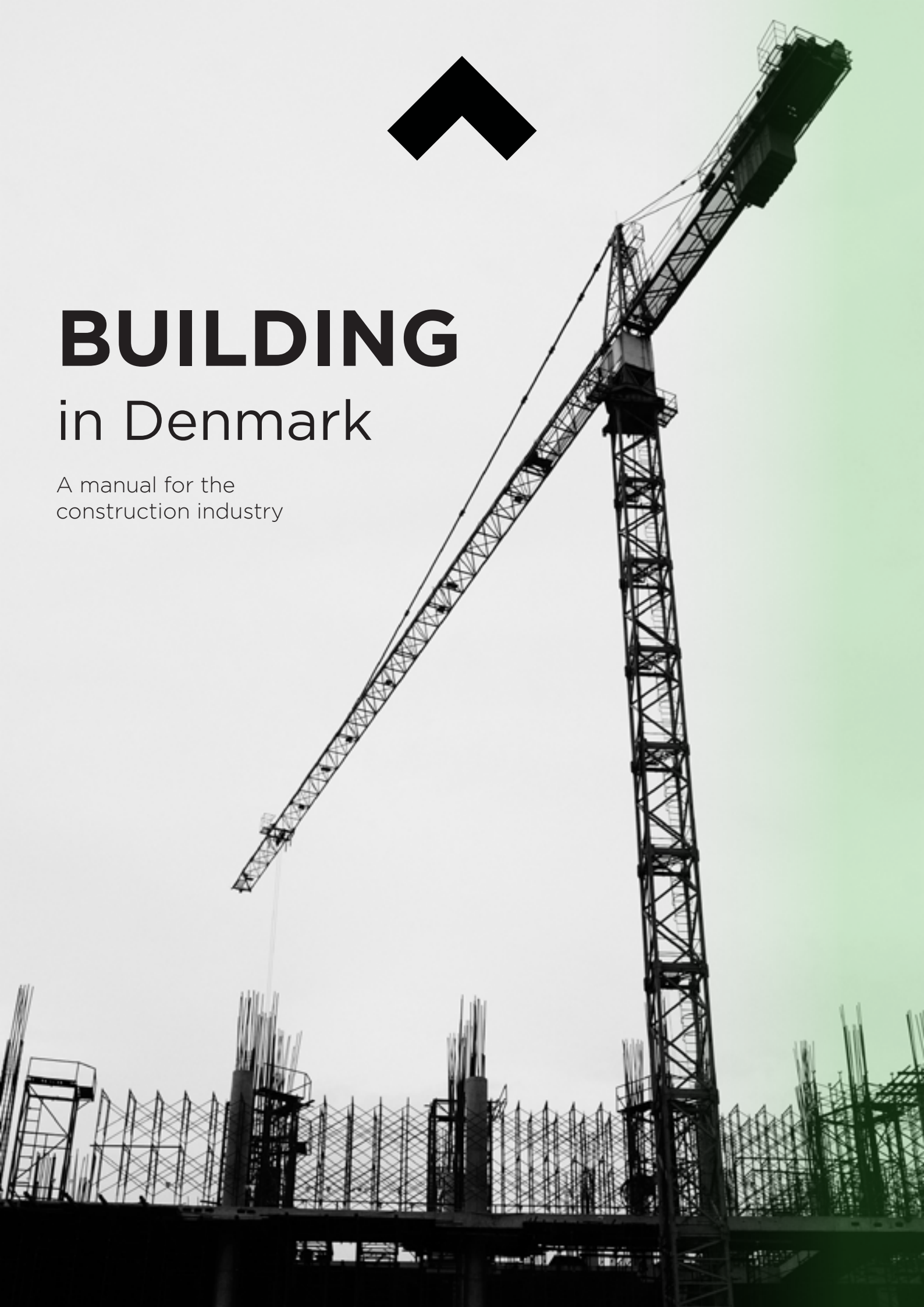




BUILDING

in Denmark

A manual for the
construction industry



Building in Denmark

Denmark is a country in progress with many large infrastructural projects and public building projects well underway and new ones being put out to tender such as the construction of the Fehmarn Belt Fixed Link – at the planned 17.6 km the longest bridge ever constructed – six new super hospitals, an additional line for the Copenhagen Metro, new tram lines around Copenhagen and much more.

Many projects aim to improve sustainability supporting a business environment for innovative construction solutions, including electrification of the national railway network, reconstructing waste water treatment plants from energy consumers to producers, and setting up smart city projects in the streets of the capital to improve the environment and living conditions.

Relative to its size, the level of construction activity in Denmark is very high with a production value of new construction plants and repairs at DKK 52.6 billion in 2017. Not surprisingly, the Danish construction market is experiencing an increasing interest from foreign contractors who not only bid for tenders but also often win them.

In addition, it is relatively simple to operate in the Danish market in terms of e.g. construction, taxation, and employment law. Nevertheless, closely assessing these matters in a holistic manner, including selecting the right corporate, employment and tax set-up will allow entities to reduce costs and risks.

Practical hint

www.njordlaw.com

Further information

www.njordlaw.com



About the guide

This first edition of this guide was the first of its kind (and it remains the only publication), offering international contractors an overview of the questions that typically arise when carrying out construction activities in Denmark. Our aim is to address most of the main considerations that may be relevant, such as invitations to tender, construction and working environment in Denmark. Web links in the guide provide further

information in English on the various topics.

We endeavour to answer the most frequently asked questions. Inevitably, you may require further information, or you may have specific concerns and questions, which are not addressed in this guide. Thus, prior to bids for tender or carrying out construction work in Denmark, we recommend you seek professional legal advice.

TABLE OF CONTENTS

1	Invitations to Tender and Construction Contracts in Denmark	7
1.1	Public Invitations to Tender in Denmark	8
1.1.1	Overview of Ongoing Invitations to Tender	8
1.1.2	Obligation to Issue an Invitation to Tender	8
1.1.3	Requirements of the Bid	9
1.1.4	Complaints Procedure in Case of Errors in the Invitations to Tender	10
1.2	Construction Contracts	11
1.2.1	The AB system	11
1.2.2	Providing Security	12
1.2.3	Payments	12
1.2.4	The Right to Stop Work if Payment is not Effectuated	13
1.2.5	Extension of Time	15
1.2.6	Liquidated Damages	15
1.2.7	Handing-over	15
1.2.8	Defects and damage	16
1.3.	Construction Disputes	16
1.4.	Securing Evidence in Danish Construction Disputes	17
2	Establishment in Denmark	18
2.1	Permanent Establishment	20
2.1.1	Choice of corporate form	20
2.1.2	RUT-Register	23
2.2	Corporate Tax	24
2.3	Hiring-out of labour taxation	24
2.4	VAT	26
2.5	Safety on Construction Sites in Denmark	27
2.5.1	Permits Required by Enterprises and Individuals	28
2.5.2	Safety on Construction Sites	29
2.5.3	Insurance Against Accidents at Work	29
3	Motor Vehicles in Denmark	30
3.1	Registration Obligations and Taxes	32
3.1.1	Passenger Cars as Company Cars	32
3.1.2	Commercial Vehicles with "Yellow Number Plates"	33
3.1.3	"Special Vehicles"	34
3.1.4	Use of Leased Motor Vehicles	34
3.1.5	Liability and Penalties	35
3.2	Registration Procedure	35
3.2.1	Registration Charge for New and Used Motor Vehicles	35
3.2.2	Calculation of the tax	35
3.2.3	Quarterly Payment in case of Temporary Stay in Denmark	36
3.3	Obligation to Mark Vehicles Transporting Goods	36

4.1	Danish Labour Market	40
4.1.1	Flexicurity - the “Danish Model”	40
4.1.2	Unions and Employers’ Associations	41
4.1.3	Various Categories of Employee	41
4.1.4	Employee Representation and Works Council	42
4.2.	Workers (blue-collar)	44
4.2.1	Applicable Law	44
4.2.2	Recruitment Procedure	44
4.2.3	Employment Contract	44
4.2.4	Working Hours	45
4.2.5	Remuneration	45
4.2.6	Vacation	46
4.2.7	Maternity and Paternity Leave	48
4.2.8	Termination of Employment Relationships	48
4.2.9	Mass Redundancies	49
4.3	Employees (white-collar)	50
4.3.1	Applicable Law	50
4.3.2	Recruitment Procedure	51
4.3.3	Employment Contract	51
4.3.4	Working Hours	52
4.3.5	Remuneration	52
4.3.6	Vacation	53
4.3.7	Sickness and Maternity Leave	53
4.3.8	Termination	54
4.3.9	Mass Redundancies	55
4.4.	Courts with Jurisdiction for Labour Disputes in Denmark	57
4.5.	Resident Permit and Work Permit in Denmark	58
4.6.	Social Security Contributions	58
4.6.1	Applicable Law	69
4.6.2	Pension Schemes	60
	Pension Schemes Under Collective Agreements	60
	Private Retirement Benefits Insurance	60
4.7	Danish Tax System for employees	62
4.7.1	Tax Liability for Individuals	62
4.7.2	Personal Taxation in Denmark	64
4.8.	Public Holidays in Denmark	67



1

Invitations to Tender and Construction Contracts in Denmark

This chapter provides an overview of the public invitations to tender and construction contracts in Denmark.

1.1 Public Invitations to Tender in Denmark

In Denmark, as in the other EU member states, there is a fundamental obligation to issue public invitations to tender for construc-

tion projects that are conducted by the state, municipalities, or other entities governed by public law.

1.1.1 Overview of Ongoing Invitations to Tender

It is relatively easy for foreign contractors to obtain an overview of public projects in Denmark for which invitations to tender have been issued. The website www.udbud.dk (“udbud” = invitation to tender) lists all public invitations to tender in Denmark.

The website lists both national and EU invitations to tender and is updated daily. However, the actual invitations to tender on the web-

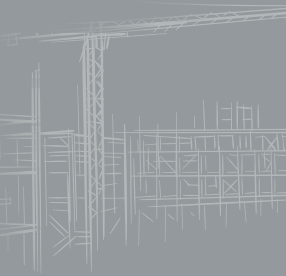
site are only available in the Danish language.

