court to prevent further infringements or initiate proceedings to preserve evidence – including a search of the business premises of an alleged infringer – of suspected infringement and the scope of such infringement.

**15. Specialized Industry Regulation**

15.1 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.

15.1.1 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).

#### 15.1.2 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.

#### 15.1.3 Interaction with customers

In its ongoing 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.

#### 15.2 Energy

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

#### 15.3 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. CO<sub>2</sub> quotas are specifically regulated in the Danish CO<sub>2</sub> Allowances Act (in Danish: *lov om CO<sub>2</sub>-kvoter*) based on the EU Emission Allowance Directive 2003/87/Ee.

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

#### 15.4 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.