



CONSTRUCTION

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360 Law Firm is a Copenhagen-based international law firm with a simple approach to solving complex legal challenges for our clients. Simply put - we go 360 degrees around any legal challenge.

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CONSTRUCTION IN DENMARK

- a guide for establishing and running a business in the Danish construction industry

A brief introduction

New tenders in Denmark such as the 17.6 km long Fehmarn Belt Fixed Link, the longest immersed tunnel ever constructed, represent a growing opportunity for large infrastructural and public building projects. Other tenders include six new super hospitals, significant expansion of the Copenhagen Metro as well as 6 GW off shore wind parks.

The majority of the projects are targeted towards sustainability, supporting innovative construction solutions in the business environment. Among other projects, electrification of the national railway network, reconstruction of wastewater treatment plants from energy consumers to producers as well as launching smart city initiatives in Copenhagen, improving overall living and environmental conditions.

In comparison to the size of Denmark, the construction activity level is very high. As an example, a public investment in Danish public infrastructure of DKK 160 billions was recently made. Foreign investors have noticed this and as a result, the Danish construction market is experiencing more and more foreign contractors bidding for tenders - and frequently winning them.

Furthermore, operating in the Danish market with regards to taxation, employment law etc. is quite simple. However, it is necessary to carefully assess a variety of areas such as optimal tax selection, and corporate/employment set-up to reduce risks for your entity.

The ambition of this guide

This guide offers international contractors a holistic overview of frequently arising questions when operating as a contractor in the Danish construction industry. This guide aims to address key considerations - invitations to tender, establishment in Denmark, safety on the construction site, employment and closing down the activity in Denmark.

At 360 Law Firm, we strive to provide a complete set of answers to the majority of these questions. However, as you may have specific concerns of your own not covered in this guide, we recommend you seek professional, legal advice before carrying out construction work or preparing bids for tender in Denmark.

Considering establishing your company in Copenhagen? We offer you free support.

Entering a new country requires thoughtful planning, and we are here to assist you in making a smooth transition. Our team will connect you with relevant networks, potential partners, authorities, organizations, and more to ensure a successful establishment in Denmark.

If you're curious about the total costs associated with running an entity in Denmark, we can provide an estimate of employee expenses and operational costs in Greater Copenhagen.

Sustainability and circularity are integral to our approach. We can guide you to partners and authorities specializing in these areas, helping you begin or enhance your sustainability efforts, building on Denmark's strengths in this field.

Our services are offered free of charge and in strict confidentiality. Please do not hesitate to reach out to begin the dialogue.

About Copenhagen Capacity

Copenhagen Capacity attracts and supports international companies, investors, and professional talents with the goal of fostering sustainable growth in Denmark and Greater Copenhagen.

We achieve this by promoting our capital, region and country globally, using our extensive network and expertise across industries, academia, and the public sector to help our clients explore business opportunities.

As a not-for-profit business foundation, Copenhagen Capacity is funded by both public entities and private foundations and companies. We promote Eastern Denmark as a business destination under the brand "Greater Copenhagen Region" and all of Denmark as a career destination under the brand "A State of Denmark."

Each year, our dedicated team supports numerous international companies in establishing operations in Eastern Denmark, while also helping existing foreign businesses expand. Additionally, we assist Danish companies in sourcing skilled international labor.

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1.

Entering Construction Contracts in Denmark

This first section of the guide will go through public tender invitations and construction contracts in Denmark (section 1.1), the essential regulation regarding construction contracts (section 1.2), and construction disputes (section 1.3).

1.1. Public Invitations to tender in Denmark at a glance

In all EU member states, including Denmark, a project owner is obliged to issue public invitations to tender for construction projects when conducted by the state, municipalities, or other publicly governed entities, and if the total volume of the project exceeds certain threshold values depending on the construction or related services requested.

1.1.1. Ongoing Invitations to tender

International contractors and companies can quickly acquire an overview of invitations to tender for public projects in Denmark. Such overview may be found on the website: www.udbud.dk – (“invitation to tender” = “udbud” in Danish). This website provides a comprehensive overview of all Danish public invitations to tender.

The website is updated daily and lists National as well as EU/invitations to tender. However, please note that the actual invitations to tender listed are only available in the Danish language. Key functions on the website include:

- Search criteria relevant to your enterprise
- Free email service to automatically notify when a newly published invitation to tender matches your profile listed
- Find other suppliers for joint bidding

1.1.2. Obligation to Issue an Invitation to tender

If the total volume of a construction project is EUR 5,3M or above, the applicable Danish regulations on invitations to tender oblige the state, municipality, or other publicly governed entity to issue public invitations to tender. For other kinds of contract types, a different threshold applies.

The EU must advertise these contracts and is obliged to state selection criteria (i.e. awarded to the least expensive or most suitable bid).

1.1.3. Requirements of the bid

Understanding bid requirements is essential when submitting a bid. These requirements need to be followed at strict precision.

The issuing authority must reject bids unable to meet the requirements put forward in the invitation to tender. If the bidder's evidence is insufficient (i.e. diverging from the requirements), the issuing authority must disqualify the bidder.

Further, and perhaps surprisingly, this also applies if evidence presented exceeds the require-



Photo: Lucas Carl

ments put forward in the invitation to tender (e.g. if the evidence is better). The compliance of procurement rules is regulated by the Danish Act on Complaints Board for Public Procurement (in Danish: “Lovbekendtgørelse om Klagenævn for Udbud”) and monitored by the Complaints Board for Public Procurement (in Danish: “Klagenævnet for udbud”).

1.1.4. Complaints Procedure in Case of Errors in the Invitations to Tender

A complaint can be filed to the Complaints Board for Public Procurement. In such filing, the Board does not ex officio examine, which procurement regulations could have been breached. As such, we advise to carefully examine potentially breached procurement regulations by stating specific arguments in detail before filing a complaint. Complaints are expected to be worded similarly to claims in court proceedings, putting a great emphasis on stating facts and submission in detail. It is recommended to consult a lawyer when preparing such complaint.

Further, if a bidder is awarded a contract due to regulatory breaches, unsuccessful bidders can claim damages. However, please note that such damage claims are rarely met

as it is difficult for bidders to provide sufficient evidence of the loss incurred. If a successful bidder is awarded a contract based on a fundamental procurement rule breach, the Board is in its right to declare already concluded contracts null or void. This means that the invitation to tender will be re-issued.

In certain cases, the contracting authority must initiate a stand-still period in which the contract may not be concluded. If an unsuccessful bidder wants to present its reservations during an invitation to tender, the bidder must do it in the so-called “stand-still” period of 10-15 days depending on communication type (10 days for electronic communication and 15 days for other communication). This “stand-still” period

starts as soon as the contract is awarded in writing, from which period a final agreement with the bidder of reference may not be concluded. Unsuccessful bidders may request a suspense based on their complaint, to prevent the contract being awarded. Following this, the Board must decide whether the final contract can be suspended. This is done via a fast-track procedure.

The Complaints Board for Public Procurement may declare a final contract null and void and

DID YOU KNOW THAT during the so-called “stand-still” period of 10 or 15 days, a complaint filed to the Complaints Board for Public Procurement (“Klagenævnet for udbud”) may prevent a contract from being finally awarded to the preferred bidder?



Anne Fredholm, Attorney

impose millions in fines to the authorizer of the invitation to tender.

Complaints to the Complaints Board for Public procurement must be written in Danish.

1.2. Construction Contracts

There are no provisions on construction and engineering contracts in Danish Law.

The construction law is based on the general principles of law as stated in the arbitral practice. Both parties must agree on which country's law is to govern the legal relationship between the parties. Otherwise, Danish law will apply for construction projects in Denmark. Practically speaking, most construction contracts are governed by standard terms for engineering and construction works. This is called the AB system, which since January 2019 is comprised of AB 18, ABR 18 and ABT 18. However, some contracts are still governed by the older ABR 89, AB 92, and ABT 93. The AB system relies heavily on implied provisions and a general understanding of law principles. This makes it difficult to read, and understanding various clauses requires knowledge of underlying principles.

DID YOU KNOW THAT the vast majority of construction projects in Denmark are governed by the standard terms called AB? It is recommended to obtain expert legal advice to understand the particulars thereof.