Search criteria relevant to one’s own enterprise can be entered on the website. A free e-mail service provides automatic notification when a new invitation to tender matching one’s own profile is published.

It is also possible to find other suppliers via the website in order to draw up a joint bid with them.

Practical tip:

The Danish register of invitations to tender www.udbud.dk lists all public invitations to tender in Denmark. The information about relevant invitations to tender is updated regularly and provided free of charge via an e-mail service.



1.1.2 Obligation to Issue an Invitation to Tender

The applicable Danish regulations on invitations to tender obliges the state, municipalities, and other entities governed by public law to issue a public invitation to tender for contracts involving a total volume of € 67,000 and above.

For construction activities, the threshold for this obligation to invite to tender is € 5,543,000.

Contracts for services and purchases of goods placed by public entities with a total volume of or

above € 144,200 and contracts for services and purchases of goods placed by municipal entities with a volume of € 221,000 or above also have to be advertised throughout the EU.

The invitation to tender documents has to state the criteria according to which the bidder will be chosen, i.e. whether the tender will be awarded to the least expensive or the most suitable bid.

1.1. Requirements of the Bid

The relevant requirements have to be observed when submitting a bid. The authority issuing the invitation to tender must refuse bids that do not meet the requirements set out in the documents of the invitation to tender.

The requirements regarding the precision of a bid are strict. If the bidder has to provide evidence of the quality of its performance and provides such evidence in a manner diverging from the requirements established by the authority awarding the tender, then that authority must disqualify the bidder.

This even applies where the evidence presented by the bidder is better than the evidence required according to the documents of the invitation to tender. Compliance with the rules on procurement is regulated by the Danish Act on the Enforcement of Procurement Regulations (in Danish: “Lov om håndhævelse af udbudsreglerne”) and is monitored at first instance by the Complaints Board for Public Procurement (in Danish: “Klagenævnet for udbud”).

Practical tip:

A bid should not be drawn up by technicians alone. The participation of legal experts is recommended as meticulous compliance with the requirements regarding bids is essential.



1.1.4

Complaints Procedure in Case of Errors in the Invitations to Tender

Where a complaint is filed with the Complaints Board for Public Procurement, the Board will not ex officio examine which procurement regulations might have been breached.

It is therefore recommendable to examine the potentially breached procurement regulations carefully before filing a complaint and to set out arguments in detail in the written complaint. Complaints should be worded in the manner of a statement of a claim in court proceedings and it is important to state the facts and submissions in detail. It is advisable to consult a lawyer when preparing a complaint.

Where a contract has been awarded based on a breach of procurement regulations, unsuccessful bidders can claim damages. However, the enforcement of damages claims often fails because unsuccessful bidders fail to present sufficient evidence of the loss incurred.

In cases, where contracts are awarded on the basis of a breach of procurement regulations, and the breach is a breach of fundamental procurement rules, the Board may declare contracts already concluded null and void so that the invitation to tender must be re-issued.

Unsuccessful bidders wishing to

present their reservations during the course of an invitation to tender have to observe the “stand-still” period of 10 days (for electronic communications) and 15 days (for other written communications).

The “stand-still” period begins as soon as the contract is awarded in writing. During this period, a final agreement may not be concluded with the preferred bidder; unsuccessful bidders may ask the Board to grant their complaint suspensive effect, preventing the contract from being awarded. The Board then has to decide in a fast-track procedure whether the final conclusion of the contract can be postponed.

In its final decision the Complaints Board for Public Procurement can declare a contract null and void and can even impose fines amounting to millions on the authority that issued the invitation to tender.

Practical tip:

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”) can prevent a contract from being finally awarded to the preferred bidder.



1.2 Construction Contracts

Danish law does not contain provisions on construction and engineering contracts. Construction law is primarily based on – unwritten – general principles of law as expressed in published arbitral practice. If the parties fail to decide on choice of law, Danish law will apply for construction in Denmark.

In practice, the majority of construction contracts in Denmark are governed by the standard terms for engineering and construction works – called the AB-system. Currently, these comprise of ABR 89,

AB 92, and ABT 93 but these will all be replaced by the AB-18 system, which public authorities will be obliged to use from 1 January 2019.

To a large extent, the AB system relies on and to a lesser extent sets-out general principles of law, which makes it difficult to comprehend by a simple reading. Many provisions are implied, and the correct reading and understanding of a clause requires knowledge of the underlying general principles of law.

Practical tip:

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. An English version of the AB 18 terms will be available with the Danish Construction Association at www.danskbyggeri.dk

1.2.1 The AB system

AB (in Danish: “Almindelige betingelser”, in English: “General Conditions”) are agreed standard terms and not legislation. Thus, they only apply if they are agreed upon the contracting parties though adaptation does not need to be express.

Deviations from individual clauses (that do not express mandatory provisions of law) may be agreed upon and often occurs – in particular for commercial terms. It should be noted, however, that deviations must generally be clear in order to be effective.

Further information:

It is definitely advisable to examine the terms and conditions in detail prior to entering into a construction contract. The AB system and Danish law differs from both common and civil law traditions in several aspects.

1.2.2 Providing Security

Unless otherwise agreed, the contractor shall provide security amounting to 15 % of the contract sum. Following the formal acceptance (or “handing-over”) of the construction work this security is reduced to 10 % of the contract sum, and to 2 % one year after formal acceptance.

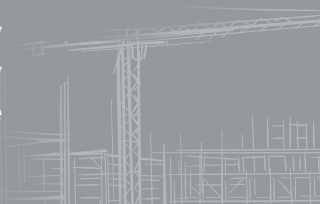
The security provided by the contractor ends definitively after 5 years. These reductions only apply if the employer does not raise claims prior to the reduction. At the request of the contractor, the employer shall provide security

amounting to the average amount of three monthly construction payments and at least 10 % of the contract sum.

While international contractors might have experienced similar security systems, the Danish system entails a dispute resolution method, which allows either party to challenge the other party’s call on the guarantee (or use of other security). Further, AB performance bonds do generally not have fixed expiration dates, which often causes trouble for international banks.

Practical tip:

Consult your bank before security is to be provided to make sure they understand the particulars of the Danish construction guarantees.



1.2.3 Payments

The default rule under the AB-system (from 2019) is bi-monthly payments 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 is not Effectuated

The contractor is entitled to stop construction work if due payments are not paid with a prior written notice of 3 working days for private employers and 5 for public employers.

The discontinuation of work always entails the risk that the contractor will be considered in wilful default of the contract, leaving the contractor liable without limitation to the employer.

Practical tip:

The legal and commercial risks involved in stopping the work are so great that this is generally considered a last resort.





1.2.5 Extension of Time

The AB system for extension of time is more complex than it appears.

Generally, both parties are entitled to extensions of time in case of:

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

The legal effect of the cause of the delay differs. The specific provi-

sions cover delays due to unusual weather conditions on lost days, which allows for a certain number of days where work cannot be carried out. Costs of variations are assumed to cover delay costs, whereas force majeure extends time for both parties without liability for either and so on.

Delay analysis is at an early stage in Denmark and even in complex projects, detailed delay analysis for claims remain relatively uncommon and may not be understood.

1.2.6 Liquidated Damages

Liquidated damages, which is sometimes misleadingly translated as daily fines or penalties (as is the direct translation), apply when agreed and will be the sole and exclusive remedy for delays.

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 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

Immediately before completion, the contractor has to send a completion notice to the employer, indicating the exact date of completion. The employer shall then convene a meeting for formal acceptance within 10 days of completion. Failure to issue an invitation to a meeting for formal acceptance means that the construction project will be deemed accepted on that date. The handing-over date is

not the date of completion, but the date on which the conformity of the works (defects) are established. It is presupposed that there will be defects that will need rectification, and do not prevent handover. Only material defects that prevent the employer from taking the works into use, such as lack of occupation permit, entitles the employer to reject the works.

1.2.8 Defects and damage

When the work has not been performed in accordance with the contracts or where it does not correspond with recognized technical standards it is considered defective – there is an implied, but limited, fitness for purpose obligation. If the defective work causes damage to other parts of the building, this is considered a product liability (and insurance) issue.

Defects and product liability are separate issues governed by separate rules though the remedial works required are often overlapping leaving substantial grey areas. Defects established must be ascertained at handing-over at which time

a period for rectification shall be set. If the defects are not rectified within this period, the employer is generally entitled to have a third party undertake the rectification work.

Inspections of the work also takes place 1 year and 30 days before 5 years after handing-over. The defects notification period generally expires after 5 years.

The Contractor is not entitled to repair damage caused to other works or a pre-existing building. The liability for such damage is generally limited to the agreed liability insurance sum.

1.3 Construction Disputes

In Denmark, it is a long-standing tradition that construction disputes are decided by the Building and Construction Arbitration Board (in Danish: “Voldgiftsnævnet for bygge- og anlægsvirksomhed”). The Board has offices in Copenhagen but it may convene where it finds it appropriate. Another particular attribute of Danish construction disputes is that normally evidence is secured by inspection and survey by an independent expert – see [section 1.4](#) below.

With the new AB-system disputes between the parties will follow rather complex set of rules.

First, the project managers should try to settle the dispute within five days. Afterwards, the representatives of the company management also have five days to settle the dispute. If this does not settle the case, the dispute must be submitted to mediation. Only when this has failed, may the parties submit the dispute to arbitration.

The arbitration court will generally be composed of a legal expert – usually a judge at a Danish high court – and two technical experts with long industry experience. Decisions handed down by the Arbitration Board are final and binding – no appeal is possible. All decisions may be published in anonymous form.

In conjunction with the above rules, it is also possible to submit certain disputes to an urgent decision or a decision concerning security and retentions. Such decisions are generally binding, but not final.

Further information:
See the website of the Danish
Building and Construction Ar-
bitration Board
<https://voldgift.dk/?lang=en>

1.4 Securing Evidence in Danish Construction Disputes

At any time, either party may request the Building and Construction Arbitration Board to appoint an independent expert to perform inspection and survey, establish factual conditions and when relevant render a technical assessment of these facts. The procedure involved, where the parties ask questions of the expert (or ex-

perts) is quite unique to Denmark and generally requires that the parties obtain local legal advice. It must be noted that evidence obtained by other means than through an expert survey may be disregarded, when an expert inspection and survey could have been performed.

