KROMANN
REUMERT

DOING BUSINESS IN DENMARK

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This guide is meant as a guide for the foreign investor and is intended to introduce the most important legislation and practical issues to be considered before commitment to a more detailed examination of Denmark as an investment destination.

This guide concentrates on the most usual forms of investment (such as the various forms of corporate entities), mergers & acquisitions, and various issues, which may be necessary to consider when making an investment in Denmark (taxation, employment matters and competition regulation among other things).

When preparing this outline we have endeavoured to see things from the foreign investor's point of view and hope to have bridged a gap, which might otherwise hinder positive and fruitful co-operation. Wherever possible, we have tried to employ the most appropriate English terms and, where necessary, we have endeavoured to explain differences in specific terms or titles as the case may be. Every care has been taken to ensure that the information is accurate as at 1 February 2005*.*

This guide is not legal advice, but only intended as a guide and outline of certain aspects of Danish law. This guide does not include EU law considerations, although EU law aspects will often have to be considered as an integral part of many transactions.

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1. INVESTMENT CLIMATE AND OPPORTUNITIES

Denmark is heavily dependent on foreign trade and international cooperation. Denmark follows liberal trade and investment policies and encourages increased foreign investment.

Denmark joined the then EEC on 1 January 1973 and, even though it is one of the smallest members of the Community, it has played a vital part in the Community's developments since then and now exports some two thirds of its total exports to EU Member States.

The Danish investment climate has followed the general trend in the world market and has experienced a solid growth in investments and acquisition deals for the first time since the end of 2000. Compared to 2003 the estimated value of transactions carried out in 2004 on the Danish market had more than doubled.

The increase in the value of transactions is attributable to an increase in the number of transactions in 2004 but also to a number of very large transactions, including Carlsberg A/S' acquisition of Orkla ASA's 40% interest in Carlsberg Breweries A/S, Kaupting Bank's acquisition of FIH, TDC A/S' acquisition of Song Networks, the merger between Group 4 Falck A/S and Securicor plc, and the merger between Campina and Arla Foods.

In 2004, the telecommunications sector and the food and beverages sector were the two sectors with the biggest activity (in value) within mergers & acquisitions representing transactions of a total value of EUR 2.7 billions and EUR 2.5 billions, respectively.

Many foreign investors have noted that Denmark benefits from a highly developed infrastructure, an advanced telecommunications system, and a highly educated and stable work force. On an international scale, Denmark maintains high standards of environmental protection and product safety and the Danish market has always shown a preference for high quality in production, finish and design. Often, Denmark serves as a test market for products, which are later to be introduced on the international market.

A very high proportion of the workforce - and the population in general - has English as their first foreign language and English will in most cases be spoken and written well by all relevant levels of the workforce. This is also illustrated by the fact that trade marks and commercials/advertise-ments in English have been used directly without translation.

Denmark's geographical location, with easy access to other Scandinavian countries, the Baltic States and other parts of Eastern Europe as well as Northern Germany, means that the country is

well placed as a centre for activities in these areas. Many European firms have realised substantial benefits by locating their Northern European distribution centres in Denmark.

Denmark treats foreign investors on a non-discriminatory national basis. Foreign firms may participate in government financed and/or subsidized research and development programs on a national treatment basis. As a general rule foreign direct investment in Denmark may take place without restrictions and screening. Ownership restrictions apply to a few sectors only, including those for national security reasons.

Denmark is generally considered well established in terms of economic competitiveness. International surveys show that Denmark is rated near the top with regard to transport (land, sea and air), energy, telecommunications and distribution systems. In terms of management, the surveys emphasize the high quality of organization, product quality, customer relations, credibility and social responsibility.

Denmark also offers political stability, low corporate taxation (30%) and flexible and easily manageable corporate formalities.

While Denmark meets the criteria for joining the EU's common currency, the Euro, it has opted out from participating. However, the Danish Krone (DKK) is linked closely to the Euro in order to ensure continuance of the fixed exchange-rate policy pursued since the early 1980s.

The legal system

The legal system is a civil law system, which has much in common with other continental European countries with the emphasis on written statutory law and derivative legislation. To some extent, statutory law is also accepted as setting out general principles of law, which may be applied in unregulated areas. Statutory law and these general principles of law are, of course, also supplemented by case law.

Foreign businessmen and their advisers, particularly from Anglo-Saxon jurisdictions, may find that the rules regarding interpretation of statutes differ from those in common law countries. As in many other civil law countries, the Danish courts are not limited to a strict interpretation of the letter of the law but are inclined to look to the purpose of the statute. The same form of interpretation is also applied to private agreements where the courts will look to the purpose of what the parties wished to achieve rather than the strict wording of the agreement. In practical terms, this means that agreements and other documents (such as purchase agreements, leases or mortgage deeds) are drawn up in reliance on both statute and general contractual principles, and in many cases the lengthy and exhaustive agreements familiar in Anglo-Saxon jurisdictions are not necessary or even appropriate.

Much new legislation implements EU Directives and Denmark has an excellent record of implementing EU Directives within the time limits for such implementation. In many sectors, foreign investors who are familiar with EU legislation in a particular area will find few surprises in Danish legislation. As an example, all relevant Banking and Insurance Directives have been implemented and Denmark has implemented a high number of the Single Market Directives. Generally therefore, industrial standards and a large part of corporate and commercial regulation correspond to those known elsewhere in Europe.

The ordinary Danish courts are staffed by professional legally qualified judges. In commercial matters, it is possible to refer to the Maritime and Commercial Court in Copenhagen, where special judges with commercial experience preside and there is a legally qualified chairman. Disputes may also be referred to arbitration before the Danish Institute of Arbitration, which is a well-established permanent institution in relation to both national and international arbitration with its own set of procedural rules (for example see www.denarbitra.dk).

Lobbying

Lobbying of the Government is not as common or organised as in some other countries, and professional lobbyists are not common. Usually, professional and trade bodies will make their views known to the Government on behalf of their members whereas lobbying by individual companies in connection with specific matters will not occur and is not considered appropriate. This is not to say that companies may not make their views known to the Government but the form and level of approach should be considered carefully.

2. COMPANY LAW

Kromann Reumert assists a large number of public and private companies, including many companies owned or controlled from abroad. The firm advises on all aspects of corporate governance, capital structures, and corporate financing, assists in the drafting of corporate documentation, and handles necessary notifications to the Danish Commerce and Companies Agency (CCA) and other public authorities.

Kromann Reumert has on-line access to the CCA and information on public record may therefore be obtained for our clients on short notice.

The most commonly used forms of companies in Denmark are Public Limited Companies and Private Limited Companies. Other possible corporate forms include Limited Partnerships, Limited Partnership Companies and Partnerships. As of 8 October 2004 companies have also had the option of forming a European Company (SE).

Foreign investors are most likely to deal with Public Limited Companies and the outline below therefore concentrates on this type of company. A brief summary of relevant information on Private Limited Companies, European Companies, Limited Partnerships, Limited Partnership Companies and Partnerships follows.

Both Public and Private Limited Companies may be incorporated by any number of founders/promoters. Incorporated dormant companies may be bought "off the shelf" for a reasonable fee from a formation agent, e.g. Kromann Reumert. The CCA registration procedures for the formation of a new company can take anywhere from a few days up to three or four weeks. However, the CCA has introduced a web-based service called "Webreg", which allows registered persons or entities, such as Kromann Reumert, to incorporate companies on-line and thereby reducing the registration time. Until registered, the persons acting on behalf of the company are personally liable for all obligations undertaken by the company. Limited Partnerships, Limited Partnership Companies and Partnerships may be established by two or more natural persons or legal entities.

Public Limited Companies - Aktieselskaber

The incorporation of this type of company is governed by the Act on Public Limited Companies (the Companies Act). The current Companies Act conforms to EU legislation in this area. The Companies Act implements the First, Second, Third, Fourth, Sixth, Seventh, Eighth, Eleventh and Twelfth Company Directives. Many foreign investors and their advisers will therefore be familiar with many corporate requirements. The CCA's unofficial translation of the Companies Act into English, French and German is available on the website http://www.eogs.dk/sw830.asp. Please note that the current translations may not be fully updated with the latest amendments.

The Public Limited Company ("Aktieselskab", abbreviated as "A/S") must have a minimum paid-up share capital of DKK 500,000 (or the equivalent Euro amount) and must have a two-tier management structure comprised of a board of directors (with at least three members) and at least one managing director. Shares may be issued in Euro.

The two-tier system of corporate management is similar to the structure known in German companies. The board of directors has the overall responsibility of managing the company whereas the managing director is charged with the day-to-day management of the company's affairs. No more than half of the directors may also serve as managing directors and a managing director cannot be appointed chairman of the board.

The chairman of the board should not be involved in specific day-to-day management and the combined position of chairman and chief executive (as known in the UK) is therefore not possible.

Managing director(s) are appointed by the board and shareholders therefore have only an indirect say on appointment or dismissal of the person(s) charged with day-to-day management of the company.

Previously, at least half of the board and all of the managing director(s) had, as the general rule, to be Danish citizens or citizens of a EU Member State or citizens of an EEA Member State (i.e. Norway, Iceland and Liechtenstein). However, as of 1 July 2004 these requirements are no longer applicable, which means that the board members and managing directors may now reside anywhere in the world.

Most types of business will be well served by adopting a standard set of Articles of Association, and the change of name and the adoption of new Articles is a simple process which may be handled by local legal advisers who can also assist with the preparation of minutes electing new members of the company management, new auditor etc.

All companies are required to elect one or more auditors who are either "registered" or "state authorised" by the Ministry of Economic and Business Affairs.

The Companies Act sets out the following minimum standards and compulsory requirements, among others, which must be satisfied by all Public Limited Companies:

Shares

As of 1 July 2004 the board of directors may decide not to issue formal share certificates (paper certificates), but should a majority of shareholders representing at least 10% of the nominal share capital require that such certificates be issued, the board is obliged to do so. Unlisted companies may therefore issue shares by way of making the relevant entries (nominal amount, share no., etc.) in their share registers but shareholders may request the company to issue a certificate confirming shareholdings.

Listed companies are required by law to issue their shares by way of "dematerialised securities" through a securities centre. Only one securities centre ("Værdipapircentralen") presently exists in Denmark.

Payment for shares

Shares may not be issued at a discount but may be issued at a premium. Previously, such additional paid-in capital (premium) was a tied-up capital reserve. However, as of 1 July 2004 such premium is considered a distributable reserve. Existing tied-up capital reserves, which were established prior to 1 July 2004, will remain tied-up until the company's first ordinary general meeting after 1 July 2004. However, the CCA has stated that a company may hold an

extraordinary general meeting after 1 July 2004 and decide to transfer the tied-up capital reserve to a distributable reserve, making it eligible for dividend payments.