1.2.1. The AB System

AB is short for “General Conditions” (in Danish “*Almindelige Betingelser*”). AB refers to a set of agreed standard terms – not legislation. This means that contracting parties must agree before contracting though it is not necessary to express any adaptation.

Often for commercial terms, deviations from individual clauses (that does not express mandatory provisions of law) may be agreed upon. However, please note that in order for the deviations to be successful, they must generally be stated clearly.

1.2.2. Providing security

The contractor shall provide performance bond (security) amounting to 15% of the contract sum unless anything else is agreed. The “hand-over” (formal acceptance) of the construction work reduces the performance bond to 10%, and to 2% 1 year after the handover.

This security ultimately ends after 5 years, and the reduction only applies if the employer does not raise claims prior to reduction.

The contractor may request the employer to provide performance bond equal to three months’ average construction payments and at least 10% of the contract sum.

This is like other international security systems. However, the Danish system includes a dispute

resolution method, allowing either party to challenge the other party’s call on the guarantee (or use of other security). Another thing to note is that AB performance bonds generally do not have fixed expiration dates, often causing trouble for international banks.

1.2.3. Payment

The default rule under the AB-system is payments twice a month based on progress. No advance payment takes place, though there is an option for claiming such payment for ordering materials and against additional security. The provisions concerning payment are often modified by employers.

1.2.4. The Right to Stop Work if Payment fails

If the employer fails to pay an amount due by the final date for payment, the contractor may stop working after having given written notice (3 working days for private employers and 5 for public sector/social housing organisation employers).

The key risk here is that discontinuation of work may imply that the contractor is deemed to be in wilful default of the contract. This leaves the contractor liable without limitation to the employer.

1.2.5. Extension of Time

The AB system for extension of time is complex. Time extensions may be granted to both parties in case of:



Elisabeth Romstad, Attorney

- Variations to the works ordered by the employer
- Force majeure
- Unusual weather conditions
- Circumstances attributable to the other party
- Public orders or bans imposed by public authorities.

The extensions may trigger different legal effects. To provide a few examples; specific provisions cover extensions due to unusual weather conditions on lost days, allowing for a certain number of days where work cannot be carried out. Further, costs of variations typically cover extension costs, while force majeure extends time for both parties without liability for either party.

1.2.6. Liquidated Damages

Often contracts include provisions regarding liquidated damages to be paid when a delay which does not entitle the contractor to extension of time occurs and may be the sole and exclusive remedy for delays. Note however, that liquidated damages are sometimes wrongly referred to as daily fines or penalties - this is not the case.

The liquidated damages do not need to be a pre-estimate of the actual daily costs of the employer though disproportionate liquidated damages may be reduced and agreed, liquidated damages may be set aside if it is apparent that no loss or inconvenience resulted from

the delay. The market standard for liquidated damages is 1‰ of the contract sum per working (not calendar) day.

Strict notice requirements apply in relation to liquidated damages and additional requirements apply to liquidated damages for exceeding interim deadlines. Caps on liquidated damages are rarely below 10% of the contract sum.

1.2.7. Handing over

Before completion, the employer must call in the parties to attend a pre-handover review of the works in reasonable time before the agreed handover.

Immediately before completion, a contractor must notify the employer of the exact date of completion. This may be done close to the completion date.

Following receipt of this notice, the employer must convene a formal meeting for acceptance within 10 working days of completion. Failure to issue such invitation for formal acceptance will deem the construction project handed over ten working days after the date of completion started.

The handover date refers to the date on which the conformity of the works (defects) is established – not the date of completion. It is assumed that there will be defects needing rectification that does not prevent handover. It is

only material defects that prevent the employer from taking the works into use that entitle the employer to reject the works. This could be lack of occupation permits.

1.2.8. Defects and Damages

A project is considered defective if either the work has not been performed in accordance with the contracts or if the work does not correspond with recognized technical standards or is not done with due care and skill.

Further, a product liability (and insurance) issue may arise if the defective work causes damage to other parts of the building.

Defects and product liability are considered separate issues and are therefore governed by separate rules. However, large grey areas are often evident with respect to these issues as the remedial works required are frequently overlapping.

It is essential that an established defect is ascertained at handover. At this point in time, a deadline for rectification must be set. The employer is usually entitled to having the rectifi-

cation work performed by a third party at the contractor's expense in case the rectification does not happen within the set time period.

Further, inspections of the conducted work usually happen both at the one-year and five-year inspections following the handover.

Following a five-year time period from the handover, the defects notification period typically expires. This means that the contractor is not entitled to repair of damage caused to other works or a pre-existing building.

Further, a given liability for damages is typically limited to the agreed liability insurance sum.

1.3. Construction Disputes

Construction disputes are by Danish tradition often decided by the Building and Construction Arbitration Board (in Danish: "*Voldgiftsnævnet for Bygge- og Anlægsvirksomhed*"). The Board can convene across the country. Further, Danish construction disputes are usually evidenced by inspection and survey by independent experts (see section 1.4 of this guide below).

With the AB-system, disputes between parties follow a more complex set of rules. First, a five-day period is granted for project managers to internally settle the dispute. Second, representatives of the company management will be granted the same five-day period to settle the dispute. Lastly, if these negotiations are unsuccessful in settling the dispute, the dispute must be submitted to mediation. It is only if this attempt to settle also fails that the disagreeing parties may submit the dispute to arbitration.

The Arbitration Board will generally be composed of a legal expert – often a judge at a Danish high court – as well as two technical experts with significant industry experience. Decisions ruled by the Arbitration Board are final and binding; in other words: no appeal is possible. All decisions may be published in anonymous form.

Further, and in conjunction with the above rules, the parties may submit certain disputes for quick decision-making when disputes are urgent or concern security and retentions.

Securing Evidence in Danish Construction Disputes

At any time, either party is allowed to request the Building and Construction Arbitration Board to appoint an independent expert. The expert is qualified to conduct inspection and survey, establish factual conditions and when relevant, render a technical assessment of these facts. What is unique to Denmark is how parties may put forward questions to the expert(s). This typically requires that the parties seek local legal advice.

Importantly, the evidence must be obtained by experts – otherwise it may be disregarded when an expert inspection and survey could have been conducted instead.



Dorthe Juel, Office Manager

Mia Krøyer, Legal Secretary



2. Establishment in Denmark

As a primary rule, participation in construction work in Denmark constitutes a permanent establishment with corporate tax liability as well as registration requirements. As such, it is essential to create a corporate structure where business activity constitutes permanent establishment. The corporate structure chosen is highly dependent on both corporate and tax regulations of such legal entity.

This second section of the guide will go through the various corporate structures (section 2.1), requirements regarding registration of foreign service providers (section 2.2), and essential regulation regarding corporate tax (section 2.3).

STEP-BY STEP GUIDE for setting up business in Denmark

- Choose the type of legal entity for your activities
- Register your entity/company
- Register with the Danish Tax Authorities
- Taxation and filling requirements

2.1. Permanent Establishment

If a business activity is carried out from a fixed place and has a certain degree of permanency, such business will be deemed a permanent establishment for tax purposes. Participation in Danish construction projects will – as a general rule – constitute a permanent establishment for Danish tax purposes from the very first day.

It is important to note that double taxation issues may occur if no double tax treaty exists between the developer's home country and Denmark. This should be carefully assessed in order to proceed most expediently.

2.1.1. Subcontracts

Even though a subcontractor of a given contract is concluded between two foreign entities, the rule of permanent establishment still applies if the performance of the contract is in Denmark. This also applies to the subcontractor.

Exceptions:

Three exceptions apply to the rule of permanent establishment:

1. Facilities used exclusively for the purpose of storing, displaying or delivering goods
2. Business facilities used exclusively for the purpose of purchasing goods or obtaining

information for the enterprise

3. Business facilities used exclusively for advertising or similar purposes.

In addition to these exemptions, if the subcontractor is only performing a part of the project, the main rule of permanent establishment still applies. However, if the performance of the



Kent Vinhardt Josephsen,
Chief People & Culture Officer

project is solely based on manpower, the regulation on hiring-out of labour applies (see section 2.3.2 of this guide).

Each individual construction activity is separately appraised when assessing permanent establishment tax liabilities in Denmark. However, if there is an economic or geographical connection between activities, the work in its entirety will still be appraised (e.g. construction of a group or terraced houses).