2

Establishment in Denmark

Participation in construction work in Denmark will – as a main rule – constitute a permanent establishment with corporate tax liability and registration requirements. For this reason, it will be necessary to choose a corporate form, when the business activity constitutes a permanent establishment. Here, the choice of corporate form will be highly dependent on both the

corporate regulation and the tax regulation of this legal entity. This choice of corporate form will be explained further below, see [section 2.1.1](#).

Foreign service providers not having a permanent establishment in Denmark may anyway have to register in the so-called “RUT- Register”, see [section 2.1.2](#).



2.1 Permanent Establishment

A permanent establishment for tax purposes is constituted when a business activity is carried out from a fixed place of business and such activity has a certain degree of permanency.

As a main rule, a construction site or the participation in a construc-

tion project will constitute a permanent establishment for Danish tax purposes from the first day. If no double tax treaty exists, double taxation issues may arise. If a double tax treaty exists this should be reviewed carefully to assess the most expedient way to proceed.

Subcontracts:

Even though a sub contract in relation to a construction project is entered into between two foreign entities, the main rule of permanent establishment will still apply – also for subcontractor – if the performance of the contract is in Denmark.

In addition, if the subcontractor is only performing part of the project, the main rule of permanent establishment will still apply. However, if the performance of the project is solely based on the manpower, the regulation on hiring-out of labour will apply, see [section 2.3.](#)

Exceptions:

There are a few exceptions to this main rule, in which case a permanent establishment does not arise with regard to:

- Facilities used exclusively in order to store, display or deliver goods,
- Business facilities used exclusively in order to purchase goods or to obtain information for the enterprise, and
- Business facilities used exclusively for advertising purposes, to provide information or for similar activities.

As a matter of principle, each individual construction activity is separately appraised when assessing whether a permanent establishment with tax liability in Denmark exists. Where there is an economic or geographical connection between the construction activities (e.g. construction of a group of terraced houses), however, the work in its entirety will be appraised.

2.1.1 Choice of corporate form

When the business activity in Denmark is regarded as a permanent establishment, there is an obligation to register for tax purposes. For this reason, it is necessary to consider the most suitable corporate form, which can be one of the following:

1. A branch (permanent establishment); or

2. A limited company

As an exemption to this main rule a construction project of limited duration does not have to register a branch for corporate purposes, only for tax purposes.

Branch vs. limited company:

In general, there are two main differences between a branch and a limited company:

1. Tax transparency: A branch is tax transparent, which means that the branch is taxed in both Denmark and in the country of the parent entity.

On one hand, some foreign contractors prefer such tax transparency in order to deduct expenses in their home country during the construction period. On the other hand, double taxation may have adverse consequences if no double tax treaty is in force.

If so, relief of double taxation can only be granted according to a general credit rule. This means that taxes paid in the home country can be deducted in the Danish tax. Depending on the circumstances, it may be more efficient to establish a Danish company. Such a company will only be taxed on the Danish income and no double tax will occur.

2. Liability: For a branch office, the head office – being the foreign company – is fully liable for the obligations of the branch. The liability for a company (A/S or ApS) is limited to the value of shares subscribed, which can be either DKK 50,000 (ApS) or DKK 500,000 (A/S). Although participating in construction projects often requires issuing of guarantees, such guarantees are often limited to certain amounts and to certain parties. Accordingly, the limitation of liability in a company will be effective towards all other creditors in relation to the project.

Furthermore, establishing a company is usually much faster and simpler compared to the establishment of a branch. A new company can be registered and ready to do business within a few hours, whereas the registration process of a branch may take several weeks and be costlier. In addition, there are no requirements to the residency of the members of the local management of a company.

Practical tip:

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

A joint venture may be established between the foreign and a Danish construction firm or between two or more foreign enterprises.

The following main types of joint venture entities may be used:

1. General partnership (interessentskab – I/S): A general partnership is transparent for Danish tax purposes. The foreign entity will be deemed to participate through a permanent establishment (branch) as described above. The participants of the joint venture will be jointly and severally liable for all obligations of the joint venture.
2. Limited partnership (partnerselskab – P/S or kommanditselskab – K/S): A limited partnership is transparent for tax purposes the same way as a general partnership. However, the participants are only liable up to an agreed amount equivalent to their share of the limited partnership.
3. A company (A/S or ApS): If the joint venture is structured as a company, no double taxation occur, as the company is a separate tax entity. The liability of the participants is limited to their shares in the company.



2.1.2 RUT-Register

If the foreign enterprise has established a branch or a company in Denmark, the RUT-registration is not required.

However, if the foreign enterprise provides manpower only or for other reasons does not have to establish a branch or a company, the foreign enterprise must register in the RUT-Register.

The RUT-Register is a separate register for foreign enterprises that provide services in Denmark without having a registered business in Denmark (in English: “Register of foreign service providers”, in Danish: “Register for udenlandske tjenesteydere”).

In addition to the registration of the foreign enterprise, the individual employees employed by the enterprise for the work to be performed in Denmark also have to be entered by name in the RUT-Register. In case of failure to register in the RUT-Register, a fine of minimum DKK 10,000 (€ 1,350) may be imposed.

The RUT-Register is publicly accessible and is used by the Danish unions as a “checklist” for foreign enterprises entering the Danish

market. Businesses entered in the register are also vetted by the Danish authorities more often than Danish enterprises.

The Danish Business Authority (in Danish: “Erhvervsstyrelsen”) is responsible for maintaining the register.

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

Practical tip:
Registration in the
RUT-Register can only
be done online at
www.virk.dk



2.2 Corporate Tax

The permanent establishment (branch) or Danish company is subject to corporate tax at the rate of 22 %. Deduction of business expenses and depreciations on certain assets may reduce the effective tax rate. According to specific rules, taxation of profit relating to construction projects may be postponed until the project is completed.

As opposed to many other countries, there is almost no social security contribution to be paid by employers (only € 1,000 per year per employee). In most countries, the social security contribution is often up to 30 % of the salary paid to the employee.

Intercompany transactions and ascertaining revenue within a

group with a permanent establishment or a company in Denmark is obliged to follow the Danish transfer pricing rules. In Denmark, the transfer pricing regulation in accordance with the OECD-guidelines. Small and medium-sized enterprises are exempt from documentation requirements, but not from applying the arm's length principle. If the taxpayer is considered a "large group", meaning that the group on a consolidated basis has (i) more than 250 employees and (ii) assets of more than DKK 125 million (approximately € 16.8 million) or a turnover of more than DKK 250 million (approximately € 33.6 million) full transfer pricing documentation is required.

Practical tip:

Several brochures on tax issues are available in English on the website of the Danish Tax Administration "SKAT":

www.skat.dk/SKAT.aspx?old=213873&lang=US

2.3 Hiring-out of labour taxation

Hiring-out of labour taxation is mainly applicable when there is no legal entity in Denmark, meaning when the business activity of the foreign enterprise is of such a nature that no permanent establishment is considered established in Denmark.

This special regulation applies in Denmark to employees who are hired out by foreign enterprises directly to the company in Denmark. The customer undertakes all rights to instruct the employee and will

pay a service charge to the foreign enterprise. The foreign enterprise will continue to pay the local salary to the employee. Such activity does generally not create a permanent establishment in Denmark for the foreign enterprise.

However, the employee will in such cases be subject to the Danish hiring-out of labour tax if working in Denmark up to 6 months.

This will imply that the customer must withhold the hiring-out of labour tax at the amount of 30 %



plus social security totalling 35.6 %. This must be withheld from the payment of the service charge to the foreign enterprise, unless the actual salary paid to the employee is disclosed.

The hiring-out of labour tax may result in a double taxation as the employee will also be taxed locally of salary paid by the foreign enterprise. Further, the hiring-out of labour tax is regarded as a final Danish tax and no deductions will be granted. Accordingly, the general Danish rule of credit for foreign

paid taxes does not apply.

To avoid these adverse consequences, it is often recommended that the foreign enterprise establish a Danish branch or company to perform the operation. In such case the hiring-out of labour tax will generally not apply.

The hiring-out of labour tax does not apply to subcontractor agreements if they are considered by the Danish authorities as “independent subcontractor agreements”. This will depend on the circumstances.

2.4 VAT

Enterprises selling goods or services in Denmark are subject to an obligation to register for VAT. VAT is charged at the rate of 25 % in Denmark.

Even if a construction enterprise does not have a “business establishment” in Denmark ([section 2.1.](#)), the work carried out in Denmark is subject to VAT as a matter of principle.

However, the “reverse charge” provision applies to construction work carried out by foreign enterprises, which do not have a business establishment in Denmark for tax purposes. This means that the Danish principal and not the foreign construction enterprise has to charge the VAT.

The “reverse charge” provision does not apply if the foreign enterprise performs other activities in Denmark that are subject to VAT, i.e. sells to private individuals.

In practice, the “reverse charge” provision means that the invoice for work in Denmark has to be issued by the foreign construction enterprise without Danish VAT. In return, the VAT ID No. (in Danish: “momsnummer”) of the Danish principal has to be indicated on the invoice. The invoice also has to contain the statement: “The sale is subject to reverse charge. The recipient is liable for the VAT”.

Practical tip:

An English-language brochure on VAT issues is available on the website of the Danish Tax Administration “SKAT”:

www.skat.dk/SKAT.aspx?o-Id=213873&lang=US

2.5 Safety on Construction Sites in Denmark

Considerable importance is attributed to safety regulations on construction sites in Denmark. Whereas commercial activities in Denmark do not in principle require a commercial permit, certain activities on construction sites are subject to a permit. The Danish provisions requiring a safety

committee on a construction site with upwards of a certain number of workers ([section 2.5.2](#)) and the provisions on insurance against accidents at work ([section 2.5.3](#)) also diverge from the corresponding regulations in other EU member states.