Payment for shares can be made either in cash or by contribution of assets other than cash. The company cannot be registered until the subscribed capital (together with any premium) has been paid-up in full.

List of shareholders

Public Limited Companies must keep a register of all shares in the company and if shares are required by the company's Articles of Association to be registered shares, the shareholder's name must be recorded. In companies, which issue bearer shares, a shareholder may nevertheless request that his shares be registered in his name. Companies are also required to keep a separate register listing shareholders holding 5% or more of the share capital or voting rights. The register of shareholders is not available to the public, but the Articles of Association may allow shareholders access to the share register. Information about holders of shareholdings of 5% or more is public.

Voting rights

Unless otherwise stated in a company's Articles of Association, each shareholder is entitled to one vote per share. Some companies maintain two (or more) classes of shares (usually called "A"-shares and "B"-shares) with the Articles of Association stating that one class of shares carries increased voting rights. There is a maximum limit of 10:1 on the difference in voting power.

A company's Articles of Association may provide that a shareholder who has acquired shares by transfer is not entitled to exercise voting rights for the shares in question at general meetings, unless the shares have been entered in the register of shareholders or unless the shareholder has applied for registration of and substantiated his acquisition prior to the general meeting has been convened. Notices of general meetings may be given not earlier than four weeks prior to the meeting, and, in the absence of any provision in the Articles of Association for a longer notice, not later than eight days before the general meeting.

Depending on the circumstances, the voting rights provisions mentioned above can be used as a defensive measure against hostile takeovers making it difficult for the purchaser to obtain control of the company.

Shareholders' agreements

Company legislation has no provisions dealing specifically with the content of shareholders' agreements and these are as such permitted. Shareholders' agreements are not required to be, and cannot be, registered with the CCA.

Shareholders' agreements are not generally binding on the company itself except perhaps in very few, specific circumstances and shareholders who are parties to such agreements should consider carefully how to ensure that the agreement can be implemented with the full intended effect.

Pre-emption rights

All shareholders have pre-emption rights entitling to subscribe for new shares in the company in an amount proportionate to their existing shareholding. Shareholders may, subject to certain majority requirements, agree to waive this right. Pre-emption rights apply only in cases where the capital increase is to be issued for cash.

General meetings

Annual general meetings must be held in due time making it possible for the company to comply with the deadline for filing the annual report. The approved and audited report has to be received by the CCA no later than five months after the end of the financial year (non-listed companies) or four months after the end of the financial year (listed companies). Extraordinary general meetings can be convened at any time with the notice period prescribed by the Articles of Association.

Where there is a single shareholder or a small number of shareholders the notice requirement for a specific ordinary or extraordinary general meeting may be waived by unanimous agreement and, also by unanimous agreement, general meetings may be held "by proxy". In such cases, the shareholders will authorise a board member or, in most cases, the company's legal adviser, to exercise the voting rights and record the decisions in the minutes. In this way, wholly owned subsidiaries may easily fulfil required corporate formalities.

With regards to proxies granted to the board of directors, certain limitations on so-called "blank proxies" apply, as they may only be granted in respect of a specific general meeting with an agenda that has been announced in advance. However, this limitation does not apply to "blank proxies" granted by the shareholders to other persons than the board of directors.

General meetings may be held virtually, either completely virtual where everybody participates electronically, e.g. by phone, the Internet or another medium with a similar function, or partially virtual where some participate electronically while others participate in person.

Board meetings may also be held virtually if this is consistent with the performance of the board's duties. It is also possible to hold a board meeting in writing if the meeting is limited to specific matters, and provided that it is consistent with the nature of these matters. However, in both cases any member of the board of directors (including an employee representative) or a managing director may object to this and require that a physical board meeting be held instead.

A company may also elect to introduce electronic communication between the company and its shareholders, e.g. by convening the general meeting by e-mail.

Some matters, including amendments to Articles of Association, capital increases, capital decreases and mergers, require that at least two-thirds of the votes cast as well as of the voting share capital represented at the general meeting assent thereto.

Dividends
Previously, payment of dividend could only be made once a year at the ordinary general meeting. As of 1 July 2004 the shareholders may authorise the board of directors to decide to distribute extraordinary dividend payments. Consequently, such payments may now take place several times each year.

The authorisation of the board to distribute extraordinary dividend payments has to be incorporated in the Articles of Association, and the authorisation can only have effect until the next ordinary general meeting - at which meeting the authorisation may be renewed.

In the event of extraordinary dividend payments, interim accounts shall be prepared. Such accounts shall at least be "reviewed" by the auditor(s) of the company (there is no requirement of an actual audit). Furthermore, the board members have to sign a statement declaring that the extraordinary dividend payment is justified taking into consideration the current financial position of the company.

Profits carried forward from previous financial years as well as profit accrued during the current financial year as recorded in the interim accounts are generally eligible for dividend payments.

Some reserves may not be available for distribution according to the Companies Act or the company's Articles of Association.

Annual report (formerly annual accounts)
The annual report must be audited by an independent auditor and approved by a general meeting to be held in due time so that the annual report may be received by the CCA no later than five months after the end of the financial year (non-listed companies) or four months after the end of the financial year (listed companies). The financial year must in general cover a 12-month period.

Management liability
Foreign companies, which have Danish subsidiaries, often appoint foreign personnel to serve on the Danish company's board. In some cases, day-to-day management is entrusted to foreign

personnel posted to Denmark for short-term or long-term periods. All board members and management must be registered with the CCA and be aware of the duties imposed by legislation and obtain proper advice.

The issue of management liability has been increasingly important in the public eye and a number of major company failures have prompted changes to company legislation. Given the increasing willingness of creditors and shareholders to attempt to hold management liable for failures, it is more important than ever to be aware of the extent of this liability and how to ensure that corporate decisions cannot be criticised.

In general, the basis for board members' and managers' liability is the general rule in Danish law regarding liability for negligence. Board members and managers must therefore exercise their duties loyally and with the necessary due care and attention.

The typical situations where liability may arise can roughly be categorised as follows:

- Neglect of specific clearly defined duties imposed by the Companies Act, the Financial Statements Act, the company's Articles of Association or basic fundamental legal principles.

  Typical examples would be the granting of prohibited shareholders' loans or engaging in business clearly outside the company's object as set out in the Articles of Association.

  New board members and managing directors should familiarise themselves with their duties in this respect, and taking legal advice from the outset will help to avoid any pitfalls.

- The pursuit by board members or management of their own interests, or, at least, interests not related to those of the company.

  Typical examples would be transactions between board members/management and the company not made on an arms-length basis or in other ways giving unfair benefits at the expense of the company or any of the shareholders.

- Failure to perform duties in a proper and businesslike manner.

  This category is probably the most likely to arise as the typical examples would be creditors seeking compensation from board members/management in cases where the creditors have suffered a loss either because the board/management failed to take action to hold off financial difficulties or, where such action has been taken, failed in that attempt.

These claims often arise where the board has failed to monitor the cash flow and financial status of the company but the question of whether a particular course of action was appropriate will feature prominently in the subsequent dispute.

To date, Danish courts have been reluctant to impose liability, unless clear specific duties - first category above - have been breached.

A summary of management's duties will necessarily be incomplete as much will depend on the company's circumstances, however, the duties of the board include:

- A duty to consider whether the company's capital resources at any time are sound considering the company's operations. Capital resources include not only share capital, but also loan capital, including available credit facilities. The board is expected to monitor not only the overall financial situation but also the cash flow and liquidity of the company.

- The board shall adopt specific rules of procedure relating to the exercise of their powers. These will typically include the frequency of board meetings, voting procedures and constitution.

- The board must adopt guidelines for book keeping, records and protocols as required by law, follow up on plans, budgets, major transactions, insurance cover, financing, cash-flow and special risks and also frequently review and consider the auditors' minutes (reports to the board), and review interim/quarterly accounts as well as consider any discrepancies from the budget for the relevant period.

- The board must make the decision as to how accounting, internal checks and controls, and preparation of budgets should be organised.

- The board must ensure that it receives "the information necessary for the board to fulfil its duties".

Some of the statutory demands on the board may well be dealt with more easily by the day-to-day management, but board members should consider carefully how best to ensure that they comply with their duties as such compliance will be of great - if not decisive - importance if problems arise. Well-drafted rules of procedure are important tools in this respect and the importance of taking proper legal advice cannot be stressed too strongly.

Over the last few years it has become more common that insurance cover (directors' liability insurance) is taken out and a number of insurers offer this type of cover.

Employee representation

Danish companies are required to allow their employees to elect representatives to the board of directors provided that the company, over a three-year period, has employed at least 35 employees. If this condition is met, the employees can demand that a vote is held to decide whether employees' representatives shall join the board (a so-called yes/no-vote). A simple majority among the employees entitled to vote is sufficient. If no majority is in favour for the time being, a new vote may be held six months later at the earliest. The company's management must assist in organising the voting procedures.

Employees who are elected by this procedure will join the board immediately after the next ordinary general meeting of the company (where new board members elected or re-elected by the shareholders will also be appointed).

Employees are entitled to appoint a minimum of two members of the board, and in any event half the number of the board members appointed by shareholders (rounded upwards if an un-equal number).

Companies with employee representation have a statutory duty to provide "proper and efficient" information to all employees. This should not be considered a heavy time-consuming task as companies are left to decide how best to meet this requirement, which of course must depend on the nature and size of the company. Larger companies (with for example 200 employees) will often have co-operation committees, which can (also) provide the employees with the relevant information.

Similar rules apply for a parent company if such a company, together with its subsidiaries, meets the 35-employee requirement. However, in parent companies the board members elected by the employees shall equal a minimum of three members.

Employee representatives on the board are subject to the same duties and obligations as other board members. Employee representatives may therefore not disclose any confidential information to their colleagues. Employee representatives on the board are also subject to the general management liability, which has been described above, although it may be that their level of experience and knowledge may be taken into account. The employee representatives are also entitled to the same remuneration as is paid to other ordinary board members.

The Danish Act on European Works Councils requires all companies with more than 1,000 employees and at least 150 employees in each of at least two Member States to set up a European Works Council (EWC) as a vehicle for informing and consulting employees in matters that

significantly or considerably affect their interests, provided that a request hereof is received from at least 100 employees in at least two Member States. These matters with significantly or considerably effect include matters such as collective redundancies and relocations of operations. The Act allows that the scope, composition, and mode of operation for the EWC should be agreed between employers and employees but failing agreement, the minimum requirements of the Act will apply.

Reporting requirements and continuing obligations

Corporate reporting requirements are not substantially different from those common elsewhere. Any change in the company's address, in company management or of the company's auditor must be notified to the CCA within 14 days from the date of the decision. The annual report must be filed with the CCA without undue delay after the general meeting's approval of the annual report, subject to an overriding general time limit that requires receipt of the annual report by the CCA no later than five months after the end of the financial year (non-listed companies) or four months after the end of the financial year (listed companies). Other changes, including amendments to the company's Articles of Association, must be notified to the CCA within four weeks from the date of the decision. Tax returns must be filed no later than six months after the end of the income year.