An exemption exists where construction projects have limited durations. In this case there is no need to register a branch for corporate purposes – only for tax purposes.

2.1.2. Choice of corporate form

If a business activity in Denmark is considered as a permanent establishment, there is an obligation to register the entity for tax purpose. It is then essential to consider the most suitable corporate form. This form may be either a branch (permanent establishment) or a limited company.

Branch vs. limited company:

There are two main differences between a branch and a limited company. These are tax transparency and liability.

1. Tax transparency:

Tax transparency for a branch means that the branch is taxed in both Denmark and in the country of the parent entity.

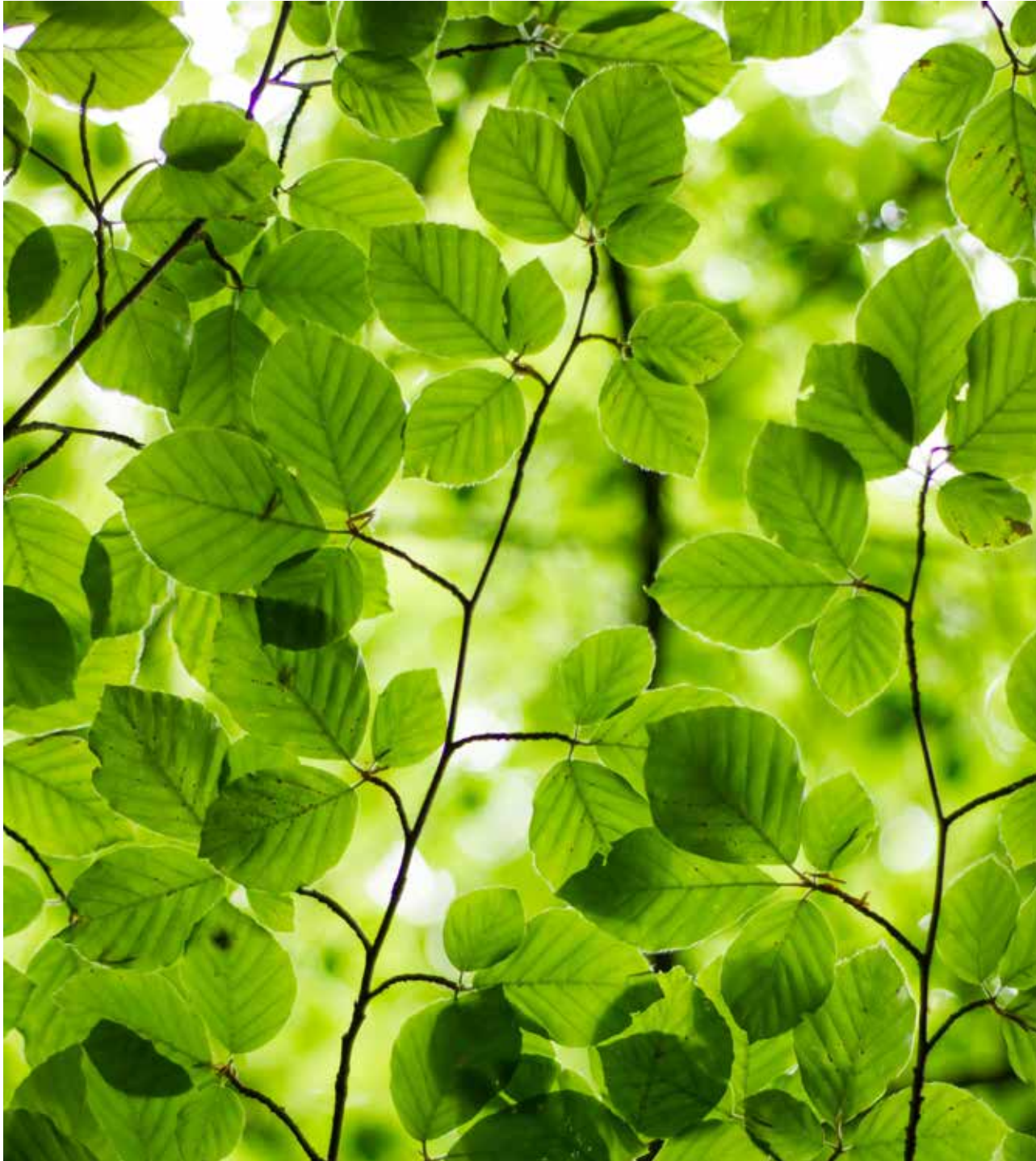
This is preferable to certain foreign contractors as they are able to deduct expenses in their home countries during the construction period. However, double taxation may have adverse consequences when no double tax treaty exists.

Relief of double taxation can only be granted according to a general credit rule. This rule governs taxes paid in the home country which are deductible according to Danish tax law. As such, it may be more efficient to establish a Danish company. If done correctly, this company will only be taxed on its Danish income and no double taxation will therefore be paid.

2. Liability

Liability for a branch is borne by the branch's head office (for the foreign company). This head office is fully liable for all obligations of the branch. The liability for a company (A/S or ApS) is limited to the value of shares subscribed – either at least in DKK 40,000 (ApS) or DKK 400,000 (A/S). Capital requirement for ApS is expected to be reduced to DKK 20.000 1/1 2025.

Even though it is often required to issue guarantees when participating in construction projects, such guarantees are limited to certain amounts and parties. This means that the limitation of liability in a company will be effective towards all other creditors in relation to the project.



It is worth to note that it is often much faster and simpler to establish a limited company compared to a branch. A new company can be registered and ready to do business in a matter of hours whereas it is both costlier and slower to establish a branch – it may take several weeks. An additional benefit for limited liability companies is that no requirements to residency members of the local management exist.

DID YOU KNOW THAT a limited company is easy to establish from day to day and no local management is required? Establishing a limited company in Denmark is both cost and tax efficient compared to the establishment of a branch.

Joint Venture

It is also possible to establish a joint venture between the foreign and Danish construction firm. There are primarily 3 different types of joint ventures:

1. General Partnership (in Danish “*Interessentskab*” called “*I/S*”): A general partnership is transparent for Danish tax purposes. The foreign entity is deemed to participate through a permanent establishment (branch) as described above. Participants in this partnership are jointly and severally liable for all obligations in the joint venture.
2. Limited Partnership (in Danish “*Partner-*

selskab” called “*P/S*” or “*Kommanditselskab*” called “*K/S*”): The limited partnership is transparent for tax purposes as the General Partnership. The difference is related to the liability of the participants. Participants are only liable up to their share of the limited partnership.

3. Company (in Danish “*Aktieselskab*” called “*A/S*” or “*Anpartselskab*” called “*ApS*”): The Joint Venture can be structured as a company to avoid double taxation as such company is a separate tax entity. The liability of the participants is, like the Limited Partnership, limited to their respective share in the company.

2.2. Register of Foreign Service Providers (“RUT-Register”)

Foreign companies or branches are obligated to register in the Register of Foreign Service Providers – shortened “RUT” (in Danish “*Register for Udenlandske Tjenesteydere*”) – if the enterprise provides foreign employees without establishing a branch or company in Denmark. This includes foreign enterprises which temporarily perform tasks in Denmark must register with RUT even if they do not have employees. In case a foreign enterprise has established a branch or company in Denmark, it is not necessary to register in the RUT-Register.



Stephan Gheysen, Partner/Attorney

The RUT-Register is a separate register for foreign enterprises without a Danish registered business, providing services in Denmark. The RUT-Register is assessable by the public and used by Danish unions as a “check-list” for foreign enterprises conducting business in Denmark. It is important that not only the enterprise as an entity registers, the individual employees of the enterprise must also be registered by name.

The following information must be filed with the RUT-Register:

- Name and address (registered office) of the foreign enterprise for which the registration is required
- CVR number (Commercial Register No.) or SE-number (tax number), if applicable
- Date on which activities in Denmark are to commence and date on which they are expected to end
- Location where services are to be provided
- Contact person in Denmark at the enterprise requiring registration
- European “NACE code” = (Nomenclature générale des activités économiques dans les Communautés Européennes)
- Identity of employees posted and duration of work in Denmark.