Practical tip:

The Council on Safety at Work in the Construction Industry (in Danish: “Branchearbejdsmiljørådet for Bygge & Anlæg”), in cooperation with the Danish Working Environment Authority (in Danish: “Arbejdstilsynet”), has prepared an English-language manual on safety at work in the construction industry which is available free of charge at <http://haandbogen.info>. Further information in English can be obtained at www.byggesikkerhed.dk.



2.5.1 Permits Required by Enterprises and Individuals

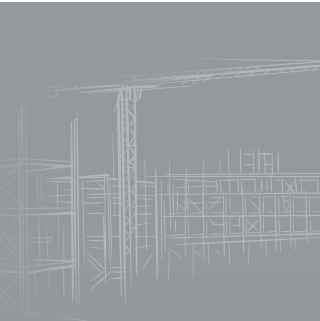
In principle, there is freedom of trade in Denmark. However, in skilled trades special permits apply to the performance of electrical, sanitary and gas installation work. A permit for the performance of such work must be obtained from the Danish Safety Technology Authority (In Danish: "Sikkerhedsstyrelsen"). A certificate of good conduct has to be provided in addition to proof of a certified quality management system (e.g. ISO certification). Work involving safety considerations may only be carried out following presentation of proof of

additional training or 2 years of practical experience. The Working Environment Authority (in Danish: "Arbejdstilsynet") is responsible for issuing permits. The following tasks are among those requiring a permit:

- 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

Practical tips:

The website of the Danish Safety Technology Authority ("Sikkerhedsstyrelsen") contains information in English about the relevant obligations to obtain permits, at www.sik.dk. English version at www.sik.dk/Global/English



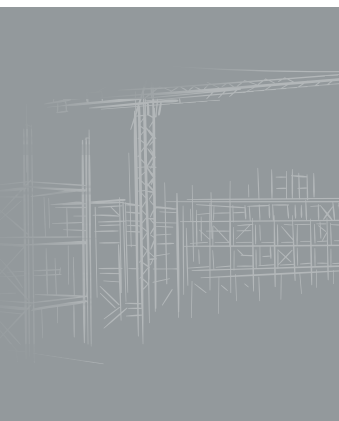
2.5.2 Safety on Construction Sites

Companies with more than 10 employees are under an obligation to establish a safety committee (“sikkerhedsudvalg”) comprised of representatives of the employer and employee representatives in order to ensure safety at work. It is the responsibility of the safety committee to plan and provide

information about safety measures, and to monitor compliance with them. The Working Environment Authority (“Arbejdstilsynet”) conducts inspections of workplaces and construction sites in order to verify compliance with the safety measures required by law.

Practical tip:

The website of the Working Environment Authority (“Arbejdstilsynet”) offers several brochures in English, German, Polish, and Lithuanian concerning safety on construction sites: <http://engelsk.arbejdstilsynet.dk/en>



2.5.3 Insurance Against Accidents at Work

The employer is liable for the consequences of sickness affecting the employee in case of accidents at work and is under a legal obligation to take out corresponding insurance. Insurance packages are offered by Danish insurance companies. The annual insurance premiums depends on the specific activity performed by the employee. The approximate annual premiums for

full-time employees, for example, are as follows:

- Construction worker € 1,300
- Joiner/carpenter € 1,100
- Bricklayer € 1,000
- Plumber or gas fitter € 900
- Painter € 700
- Electrician € 600

For EC-law purposes, this mandatory insurance scheme is considered a social benefit.

3

Motor Vehicles in Denmark

Viewed from the international perspective, the taxes for registering a motor vehicle in Denmark are very high (up to 150 % of the value of the vehicle). Strict laws ensure that the taxes are actually paid.

As a rule, in order to use a motor vehicle in Denmark the vehicle must be registered in the Danish Register for Motor Vehicles (“Motorregistret”) and a permit for

its use must be issued. A person residing in Denmark must obtain a permit for the use of his or her vehicle within 14 days of having imported it into the country.

The regulations are complicated and in the majority of cases, the substantial Danish registration tax has to be paid.

For cash flow reasons leasing is often more cost-efficient.



3.1 Registration Obligations and Taxes

3.1.1 Passenger Cars as Company Cars

It is generally impossible to obtain an exemption from motor vehicle registration in Denmark based on the information that the vehicle used is a “company car” with a foreign owner or a foreign user. Where the owner of a motor vehicle is a resident or has its seat in Denmark the vehicle has to be registered in the Danish Register for Motor Vehicles (in Danish: “Motorregistret”). This also applies where the owner, e.g. a contractor, does not have its seat in Denmark but for tax purposes is considered to operate a business establishment there.

Furthermore, the registration obligation also applies where the user, and not the owner of the vehicle, has his or her place of residence, seat or business establishment in Denmark. The “user” of the motor vehicle is the person who uses it – even for short-term use only.

A person who is entered into the Danish Civil Registration System (in Danish: “Det Centrale Personregister”), and who therefore has a Danish personal ID number (in Danish: “CPR-nummer”), has his or her place of residence in Denmark based on the entry in the Civil Registration System alone.

A person who is not entered into the Danish Civil Registration System will nevertheless be considered a resident in Denmark if he or she has spent at least 185 days in Denmark during the last 12 months. Consequently, the vast majority of company cars made available to employees who are resident in Denmark are subject to the Danish registration charges.

The obligation to register foreign vehicles in Denmark arises 14 days after the vehicle is imported into Denmark for the first time.



3.1.2 Commercial Vehicles with “Yellow Number Plates”

It is possible to register motor vehicles with a total weight of no more than 4 tonnes with so-called “yellow number plates” (in Danish: “gule plader”). A reduced registration tax is paid for such vehicles. The motor vehicle has to be fitted specifically for transportation of goods, e.g. as a delivery van. The motor vehicle has to clearly display the name and the CVR number of the user, which is usually the owner of the vehicle.

The precise use of the motor vehicle has to be stated when applying for yellow number plates. Where the vehicle is also to be used privately, a separate and additional tax for the private use has to be paid.

The registration tax for vans with yellow number plates amounts to 50 % of the value of full registration tax in excess of DKK 17,500 (approx. € 2,350).

For vans with a total weight of more than 2.5 tonnes the registration charge is 30 % of the full registration tax in excess of DKK 34.100 (approx. € 4,600), if:

- the van is an open van (pick-up) (in Danish: “er åben”), or
- the van is not manufactured with a window behind the driver, in the left side of the vehicle.

The same applies to a vehicle with a total weight between 3 and 4 tonnes, however, the registration tax cannot exceed DKK 56.800 (approx. € 7,650).



3.1.3 "Special Vehicles"

Team vehicles are motor vehicles constructed and fitted for the transport of people and materials. The driver's cab has to be fitted for at least 4 passengers, with at least one seat behind the front seats. The driver's cab has to be separated from the cargo compartment. The cargo compartment has to be bigger in size than the driver's cab. The vehicle may only be used to transport materials and tools to the workplaces of the enterprise or to transport people who work in the enterprise of the vehicle owner or user. The motor vehicle may not be used for the transport of private passengers. The name and CVR number of the enterprise has to be clearly displayed on the vehicle.

- Towing Vehicles (in Danish: "trækraft for køretøjer eller arbejdsredskaber")
- Towing vehicles are primarily equipped to tow other motor vehicles or implements, and to be used as towing vehicles for other vehicles that are subject to registration.
- Implements ("arbejdsredskab")
- Implements are motor vehicles fitted primarily as implements and used exclusively in that capacity. Gritting vehicles are an example of such "implements".
- Other Construction Machinery
- Construction machinery and cranes with a maximum speed of 30 km/h do not fall under the obligation to pay the motor vehicle registration tax.

3.1.4 Use of Leased Motor Vehicles

In principle, leased motor vehicles must be registered in Denmark under the same rules as other vehicles. This also applies to motor vehicles leased from foreign leasing enterprises.

However, upon a prior application the Danish Tax Administration ("SKAT") can authorize payment of a proportional registration tax for leasing vehicles intended for use in Denmark for a limited period of time, during the term of the lease. The requirement is that

- the vehicle is owned by a leasing enterprise,
- the vehicle is leased to a person or company in Denmark for a limited period of time, and
- a corresponding written agreement exists
- The agreement must be in Danish or translated into

Danish by an authorised translator. Furthermore, the agreement is required by law to contain certain terms and conditions.

The registration charge is determined on the basis of the value of the motor vehicle for which the charge is payable. Depending on the age of the motor vehicle, 2 % (0-3 months), 1 % (3-36 months) or 0.5 % (36+ months) of the total registration tax is payable each month. If the parties wish to renew the leasing contract, the Tax Office has to be notified accordingly at least 14 days before the term of the lease expires, and at that time a new contract for the renewal period has to exist.

The rules are very complicated, and it is definitely advisable to obtain advice on the specific procedure.

3.1.5 Liability and Penalties

The owner and the user are jointly and severally liable for any fines imposed. Failure to comply with the regulations leads to a fine amounting to twice the registration tax imposed,

payable in addition to the registration tax. Furthermore, the vehicle will be impounded. It is evident that the failure to comply with the regulations leads to harsh penalties.

3.2 Registration Procedure

Liability insurance has to be taken out with a Danish insurance company in order to register a foreign vehicle in Denmark.

In addition, a Danish vehicle inspection centre has to conduct a technical check and an inspection in order to determine the registra-

tion tax, during which the identity, the mileage, equipment and general condition of the motor vehicle are established.

The vehicle then has to be entered electronically into the central Register for Motor Vehicles (in Danish: "Motorregistret").

3.2.1 Registration Charge for New and Used Motor Vehicles

For a new motor vehicle, the registration tax is calculated on the basis of the purchase price. A motor vehicle is "new" if it has been driven for less than 2,000 kilometres. Vehicles that have been driven for more than 2,000 kilometres are considered used vehicles – the age of the vehicle is irrelevant.

The Danish Tax Administration ("SKAT") calculates the registration tax for used motor vehicles on the basis of the market price where the vehicle is sold to a consumer in Denmark. This price is then compared against the original price for a new vehicle and the loss in value.