Listed companies are required to notify the Copenhagen Stock Exchange immediately of any change in the company's management and of any significant matters which may influence the market price of the company's shares. In addition, the Copenhagen Stock Exchange recommends that listed companies in their annual reports evaluate the recommendations contained in "The Nørby Committee's report on Corporate Governance in Denmark – recommendations for good corporate governance in Denmark".

Public records - access

The company registration system is now fully computerised and a fair amount of information is available on-line to any interested party and, more extensively, to those who subscribe to the CCA's on-line information system, "Publi-com". This information includes summary extracts of the full list of board members, managers, auditors, rules of signature, financial year and when the latest annual report was filed. Copies of the annual reports are also available on-line whereas copies of the Articles of Associations may be available by mail within a few days (or by fax the same day by payment of a special fee).

Treasury shares

Public Limited Companies are allowed to purchase shares issued by the company itself (treasury shares), provided that the board of directors has obtained authorisation from the general meeting to purchase treasury shares and that such purchase of treasury shares can be covered by the

company's free reserves. The company may not at any point in time hold treasury shares representing more than 10% of the company's share capital (including a subsidiary's shares in its parent company, regardless of whether said subsidiary is Danish or foreign) and the total share capital held by others than the company may not be less than DKK 500,000. The company cannot exercise voting rights attached to treasury shares.

Shareholder's loans

The Companies Act prohibits the granting of loans or security to a shareholder. This rule is far reaching and may for instance prohibit Danish subsidiaries from participating in cash pool arrangements with joint liability. If the shareholder is a controlling shareholder in the form of a company incorporated in Denmark, in another EU Member State or in an EEA Member State, the prohibition does in general not apply.

The Companies Act also contains a prohibition against using a company's assets for the purpose of acquiring shares in the company or in its parent company.

The aforesaid rules may give rise to considerable uncertainty in specific cases and it is therefore advisable to consult legal advisers prior to implementation of any transaction, which involves a company and its shareholders.

Private Limited Companies - Anpartsselskaber

Many corporate entities in Denmark take the form of the Private Limited Company ("Anpartsselskab" which is usually abbreviated as "ApS"). The CCA's unofficial translation of the Danish Act on Private Limited Companies into English, French and German is available on the website http://www.eogs.dk/sw831.asp. Please note that the current translations may not be fully updated with the latest amendments.

This form of company benefits from a lower requirement for the paid-up share capital (which must be minimum DKK 125,000 or the equivalent Euro amount) and the fact that the management may, for instance, consist of either a sole managing director and no board, or alternatively, a board of directors only. Nevertheless, a traditional two-tier management system may be established, if so desired. It is prohibited for a Private Limited Company to issue share certificates and to purchase own shares.

However, even though the Act on Private Limited Companies in many ways differs from the Act on Public Limited Companies, there are similarities, which should be noted, e.g. the provisions regarding employee representation.

Private Limited Companies are not eligible for listing on the Copenhagen Stock Exchange.

Branch office

Other forms of corporate establishment are available. Foreign limited companies may register a branch in which case copies of the Articles of Association, among other things, of the foreign company must be filed with the CCA. Any subsequent change in the Articles of Association etc. must also be notified.

In case the branch is liable to pay tax in Denmark or it is registered for VAT, the Danish tax authorities require that the company provides security, e.g. in the form of a bank guarantee provided by the foreign company, in order to cover any claims made by public creditors. The amount of such security is determined by the difference between DKK 125,000 and the sum of the assets related to the business less a deductible of DKK 15,000. Alternatively, a state authorised or registered accountant may issue an accountant's opinion stating that the net assets related to the business equal to DKK 125,000.

The requirement to provide security expires when the business has net assets worth DKK 125,000 provided that all relevant taxes during a period of 18 months have been paid. However, the security may be released prior to the expiry of the 18-month period provided the business has net assets worth at least DKK 125,000 and all relevant taxes have been paid.

Branches may be established by companies domiciled in other EU Member States, the US or a country that allows a similar facility for Danish companies. In the latter case, a certificate from the home state's authorities will have to be provided confirming that the establishment of a branch is open to Danish companies.

A branch manager must be appointed by a power of attorney and is responsible for all the obligations of the branch vis-à-vis the Danish authorities, in particular with regard to tax, VAT etc. It is a statutory requirement that the branch manager is able to bind the company (i.e. the foreign company is fully bound by all actions taken by the branch manager on behalf of the branch); the rule of signature may only limit authorisation to any number of branch managers having to sign jointly.

The audited annual report of the foreign company must be filed with the CCA without undue delay after the annual report has been approved by the annual general meeting of the company, or, no later than five months after the end of the financial year.

European Company

As of 8 October 2004 companies have had the option of forming a European Company - known formally by its Latin name "Societas Europeae" (SE). A SE will be able to operate on a European-

wide basis and be governed by Community law directly applicable in all Member States. The European Company Statute and the supplementary Directive on involvement of employees have led to several new amendments in Danish company law legislation, but so far very few - if any - European Companies have been formed in Denmark.

Limited Partnership ("Kommanditselskab", abbreviated as "K/S")
Some types of business may choose to establish a Limited Partnership, i.e. an entity with a general partner having unlimited liability and any number of limited partners having their liability limited to a certain amount.

A Limited Partnership is governed by a set of Articles of Association, which generally will have to be filed with the CCA. An annual report must be prepared and filed (if all limited partners are Public Limited Companies, Private Limited Companies, or Limited Partnership Companies) without undue delay after approval by the general meeting in order for the CCA to receive the annual report within five months after the end of the financial year.

Limited Partnership Company ("Kommanditaktieselskab" or "Partnerselskab", the latter mentioned abbreviated as "P/S")
The Limited Partnership Company (i.e. a commercial Limited Partnership with a Public Limited Company acting as limited partner with its entire share capital or where the limited partners have contributed a certain amount divided on shares) is a variety of the Limited Partnership. It is required that the general partner shall have managerial and financial powers in the Limited Partnership Company.

The Companies Act regulates certain aspects of the Limited Partnership Company relating to formation, power to sign for the company, the content of the Articles of Association and registration. The annual report must be prepared and filed without undue delay after approval by the general meeting in order for the CCA to receive the annual report within five months after the end of the financial year.

Partnership ("Interessentskab", abbreviated as "I/S")
Finally, it is possible to establish a Partnership based on a partnership agreement, and there are no statutory requirements regarding the contents of such an agreement. Each partner will have joint and several liability for all obligations of the Partnership, which is, however, for all other purposes than tax matters considered a separate legal entity.

If all partners are subject to limited liability, e.g. if all partners are corporate entities, the partnership must file a notification to the CCA (including the partnership Articles of Association) and is also subject to the Financial Statements Act. The annual report must therefore be prepared

and filed without undue delay after approval by the general meeting in order for the CCA to receive the annual report within five months following the end of the financial year.

European Economic Interest Groupings
With effect from 1 July 1989, Denmark has implemented the EC Directive on European Economic Interest Groupings (EEIG) and any such entity may therefore choose to have its registered domicile in Denmark.

Representation office
The establishment of a representation office is not subject to any specific restraints, save in case of representation offices of foreign banks, investment companies, insurance companies and other financial undertakings, which require that special notification is made to the appropriate authority.

3. ACCOUNTING

The Danish Financial Statements Act regulates all business enterprises. The Financial Statements Act requires that most companies, i.e. Public Limited Companies, Private Limited Companies, Limited Partnership Companies, and Partnerships and Limited Partnerships in which all partners or general partners respectively are Public Limited Companies, Private Limited Companies or Limited Partnership Companies, shall prepare an annual report, which shall give a true and fair view of the company's (or the group's) assets, liabilities, financial position and result. The annual report has to be audited by an external and independent accountant. Limited Partnerships and Partnerships in which all general partners or partners respectively are not Public Limited Companies, Private Limited Companies, or Limited Partnership Companies are not required to prepare an annual report according to the Financial Statements Act. The CCA's unofficial translation of the Danish Financial Statements Act into English is available on the website http://www.eogs.dk/sw833.asp. Please note that the current translation may not be fully updated with the latest amendments.

The Financial Statements Act is based on a value oriented accounting concept, which implies that the accounts in general shall be based on the present market value of the assets and liabilities as opposed to historic cost. Furthermore, the legislation regarding financial statements also takes into account the latest international regulations, i.e. IAS/IFRS.

4. MERGERS & ACQUISITIONS

Only a relatively small percentage of Danish companies are listed on the Copenhagen Stock Exchange (CSE) and, generally, a foreign investor is therefore likely to be unburdened by the rules and regulations on bidding for a listed company. On the other hand, some of the most successful companies are listed and in these cases a number of take-over regulations must be

complied with. Some of the matters discussed in this section are also relevant to investors acquiring a significant part of the share capital in a target company.

The Danish rules on mergers conform to the Third Company Directive and a merger may therefore be effected either by transferring the assets and liabilities of one company to another or by amalgamating two or more companies into a new company. The provisions include safeguards to protect each company's creditors, including an independent valuation of the assets involved. At present, the rules and regulations in force are aimed specifically at domestic mergers and no rules are in place which allow mergers between Danish and foreign companies.

Denmark has rules on merger control. The Danish merger control rules apply in conjunction with the EU Merger Regulation. Reference is made to Section 11 on Competition Law.

Denmark has no elaborate take-over code and in the absence of a surge in hostile take-overs, it is unlikely that any such code will be adopted. However, the Companies Act and the Securities Trading Act influence the conduct of a take-over and these rules are summarised below.

In most cases, the target will be a non-listed company and, if this is the case, it is almost exclusively the Companies Act, which is relevant.

Compared to many other jurisdictions, the Danish legal regime in this area is fairly liberal.

Danish corporate law provides companies with some techniques for hindering a non-agreed take-over. As a result, the Danish market is perhaps not as open as is the case in the UK for example.

Firstly, as indicated above, a company may have different classes of shares and although one class of shares may not carry voting rights in excess of ten times that of the other class (except in a private limited company), easy access to a majority holding may be hindered. In most cases, class A shares carrying increased voting rights are held by one or a few owners (and are usually not listed on the CSE) whereas class B shares are held by a large number of shareholders and may be listed on the CSE. The exact pricing of the different classes of shares may therefore prove to be a vital consideration in the transaction. The CSE allows a maximum price difference of 50% between two classes of shares.

Secondly, the articles of association may limit the voting rights, which may be exercised by any one shareholder and it is even possible that any one shareholder may not exercise voting rights for more than e.g. 1% of the total voting rights in the company. Limitations on voting rights are very often seen in the articles of banks, savings banks, finance companies and the like.