In case of failure to register in the RUT-Register, a fine of minimum DKK 10,000 (EUR 1,350) may be imposed. Businesses entered in the register are also vetted by the Danish authorities more

often than Danish enterprises. The Danish Business Authority is responsible for maintaining the register.

2.3. Corporate Tax

Both the permanent establishment (branch) and the Danish company is subject to corporate tax at the rate of 22%. However, certain asset depreciation as well as deduction of business expenses may reduce the effective tax rate. Further, taxation of projects may be postponed until the completion of the project.

Characteristic for Denmark is how there is almost no payment contribution towards social security for employers (only EUR 2,000 per year per employee).

In comparison, social security contribution in other countries is often fixed at 30% of employee salaries.

2.3.1. Transfer Pricing

Intercompany transaction and ascertaining revenue within a group of permanent establishments or a Danish company is obliged to follow Danish transfer pricing rules – rules that comply with the OECD guidelines. It is worth noting that small and medium-sized businesses are exempt from documentation requirements, but not from applying the arm’s length principle, whereafter affiliated companies are required to transact with each other on the same terms and conditions that they apply to unrelated parties.



Helena Lysdahl, Attorney

Full transfer pricing applies if the taxpayer, on a consolidated basis has:

1. more than 250 employees and
2. assets of more than DKK 125 million or a turnover of more than DKK 250

2.3.2. Hiring-out of labour taxation

If the foreign enterprise is not considered a permanent establishment, hiring-out of labour taxation usually applies.

As such, if employees are hired out by foreign enterprises directly to a company in Denmark, this special regulation applies. The customer undertakes all rights to instruct the employee and pays a service charge to the foreign enterprise, and the foreign enterprise continues to pay the local salary to the employee. This activity will generally not make the foreign enterprise a permanent establishment. However, in these cases, the employee is subject to Danish hiring-out labour tax of 30% if working in Denmark up to 6 months. The customer must withhold this hiring-out of labour taxation of 30% plus a labour market contribution of 8%, a total tax amount of 35.6 %.

Unless the salary paid to the employee is enclosed, the total taxation of 35.6 % must be withheld from the payment of the service charge to the foreign enterprise.

The hiring-out of labour tax may in certain cases result in double taxation as the employee will

also be taxed locally of the salary paid by the foreign enterprise. In addition to this, the hiring-out of labour tax is regarded as a final Danish tax and no deductions are allowed. This also means that the general Danish rule of credit for foreign paid taxes does not apply.

It is often recommended to establish a Danish branch or company to avoid these adverse costs. In such case, the hiring-out of labour tax will not apply.

Lastly, and depending on the circumstances, the hiring-out of labour taxation does not apply to subcontractor agreements if they are considered by the Danish authorities as “independent subcontractor agreements”.

2.3.3. VAT

VAT of 25% is charged to enterprises selling goods or services in Denmark. It is mandatory to register for VAT if selling goods or services. In fact, even if a construction enterprise is not deemed to have a “business establishment” (see section 2.1) in Denmark, the work carried out is principally subject to VAT.

However, a provision called “reverse charge” applies when work carried out by a foreign enterprise does not have a Danish business establishment for tax purposes. This provision states that it is the Danish principal that needs to charge VAT - and not the foreign construction enterprise.

If the foreign enterprise performs other activities not subject to VAT (e.g. sale to private individuals), the “reverse charge” provision does not apply.

In practice, the “reverse charge” provisions state that invoices for work in Denmark must be issued by the foreign construction enterprise without Danish VAT. In return, the VAT identification number (in Danish “*momsnummer*”) of the Danish principal must be indicated on the invoice. Further, the invoice must also include the wording “The sale is subject to reverse charge. The recipient is liable for the VAT”.



Kim Meurs-Gerken, Partner/Attorney



3. Safety

In Denmark, safety regulations on construction sites are of quintessential importance. Unlike commercial activities that principally do not require commercial permits, some activities on construction sites will be subject to permits.

This third section of the guide will go through the required permits (section 3.1), the Danish provisions requiring safety committees on construction sites with certain numbers of workers (section 3.2) and insurance provisions against work accidents (section 3.3) which diverge from corresponding EU regulations in other member states

3.1. Permits Required by Enterprises and Individuals

While freedom of trade principally exists in Denmark, in skilled trades special permits apply. These permits apply to the performance of electrical, sanitary, and gas installation work. Such permits must be obtained from the Danish Safety Technology Authority (in Danish “*Sikkerhedsstyrelsen*”).

Further, and in addition to proof of a certified quality management system (such as an ISO certification), a certificate of good conduct must be provided as well.

If the work involves safety considerations, it must only be conducted following the presentation of proof of additional training or 2 years of practical experience.

Generally speaking, it is the Working Environment Authority (in Danish “*Arbejdstilsynet*”) that is responsible for issuing permits. The following work require permits:

- Work involving asbestos
- Erection of scaffolding
- Installation of elevators
- Operation of fork-lift trucks
- Operation of cranes
- Work involving refrigerants
- Work involving boiler systems
- Welding work
- Fire approval

3.2. Safety on Construction Sites

It is mandatory for companies with more than 9 employees to establish a “Safety Committee” (in Danish “*Sikkerhedsudvalg*”), which represents both employers and employees to ensure safety at work. The Safety Committee is responsible for planning and providing information about safety measures and to monitor compliance of these. In order to verify compliance with law required safety measures, the Danish Working Environment Authority conducts inspections of workplaces and construction sites.

3.3. Insurance Against Accidents at Work

In the case of accidents at the workplace, the employer is liable for the consequences and is under legal obligation to take out adequate insurance. This requirement covers all employees,



including salaried employees, interns, permanent and temporary employees.

Various Danish insurance companies may provide such insurance and, depending on the specific work, premiums may vary. Approximate annual premiums for full-time employees are EUR 600-1,400.

The purpose of the mandatory insurance scheme is to provide compensation and reimbursement to injured employees or their surviving relatives in the event of an accident at work.

*Mathias Hemmer Rasmussen, Attorney and
Elisabeth Romstad, Attorney*



4. Employment in Denmark

Denmark is very well-known for the “Danish Model” and is considered one of the most flexible countries in the EU regarding recruitments and terminations.

DID YOU KNOW THAT
the Danish labour market model is based on an unusual division of responsibilities between the government, the employer’s organisations, and the labour organisations? In most cases, working conditions are negotiated through collective agreements between the employer organisations and labour organisations rather than decided by legislation. For instance, Denmark is one of the few EU countries, where there is no statutory minimum wage.

The interactions between unions, employer’s associations and the Danish Government allow for a unique social security contribution evident in the “flexicurity model”.

This forth section of the guide will go through the most important regulations on the Danish labour market.

4.1. Introduction to the Danish Labour Market - “The Danish Model”

Flexicurity (“flexibility” and “security”) is a

unique model invented in Denmark encompassing a triumvirate between unions, employer’s associations, and the Danish Government. Basically, the model allows for immediate hiring and firing through flexible employment opportunities created by the unions and the employer’s associations. Security comes in play as the Danish Government provides a stable social safety net through, among other things, training opportunities for terminated workers. Unlike other countries, the employer does not need to pay social security contribution on top of workers’ salaries. Such contribution may reach up to 30% in other countries. This is particularly important when bidding on public invitations to tender as no social security contribution costs should be included in the assessment.

The “hire and fire” concept allows for a flexible labour market with great employment opportunities. Further, no legislation against dismissal exists in Denmark. However, certain laws and agreements provide a right to compensation in case of unfair dismissal. For example; the Danish Anti-discrimination Act, the Danish Act on Equal Treatment, and for white-collar employees The Danish Salaried Employees Act (white collar employees), and the Main Agreement (blue collar employees).

One of the key prerequisites for the Danish Model to work is the collective bargaining of labour market parties existing to negotiate proper working conditions. When unions bargain, it creates stability as an alternative to statutory legislation as the labour regulation is independent of changing governments. This also means that unions are sceptical towards working conditions that are not collectively agreed by parties in Denmark.

4.2. Various categories of employees

In Denmark the various categories of employees are covered by different set of rules.



Blue-collar workers are typically characterised by performing manual labour. This category includes both skilled and unskilled labour. Examples of blue-collar workers in the construction industry are electricians, bricklayers and crane operators. Most blue collar-workers are covered by collective agreements depending on their field of work.