3.2.2 Calculation of the tax

Generally, the registration tax amounts to 105 % of the value of the motor vehicle up to the amount of DKK 82.800 (approx. € 11,100) and 150 % of the amount exceeding that figure.

When calculating the value deductions can be made for safety equipment etc.

Furthermore, the registration tax for motor vehicles with a low fuel consumption is deducted. The registration charge will be deducted with DKK 4,000 (approx. € 550) for every km exceeding 16 km/l petrol (18 km/l for diesel).

3.2.3 Quarterly Payment in case of Temporary Stay in Denmark

On request, the Tax Office may permit quarterly payment of the registration charge for motor vehicles registered in Denmark for a limited period of time. The prerequisite for this is that the motor vehicle is owned by a foreigner and is used by that person solely during a temporary stay in Denmark.

Together with payment of the first quarterly instalment, a deposit in the amount of one quarterly instalment also has to be paid.

The registration tax is determined based on the value of the motor vehicle for which the tax is payable. Depending on the age of the motor vehicle, 2 % (0-3 months), 1 % (3-36 months) or 0.5 % (36+ months) of the total registration charge is payable each month.

The obligation to register a motor vehicle ends as soon as the temporary stay in Denmark ends; the Tax Office will return the deposit and reimburse any excess amounts paid.

3.3 Obligation to Mark Vehicles Transporting Goods

Motor vehicles that transport goods, with a total weight of less than 4 tonnes and used exclusively for commercial purposes have to be clearly marked on the side with the name or logo of the enterprise and the enterprise's CVR number. This also applies to leased motor vehicles.

Failure to comply with this obligation is punishable by a fine amounting to DKK 5,000 (€ 670), and by increased fines in case of repeated offences.





4

Working Environment in Denmark

Denmark has the most flexible recruitment legislation in the EU and on many areas the Danish labour market differ from the labour market in other EU member states, especially when it comes to the interactions between the unions, employer's associations and the Danish state, e.g. regarding the social security contribution and the so-called "flexicurity" model. This is explained in more detail below.

4.1 Danish Labour Market

4.1.1 Flexicurity - the “Danish Model”

Denmark is proud of having invented the Danish model of “flexicurity” (composed of the terms “flexibility” and “security”). The composite term describes a trivariate between the unions, employers’ associations and the state: the unions and the employers’ associations provide flexible employment opportunities with rapid hiring and firing. In return, the state provides a stable social-welfare safety net and further training opportunities for employees, who have been fired. In relation to the social-welfare, it is worth mentioning that there is virtually no social security contribution for the employer to pay on top of the salary as is the case in other countries. In most other countries, the social security contribution is up to 30 %. This is also relevant to know, when you are bidding on a public invitation to tender in Denmark, as you should not calculate with a high social security contribution in your cost base of a tender.

In Denmark, the unions thus accept a “hire and fire” concept, since - generally speaking - this creates a flexible labour market with better employment opportunities. There is no legislation on protection against dismissal in Denmark.

The “Danish Model” can only function if the parties to collective bargaining agreements negotiate reasonable working conditions

within the context of collective agreements and monitor those conditions. One of the purposes of this model is to provide stability, which is created when the unions negotiate the working conditions instead of legislation, since the labour regulation will be independent of changing government. Hence, the unions view working conditions that are not agreed by parties to collective agreements in Denmark skeptically.



4.1.2 Unions and Employers' Associations

In principle, neither the employer nor the employee is under an obligation to join an employers' association or a union respectively. Hence, the terms of employment can be freely negotiated.

However, parties to collective agreements, especially the unions, have an interest in achieving a high degree of organization. Employers can either join one of the employers' associations – thus being directly covered by the terms of collective agreements – or may enter into their own “company agree-

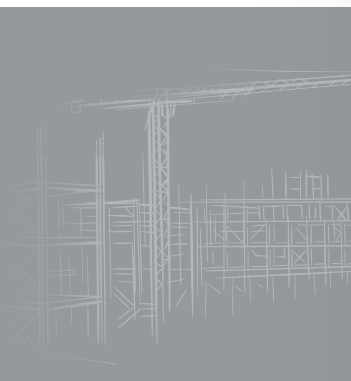
ments” with a union.

70 % of all employees in Denmark are members of a union. Whereas almost all blue-collar workers are covered by the terms of collective agreements, the same does not apply to white-collar staff.

The Danish Construction Association (“Dansk Byggeri”) is the principal employers' association for the construction industry. The dominant union on the side of workers in the construction industry is Fælles Fagligt Forbund (so-called “3F”).

Practical tip:

The website of Dansk Byggeri, www.danskbyggeri.dk/english contains further information in English about membership in the employers' association.



4.1.3 Various Categories of Employee

In Denmark, a distinction is made between blue-collar workers, white-collar employees, and other members of staff.

As a rule, detailed collective agreements apply to blue-collar workers. Employees are governed by specific legislation, the Danish Act on Salaried Employees (in Danish: “Funktionærloven”), and - insofar as agreed - by the provisions of a collective agreement.

The legislation governing employees (the Salaried Employees Act) is the most important legal instrument in labour and employment law. Most of the provisions are mandatory where the employment relationship of an employee is concerned.

The employees to whom the legislation governing employees applies are determined by a list contained in the legislation, according to which office workers and persons who supervise and issue instructions to other employees fall within the ambit of the legislation. In the construction industry, this would cover the site manager, for example, but not the site foreman.

Further information:

A precise definition of the employee in the sense of Danish law can be found in Sec. 1 of the legislation governing employees (the Danish Salaried Employees Act).

Other staff members, for example are managing directors, who are not covered by the laws governing employees or by collective agreements. Such executive staff members enjoy broad freedom of contract.

Based on the principle of equal treatment, temporary employees (in Danish: “vikarer”) enjoy the same rights as other employees.

4.1.4 Employee Representation and Works Council

In larger enterprises, employee representatives (in Danish: “til-lidsrepræsentanter”) with special rights under the relevant collective agreements are also elected via the unions.

Under Danish law, employees in corporate entities are entitled to elect half of the members of the supervisory body (e.g. the supervisory board) if the corporate entity had at least 35 employees during the last three years and only if the

company have a board of directors. For a limited company (ApS), it is possible to establish a company with only an executive board, and hence no board of directors, which would entail no employee representation entitlement.

Please note that the employee representatives mentioned above enjoy a special protection against dismissal as long as they are occupying the position as employee representative.



4.2 Workers (blue-collar)

4.2.1 Applicable Law

The applicable law is first of all dependant on the kind of employment, in particular whether the worker is seconded or is locally employed.

Seconded workers are initially subject to the law applicable to their original contract. However, if the worker subsequently works permanently in Denmark, the mandatory provisions of Danish law will govern him or her.

Another choice of law than Danish law cannot be agreed. A worker

may not be placed in a position worse than under the mandatory provisions applicable in the country where he or she usually performs his or her work. However, there are hardly any mandatory statutory provisions applicable to workers in Denmark.

The unions in Denmark therefore attempt to enforce their local collective agreements to the best possible extent for all workers engaged in Denmark.

4.2.2 Recruitment Procedure

A criminal record certificate (in Danish: "straffeattest") can be required at the time of recruitment. It lists all offences under the Danish Criminal Code for a period of 5 years. The following questions are not permitted during an interview for employment:

- Pregnancy (and relevant plans)
- Religious beliefs and sexual orientation, political views
- 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

4.2.3 Employment Contract

Under Danish law, it is a requirement that all workers are provided with an employment contract. Due to the special nature of the Danish labour law system, most employment issues are not regulated by

law, but are regulated in the collective agreements in force. Whether such collective agreements must be observed, depend on whether or not you are a party to such collective agreements.

4.2.4 Working Hours

There is no legislative minimum requirement of working hours according to Danish law, but a maximum of 48 hours in average within a four-month period. Besides this

legislative requirement, working hours are usually regulated in more detail in the collective agreements in force.

4.2.5 Remuneration

There is no minimum wage determined by law in Denmark. However, collective agreements often specify a certain minimum salary.

Detailed provisions on wages and salaries are usually set out in the

collective agreements. As a rule, it is not easy for foreign enterprises to understand the complicated provisions and to implement them correctly in practice.

Further information:

Further details on provisions governing working hours and minimum salaries can also be found in the overview made available by Dansk Byggeri in the “Provisions in collective agreements for foreign members of the Danish Construction Association”.

4.2.6 Vacation

A worker is entitled to 25 holidays per holiday year. However, the worker only receives holiday pay if the holidays were earned during the previous calendar year.

As a rule, workers do not receive remuneration from their employers during their holidays. Instead, workers receive holiday pay amounting to 12.5 %, calculated on the basis of their salary during the preceding computation year.

The employer has to pay earned the holiday pay into the holiday account (in Danish: "Feriekonto"). Disbursement to the worker takes place from that account when the holiday is taken.

The provisions on holiday distinguish between the year in which holidays is earned (corresponding to the calendar year) and the "holiday year" (1 May – 30 April).

Holidays have to be announced 3 months before the main holiday (the first 15 days of holiday) is taken. The remaining holidays (holidays in excess of 15 days) have to be announced one month in advance.

A worker may carry holidays in excess of 20 days forward into the next holiday year. However, this is subject to a corresponding agreement entered into with the employer by 30th of September after the holiday year ends. Collective agreements may contain divergent provisions.

Normally, the holiday pay is disbursed at about the same time as the holiday is taken. In certain situations, the holiday pay can be disbursed without the holiday having been taken:

- Before the start of the holiday year if the holiday pay does not exceed DKK 1,500 (€ 200) after the deduction of tax and the labour market contribution
- At the end of the holiday year if the holiday pay does not exceed DKK 750 (€ 100) after the deduction of tax and the labour market contribution
- If the worker leaves the Danish labour market, e.g. returns to his or her home country
- After the end of the holiday year if the holiday pay amounts to no more than DKK 2,250 (€ 300)

Further information:

An English translation of the Danish Act on Holidays (in Danish: "ferieloven") is available for a paid fee on the website www.karnovgroup.dk

As illustrated above the Danish holiday system is complicated and does not mix well with other systems – often to the detriment of

the employee/worker. Accordingly, it is expected to be reformed by 1 September 2020.