In addition, the articles of association and/or shareholders' agreements may also grant (often mutual) rights of first refusal (purchase options) before a sale of shares to any third party.

All shares are freely transferable unless the articles of association provide otherwise.

The financing of a take-over may be hindered by the Companies Act's prohibition of a company extending any loan meant to make possible the acquisition of shares in such company. This same provision makes it impossible for a company to provide any sort of security in connection with the acquisition of its own shares. In other words the use of so-called "bridge loans" is not possible in the typical situation where the lender will demand security over the target company's assets. Alternative ways of securing the financing of an acquisition will be necessary. Such alternative ways may include pledging the shares in the target company coupled with appropriate financial and restrictive covenants.

The holding of a controlling block of shares does not mean that the majority shareholder can freely compel the minority shareholders to sell their shares. Compulsory redemption of minority shareholders' shares is only possible if 90% of the shares (and of the voting rights) have been acquired. In addition, when this threshold is satisfied, the minority shareholders' may themselves demand that their shares be repurchased.

Rules in the Companies Act and the Securities Trading Act require that the target company (and, if applicable, the CSE) be notified as soon as any investor has acquired 5% of either the share capital or the voting rights. This notification must be made "immediately", i.e. without any delay whatsoever.

In respect of listed companies, the purchase of a substantial number of shares will, in certain situations, trigger a duty to offer to purchase the remaining minority shareholders' shares.

The obligation to make an offer to purchase minority shareholders' shares applies where a transfer, directly or indirectly, of shares in a listed company takes place and:

- the investor acquires the majority of the voting rights;

- the investor becomes able to appoint a majority of the board members;

- the investor is able to have a decisive influence on the company due to the content of the articles of association or an agreement with the company;

- the investor, by way of an agreement with other shareholders, controls the majority of the votes; or

- the investor is able to have a decisive influence on the company and owns more than one third (1/3) of the votes.

The purchase offer must be on "identical terms" as the terms at which the investor purchased its controlling block of shares.

It is possible to obtain an exemption from the "identical terms" requirement if special circumstances (e.g. corporate reorganisation) justify this.

Certain minimum requirements apply in respect of a purchase offer, and the offer document must include (inter alia):

- identity and address of the new investor (offeror),
- tender price,
- any conditions attached to the offer,
- time for and terms of payment,
- a period for acceptance (a minimum of 4 weeks and a maximum of 10 weeks), and
- a statement of the offeror's future plans for the company.

The offer must be published in a daily newspaper.

Acquisition of non-listed companies will have to take account of some of the rules mentioned above, and these companies in particular may be subject to restrictions on share transfers and limitations on voting rights and it is also likely that shareholders' agreements provide shareholders with e.g. options which may prove to be an obstacle to a purchaser.

Acquisitions may be structured as purchases of shares or acquisitions of assets and liabilities. Hybrid forms such as the spin-off of an internal division into separate corporate vehicles may also be used.

In principle, the parties are free to set the purchase price and the form of compensation to be paid. Compensation may therefore be all cash, or a combination of shares, cash, convertible bonds and warrants.

Acquisition of assets

If assets and liabilities rather than shares are to be acquired, it will often be preferable to incorporate a Danish company, which will acquire the assets and liabilities and employ the employees.

Reasons for structuring the acquisition as a purchase of assets and liabilities include the exclusion of certain actual or contingent liabilities and tax issues. The scope of due diligence investigations and the seller's representations, warranties and covenants are, however, often the same, regardless of whether shares or assets are purchased. A purchase of assets will have the advantage for the purchaser that the book value of the assets, on incorporation into the purchaser's balance sheet, may be increased to fair market value thereby increasing the basis for obtaining the necessary loan financing and also increasing the basis for depreciation for tax purposes. Goodwill is permitted to be included in the basis of depreciation. Further, the prohibition against the target company providing security for the purchase of its own shares (financial assistance) does not apply under this method as no shares are being transferred.

On the other hand, the tax liabilities incurred by the seller may lead to an increase in the purchase price relative to what it might have been had shares been transferred.

Also, a purchase of assets will involve obtaining the necessary approval from the major part of the business' contract partners who will have to accept the acquisition vehicle as their new debtor.

It should also be remembered that a purchase of assets and liabilities automatically assumes liability vis-à-vis the employees. The employees are entitled to be consulted in advance of the transaction if significant changes to employment terms are planned or intended as a result of the transfer.

Transfer of real estate is subject to payment of stamp duty of 0.6% of the transfer price. The transfer of other assets is not subject to stamp duty.

5. TAX

Denmark has a reputation as a high-taxation country, but from the business/company/employer's perspective, a comparison with other European jurisdictions will show a more balanced picture in respect of combined corporate tax and labour costs.

To a great extent, the Danish tax regime relies on direct, rather than indirect, taxes. Even if the direct labour costs in terms of wage levels are comparatively high, there are relatively few indirect

costs and duties in the form of social security and contributions from employers, which in other jurisdictions serve to push the combined tax and labour costs to a high level.

Tax law is nevertheless a complicated area, which undergoes frequent changes and amendments by the Parliament. The extensive and detailed legislation (supplemented by derivative legislation, guidance notes etc.) is supplemented by extensive case law and administrative practice.

Any transaction will therefore have to be structured carefully in order to benefit from the most favourable tax treatment.

For a general outline of the Danish tax rules please see our "Guide to Business Taxation in Denmark".

6. THE FINANCIAL SECTOR

The financial sector in Denmark is mainly regulated by the Danish Financial Business Act, which in general applies to investment companies, insurance companies, credit institutions, mortgage credit institutions and regulated funds' management companies. Other statutory rules relating to the financial sector include the Securities Trading Act, the Investment Associations and Special-purpose Associations Act and the Company Pension Funds Act.

The Financial Business Act sets forth rules regarding (among other things) authorisation requirements, conduct of business, processing of personal data, investment, solvency and liquidity, ownership, management, accounting and supervision in connection with the above institutions. The Financial Business Act is supplemented by a large number of Executive Orders setting out more detailed regulation of the areas comprised by the Financial Business Act. Due to the complexity of the regulatory framework applicable to the financial sector, Kromann Reumert generally recommends that detailed advice be sought.

Kromann Reumert is involved in all aspects of legal advice related to the financial sector including advice in relation to stock listings, offering of securities and financial services, investment companies, funds, domestic and international project financing, acquisition and asset financing, major loan transactions, security documentation, derivative transactions, insurance business and insurance litigation. In all these matters, Kromann Reumert acts for a large number of domestic and international banks, investment companies, mortgage credit institutions, pension funds, funds and insurance companies.

The Copenhagen Stock Exchange and trading of securities

Trading on the Copenhagen Stock Exchange (CSE) is carried out on a fully computerised basis (operated within the NOREX Alliance consisting of the Stockholm Stock Exchange, the Oslo Stock Exchange, the Iceland Stock Exchange, the OMX Exchanges and CSE). No share certificates or other paper securities are issued and corporate securities are evidenced by electronic entries in the Danish Securities Centre (Værdipapircentralen). The Securities Centre keeps individual accounts for holders of securities as well as a share register for each listed company.

All trading related to listed securities has to be notified to the Securities Centre through authorised accounting agents. However, certain "large customers" may communicate directly with the Securities Centre in respect of their own accounts. It is possible for a holder of securities to have several accounts and to deal through several accounting agents.

Registration in the Securities Centre constitutes conclusive evidence of title. Any other rights attached to a listed security, including any form of charge or pledge, also have to be registered in order to be enforceable against third parties.

Companies are eligible for listing if they have a paid-up share capital of DKK 15 million. As a general rule, no less than 25% of the listed classes of shares have to be available for sale to the public and the market value of each issue has to be at least DKK 8.5 million.

In general, only Danish or foreign investment companies, credit institutions, mortgage credit institutions and the Danish Central Bank (Nationalbanken) are allowed to trade on the CSE. Such entities (except for the Danish Central Bank) have to be authorised to carry out securities trading by the Danish Financial Supervisory Authority (this applies in respect of Danish or non-EU/EEA entities) or by the entity's home country supervisory authority (this applies in respect of EU/EEA entities). Most of the members of the CSE offer their customers automatic order routing allowing the customers to trade directly on the CSE via the member.

Trading in listed securities is carried out by both automatic and semi-automatic trading systems but in order to ensure that share prices take account of all trades, traders are required to notify all trades even if effected outside the various trading systems, i.e. via the OTC (over-the-counter) market. Trades are to be notified within strict time limits (in general within 5 minutes). Settlement takes place within 3 days.

Listed companies are subject to relatively strict continuing reporting obligations. All information relating to the company that may have an influence on the share price has to be notified to the CSE immediately, including matters such as a change of management. Other matters also have to be reported to the CSE within strict time limits, this includes semi-annual and annual financial

reports etc. The CSE recommends listed companies to implement quarterly financial reporting and most of the major listed companies follow the recommendations of the CSE.

As per 1 April 2005 new regulation on reporting obligations will enter into force implementing the EU Market Abuse Directive (2003/6). The new regulation is not expected to imply material changes in relation to the current reporting obligations, however, the reporting obligations will be extended to also comprise companies that are not listed, but have applied for listing. Accordingly, with effect from 1 April 2005 all insider knowledge about such companies has to be notified to the CSE as soon as possible. Insider knowledge is specific non-published information regarding the issuer of the securities, the securities or market conditions in relation hereto that can be expected to have a significant influence on the share price if published (i.e. information which a sensible investor would use as part of its investment decisions). However, the issuer may at its' own risk postpone the publication of insider knowledge in order not to damage its own interests, provided that such postponement will not mislead the public and such insider knowledge can be treated confidential.

There is no duty charged on transfers of shares.

The Securities Trading Act and its derivative regulation implement the EC Directive on Public Offer Prospectuses (89/298) and the Listing Particulars Directive (2001/34). In general, an offering of securities to the public has to be accompanied by a prospectus regardless of whether the securities are listed or not. However, the Danish rules contain several exemptions from the general prospectus requirement, e.g. offerings to institutional investors, to a limited number of investors or to the employees of the issuer and the issuer's subsidiaries. New regulation on prospectus requirements in connection with public offerings of securities will enter force on 1 July 2005 implementing the new EU Prospectus Directive (2003/71). Accordingly, with effect from 1 July 2005 an offering to the public of securities with a market price of more than Euro 100,000 must in general be accompanied by a prospectus regardless of whether the securities are listed or not. However, the Danish revised regulation still contains several exemptions from the prospectus requirements, e.g. offerings to qualified investors and to a limited number of investors.

The CSE is managed by a board of directors who is responsible for ensuring that the trading of listed securities is conducted in an appropriate and fair manner and in compliance with the rules issued by the board. The CSE is subject to the supervision of the Danish Financial Supervisory Authority.