White-collar employees are primarily employees working in an office, working with sale and employees who supervise and instruct other employees. Examples of white-collar employees in the construction industry are site managers, safety equipment managers, project managers and HR managers and assistants. These employees are covered by the Danish Salaried Employees Act. This is the most important legal instrument in Danish employment law, and most provisions in the act are mandatory.

Other staff members, e.g. managing directors and external consultants are not covered by the laws governing employees or by collective agreements. These staff members enjoy broad freedom of contract.

4.3. Employee representation and works council

Under Danish law, employees in corporate entities have a few important rights. First, employee representatives (in Danish “*Tilidsrepræsentanter*”) are elected by the employees in large enterprises, and they are also entitled to elect half

of the members of e.g., the entity’s supervisory board, if it has or has had 35 employees during the last three 3 years, and only if the company has a board of directors. Further, employee representatives are protected against dismissal when they are serving as representatives.

This is not the case for a limited company where it is possible to establish a Danish ApS company (in Danish “*Anpartsselskab*”) with only an executive board and thus no board of directors and no employee representation entitlement.

4.4. Recruitment procedure

When recruiting employees in Denmark the candidates are protected against discrimination in different sets of rules. According to these rules information about the following may not be taken into account when recruiting employees, and employers should therefore be careful before they ask questions about:

- Pregnancy (and relevant plans)
- Religious beliefs
- Sexual orientation
- Gender identity
- Political views
- National, social, or ethnic origin
- Number of days taken off sick
- Sickness, unless it is relevant to the specific position
- Financial situation unless it is relevant to the specific position.

Furthermore, it is not allowed to ask questions about or collect information about the candidates’ age.

It may be relevant to require a criminal record (in Danish “*Straffeattest*”) from the employee. A criminal record lists all criminal offences under the Danish Criminal Code for a period of 5 years. It may be requested from the employee if it is considered objective and necessary in relation to the specific position, e.g., applicants for trusted positions.

4.5. Transferring employees to Denmark

Different rules apply depending on where a company is transferring employees from. Generally, we distinguish between employees from other Nordic countries (section 4.5.1), employees from other EU/EEA countries or Switzerland (section 4.5.2) and employees from other countries (section 4.5.3).

STEP-BY STEP GUIDE for transferring employees to Denmark:

- Offer them an employment contract
- Apply for residence and work permit
- Arrange housing (optional)
- Set up pay roll and bank account



4.5.1. Employees from other Nordic countries

Employees from other Nordic countries (Sweden, Norway, Finland, and Iceland) can travel to Denmark and live and work here without residence and work permit.

4.5.2. Employees from EU/EEA or Switzerland

As an EU citizen, an employee has an automatic right to travel to and work in Denmark. This means that the employee can start working from the day of entry.

If the employee is going to stay in Denmark for more than 90 days, he or she must apply for an EU Residence Card. The employee also needs a tax card and a bank account for the employer to pay wages. The employee may also benefit from a social security number (in Danish “CPR” number), a health card and a MitID.

4.5.3. Employees from other countries

Employees from non-EU/EEA countries must apply for residence and work permit before they can travel to Denmark and start working. They can do this based on different schemes e.g., the Pay Limit Scheme, the Positive Lists, and the Fast-Track Scheme.

If the employees come from countries without a visa requirement, they can travel to Denmark without a visa. Employees from visa-free countries can enter Denmark if they meet some ba-

sic conditions, for example they need a valid passport and the necessary means to pay for their stay as well as they must be able to document the purpose of their stay in Denmark. However, they are not allowed to start working in Denmark based on a visa.

The Pay Limit Scheme:

Employees from non-EU/EEA countries can apply for residence and work permit based on the Pay Limit Scheme if they have been offered a job with a yearly salary of at least DKK 487,000 (2024 level). Furthermore, their salary must be paid into a Danish bank account, the offered salary and terms of employment must correspond to Danish standards and the working hours must be at least 30 hours a week.

Supplementary Pay Limit Scheme:

If the salary level does not fulfil the minimum annual salary for the Pay Limit Scheme, the Supplementary Pay Limit Scheme might be relevant. The requirements for the Pay Limit Scheme also apply for the supplementary scheme. In addition, it is a requirement that the offered job has an annual salary of DKK 393,000 (2024 level), and that the offered position has been published on Jobnet and the EURES portal for at least two weeks before applying for a residence and work permit.

The Positive List:

Employees who have been offered a job in Denmark included in either The Positive List for People with Higher Education or The Positive List for Skilled Work can apply for Danish residence and work permit based on this scheme.

The Positive Lists are updated twice a year (in January and July). The Positive List for Skilled Work from July 2024 for example includes bricklayers, carpenters, and industrial technicians. Besides being offered a job included in the list, the salary must correspond to Danish standards, the company must fulfil their educational obligations and the salary must be paid to a Danish bank account.

Fast-Track scheme:

The Fast-Track scheme is aimed for larger companies with a genuine need for recruiting highly qualified employees to Denmark quickly. A company must meet certain conditions to be certified under the scheme, for example there must be at least 10 full-time employees working for the Danish company.

4.5.4. Consequences of non-compliance

The employees, as well as the employer, risk being fined or imprisoned if they work or employ workers without residence and work permit in Denmark.

The employer risks a fine of DKK 10,000 per

employee per month for each employee without the necessary residence and work permit. If there are particularly aggravating circumstances, each fine may increase to DKK 15,000-25,000.

Therefore, it is very important to be aware of the rules regarding residence and work permit when recruiting employees to Denmark if any changes are made in the employment conditions or if the permit contains any special conditions.

4.6. Employment contract

It is a requirement under Danish law that all employees who are under employment expected to be more than 3 hours per week on average over a 4-week reference period or where there is no agreed minimum weekly working hours must be given an employment contract. The contract must describe the specific conditions for the employment and the employment contract must be handed out to the employee within 7 calendar days from the beginning of the employment.

If the employment is covered by a collective agreement, this may contain special rules on the conclusion of employment contracts, such as relevant contract templates that can be used.

4.6.1. Checklist for employment contract

- CHECKLIST**
for the employment contract:
- **Employer's and employee's name and address**
 - **The location of the workplace**
 - **Job description or employee's job title, rank, or job category**
 - **Employment commencement date**
 - **Expected duration of employment, if not permanent employment**
 - **Terms for trial period, if any**
 - **Employee's and employer's terms of notice**
 - **The agreed salary to which the employee is entitled upon commencement of employment and allowances or other forms of remuneration, e.g. pension contributions, lodging and meals.**
 - **The frequency of salary payments**
 - **The standard daily or weekly working hours**
 - **Information on which collective agreements or other agreements that regulate the employment and working conditions**
 - **The insurance company with whom the employer has taken out an occupational injury insurance**
 - **To which social security institution the employer pays social contributions**
 - **Duration of absence with pay**



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4.6.2. Secondment contracts

Employees who are seconded to Denmark from another country need a special employment contract – a secondment contract. A secondment contract is an addendum to the employment contract between the employee and the usual employer. It describes the terms of the employment during the secondment period, and it is entered into by three parties: the employee, the employer, and the temporary employer.

In addition to the information above, a secondment contract should contain information about the secondment period, social security, any agreements regarding repatriation, and which country's law holidays are taken according to.

Pursuant to the Danish Act Concerning Posting of Workers, the following mandatory provisions under Danish employment law apply during a secondment in Denmark:

- The Danish Working Environment Act
- The Act on Equal Treatment of Men and Women
- The Equal Pay Act
- Section 7 of the Danish Salaried Employees Act
- The Act prohibiting Discrimination on the Labour Market
- The Act on implementation of parts of the Working Time Directive

4.7. Working hours

4.7.1 Introduction to the EU Working Time Directive

Danish full-time employees usually work an average of 37 hours per week, exclusive of lunch, i.e. 160.33 hours per month. As for *white-collar employees* there is no legal requirements of 37 hours, and it can be more or less.

As for *blue-collar workers* working hours are fixed in the applicable collective agreement and within most industries, standard working hours are 37 hours per week.