4.2.7 Maternity and Paternity Leave

Both the mother and the father are entitled to take leave after the birth of a child.

An expectant mother is entitled to four weeks of maternity leave prior to the birth of the child. After the birth, the mother has two weeks of mandatory maternity leave; she is then entitled to take 12 additional weeks of maternity leave. After this, she is entitled to take at least 32 additional weeks of parental leave.

The employer has to be notified at least 3 months before the expected date of birth as to when the expectant mother intends to take her maternity leave. No later than 8 weeks after the birth, the mother

has to inform her employer about the planned length of her maternity leave.

The father is entitled to take two weeks of parental leave during the first 14 weeks after the birth of the child and is also entitled to take at least 32 weeks of parental leave. He must inform his employer accordingly at least 4 weeks before taking parental leave.

The above-mentioned regulations initially apply to the right to take leave of absence if notification is provided. The question of how long it is possible to claim continued payment of remuneration is governed by the relevant collective agreement in force.

4.2.8 Termination of Employment Relationships

Denmark has one of the most flexible labour law systems when it comes to hiring and firing employees.

As a rule, the only payment related to a termination is the payment of the workers' usual salary during a period of notice, and so there is no obligation to pay any kind of redundancy payment after the period of notice. The period of notice in case of a worker's dismissal vary depending on the collective agreement concerned. Overall, the periods of notice where workers are dismissed are considerably shorter than those applicable to employees.

According to a typical collective agreement in the construction

industry, workers who have been with the company for less than 6 months can be dismissed with immediate effect.

After service with the company of 6 months or more, the period of notice in case of dismissal is usually between 14 and 70 days depending on the duration of the employment relationship. If the worker is aged 50 or over on the date of dismissal and if he or she has been with the Danish company for between 9 and 12 years, the period of notice is between 90 and 120 days.

A worker can terminate his or her employment relationship by giving between 7 and 28 days' notice, depending on the duration of the employment.

4.2.9 Mass Redundancies

A number of obligations to provide information and to negotiate have to be observed where mass redundancies are planned, according to the Danish Law on Mass Redundancies (in Danish: “Lov om masseafskedigelse”). The Danish Law on Mass Redundancies is based on the relevant EU Directive (1998/59/EC).

The following dismissals within a 30-day period will be considered mass redundancies under Danish law:

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

The regulation on mass redundancies in Denmark is less restrictive than in other countries. Where “mass redundancies” are planned, the only requirement for the employer is to initiate and hold negotiations with different parties, but there is no requirement of consent from these parties.

First, negotiations have to be held in advance with the regional labour councils (in each case for the North, South or Central Region or Zealand).

Apart from this, at the earliest possible point in time, negotiations have to take place with the employees’ representatives. During these negotiations the possibility of avoiding or limiting the mass redundancies have to be discussed, and the possibilities of alleviating the consequences of the redundancies by way of flanking social-welfare measures, in particular assistance through deployment elsewhere or re-training, also have to be negotiated.

If the negotiations are unsuccessful, the redundancies may take place according to the intended procedure. Therefore, there is no requirement of an actual consent from the employees’ representative to such redundancies, only a requirement of a negotiation to be held.

Further information:

The exact mode of procedure where mass redundancies are concerned is set out in the relevant legislation (in Danish: “Lov om masseafskedigelse”).

4.3 Employees (white-collar)

As mentioned above, Denmark has the most flexible hiring and firing legislation throughout EU.

The following section explains the basic legal status of employees on

the Danish labour market.

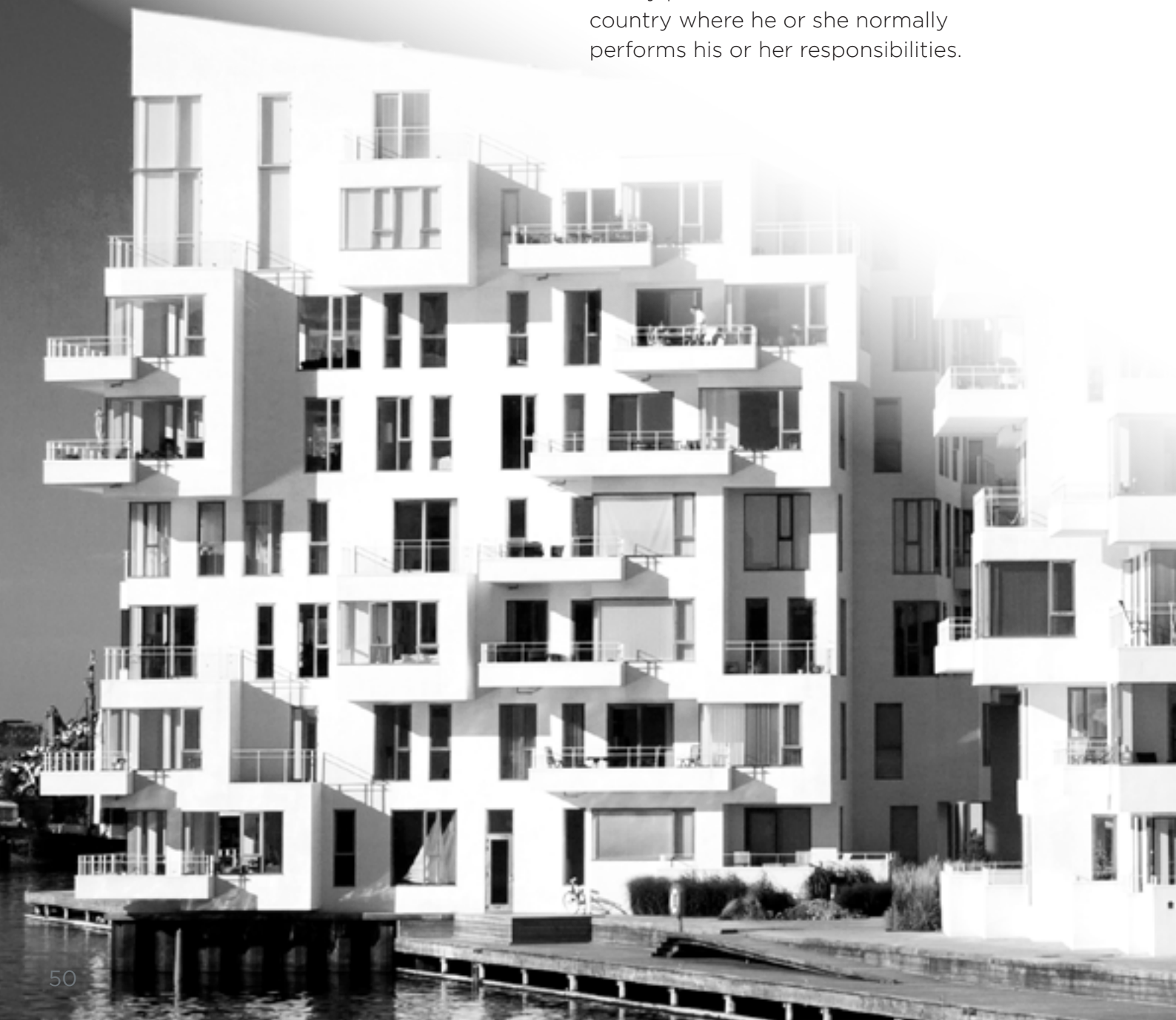
Contrary to the legal status of workers, the rights of employees are governed by statutory provisions.

4.3.1 Applicable Law

The applicable law is first of all dependant on the type of employment, in particular whether the worker is seconded or locally employed.

Seconded employees are governed by the law applicable to their original contract. However, if the employee subsequently works permanently in Denmark, Danish law will then govern him or her.

According to EU law, an employee may not be placed in a position that is worse than under the mandatory provisions in force in the country where he or she normally performs his or her responsibilities.



4.3.2 Recruitment Procedure

The recruitment procedure is governed by the same regulations mentioned in [section 4.2.2.](#) above in relation to workers.

4.3.3 Employment Contract

It is not a legal requirement to draw up an employment contract in both English (or in the relevant language spoken by the employee) and in Danish.

However, where employment contracts are only drawn up in one of the two languages, it often becomes clear that at least one of the parties did not really understand parts of the agreement at the time it was concluded. This is not the best basis for a good employment relationship.

Thus, it is necessary to consider if the employee understands English, and if so, the contract can be drawn up in only this language. If the employment contract is drawn up in two languages, it should be stated clearly which language is to prevail in case of doubt.

According to Danish act on proof of employment conditions (“Ansættelsesbevisloven”), the employer has to inform the employee in writing about the terms of his or her employment relationship.

The following conditions should therefore form part of the employment contract:

- The name and address of both the employer and the employee
- The place of work
- Description of the responsibilities or position to be held by the employee
- Date on which the employment relationship is to commence
- Duration of the employment relationship
- Where the employment relationship is not limited in term, the periods of notice for both the employer and the employee have to be indicated, e.g. by referring to the Danish legislation governing employees.
- The employee's right to take holiday
- Salary
- Daily and weekly working hours
- Any collective agreements governing the employment relationship
- Other important aspects of the employment relationship

Subsequent amendments of these points have to be notified to the employee in writing.

If the employer fails to issue a letter of employment, an obligation can be imposed on it to pay compensation of between € 200 and € 1,300 to the employee.

4.3.4 Working Hours

There is no legislation governing the weekly working hours per se except for the EU provisions indicated above. The weekly working hours according to the collective agreements are usually 37 hours per week. Apart from this, the working hours may be agreed freely by the parties. The employment con-

tract has to state whether pecuniary compensation or time off will be granted for overtime.

Modifications to working hours have to be notified to the employee together with notification of the periods of notice applicable when the employment relationship is terminated.

Further information:

Further details on the provisions applicable to working hours can be found in the overview made available by Dansk Byggeri: “Provisions in Collective Agreements for Foreign Members of the Danish Construction Association”.

4.3.5 Remuneration

Where the employment relationship is not governed by a collective agreement – which is often the case – the salary is a matter for negotiation between the parties.