The domestic market is of course only one source of external finance for major Danish companies, which have tapped into the Euro-loan market, and some companies have obtained listings on exchanges abroad, e.g. London, New York, NASDAQ and Zurich.

Investment companies

In the Danish market for investment services there are many foreign investment companies represented, which are operating in Denmark on a cross border basis or via a branch or a subsidiary.

Foreign investment companies from the EU or EEA area may conduct securities trading activities in Denmark on a cross border basis on the basis of the EU financial passport upon the Danish Financial Supervisory Authority having received a notification and statement from the investment company's home country supervisory authority that the intended activities are comprised by the home country license. Investment service activities can be carry out via a branch two months after the Danish Financial Supervisory Authority has received sufficient information from the home country supervisory authority, including information on guarantee schemes, the activities of the branch and the home country license.

In respect of non-EU/EEA investment companies, such companies most obtain the approval of the Danish Financial Supervisory Authority in order to offer services in relation to securities in Denmark. In order to obtain a Danish license the foreign investment company has to proceed along a procedure similar to the one applicable to EU/EEA investment companies' notification.

Danish good practice rules will apply in respect of foreign investment companies' activities in Denmark on a cross border basis or via a branch.

If foreign investment companies wish to establish a Danish subsidiary, such subsidiary is required to be a Public Limited Company ("A/S") and to have a paid-up share capital of at least the equivalent of EUR 1 million (applies, i.a., for investment companies wishing to be members of a stock exchange) or EUR 0.3 million depending on the type of investment services to be carried out by the investment company. Further, the company has to obtain a Danish license as an investment company from the Danish Financial Supervisory Authority.

Danish investment companies are comprised by a statutory guarantee scheme according to which certain investors' deposits are guaranteed up to a maximum of DKK 300,000 and certain investors' securities are guaranteed up to a maximum of EUR 20,000 in case of the investment company's suspension of payments or bankruptcy.

Banking

The two largest banks are Danske Bank and Nordea Bank Danmark. Both of these banks are well established throughout Scandinavia and have subsidiaries and branches abroad.

Foreign EU/EEA credit institutions may operate in Denmark on a cross border basis or through a branch on the basis of the EU financial passport subject to the few formalities required by the EU legislation. In respect of cross border activities, the home country's banking authorities have to notify the Danish Financial Supervisory Authority of the intended cross border activities and state that such activities are comprised by the bank's home country license. The cross border activities may be commenced upon the Danish Financial Supervisory Authority's receipt of this information. As to activities through a Danish branch, the home country's banking authorities have to provide confirmation regarding the banking licence in the home state, the capital and solvency figures and miscellaneous other information. The branch may start operating two months after receipt of this information.

Foreign non-EU/EEA banks may operate in Denmark through a branch subject to approval from the Danish Financial Supervisory Authority. The branch must have a minimum capital of EUR 8 million and must be managed by two or more branch managers. In general, the branch has to comply with the same regulation in the Danish Financial Business Act as Danish banks.

Danish good practice rules apply in respect of foreign credit institutions' activities in Denmark on a cross border basis or via a branch.

If a banking subsidiary is to be established, a minimum capital requirement of EUR 8 million will apply. A banking licence also has to be obtained and this will require, among other information, information on ownership.

A statutory deposit guarantee scheme ensures that certain depositors will receive repayment of their deposits up to a maximum limit of DKK 300,000 in case of the bank's suspension of payments or bankruptcy. The EC Directive on Deposit Guarantees (94/19) only provides for a minimum level of EUR 20,000 and the Danish scheme therefore affords higher protection.

Funds

The direct or indirect marketing of foreign funds in Denmark is subject to the rules of the Investment Associations and Special-purpose Associations Act. The said Act applies to foreign funds if they are similar to Danish investment associations (UCITS; Undertakings for Collective Investments in Transferable Securities), special-purpose associations (non-UCITS) or other collective investment schemes (non-UCITS). Indirect marketing, inter alia, includes the distribution of a funds' shares through a unit-link scheme or similar.

Investment associations and special-purpose associations are characterised by (i) receiving funds from a larger number of persons or the general public, (ii) investing their funds in certain

securities on the basis of a risk diversification principle and (iii) redeeming the interest holders' share of the assets with means derived there from (i.e. open ended vehicles).

Other collective investment schemes are investment schemes which receive funds from a larger number of persons or the general public without being an investment association or a special-purpose association and which mainly invest in the types of securities that are listed in the Financial Business Act (such as shares, bonds, interests in collective investment schemes, certain derivatives and commodities).

It should be noted that the Investment Associations and Special-purpose Associations Act does not apply towards the following types of foreign funds:

- Funds that are structured in a way similar to Danish Public Limited Companies ("A/S") or Danish Private Limited Companies ("ApS");

- Funds in the form of private equity funds, i.e. funds that invest in equity in order to completely or partly acquire a Public Limited Company or a Private Limited Company with a view to participate actively in the management and operation of such company;

- Funds for employees in a company or a group; or

- Funds which invest directly in real estate.

The distribution of funds which are not comprised by the Investment Associations and Special-purpose Associations Act to investors in Denmark may be subject to the above mentioned prospectus requirements.

As a general rule, foreign funds which qualify as UCITS can be marketed directly or indirectly in Denmark two months after the Danish Financial Supervisory Authority has received various information and documentation regarding the fund. The direct or indirect marketing in Denmark of other foreign funds which are comprised by the Investment Associations and Special-purpose Associations Act but which are not UCITS requires a marketing approval from the Danish Financial Supervisory Authority.

Danish good practice rules apply in respect of foreign funds' activities in Denmark.

Foreign administration companies are not allowed to manage Danish funds but may offer certain investment services on a cross border basis.

Insurance companies
Foreign insurance companies domiciled in another EU or EEA country may conduct insurance business in Denmark through a branch or as cross-border activity.

In order to conduct cross border activities, the home country's insurance authorities have to notify the Danish Financial Supervisory Authority of the intended cross border activities and state that such activities are comprised by the insurance company's home country license. Further, the Financial Supervisory Authority has to receive a solvency certificate, a list of classes of insurance, groups of insurance and subsidiary risks that the insurance company intends to cover in Denmark and certain other information depending on the type of cross border activities. The cross border activities may be commenced upon the Danish Financial Supervisory Authority's receipt of the above information.

As to activities through a Danish branch, the home country's insurance authorities have to provide confirmation regarding the insurance licence in the home country and miscellaneous other information. Further, the Financial Supervisory Authority has to receive a solvency certificate. The branch may start operating two months after receipt of this information. The foreign insurance company has to appoint a general agent authorised to represent the foreign insurance company vis-à-vis all public authorities and third parties.

Insurance companies from outside the EU or EEA area may conduct insurance business in Denmark through a branch subject to the Danish Financial Supervisory Authority's approval and a number of requirements on investment of funds sufficient to meet the obligations of direct business in Denmark.

Foreign insurance companies are regarded as having a branch in Denmark if they have an office in Denmark managed by the companies' own personnel or if they are represented in Denmark by a third party authorised to act on behalf of the foreign insurance companies in a way similar to a branch.

Danish conduct of business rules will apply in respect of foreign insurance companies' activities in Denmark on a cross border basis or via a branch.

Mortgage credit institutions
A large majority of property acquisitions in Denmark, whether commercial or private, are financed by loans obtained from mortgage credit institutions. These mortgage credit institutions are governed by the Danish Financial Business Act and the Danish Mortgage Credit Loans and Mortgage Credit Bonds Act and are subject to supervision by the Danish Financial Supervisory Authority. Mortgage credit institutions may, with very few exceptions, only provide loans against

mortgages registered on the property. Such institutions fund themselves through the issue of mortgage credit bonds. These bonds are listed on the CSE and the importance of this sector is reflected in the fact that the Danish bond market is one of the largest in the world.

According to the Mortgage Credit Loans and Mortgage Credit Bonds Act, a mortgage may only be granted within certain limits, (e.g. loans provided for commercial property whether industrial or office, may be given for a maximum of 60% of the cash value of the property). The cash value is estimated by the mortgage credit institution itself according to certain statutory and administrative guidelines.

Foreign EU/EEA credit institutions may conduct business in Denmark as a mortgage credit institution through a branch or as a cross-border activity subject to certain requirements (e.g. that the Mortgage Credit Loans and Mortgage Credit Bonds Act is complied with, that the main part of the institution's business is limited to providing loans against registered mortgages and that loans and funding is guided by a principle of balance etc.). A foreign mortgage credit institution may conduct business through a branch within two months of the Financial Supervisory Authority having received sufficient notification in this regard from the competent home state authorities. No time limit applies if a foreign mortgage credit institution's home state authority notifies that business will be conducted as cross-border activity.

Danish good practice rules apply in respect of foreign credit institutions' activities as a mortgage credit institution in Denmark on a cross border basis or via a branch.

Interests in Danish financial businesses

If Danish or foreign investors wish to acquire or sell interests in a Danish financial business (banks, investment companies, insurance companies, mortgage credit institutions or regulated funds' management companies), the Danish Financial Supervisory Authority has to be informed and approve of acquisitions of and certain increases in qualifying interests in such financial businesses or financial holding companies to such businesses.

A qualifying interest is defined as direct or indirect ownership of at least 10% of the capital or the votes in a financial business or a financial holding company or an interest that allows a significant influence on the management of the financial business or the financial holding company.

The Danish Financial Supervisory Authority may only approve of acquisitions of qualifying interests and increases in existing qualifying interests if they are not contrary to the financial business or the financial holding company being operated in an appropriate way. Further, the Danish Financial Supervisory Authority has to be informed beforehand of certain decreases in qualifying interests. Sanctions such as termination of voting rights attached to the capital in the financial business or

the financial holding company may be imposed by the Danish Financial Supervisory Authority if holders of qualifying interests oppose the safe and proper conduct of business.

7. AGENTS AND DISTRIBUTORS

Agents

Denmark has implemented the EU Directive on Commercial Agents and the Danish Act on Commercial Agents closely reflects the provisions of the Directive. With respect to the issue of indemnity or compensation payable to the agent upon termination of the agency agreement, Denmark has opted for the indemnity model. A substantial number of the provisions of the Act on Commercial Agents are mandatory and will therefore supersede deviating provisions in an agency agreement.

The Act includes a right for the agent to receive a reasonable commission and certain limitations on non-competition (restraint of trade) clauses, which inter alia cannot exceed two years in duration and cannot extend to geographical areas, groups of customers or kinds of goods not covered by the agency agreement.