For employees over 18 years of age, the EU Working Time Directive sets the following restrictions on working hours:

- A daily rest period of at least 11 consecutive hours
- A break during any working day lasting more than 6 hours. The length of the break depends on its purpose, for example, a lunch break
- One rest day (24 hours) per week that must be in connection with a daily rest period. No more than six days are allowed between two rest days
- A working week of maximum 48 hours on average (including overtime), over a reference period of up to 4 monthsA night worker may not work more than 8 hours per 24-hour period on average. The collective agreements may deviate from these rules under special circumstances.

Failure to comply with the Working Time Directive may result in a fine for the employer. As a rule, this fine is DKK 25,000 per employee, but in exceptional cases the fine may be DKK 50,000. This also applies to employees – typically white-collar employees – who to a great extent plan their own working hours.

4.7.2 Registration of working hours

As of July 1st, 2024, new rules will impose new obligations on employers regarding the time registrations of their employee's working hours.

The new rules revolve around two central elements i) the introduction of a time recording system for working hours and ii) the possibility of an opt-out in the event that employees and employers agree to deviate from the rules of The Danish Working Hours Act.

a) Time recording system for working hours

According to The Danish Working Hours Act, employers are now obligated to implement a registration system for their employees' working hours. The purpose of this obligation is to ensure that regulation on rest periods and the maximum weekly working hours are adhered to.

Employers are free to choose how the registration system should be designed, however the system must meet the requirements of being objective, reliable and accessible, and must enable the measurements of each individual em-

DID YOU KNOW THAT

since holidays have a recreational purpose, employees cannot forgo holidays, nor can they receive compensation apart from the 5th week for not taking the leave they have earned? Holidays are both a right and an obligation – and both the employee and the employer are responsible for ensuring that they are taken. Neither parties can benefit from the employee not taking the holidays they have qualified for.



Photo: James Sullivan

employee's daily working hours. Furthermore, the employees must have access to their own information registered in the system.

The employer is responsible for documenting the employee's working hours and must retain the information for 5 years.

Please note that the registration and use of employee information continue to be subject to other legislation and agreements, i.e. GDPR regulation.

Finally, some employees are exempt from the rules of registration. This applies to employees whose working hours are not measured or predetermined, and employees who can determine their own working hours.

b) Opting out of The Danish Working Hours Act

Part of the passed changes to the Act entail the option for employees and employers to make individual agreements to deviate from the rules of The Working Hours Act. This includes the 48-hour rule, the rules about breaks and night work. Such agreements to opt-out can however only be entered into if the employee's rights are protected through a collective bargain agreement at the workplace. This means that the authority to enter such individual agreement must be stated in the collective bargain agreement while the framework of how such agreement can be entered follows from The Working Hours Act.

4.8. Remuneration

4.8.1. Salary

There is no statutory minimum wage in Denmark. Instead, wages are typically fixed in the collective agreements for different types of work. Besides for minimum hourly payments, the collective agreements typically include detailed provisions regarding additional payment for overtime, working at odd hours etc.

4.8.2. Pension Schemes

4.8.2.1. Pension Schemes Under Collective Agreements

In most collective agreements a monthly pension contribution is fixed. The monthly pension contribution is typically 12% of which the employer pays 2/3 (10%) on top of the gross salary and the employee pays 1/3 (2%) of their gross salary. Furthermore, the collective agreement typically states which pension scheme to use.

4.8.2.2. Private Pension Schemes

There is no statutory obligation by law for employers to pay pension contribution to private pension schemes in Denmark. Employees not covered by collective agreement enjoy broad freedom of contract. However, most white-collar employees are covered by a pension scheme, according to which they receive 12-15% in pension contribution. Usually, the employer pays 2/3 of the pension contribution, while the employee pays 1/3.

4.8.3. Abolition of Great Day of Prayer in Denmark from 1 January 2024

On 28 February 2023, the Danish Parliament passed a law abolishing the national holiday Store Bededag (Great Day of Prayer) as a public holiday from 2024 onwards. This means that the day in the future will be a normal working day.

At the same time, the law stipulates that employees who have their working hours increased as a result must be paid for the extra work, corresponding to a wage supplement of 0.45% of the annual salary.

The Act applies both to employees employed before and after 1 January 2024. When hiring employees after 1 January 2024, the relevant employees must also receive a salary supplement of 0.45% of the annual salary.

Monthly salaried employees

The monthly salaried/employees with a fixed salary must receive a salary supplement of 0.45% of the annual salary as compensation for having to work more as a result of Store Bededag being abolished as a paid day off.

We recommend that the salary supplement appears specified on the payslip because the employer must be able to document that a salary supplement has been given.

Hourly paid employees

The hourly paid workers should not receive a

wage supplement of 0.45% in compensation because they will receive their usual salary at the increased working hours when they work on Store Bededag.

Hourly paid workers, who previously received a special collective bargaining allowance for working on Store Bededag, will no longer receive this supplement.

4.9. Holiday
4.9.1. The Danish Holiday Act

All employees employed under Danish law are covered by the Danish Holiday Act. The Act may be summarized as follows:

- All employees are entitled to at least 5 weeks of holiday (25 days) in the holiday year, regardless of whether they have accrued the right to holiday with pay and regardless of whether they are employed full-time, part-time are hourly paid or a student. If the employee has not accrued a total of 25 days, the holidays taken beyond the accrued holidays will be deducted from the employee's regular salary and thus be self-paid.

- The act distinguishes between two types of holidays “*main holiday*” and “*remaining holiday*”. The main holiday consists of 15 consecutive holidays which must be taken between May 1st and September 30th. The remaining 10 days of holiday can be taken at any point of the holiday leave period. Generally, the employees are entitled to take 5 of the 10 days in a consecutive period.

- The act entails concurrent holiday, where employees accrue 2.08 holidays per month, whereafter the employee may already take the paid holidays the following month, if desired.

- The employer and the employee may agree that the employee can take some paid vacation in advance before it has been accrued. It is important to note that such plans require an explicit agreement and the employee cannot take more holidays in advance than they can accrue within the holiday year.

- If the 5th holiday week is not held, it will automatically be paid out to the employees unless the employee and the employer agree to transfer the holidays to the following holiday period. An exception to this is part-time employees or employees who have not been employed for the entire holiday leave period.

The holidays are earned in the “holiday year”, which is from 1 September to 31 August the following year. The holidays can be taken during a period of 16 months from 1 September to 31 December the following year, which is the holiday year plus 4 more months.

Holidays must be announced 3 months before the main holiday (3 consecutive weeks of holiday) is taken. The remaining holidays must be announced one month in advance.

When your employees are entitled to paid holiday, they will receive their usual pay when they take holiday. In addition, they are entitled to a holiday supplement of 1% of their pay from September to August. There are two ways of getting the holiday supplement disbursed:

- They may get the holiday supplement for the first nine months disbursed with their May salary and for the remaining three months with their August salary.
- They can get the holiday supplement disbursed, when their holiday begins.

4.9.2. Additional holidays

In addition to holidays according to the Danish Holiday Act, most collective agreements give the employees the right to 5-10 additional holidays per year.

It is also a usual term for white-collar employees that they are entitled to 5 additional holidays per year. This must be agreed in the employment contract.

4.9.3. Public Holidays in Denmark

Depending on the terms of the employment contractor other obligations of the employer (e.g. collective agreements), payment of Pay-



Photo: Kuan Fang

ment of salary on public holidays is not regulated by law in Denmark but determined individually. This means that the right to payment of salary on public holidays will follow from the individual employment contract and other obligations of the employer (e.g. collective agreements).

Public holidays are important for have a significant impact on the remuneration payable under both collective agreements and obligations, if any, for construction enterprises when carrying out work under construction agreements.

PUBLIC HOLIDAYS IN DENMARK:

- **New Year's Day: 1 January**
- **Maundy Thursday: March/April**
- **Good Friday: March/April**
- **Easter Sunday: March/April**
- **Easter Monday: March/April**
- **Ascension Day: May/June**
- **Whit Sunday: May/June**
- **Whit Monday: May/June**
- **Christmas Day: 25 December**
- **Boxing Day: 26 December**

Furthermore, some days are not public holidays, but are considered holidays for certain groups of employees, either by their collective bargain agreements or their individual employment contracts. Depending on the collective agreement or the individual agreement these days may be considered compulsory holiday that is deducted from the 25 holidays the employee is entitled to.