Where an employer pays a lower salary to one employee vis-à-vis the other employees without an objective reason, the employee treated unequally is entitled to claim the differential amount.

4.3.6 Vacation

According to the Holiday Act, an employee is entitled to 25 days (5 weeks) annual holiday to be taken within the holiday year (from 1 May – 30 April). The entitlement to salary during periods of holiday is accrued in the qualifying year (1 January – 31 December of the previous year) by 2.08 days per calendar month.

For instance, if the employee is employed in the company as from November 2016, the employee will be entitled to partial holiday ($2 \times 2.08 = 4.16$ days) with pay to be taken in the period from 1 May 2017 – 30 April 2018, but not before. The employee will be entitled to full salary during holiday in the following holiday year 1 May 2018 – 30 April 2019, as the employee will have been employed all 12 months of 2017.

In addition, the employee is entitled to a vacation supplement amounting to 1 % of his or her salary in the preceding year. The employer has to disburse the holiday supplement at the same time as the main holiday commences, i.e. normally together with the salary for April or May.

Moreover, most collective agreements entitle the employee to 5 additional holidays (in Danish: “Feriefridage”), so the total days of holidays is 30. However, if the employment is not covered by any collective agreement the question of additional holidays is a negotiable term in the contract. Thus, it is not a requirement under Danish law to grant the 5 additional holidays, however, these are often granted.

Since the holiday year is not identical to the calendar year, the holiday is not necessarily taken within the context of the same employment relationship in which it was earned. Hence, in Denmark the holiday entitlement is not bound to an existing employment relationship, but, rather, is “saved up” for the future. Where an employee moves jobs, the former employer pays the paid holidays into a so-called holiday account from which the employee is able to deduct his or her holiday allowance within the new employment relationship.

An English translation of the Danish Act on Holiday (in Danish: “ferieloven”) is available for a paid fee on www.karnovgroup.dk

4.3.7 Sickness and Maternity Leave

Sickness is a valid reason not to be at work.

As regards maternity leave, provisions corresponding to those discussed in No. 2.g. above with regard to workers apply.

Employees are entitled to claim continued salary payments during the period of parental leave under the legislation governing employees

4.3.8 Termination

According to the Danish Salaried Employees Act, the period of notice in case of dismissal by the employer is between 1 and 6 months depending on the duration of the employment relationship and are as follows:

- 1 month until the end of the 5th month of employment
- 3 months until the end of 2 years and 9 months' 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
- Subsequently, the notice of termination is 6 months

Employees may terminate their employment contracts with one month's notice, irrespective of their length of service with the company. The contracting parties may agree on a trial phase of up to 3 months during which the employment relationship may be terminated by either side subject to observance of 14 days' notice.

According to the Danish Salaried Employees Act, it is a requirement after one year of service with the company that the employer's termination of the employment relationship must be based upon due cause. Such due cause can be present either if e.g. the employee does not perform as expected or if the employer e.g. is terminating the employment due to restructuring or scale down, etc. Scale down and restructuring of the company will always be considered as due cause for termination.

An employee who have been dismissed without such due cause may file a claim for a severance

payment amounting to up to half the salary claims during the period of notice for a maximum of 6 months. The employer has to prove the objective reasons behind the employee's dismissal.

Further, a termination of an employment does not require a consent from a union or other third party. In addition, there is no requirement of using a "first in, last out"-principle for the termination process.

After an employment relationship with a company lasting 12, 15 or 18 years, the employee has a mandatory claim for severance pay amounting to 1, 2 or 3 monthly salaries in case of dismissal.

Protection against dismissal follows from the Act on Equal Treatment (in Danish: "ligebehandlingsloven"). An expectant mother who is dismissed can claim significant compensation from the employer if the employer is unable to prove that the dismissal is not connected to the employee's pregnancy. Special protection against dismissal also applies to employee representatives (in Danish: "tillidsrepræsentanter") and to employees' safety officers (in Danish: "sikkerhedsrepræsentanter").

It is possible to dismiss an employee with immediate effect in case of gross misconduct. However, as a rule this requires a prior written warning notice issued to the employee.

The employer may agree with the employee on a shorter period of one month's notice for dismissal in case of lengthy periods of sickness (120 days within the last 12 months).

Further information:

The above-mentioned provisions on termination and dismissal can be found in Secs. 2, 2a and 2b of the Danish Act on Salaried Employees (in Danish: “funktionærloven”).

4.3.9 Mass Redundancies

The comments made in [section 4.2.9](#) above with reference to workers also apply to the dismissal of large groups of employees. No distinction is made in this respect between workers and employees.



4.4 Courts with Jurisdiction for Labour Disputes in Denmark

In Denmark, there are no specific labour courts as in other EU member states. The ordinary courts hold jurisdiction on labour disputes between employers and employees.

Action Brought by Employee

A contractor with its seat or a branch establishment in Denmark may have a labour dispute brought against them in Denmark. This also applies without a seat or branch establishment in Denmark when the employee performed his or her responsibilities in Denmark. Where the employee performs his

or her responsibilities in different locations – working for example in another EU member state as well as in Denmark – the employee may bring proceedings against the employer at the place where the business establishment that recruited the employee is located.

Action Brought by Employer

By contrast, the employer may only initiate proceedings at the place where the employee resides.

Agreement on Place of Jurisdiction

An agreement on a different place of jurisdiction to those described above is only possible if the agreement is concluded after the dispute arises.

Further information:

The exact place where litigation between an employer and an employee has to take place is determined for Denmark by EU Regulation No. 44/2001.

A special labour court (in Danish: “Arbejdsretten”), which is in fact an arbitration tribunal established

by the parties to collective agreements, has jurisdiction for disputes governed by collective agreements.

4.5. Resident Permit and Work Permit in Denmark

For citizens of the European Union no residence permit or work permit is required to work in Denmark. Furthermore, citizens of the EU can spend up to 3 months in Denmark without registration being required. If they are job-seeking, this period is extended to 6 months.

If the EU employees are staying in Denmark for more than 3 months, the employee shall request the State Administration Office (in Danish: “Statsforvaltningen”) to issue a proof of registration (in Danish: “registreringsbevis”).

Practical tip:
The form for obtaining proof of registration can be obtained online at: http://www.statsforvaltningen.dk/stats_resources/810.pdf



In order to work in Denmark, a foreign employee must have a personal ID No. from the Civil Registration System (in Danish: “Det Centrale Personregister”). The personal ID No. is required in order to obtain an (electronic) tax card and is called a CPR number. The personal ID No. can be ob-

tained from either the citizens’ bureau (in Danish: “borgerservice”) of the municipal administration (in Danish: “kommune”) or the Danish Customs and Tax Administration (SKAT). The latter in cases where the employee does not meet the requirements for being registered as a resident of Denmark.

4.6 Social Security Contributions

Danish social security contributions are often payable where foreign employees work in Denmark. However, as mentioned above, in Denmark, there is virtually no social security contribution for the employer to pay. The social security contributions payable by the employer are limited in Denmark (only € 1,000 per year per employee). This is relevant to know in the tender process, as the cost base of

the tender should then only include the Danish social security contribution of € 1,000 per year per employee on top of the salary. As a matter of principle, health insurance is organized by the state and paid via taxes. However, it is possible to take out additional private insurance, which may be considered for indispensable employees.

4.6.1

Applicable Law

According to Danish law, all employers are obligated to pay € 1,000 per year per employee in social security contribution. Furthermore, the employer shall withhold the social security contribution of the employee, which is 8 % of the salary.

This amount of 8 % for the employee is a tax and must be withheld by the employer from the salary, whether or not the employee is a locally employed person or a seconded. Since this is a tax, the employee cannot receive relief from Denmark and must therefore apply for relief of this social security at home if applicable.

Since many employees are only in Denmark for a defined period of time, it will be relevant for them to retain their social security insurance in their home country. Here, the basic rule is that an employee can retain the social security insurance of his or her home country for up to 3 years.

Proof of social security insurance has to be provided by presenting a declaration issued by the home country.

Further information:

The exact provisions are set out in EU Regulations Nos. (EC) 883/2004 and 987/2009 on the coordination of social security systems.



4.6.2 Pension Schemes

Pension Schemes Under Collective Agreements

There is no legal requirement for an employer to pay pension contributions into a pension scheme on behalf of the employee, unless this follows from a collective agreement. The majority of collective agreements contain provisions on pension schemes.

The Danish state subsidizes company pension schemes by permitting the deduction of contributions for tax purposes. In return, the pensions are liable for tax as income when they are disbursed after retirement.

Where an employee moves to a new job, he or she is often then governed by a different collective agreement and therefore has to move to a different pension scheme. It is possible to switch schemes, but as a rule, fees are charged.

A seconded employee who falls within the ambit of a Danish pension scheme under a collective

agreement can transfer the accrued capital to a different EU member state after having terminated his or her employment relationship in Denmark. However, then the employee must request for premature disbursement of the capital, which is subject to taxes. The amount of taxes depends, amongst others, of whether or not the payments to the pension scheme have been made with deductions, and if deductions have been made, the pension scheme can be subject to up to 69 % tax.

Pensions are usually not disbursed until the age of retirement is reached. The question whether employees who worked temporarily in Denmark and for whom contributions were paid into a company pension scheme will ultimately receive any pension benefits, is difficult to answer though the benefits appear minimal.

Further information:

Further details on pension schemes under collective agreements can be found in the overview made available by Dansk Byggeri: "Provisions in collective agreements for foreign members of Dansk Byggeri".

Private Retirement Benefits Insurance

The Danish state also subsidises private retirement benefits insurance schemes by permitting contributions paid to be deducted for tax purposes. These pensions are also taxed as income upon disbursement at a later point in time.



4.7 Danish Tax System for employees

A person residing or working in Denmark is as a starting point liable to pay tax and dues in Denmark. Upon determining liability for taxes, any double taxation treaties have to be taken into account.

4.7.1 Tax Liability for Individuals

The tax liability for employees will first of all depend on whether or not the salary is paid for the work performed in Denmark (the salary) and can also depend on the amount of time spent in Denmark. If the employee's country of origin

does not have a double taxation agreement with Denmark, the employee will either be fully or limited liable to taxation in Denmark, depending on the amount of time the employee is in Denmark.