If an agency agreement has been entered into for an indefinite period of time, the principal and the agent will both have to comply with a minimum notice period. The notice period is required to be at least 1 month in the first year of the contract period and is increased with 1 month for each subsequent year, however, only up to a maximum notice period of 6 months. It may, however, be agreed that the agent is entitled to terminate the agency with 3 months' notice. Agency agreements may be expressly limited in time and will in that case expire on the agreed date. However, if an agency agreement entered into for a fixed period of time is renewed or continued upon its expiry, either by express or tacit agreement, the agency will be considered an agency formed for an indefinite period of time and the above-mentioned minimum notice periods will apply.

Agents are in most cases entitled to indemnity when the agreement is terminated. Indemnity must be paid if and to the extent the agent has brought the principal new customers or significantly increased the business with existing customers from which the principal continues to derive substantial benefits, and if and to the extent payment of indemnity is equitable having regard to all the circumstances of the case. The amount of indemnity cannot exceed a figure equivalent to the remuneration for one year calculated on the basis of the agent's average annual remuneration over the preceding five years.

Distributors

There is no statutory law on distribution agreements (save for the relevant national and EU competition rules including the relevant group exemptions). The parties are therefore to a large extent free to agree on the terms of the distribution agreement.

Most suppliers and distributors include specific termination notice provisions in their agreements but, in the absence of specific agreement, the courts will look to the length of the relationship and determine the notice period on this basis. In most cases the required notice period will not extent beyond 6 months.

Danish case law on distribution agreements does not in general provide for payment of indemnity or compensation to the distributor in cases where the supplier terminates the agreement in accordance with the provisions set out therein. If the distribution agreement is lawfully terminated compensation to the distributor will only be awarded under special circumstances.

8. FOREIGN EXCHANGE REGULATIONS

Since 1 October 1988 it has not been necessary to obtain any authorisation or permission in order to make investments in or payments into Denmark, nor is it necessary in relation to the expatriation of funds.

Danish companies are therefore free to obtain financing on the international markets without being subject to limitations on repayment periods etc.

There was, however, until 1 January 2005 a notification requirement as all foreign exchange transactions in excess of DKK 250,000 were to be notified to the Danish Central Bank (Nationalbanken) and special rules applied to the keeping of accounts abroad and the holding of foreign securities.

As per 1 January 2005 only certain large Danish entities – approximately 2,500 - are obliged to submit information regarding cross-border payments to the Danish Central Bank.

9. PROPERTY AND CONSTRUCTION

Kromann Reumert regularly advises on all aspects of property transactions, including constructions, project developments, sales and purchases, commercial leases, property financing, environmental matters and related litigation.

The firm represents not only major property contractors but also a number of property investment companies, project developers and property managers and also assists corporate clients in their dealings with landlords.

Purchase of real property

In Denmark, real property (land) is typically purchased by a purchase agreement and then a deed of transfer is prepared and entered in the Danish land register.

Whereas in some countries extensive and time-consuming pre-contract searches and investigations are necessary before an acquisition, the Danish property registry system serves to remove most concerns and uncertainties when dealing with Danish property.

All Danish properties are registered in one of approximately 82 local property registers and all properties are identified by a property number and other identification measures. All of these registers are now fully computerised and Kromann Reumert is able to obtain on-line information on properties in all registers.

The property registers, which are open to the public, show the identity of the owner, all registered mortgages and other rights such as purchase options, owner's bankruptcy etc. In most cases, all other burdens and easements such as right of way, local restrictions on construction etc. will also appear on the register. In some cases, a status such as contaminated land will also have been registered.

In most cases, it is therefore easy to obtain information as to what liabilities are attached to any particular property and copies of relevant documents (mortgages etc.) can be obtained at a low cost within short time.

The property register also serves an important function in terms of securing the purchaser's title to the property. Once the formal transfer document has been registered on the property, a third party will have to respect the purchaser's better title.

The property register system also serves as an easy and dependable way of providing security to lenders, as the ranking of priority of lenders will appear clearly on the property's list of mortgages. As is the case for transfer documents, the registration of a mortgage will protect the mortgagee against subsequent purchasers and against the mortgagor's other creditors.

The purchase of real property is typically financed by a mortgage credit institution, which is recorded in the relevant mortgage register. Property can also be purchased with cash, or the purchase can be financed by a mortgage from a bank.

People who are not residents of Denmark, and who have not previously been residents of Denmark for a total period of five years, can only purchase property in Denmark with the consent of the Danish Ministry of Justice. The same applies to companies, associations, etc. which are not domiciled in Denmark. EU citizens, citizens of EEA countries, and EU companies may, however, purchase real property in Denmark without the consent of the Ministry under certain circumstances. This applies only in the case of property intended to serve as necessary permanent residence for the purchaser or when the purchase is a prerequisite for operating the purchaser's own business or supplying services. Holiday cottages may only be purchased by non-residents of Denmark with the consent of the Ministry, which is seldom given.

Leases

Danish rent legislation is very lessee-friendly and contains a number of rules, which cannot be deviated from to the detriment of the lessee, regardless of whether the lease is of premises for dwelling or commercial purposes. Danish rent legislation also sets a number of formal requirements, which must be fulfilled before the terms of the lease can be considered valid.

Irrespective of agreement to the contrary, for example, a lessor may only terminate a lease in certain cases, e.g. when the lessor wishes to make use of the rental property, in which case one year's notice of termination must be given. Unless otherwise stipulated in the lease, a lessee can always terminate a lease.

Rent paid for residential premises may never exceed "the value of the premises".

Commercial leases

Effective from 1 January 2000, legislation regarding commercial leases has undergone radical change. As a result, there is now a far greater degree of freedom of contract between the two parties.

The amount to be paid in rent when the contract is signed and subsequent adjustments in the amount are agreed between the lessee and lessor. During the term of the lease, either party can demand that the rent be adjusted to the market rate at the time in question if the rent is substantially higher or lower than the market rate. This demand can usually be made four years after the commencement of the lease.

Otherwise, the parties can agree that the lessor may require a change in the terms of the lease to allow the lessor to terminate the lease if negotiations between the parties have not resulted in an agreement on future lease terms. The lessee, however, is protected from such changes in the terms for eight years after commencement of the lease.

In order to obtain full protection against the lessor's creditors, extracts of commercial leases, in particular provisions regarding deposits, pre-payments, fixed terms of the lease etc., can and should be registered in the property register. Registration of these clauses will ensure that a subsequent purchaser or a creditor will have to respect the lessee's rights under the lease agreement.

Usually, maintenance of the interior is the responsibility of the lessee who will also have to ensure that the activities that are to be conducted on the property comply with applicable planning permissions and other rules and regulations relating to the property or the area where the property is situated.

10. ENVIRONMENTAL LAW

Danish environmental law has developed since the beginning of the 1970s as part of public law, private law and European Community Law. The Danish rules are framework and delegation statutes, which are supplemented by the administrative authorities through binding and guiding rules and actual, specific physical plans. The most essential environmental acts are described below. The Treaty on European Union seeks to promote harmonisation of the environmental laws and the free movement of goods within the internal market. It must be pointed out that Denmark generally has a high degree of compliance with the EU law. At the same time the national traditions are very important. The obligations of the natural persons and legal entities follow from the conditions, which are fixed in the national environmental law.

There are a number of different administrative authorities with competence in the area of environmental law. The basic expert and administrative work of the Ministry of the Environment is carried out by the National Agency for Environmental Protection, the National Forest and Nature Agency and the Department on Planning. The public elected local councils and regional councils are, besides other public duties, responsible for the environmental and planning procedures and they have a duty to ensure that decisions are taken in conformity with local wishes. The Environmental Appeals Board and the Nature Protection Board of Appeal are independent appeal bodies. They normally have the power to undertake a complete review of appealed decisions. Within the sphere of environmental law, the delimitation of the right of complaint does not only pertain to the individual person who has suffered an injury, but also to other interests, which require protection. The environmental organisations can act as advocates for those interests by, inter alia, appealing a decision to the highest administrative authorities. It is pursuant to the Danish Constitution, possible to bring the decisions made by the public authorities before a court of law.

The national traditions and the Constitution have requirements regarding protection of property rights. Such requirements provide that no one can be deprived of his private property rights, unless in accordance with the law and statutes and provided that full compensation is being paid. Regulation and interference with property rights have to be based on a perceived need for general protection of common interests (e.g. environmental protection), and the interference has to be general and necessary.

Neighbour law

The neighbour law (comparable to private nuisance) fulfils the function of strict liability with regard to real property. Trespass can be defined as the wrongful invasion of the use and enjoyment of property. The courts have several possibilities in cases of dispute between neighbours. The sanctions can be divided into the following categories: 1) prohibition of the enterprise or other activities - fully or partly, 2) an order for remedial action and/or 3) economic compensation. A judgement involves determining whether the interference is unreasonable in the sense that the harm to the plaintiff (as individual land owner) is greater than the utility of the defendants conduct.

Green taxes

Denmark is one of the states using several kinds of green fees and green taxes. Consequently, it is important to include such costs in the decision-making process and to be aware of the possibilities of reducing such costs by implementation of cleaner technologies, resource management and/or environmental audit and management schemes (e.g. EMAS-registration).

Planning

The Danish Planning Act is one of the most important environmental acts. Planning is carried out at three levels: nationally, regionally for each of the 14 counties and locally (as municipal plans and local plans) for each of the 275 municipalities. Planning at any level must be in agreement with the framework established at the level above. The most important plans are the regional plans, since the local councils as well as the county councils must strive to implement the guidelines contained in these plans. Their planning and development activity may not contradict the regional planning for these matters. The local plans are the only physical plans to the public that have a binding effect on citizens.

The Danish Environmental Impact Assessment (EIA) provisions are integrated directly into the regional plans, into a national development plan directive or as part of a specific provision. County councils have to prepare the EIA-supplement to the regional plan. The duties as well as the procedure are based on the EIA-Directive. An EIA is consequently required for larger potentially polluting projects included in the lists of the Directive.

The zoning regulation is part of the Planning Act. The entire country is divided into urban zones, summer cottage areas and rural zones. Within the rural zoning areas it is, primarily, the use associated with fishery and farming which is permitted. Without permission from the county council or the local council it is, within rural zoned areas, prohibited to divide the land into smaller lots, unless the land being divided has been added to an existing farm. Moreover, it is not permitted to construct new buildings without permission, unless these buildings are necessary for the cultivation of the property concerned, such as farm- or forestry land or for carrying out fishery.

Environmental protection

In 1974 the first Danish Environmental Protection Act came into force. Focus was placed upon the big industrial polluting companies and the pollution from real estate. It was a system of regulation, which recognized that the three elements which may be polluted by dangerous activities – water, air and land (the three "receiving media") – are not self-contained, but interrelated. A new Environmental Protection Act came into force on 1 January 1992. Several new EC Directives – e.g. the Directive on Integrated Pollution Prevention and Control (IPPC-Directive) - are implemented by amendments to this Act. The Act is characterized by a more modern attitude towards environmental protection, as it is based on the important international environmental principles, focusing on ecological interests. Such principles, as the principle of source, the substitution principle, the principle of best available techniques (BAT), the integrated pollution control principle, the principle of integrating environmental considerations into other policies, the polluter-pays principle and the precautionary principle, are normally important parts of the decision-making basis.