- **Labour day: 1 May (for blue-collar workers mainly)**
- **Constitution Day (in Danish “Grundlovsdag”): 5 June (public holiday in part – often full holiday for white collar employees).**
- **Christmas Eve: 24 December**
- **New Year's Eve: 31 December**

4.10. Sickness

Sickness is a valid reason to be absent from work.

White-collar employees covered by the Danish Salaried Employees Act are entitled to full salary from the employer during sickness for an infinite period. *Blue-collar workers* do not have a statutory right to salary during sickness, however, most collective agreements entitle the employees to salary during a limited period.

When the employer pays salary to an employee during sickness for more than 30 days, they are entitled to reimbursement from the municipality corresponding to sick benefits (about DKK 4,400 per week). However, the employer is not entitled to reimbursement for the first 30 days.

There is no general prohibition on dismissing an employee on sick leave., however some collective agreements do protect employees from termination for a limited period of time. In certain circumstances, sick leave may be a fair reason for termination of the employment. See more about termination in section 4.12 of this guide.

4.11. Maternity and Paternity Leave

All employees employed under Danish law are covered by the Danish Maternity Act. The Act states when each parent is entitled to leave, the length of the leave, notice of leave etc. However, the Act does not entitle the employee to salary from the employer during the leave. According to the Act, the employee is only entitled to public maternity and parental leave benefits.

The mother:

- An expected mother is entitled to take 4 weeks of maternity leave prior to the expected birth of a child
- After the birth, the mother has 2 weeks of mandatory maternity leave
- Following the mandatory leave, she is entitled to take an additional 8 weeks of maternity



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leave. She is entitled to transfer all or some of these 8 weeks to the father or other co-parent.

- Finally, the mother is entitled to take 14 weeks of parental leave. 9 of these weeks are designated specifically to the mother and cannot be transferred to the other parent.

The father (or co-parent):

- The father is entitled to take 2 weeks of parental leave during the first 10 weeks of the birth of the child.
- Afterwards the father is entitled to take 22 weeks of parental leave. 13 of these weeks may be transferred to the mother, whilst the remaining 9 weeks are specifically assigned to the father.

DID YOU KNOW THAT the Danish Maternity Act was changed with effect for children born on 2 August 2022 and after? The former maternity act applies for children born before this date. The new reform is a result of the Danish Parliaments desire to tag more of the statutory parental leave to each parent, leaving more parental leave for the father or other partners than it is currently the case.

The Danish Maternity Act contains different rules regarding notification to the employer.

The Danish Salaried Employees Act as well as many collective agreements entitles the employee to salary from the employer during a part of the leave according to the Danish Maternity Act. If the employer pays full or partial salary to the employee during a period when the employee is entitled to public maternity benefits, the employer may receive reimbursement equivalent to public maternity benefits.

4.12. Termination

As stated in section 4.1 of this guide, Denmark has a very flexible labour market in terms of hiring and firing employees. Generally, no legislation against dismissal exists in Denmark. However, certain laws and agreements provide a right to compensation in case of unfair dismissal, for example the Danish Anti-discrimination Act, the Danish Act on Equal Treatment and for white-collar workers, the Danish Salaried Employees Act and the Main Agreement.

4.12.1. Notice periods

For *white-collar employees* the notice periods are stated in the Danish Salaried Employees Act. The period of notice in case of dismissal by the employer is between 1 month and 6 months depending on the employee's seniority. The employer's notice period is the following:

- 1 month until the end of the 5th month of employment

- 3 months until the end of 2 years and 9 months of employment
- 4 months until the end of 5 years and 8 months employment
- 5 months until the end of 8 years and 7 months employment
- Hereinafter: notice of termination is 6 months

The employees may terminate the employment with one month's notice, irrespective of the seniority.

The employee and employer may agree on a probation period of up to 3 months in which the employment relationship may be terminated by either party subject to observance of a 14 days' notice.

For *blue-collar workers*, there is no statutory termination notices and the notice period depends on the applicable collective agreement. It is therefore very important to examine which collective agreement applies within the specific area. Generally, the period of notice when dismissed is considerably shorter for blue-collar workers covered by collective agreements compared to employees covered by the Danish Salaried Employees Act. Typically, if a worker has been employed with the company for less than 6 months, he or she may be dismissed with immediate effect. In case a worker has been with the company for more than 6 months, the period of notice in case of dismissal is typically between 14 and 70 days depending on the



overall duration of employment. If the worker is or exceeds the age of 50 and has been with the Danish company between 9 and 12 years, the period of notice is between 90 and 120 days.

A worker may choose to terminate his or her employment contract by giving notice between 7 and 28 days. Again, this is also dependent on the overall duration of the employment.

4.12.2. Fair reason for termination

White-collar employees covered by the Danish Salaried Employees Act are protected against unfair termination when they have been employed in the company for one year. This means that the employer does not need a fair reason for termination within the first year of employment.

Blue-collar workers covered by collective agreements are protected against unfair termination when they have been employed in the company for 9 months. Thus, the employer does not need a fair reason for termination within the first 9 months of employment.

However, from the first day of employment all employees are protected by the Danish Equal Treatment Act and the Danish Antidiscrimination Act. This means that employees are protected against termination based on for example an announced pregnancy, handicap or the employee's age.

In case of termination without a fair reason after 9 or 12 months' respectively or a termination contrary to the Danish Equal Treatment Act or the Danish Antidiscrimination Act, the employee will be entitled to a compensation. However, the termination will still be effective.

4.12.3. Severance pays

When a *white-collar* employee covered by the Danish Salaried Employees Act has been employed with a company for 12 or 17 years, the employee has a mandatory claim for severance pay amounting to 1 or 3 monthly salaries respectively in case of dismissal.

No other generally severance pays must be paid in case of dismissal., but some collective agreements do contain provisions of severance compensation when employed for a longer period of time.

4.12.4. Mass Redundancies

According to the Danish Law on Mass Redundancies (in Danish "*Lov om masseafskedigelser*"), certain obligations regarding information and negotiations must be upheld. This law is based on an EU Directive. If any applicable collective agreement covers the subject of mass redundancies, this takes precedence over the legislation.

Dismissals within a 30-day period is considered a mass redundancy under Danish law if:

- Dismissal of at least 10 employees in a business with 20-100 employees
- Dismissal of at least 10% employees in a business with 100-300 employees
- Dismissal of at least 30 employees in a business with at least 300 employees

Since there are no requirements of consent to negotiations by involved parties, dismissal regarding mass redundancies is considered less strict in Denmark compared to other countries. In fact, the only requirement for the employer is to initiate and negotiate with the different parties, and that the negotiations are honest – with no requirement of consent by these parties.

The negotiations are governed in the following way. First, an orientation must be given to the regional labour councils of the contemplated dismissals (in each case for the North, South, Central Region or Zealand) in advance. Then negotiations must take place with the employees and their representatives at the earliest possible convenience. During these negotiations, the possibility of avoiding or limiting the mass redundancies must be discussed. Further, by way of flanking social-welfare measures, the possibility of alleviating consequences of the redundancies – especially through deployment elsewhere and re-training for new jobs – must be discussed.

In case more than 50% of the employees in a company of at least 100 employees are dis-

missed, the negotiations must last at least 21 days. In case of unsuccessful negotiations, redundancies will take place according to agreed procedure. No matter the outcome of the negotiations, the regional labour council must be informed of the result. If the regulation is not followed, the employees may be entitled to compensation, and the company may also be fined or otherwise penalized.

The exact mode of procedure where mass redundancies are concerned is set out in the relevant legislation.

4.13. Courts with Jurisdiction for Labour Disputes in Denmark

Unlike other EU member countries, ordinary courts in Denmark hold jurisdiction on labour disputes between employers and employees.

Action brought by the employee:

Employees can bring upon an employer a labour dispute in Denmark if the employer is either established in Denmark, has a seat in Denmark, or if the work is conducted in Denmark. If, for example, a worker is working in another EU state than Denmark, he or she may bring proceedings against the employer at the place where the business establishment that recruited the employee is located.

Action brought by the employer:

The employer may only bring proceedings at the residing country of the employee.

Agreement on place of jurisdiction:

If an agreement of settlement is concluded after the dispute arises, an agreement of a different place of jurisdiction (unlike above) may be agreed.

An arbitration tribunal established by the parties to a collective agreement, basically a special labour court (in Danish “*Arbejdsretten*”), has jurisdiction for disputes governed by collective agreements.