Time spent in Denmark

Work in Denmark for more than 6 months will entail that the employee is fully liable to taxation in Denmark from the first day of working in Denmark.

Work in Denmark for less than 6 months – calculated as less than 183 days – will result in the employ-

ee being limited liable to taxation in Denmark. The calculation of the 183 days includes holidays etc. The rule is complicated and is given divergent interpretations in Denmark and other EU member states. Thus, it may be relevant to obtain legal advice on tax matters.

Salary paid by Danish Subsidiary or Permanent Establishment in Denmark

An employee whose salary is paid in Denmark by a subsidiary or a permanent business establishment of a foreign enterprise in Denmark is liable for tax on that income in Denmark. This does not depend on whether or not the employee is resident in Denmark or on how long he or she works in Denmark.

An employee whose salary is not paid in Denmark by a subsidiary or a permanent business establishment of a foreign enterprise is as a general rule not liable for tax in Denmark if he or she does not spend more than 183 days in Denmark during the course of a 12-month period.

Hired-out-Labour Tax. An employee who has been hired out by a foreign enterprise directly to the company (the customer) in Denmark to perform work in Denmark, will be liable for international hiring out of labour tax, which the Danish company (the customer) will withhold from the salary. In some cases, the employee can apply for tax relief in his or her home country.

Expat tax is a special tax scheme, which certain highly-paid employees (and researchers) can choose to pay tax accordingly instead of paying tax under the regular income taxation scheme. The taxation rate under the expat tax is 26 %, and adding the mandatory labour market contribution, the tax rate is a total of 31.92 % tax, which is a very favourable taxation rate. In order to be eligible under the expat tax scheme, the employee is required to earn a salary of at least DKK 63,700 per month (in 2017). This amount is calculated as the salary before deduction of social security contributions, but after the deduction of labour market supplementary pension fund (“ATP”) contributions, and the amount also includes the value of any fringe benefits and employer-funded health care services, etc.

If the salary including fringe benefits etc. exceeds this amount, it is possible for the employer to reduce the gross salary without it affecting the employee’s net salary. The expat tax can be applied for a period of up to 60 months.

4.7.2 Personal Taxation in Denmark

The taxation systems in the majority of EU member states and in Denmark are different in that the social security systems in Denmark – with the above-mentioned exceptions – are financed almost exclusively by taxes. By contrast, in most other EU member states significant social security contributions are payable in addition to taxes.

For this reason, the tax burden in Denmark initially appears to be considerably higher than in the majority of EU member states. However, where the taxes, the social security contributions and VAT are viewed in their entirety, the difference between the net incomes of average employees in the countries is much less significant.

Before the first disbursement of his or her salary, an employee liable for tax in Denmark has to obtain a wage tax card based on his or her personal ID No. (CPR number obtained as described in no. 5 above). This is required by the employer in order to withhold taxes from the salary at source. The wage tax card is provided to the employer electronically.

If a wage tax card is not provided by the time the salary is payable, the employer has to withhold 55 % of the salary without deducting any exemption amounts.

Every person has a basic tax-free amount of DKK 45,000 (2017) that is adjusted annually. Income exceeding this is taxed with a gross tax of 8 % where after the remaining amount on average is taxed with 35 % unless the total income amounts to more than DKK 467,300. In said case, the amount exceeding DKK 467,300 will be subject to an additional tax of 15 %. However, in any case taxes may not

exceed 51.95 % of a person's total income.

Deductions are costs/amounts that can be deducted from the salary prior to taxation. The following amounts can as a rule be deducted: costs of the journey between the residence and the place of work (flat-rate amount per km), union dues, unemployment insurance contributions, and contributions to pension schemes.

The following fringe benefits are added to the income for tax purposes: Residence, company car, computer, and telephone made available as well as other fringe benefits. The economic value of such fringe benefits is added to the income, as this value is considered part of the employees' salary, if the employee uses the benefits for private purposes and thereby receives a financial benefit. In order for the Danish Tax Authorities to establish the value of a fringe benefit, e.g. the value of a company car, the Tax Authorities distinguish between the private use of the company car and the use for business purposes only. If the company car is used to drive between the employee's home address and the place of work, such use will be considered as private, and will be added to the income. On the other hand, the use of the company car to drive to customers or other use of the company car for business related purposes will not be added to the income, as such use will be considered use for business purposes only.

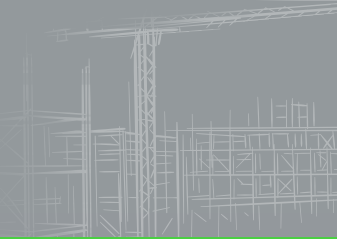
Tax returns have to be filed by 30 April of the year following the tax year. Normally, an electronic version of the tax return is made available by February/March, which has to be examined by the taxpayer in

order to make any amendments. Failure to file tax returns is punishable by a fine of up to DKK 5,000 (670). Every citizen can access

his or her electronic tax record at the Danish Tax Administration “SKAT” and can modify his or her tax card and tax return online.

Practical tip:

It is possible to file or amend a tax return using a digital signature (“NemID”) on the website of the Danish Tax Administration www.skat.dk





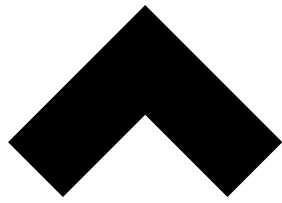
4.8 Public Holidays in Denmark

Payment of salary on public holidays is not regulated by law in Denmark, while the obligation to pay salary on public holidays will depend on the terms of the employment agreement or other obligations for the employer, e.g. according to a collective agreement, if the employer is a party to such.

The following days are 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
- Day of Prayer ("Store Bededag"): a Friday in April/May
- Labour day: 1 May (for blue collar workers mainly)
- Ascension Day: May/June
- Whit Sunday: May/June
- Whit Monday: May/June
- Constitution Day ("Grundlovsdag"): 5 June
(public holiday in part – often full holiday for white collar employees)
- Christmas Eve: 24 December (de facto holiday)
- Christmas Day: 25 December
- Boxing Day: 26 December
- New Year's Eve: 31 December (de facto holiday)

Public holidays are important for remuneration payable under collective agreements, for example, and for the obligations of construction enterprises to carry out work under construction agreements.



NJORD Law Firm is one of the leading law firms advising on international construction projects. We have a specialised unit set up to, and we are experienced in advising on all aspects relevant to a construction project including construction, labour, corporate and tax law as well as general compliance. We are currently the only firm to offer integrated, full package, holistic advice to foreign contractors and have an impressive track record for achieving results that effect the bottom line. Our construction team is one of the strongest in Denmark having long-term collaboration with most of the largest construction companies in the world. We advise on all stages of a construction project from procurement, finance and initial design, over project execution and contract management to transactions after completion of the project.



NJORD Law Firm



Ulrik Fleischer-Michaelsen
Partner

Ulrik Fleischer-Michaelsen specializes in international transactions, advising foreign enterprises on establishing or expanding in Denmark within various industries and sectors. In addition, he assists foreign construction companies with legal compliance.

Further, Ulrik Fleischer-Michaelsen has comprehensive experience in M&A and venture capital, having assisted in multiple transactions through many years.

As trusted advisor, Ulrik Fleischer-Michaelsen serves international and domestic clients ranging from entrepreneurs to large multinationals.



Thomas Ryhl
Partner

Thomas Ryhl is one of the leading EC and procurement law experts as well as a highly respected litigator who regularly appears before the European Court of Justice.

He advises a number of large international clients in relation to tenders in Denmark.



Søren Egstrand Thomsen
Partner

Søren Egstrand Thomsen has extensive experience with project development and construction contracts.

With detailed industry knowledge, he can help ensure that tenders are competitive.

He also handles disputes before the Danish Building and Construction Arbitration Board and the courts.

NJORD Law Firm



Steffen Hebsgaard Muff
Attorney at law

Steffen Hebsgaard Muff advises on civil engineering contracts and disputes. This includes infrastructure and energy projects, as well as project logistics and integrated IT-solutions. He is one of the leading FIDIC practitioners in Denmark.

Having worked with numerous foreign contractors in Denmark and for several Danish entities, Steffen is an expert on the common pitfalls that international contractors experience in Denmark.



Sabine Glatz Taulov
Attorney at law

Sabine Glatz Taulov is a Danish attorney at law, who advises on construction and labour law. Her main clients are German and Austrian construction companies within the construction industry. Sabine Glatz Taulov handles disputes before the Danish Building and Construction Arbitration Board.

In addition, she advises on hiring and deployment of employees and negotiation of collective agreements.



Stefan Reinel
Partner

Stefan Reinel is both a Danish attorney at law, German Rechtsanwalt, and a certified specialist in international commercial law. He advises on German – Danish legal issues and represents many large German entities, including construction companies, in Denmark.

NJORD Law Firm



José María Barnils
Abogado

José María Barnils is a dual-qualified lawyer certified to practice law in Spain, Catalonia, and Denmark. Furthermore, he boasts an LL.M. from the London School of Economics and a degree from McGill University in Montreal. Thus, José Maria Barnils deals with Spanish-Danish matters, and assists South European companies that have commercial interests in Denmark. He divides his time between Copenhagen and Spain, mainly Barcelona.



Luigi Farina
Attorney at law

Luigi Farina is admitted to the bar in Denmark as well as in Italy. Luigi Farina is an expert on Italian-Danish legal matters. He has advised several Italian (and other Southern European) contractors on construction in Denmark.

CONTACT



Ulrik Fleischer-Michaelsen
Partner

Phone: +45 77 40 10 33
ufm@njordlaw.com



Søren Egstrand Thomsen
Partner

Phone: +45 77 40 10 13
set@njordlaw.com

CONTACT



Sabine Glatz Taulov
Attorney at law

Phone: +45 77 40 11 73
sag@njordlaw.com



Steffen Hebsgaard Muff
Attorney at law

Phone: +45 77 40 10 17
shm@njordlaw.com



NJORD
L A W F I R M