With respect to individual types of discharges, polluting liquids (waste water) may not be discharged on or into the ground – or into the surface water - unless a permit has been given (based on Chapter 3 and Chapter 4 of the Act). Environmental approval (Chapter 5-approvals) must be obtained before an enterprise included in "the list of heavily polluting enterprises, plants and activities" can begin to operate, or be extended or modified (regarding buildings or operations) in a way likely to cause increased pollution. The Minister for the Environment draws up in a statutory order the list of such heavily polluting enterprises, plants and activities covered by the mentioned approval obligation. Some operators may – as part of the assessment – take part in an environmental impact assessment process, but the EIA does not play a significant role in the just mentioned approval procedure, see above concerning the planning system. Applications for approval must be very elaborate containing information on the production process, the composition and volume of waste, method and place of waste disposal, suggestions concerning BAT and concerning technical installations to reduce the environmental impact of the activities.

In the approvals, the authorities will lay down specific provisions, inter alia regarding the acceptable levels of emissions and immissions. The provisions are based on standards and guidelines and on a judgement of the location of the enterprise and the sensitivity of the surroundings. When an approval has been obtained, new requirements and tightening of provisions cannot be imposed during the first 8 years after the issue of the approval, except under specific and strict conditions, inter alia if the activities of the enterprise prove to cause significant pollution or significantly more pollution than a lesser polluting technology or better cleaning measures would have caused, and such measures can be implemented without excessive costs. After the expiry of this protection period the authorities enjoy a higher degree of freedom to change the provisions of the approval in order to achieve a reduction in the pollution from the enterprise. The supervision authorities may order the enterprise to cease operations until the pollution is brought within certain specified limits. Where anti-pollution measures cannot be taken, the supervising authority may prohibit the continued operation of the activity and, where required, demand it to be removed.

Waste

Danish legislation on waste is also to be found in the Environmental Protection Act. The regulation is based on the Basel Convention and the EC Waste Directives and Regulations. Pursuant to these rules, local councils have, regarding household waste, industrial waste and construction waste, laid down some local rules (local council waste by-laws) governing the local waste schemes, including schemes for collection of different waste categories, including different disposal methods. The local councils must also prepare long term and short term plans for the disposal of waste within the local areas.

Polluted soil

The Danish Act on Polluted Soil is used to ensure protection of human health and the drinking water resources. The purpose of this new act, which came into force on 1 January 2000 (and partly on 1 January 2001) is to support initiatives to combat soil pollution, partly by mapping and designating soil contaminated areas in Denmark and partly by giving the environmental authorities in Denmark broader authority to order the polluter to take investigative and remedial action with regard to soil pollution.

If an area is designated – which can be done even if there is only a suspicion of pollution that can have a detrimental effect on human health, groundwater or the environment – then the owner must apply to the county council for permission prior to change of the use to a sensitive use, i.e. housing, child care centre or playground. Permission is also required for the commencement of construction work on a designated area which is used for one of said purposes or which is a target area with regard to drinking water resources.

Under the Act, the authorities can, on a strict-liability basis, order the polluter to investigate the extent of the pollution, irrespective of when the pollution occurred, unless the pollution occurred prior to 1 January 1992. The polluter can also be ordered to clean up the contaminated site. With regard to contamination occurring 1 January 2001 or thereafter, such an order can be issued to the polluter on a strict-liability basis, i.e. regardless of culpa (fault). According to the present case law and the general legal opinion, clean up orders regarding pollution having occurred prior to this date usually require that the pollution was caused by actionable (culpable) conduct.

Administrative orders requiring investigative or remedial action can be issued regardless of whether the polluter owns or has current use of the contaminated property. Clean up orders with regard to contamination having occurred before 1 January 2001 can, however, only be issued to a polluter with no current use of the property, if the polluter has had use of the property on 10 February 1999 or later. Moreover, enforcement notices are under certain conditions binding on subsequent operators of the polluting enterprise and/or acquirers of the contaminated property. It is a basic condition that the operator/acquirer at the time of acquisition knew or should have known of the enforcement notice. Thus, the polluter cannot simply transfer contaminated property to avoid such orders.

Environmental liability

The Danish Environmental Liability Act - as a private liability act - was passed in July 1994. The Act stipulates a specific liability scheme for environmental damage caused by particularly polluting enterprises, as it introduces a regime of strict liability in respect of environmental damage caused by certain listed activities. (The list is a part of the Act, and it is nearly the same as the one connected to the Environmental Protection Act.) The law only applies to environmental damage caused after 1 July 1994, when the law came into force. It is rarely used in practice. It should, however, be noted that the expenses of the environmental authorities related to the restoration of the environment are covered by the law.

The basic principle of Danish liability law is that without a specific statutory rule on strict liability (as e.g. laid down in the Environmental Liability Act) such liability requires culpable conduct on behalf of the polluter. Thus, innocent owners of polluted properties are not automatically liable.

Genetic engineering

The Danish Act on Environment and Genetic Engineering was established in 1986 as one of the first in the world. The present content of the Act is based first and foremost on the two important EC Directives – the Directive on the Contained Use of Genetically Modified Micro Organisms and the Directive on the Deliberate Release into the Environment of Genetically Modified Organisms. In some respects the Directives enable the competent Danish authority to act on behalf of the Community, inter alia in respect of the placing on the internal market of products containing GMOs

etc. The Act establishes appropriate procedures for the case-by-case notification of specific operations involving the regulated issues.

Chemical substances

The Danish Act on Chemical Substances and Products gives rules for the admission and use of pesticides and other sorts of chemicals. The Act is based on all the relevant EC Directives.

Water resources

The Danish Water Supply Act regulates the volume of water in the watercourses as well as the groundwater resources. Water may not be extracted without first obtaining a licence. In pursuance of the Act, the county councils with assistance from the local councils may prepare plans for the water extraction and the water supply. Important results have been attained concerning the determination of the location, size and quality of water resources as well as the planning of future water use. This water resources planning have involved the designation of areas crucial to the future supply of water and, indirectly, the designation of areas of no interest in this respect. The designation is an important part of the regional plans mentioned above.

The Danish Watercourse Act from 1992 contains rules on the use of and the general prohibitions with regard to alteration of watercourses. The most important function of this Act is to solve conflicts between landowners (agriculture) regarding the utilization and maintenance of watercourses as well as to ensure the draining capacity of the watercourses, and to safeguard the shape of the watercourses to ensure smooth water flows. The Act contains provisions that can safeguard and restore good physical conditions in the watercourses. It places a ban on a strip of "protected" land along natural watercourses or lakes, either natural ones or those given high priority in a regional plan.

Protection of marine environment

Danish legislation on the protection of sea areas is – as legislation in other countries - based on international conventions. The Danish Act on the Protection of the Marine Environment applies to the entire national territorial waters. It relates to the disposal of substances and materials by dumping, emptying or sinking them into the sea from ships, aircrafts and platforms, whether fixed or floating. It also includes rules concerning waste- and oil-treatment in the harbour and rules on disposal of dredge material from harbours.

Nature protection

The protection of nature has deep roots in the Danish society. The Danish Nature Protection Act includes some very important rules on the protection of wetlands. The Act also protects beaches, lakes, watercourses and forests. Pursuant to the Act, it is possible to make specific conservation decisions. The designation of land as a wildlife reserve can also be made by a statutory order. The

objectives of the Act are not only to safeguard nature and environment in order to make society prosper with regard to human conditions, but also to improve, restore and provide areas important to flora and fauna, as well as to the interests essential to the landscape and the future of mankind. Danish territorial waters and fishing territories are included within the scope of the nature protection legislation in order to ensure the implementation of the EC Wildfowl Protection Directive and the EC Directive on Habitat as well as international conventions. The Minister may also adopt conservation orders with regard to territorial waters on the basis of the Continental Shelf and the Act on the Exclusive Economic Zone of the Kingdom of Denmark.

11. COMPETITION LAW

Many transactions and commercial arrangements may involve competition law issues under both the Danish Competition Act and EC competition law. An English unofficial translation of the Competition Act is available on the Competition Authority's (Konkurrencestyrelsen) website www.ks.dk. The most recent amendments to the Act came into force on 1 February 2005.

Operation of the Act is supervised by the Competition Council (Konkurrencerådet). Decisions made by the Competition Council can be appealed to the Competition Appeals Tribunal (Konkurrence-ankenævnet). The Competition Authority acts as the executive body of the Council.

The Act aligns Danish competition law with EC competition law and is enforced in accordance with the case law of the European courts. Accordingly, the Act contains a prohibition against anti-competitive agreements, a prohibition of the abuse of a dominant position and a merger control regime based on the same principles as the EC Merger Regulation.

Public access to documents relating to individual cases notified to the Competition Council is not permitted. However, the decisions of the Competition Council and the Competition Appeals Tribunal are made public, in Danish, on the Competition Authority's website.

Bi-lateral and multi-lateral arrangements

Section 6 of the Act prohibits agreements, concerted practices and decisions that directly or indirectly have as their object or effect the prevention, restriction or distortion of competition; this provision corresponds to Article 81 of the EC Treaty. The term "agreement" is broad and includes informal understandings, "gentleman agreements" and standard terms and conditions of sale. A "concerted practice" may exist if two undertakings, without entering into an agreement, undertake co-ordinated behaviour on a market that restricts or distorts competition.

The Act provides a non-exhaustive list of examples of behaviour that are caught by the prohibition:

- direct or indirect fixing of prices,
- limitation or control of production, markets, technical development or investment,
- sharing of markets or sources of supply,
- application of dissimilar conditions to equivalent transactions,
- tying the sale of one product or service to the sale of an unrelated product or service,
- co-ordination of competitive practices by two or more undertakings through the establishment of a joint venture, or
- resale price maintenance.

Other agreements or practices, which are likely to be caught by the prohibition, include collective boycotts, exchange of market and business information between competitors, certain selective distribution networks, excessive non-compete clauses and exclusivity clauses in licensing, purchase or distribution agreements.

The prohibition against anti-competitive agreements is subject to a *de minimis* rule and does not apply if:

- the parties concerned (including the groups to which they belong) have an aggregate annual turnover on a world-wide basis of less than DKK 1 billion and a combined market share of less than 10%; or

- the parties (regardless of their market shares) have an aggregate annual turnover of less than DKK 150 million.