4.14. Social Security Contributions

In Denmark, an employer pays almost no social security contribution for employees (either domestic or foreign workers). In fact, social security contribution to be paid by the employer is limited to only EUR 2,000 per year per employee.

This is important in the tender process as the employer needs to include the contribution of EUR 2,000 on top of the employee’s salary.

Health insurance is public and organised by the Danish state via paid taxes. While most citizens are covered by public health insurance only, it is possible to take out additional private insurance. Private health insurance is voluntary; the

employer may therefore decide whether or not the employees should be covered by such insurance as well.

While the employer is obliged to pay a social security contribution of EUR 2,000, the employer must also withhold a labour market contribution of the employee, which amounts to 8% of the employee’s salary.

The contribution of 8% for the employee must be withheld by the employer from the salary whether the employee is locally employed or seconded. The employee is unable to receive relief from Denmark and must therefore apply for relief in his or her home country. This is because the social security contribution is considered a tax.

It is beneficial for workers staying in Denmark to keep their social security insurance from their home country for a defined period. As a rule, an employee can keep his or her social security insurance for up to 3 years. In such case, proof of social security in the home country must be provided with an official A1 declaration from the home country.

4.15. Danish Tax System for Employees

Danish tax liability is obligatory if a person is residing or working in Denmark. However, double taxation treaties will be considered when determining tax liabilities.

4.15.1. Tax Liability for Individuals

Tax liability for an employee is determined through either where his or her salary is paid or how long time the employee has spent in Denmark. If no double taxation agreement exists between Denmark and the home country of the employee, he or she will be subject to either full or limited tax liability in Denmark. This is determined by the amount of time spent in Denmark.

Time spent in Denmark

The Danish rule on time spent in Denmark can be complicated to interpret. An employee working for more than 6 months (calculated as 183 days including holidays etc.) will be fully liable to taxation in Denmark from the first day of work. If the employee has worked for less than 6 months, he or she will only be limited liable to taxation in Denmark.

Salary paid by Danish subsidiary or permanent establishment in Denmark

Regardless of time spent in Denmark, if an employee receives a salary paid in Denmark by either a subsidiary or a permanent business establishment of a foreign enterprise in Denmark, he or she will be liable for tax on this income. If the salary is not paid in Denmark by a subsidiary or permanent business establishment, the employee is generally not liable for tax in Denmark. It is only when the employee stays

in Denmark for a longer period than 183 days over a 12-month period that he or she will be tax liable.

Hired-out-labour tax

If a Danish company directly hires an employee from a foreign enterprise to perform work in Denmark, this employee will be liable for international hiring out of labour tax. This tax will be withheld from the employee’s salary. In certain instances, the employee can apply for tax relief in his or her home country.

Expat tax

Rather than paying tax under the regular tax scheme, certain high-paid employees or researchers may apply for the Expat Tax Scheme. This taxation rate under this scheme is 27% with an added labour market contribution amounting to a total of 32.84%.

An employee eligible for the Expat Tax Scheme must earn a salary of at least DKK 75.100 (2024 level) per month. This salary is calculated as the salary before deduction of social security contribution, but after the deduction of labour market supplementary pension fund (in Danish “ATP”) contributions. This amount also includes the value of fringe benefits such as free housing or allowances, and employer-funded healthcare services.

It is possible for the employer to reduce the gross salary without affecting the employee’s net salary. This is usually done when the salary including fringe benefits etc. exceeds the total amount of DKK 75,100 (2024). The required amount to be covered by the scheme is adjusted annually.

The expat tax scheme may be applied for a period of up to 84 months.

4.15.2. Personal Taxation in Denmark

Unlike most EU member countries where social security contribution is paid in addition to taxes, social security contributions in Denmark are financed almost exclusively by taxes. This means that the initial tax burden in Denmark remains relatively high compared to other EU member countries. However, the difference between average net incomes of employees in Denmark and other EU member countries are relatively minor when taking the taxes, social security contributions and VAT into consideration as well.

For an employer to withhold taxes, an employee must obtain a tax card based on his or her Danish ID-number (in Danish “CPR” number) before the first disbursement of his or her salary. This tax card is provided electronically to the employee. If a tax card is not provided by the time a salary is payable, the employer must withhold 55% of the salary without deducting any exemption amounts.

By law, every person in Denmark has a tax-free amount of DKK 49,700 (EUR 6,670) that is adjusted annually. Income exceeding this amount is taxed with a gross tax of 8% whereafter the remaining amount is taxed with an average of 35% unless the total income amounts to more than DKK 588,900 (2024 level) per year. The exceeding amount, if any, will be taxed at the rate of 15%. However, taxes may not exceed 52.07% (2024 level) of a person’s total income.

Deductions:

Deductions are defined as costs that may be deducted from a salary prior to taxation, ultimately lowering an employee’s or employer’s total taxable amount. The following deductions can be made:

- Costs of the journey between the residence and the place of work (flat-rate amount per km)
- Union dues
- Unemployment insurance contributions
- Contributions made to pension schemes
- Interest on debt abroad (outside Denmark)

Fringe benefits:

Fringe benefits may further be added to the income for tax purposes. These include, but are not limited to:

- Residence
- Company car
- Computer and telephone

Depending on the use of these fringe benefits – either private or for business purposes – the economic value of these benefits will or will not be added to the income. For private use, it will be added to income. For business purposes, it will not be added. A fringe benefit such as a company car is considered private if it is used to drive from the user's residence to the place of work but considered used for business purposes if used to transport e.g., customers. It is the Danish Tax Authority that defines the economic value of the fringe benefits.

Tax returns:

Tax returns must be filed by the 30th of April of the year following the tax year. Usually, such tax return filing form is available online from February/March. This form must be examined by the taxpayer in order to make amendments. It is punishable not to file tax return and may be fined up to DKK 5,000.

Every citizen can access his or her electronic tax record at the Danish Tax Agency and modify the tax card and tax return online.

Mathias Hemmer Rasmussen, Attorney



5. Closing the activity in Denmark

Closing down a Danish company requires a liquidation processdissolution either through solvent liquidation or – if there are no liabilities – a termination statement dissolution by declaration. Both processes are fairly simple, although you will need a lawyer and an accountant to help you through the process. The process as well as the pros and cons for each option are described below.

STEP-BY STEP GUIDE for liquidation:

- 1. Decision on a general meeting to liquidate the company and appoint a liquidator**
- 2. Notification to the Danish Business Authority within 2 weeks from the signing of the minutes from the general meeting of the decision to liquidate the company**
- 3. A period of 3 months where the creditors will have to notice their claims and the liquidator contacts any known creditors,**
- 4. Payment and collecting of all outstanding amounts in the company**
- 5. After the end of the 3-month period, a draft for a final liquidation report from the latest Annual report to the end day of the liquidation is prepared.**

5.1. Solvent liquidation

A solvent liquidation requires the most amount of time. However, this option also provides the company's shareholders with the most security, since it will not be possible to rectify any claims against the shareholders after the company has been liquidated.

- 6. When the final liquidation report has been prepared, this must be submitted to the tax authorities requesting a tax relief statement (i.e. a statement that no existing or potential tax claims are outstanding). Unfortunately, the processing time with the tax authorities may be several months from filing.**
- 7. Final Decision on the liquidation on a general meeting.**
- 8. Notification to the Danish Business Authorities within 2 weeks from the date of the minutes of the general meeting of the final decision to liquidate the company**
- 9. Distribution of dividend to the shareholders**



5.2. Dissolution by declaration

Dissolution by declaration is a more simple and faster process compared to a solvent liquidation. However, the shareholders will be personally liable for any debt, that has not been paid before the closing of the company.

A termination statement requires the following steps:

1. Payment and collecting of all outstanding debt in the company,
2. Cancellation of all duties to pay taxes, VAT and other duties
3. Filing of all taxes and duties, including VAT to the tax authorities
4. Requesting for a tax relief statement. Unfortunately, the processing time with the tax authorities may be several months from filing.
5. The shareholders' signing of a statement of payment of all outstanding debt.
6. Notification to the Danish Business Authorities within 2 weeks from signing the statement
7. Distribution of dividend to the shareholders

 HEADQUARTER IN DENMARK

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CHINA
CROATIA
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