This exemption is conditional on competition not being affected by similar agreements between other undertakings in the relevant market. The benefit of the exemption would also be lost if the agreement between the parties contained provisions agreeing to coordinate prices or profits, or impose resale price maintenance. Even if the thresholds are exceeded, it is still a requirement that a restriction must have an appreciable restrictive effect for Section 6 to apply.

In Denmark it is possible to notify agreements to the Danish Competition Authority in order to obtain an express exemption decision from the prohibition against anti-competitive agreements contained in Section 6 of the Competition Act. However, the exemption, contained in Section 8 of the Competition Act (the equivalent to Article 81(3) EC), to the prohibition against anti-competitive agreements applies automatically without any notification if the exemption conditions are met. Therefore, self-assessment is possible although notification is available on a voluntary basis and may be used when the parties require additional certainty.

The exemption criteria in Section 8 of the Competition Act mirror those contained in Article 81(3) of the EC Treaty:

- strengthen efficiency in the production or distribution of goods and services, and
- promotes technical or economical development, and
- the arrangement between the parties ensures that consumers receive a share of the advantages, without
- placing restrictions on the parties that are not indispensable to the attainment of these objectives.

In line with the EU system, an agreement that meets the requirements under a so-called "block exemption" for certain categories of agreements is automatically exempted from the prohibition in Section 6.

The Competition Council may issue orders directing undertakings to bring prohibited agreements or behaviour to an end or, at the Council's discretion, negotiate binding commitments to resolve the issue. Fines for infringement of the Act and fines for providing incorrect or misleading information to the Competition Council can be imposed in cases of negligent or intentional behaviour. Fines are calculated on the basis of the gravity and duration of the infringement and the turnover of the undertaking in question. Fines of over DKK 15 million may be imposed for the most severe infringements. Prohibited agreements are null and void and cannot be enforced.

At present there are no national rules equivalent to the leniency rules under EC competition law. However, in accordance with recent case law co-operation during an investigation may lead to a reduction in the fine of up to 10%. In relation to cartels it should be noted that the Danish competition authorities have extensive powers of investigation.

Abuse of a dominant position
Section 11 of the Act prohibits abuse of a dominant position and corresponds to Article 82 of the EC Treaty. In order to determine whether an undertaking has a dominant position in a certain market, it is necessary to define the "relevant market" in terms of products and/or services and the relevant geographic area.

Secondly, if an undertaking has a market share of more than 40% there exists a rebuttable presumption of dominance. A market share of more than 50% is in itself evidence of the existence of a dominant position.

An abuse of a dominant position may consist of a number of activities such as the imposition of unreasonable purchase and sales prices on other parties, the use of discriminatory terms and conditions towards trading partners and refusal to supply.

Merger control

Merger control was introduced under Danish law in 2000 and is now contained in Section 12 of the Act. There is an obligation to notify mergers and take-overs, which meet the jurisdictional thresholds to the Competition Authority. A concentration within the scope of the merger control rules may not be put into effect until the Competition Council has approved the transaction. In line with current EC merger control there is no time limit for notification.

The jurisdictional thresholds triggering the obligation to notify are as follows:

- the combined aggregate turnover of the undertakings concerned in Denmark is more than DKK 3.8 billion provided the turnover in Denmark of each of at least two of the undertakings concerned is more than DKK 300 million; or

- the aggregate turnover in Denmark of at least one of the undertakings concerned is more than DKK 3.8 billion and the aggregate turnover world wide of at least one of the other undertakings concerned is more than DKK 3.8 billion.

The Act applies to concentrations where two or more previously independent undertakings merge, or one or more persons already controlling at least one undertaking or one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings. The establishment of a joint venture performing on a lasting basis all the functions of an autonomous economic entity constitutes a concentration within the scope of the merger control rules. A non-full function joint venture will be assessed under Section 6 of the Act.

Mergers and concentrations will be approved unless they would significantly impede effective competition especially by the creation or strengthening of a dominant position. Conditions, such as divestment, may be attached to the decision if necessary.

12. INTELLECTUAL PROPERTY

The protection and enforcement of intellectual property rights, including patents, know-how, trademarks, copyright and designs, have proved increasingly important for businesses. Kromann Reumert represents clients in connection with disputes regarding patents, utility models, trademarks, designs and copyright as well as unfair competition, trade secrets and passing-off.

We are regularly advising on licence agreements and other transfers of intellectual property rights, and we also offer advice on IP risk management.

Patents

Denmark is a party to the 1970 Patent Co-operation Treaty (PCT), the European Patent Convention (EPC) and to the London Protocol. As of 1 February 2005 the latter is not yet implemented in the Danish Patents Act but will upon implementation lead to a limitation of the Danish requirements with respect to translations of European Patents.

As a result of Denmark's adherence to the above-mentioned international conventions an application for the grant of a European Patent may designate Denmark, and national Danish patents may be obtained either through designation of Denmark in a PCT application or by means of a purely national application submitted to the Danish Patent and Trademark Office. Foreigners hold a substantial number of the patents currently in force on the Danish territory.

Patents may be obtained for all inventions that are susceptible of industrial application, provided that the subject matter is not expressly excluded from patent protection. To this end, the provisions of the EU Directive on the Legal Protection of Biotechnological Inventions have been implemented in the Patents Act. In addition to the matters thereby excluded from patent protection, the Danish Patents Act exclude from patent protection, inter alia, discoveries, scientific theories, business methods and computer programs as such. Plant species may be granted protection either pursuant to the Danish Act on Plant Variety Protection or pursuant to the EU Council Regulation on Community Plant Variety Rights.

Patents are granted provided that the invention possesses novelty and involves an inventive step. As a main rule these requirements are similar to the requirements applied in other European countries and the Danish Patent and Trademark Office has expressly stated that it intends to rely on the precedents of the European Patent Organisation in their examination of patent applications.

The protection period is 20 years from the date of the original application.

Utility models

This form of protection supplements patent protection, as the conditions for obtaining protection of utility models are more relaxed than the conditions for obtaining a patent.

Utility model protection may be obtained for technical creations such as instruments, various forms of apparatuses, tools, electrical circuits, chemical compounds, foodstuffs etc. Plants, animals and processes are specifically excluded from protection.

It is a requirement for utility model protection that the creation possesses novelty and differs distinctly from prior art. The latter requirement is less rigorous than the inventive step requirement found in patent law.

The examination of utility model applications in the Danish Patent and Trademark Office is confined to an examination of whether the creation consists of a protectable subject matter. The fulfilment of the requirements with respect to novelty and distinction from prior art is not examined, unless the applicant requests the Danish Patent and Trademark Office to do so.
The utility model protection can be extended to a maximum duration of 10 years from the filing of the application.

Patent protection and utility model protection may be granted cumulatively if the invention/creation fulfils the requirements of both the Patents Act and the Utility Models Act. If a first attempt to obtain patent protection meets difficulties in respect of fulfilment of the inventive step requirement in patent law it is possible to "cross over" to a utility model application without loss of priority.

Trademarks and service marks
Denmark has implemented the EC Trademarks Directive and the Danish Trademarks Act is almost identical to the Directive.

Trademarks can be any symbol, which is able to distinguish a product or service from the products or services of other undertakings. Trademarks can be words or phrases, letters, figures, depictions of shape, get-up, packaging or even sounds, provided they can be reproduced graphically.

In Denmark, trademarks may be obtained either by registration or through the use of a particular mark in the course of trade. Alternatively, one may register a Community trademark that will have effect on the Danish territory as well as in other EU member countries.

The protection period for a registered trademark is 10 years from the registration date, and the registration is renewable. However, a trademark owner must exploit a registered trademark in order to retain his exclusive right. If the mark has not been used for five years, the registration (and protection) may lapse and cannot be invoked against third parties.

Trademarks established through use remains in force until the use lapses.

Copyright

Denmark is a party to most of the international conventions related to copyright and neighbouring rights, and Denmark has implemented all the EU copyright related Directives that are currently in force.

Copyright protection is not conditional upon any form of registration and there is no copyright register available. Copyright exists as soon as a particular work is created provided that the work is the result of the author's own intellectual creative contribution.

Copyright protects traditional works of literature and artistic works as well as maps, drawings, manuals, certain types of catalogues and databases, applied art (designs) and computer programs. Copyright protection of computer programs covers the specific program (but not the idea or algorithm) and reverse engineering is allowed when necessary to ensure compatibility between programs. Special rules regulate the transfer of copyright to computer programs between an employee and his employer, cf. the below Section on Employees' inventions etc.

Protection is given for the lifetime of the author plus 70 years.

The Danish Copyright Act also protects performers, producers of sound recordings and moving pictures, manufacturers of catalogues and databases and various other neighbouring rights. The neighbouring right protection is more limited in scope and duration than the copyright protection of literary and artistic works.

Designs

Denmark has implemented the EU Directive 98/71 on the protection of designs, and the most recent Danish Designs Act is almost identical to the Directive. Furthermore, EU Regulation No. 6/2002 on Community Designs applies in Denmark and provides protection for registered and unregistered designs. Registered design rights obtained prior to 1 October 2001 are still regulated by the previous Designs Act.

The appearance of a product or a part of a product may obtain protection pursuant to the Designs Act or pursuant to the EU Regulation. The requirements for protection are in both cases that the design is novel and has an individual character.

Protection of a registered design may be obtained for a total period of up to 25 years. Without registration, a Community design is protected against mere copying for 3 years. A design that possesses a certain degree of originality may also be protected by copyright.

Know-how

Know-how is acknowledged by Danish law although not defined by statute. Even though know-how by its nature has to be protected first and foremost by creating safeguards within a business organisation, including necessary contractual sanctions in agreements with trading partners, there is also assistance to be found in the Danish Marketing Practices Act. Not only does this Act include a provision that protects trade secrets and technical drawings but it also includes a general standard that prohibits all acts that are not in accordance with "good marketing practices". Both of these provisions may assist when dealing with unauthorised dissemination of business know-how.

Passing-off

The general Danish standard of "good marketing practices" may also be applied in the countering of passing-off. This standard has successfully been employed by businesses to prevent the marketing of not only products, which have been copied outright, but also of products where there is a fairly close resemblance.

Employees' inventions etc.

According to the Danish Act on Employee's Inventions (i.e. inventions and creations covered by the Patents Act and the Utility Models Act), an employee is the owner of his inventions made in the course of his normal duties but the Act entitles the employer to require that ownership be transferred to the employer. The Act requires the employee to notify the employer of new inventions without undue delay, and the employer should then notify his request for transfer of ownership to the invention within 4 months. If the employer fails to request a transfer of ownership, the employee may freely dispose of the invention. A transfer of ownership may entitle the employee to "a reasonable compensation". Case law is limited but indicates that such compensation tends to be modest.

The statutory arrangement may be varied by agreement between the employer and the employee and it is advisable that employment agreements with relevant employees include provisions providing for an automatic transfer of ownership for all inventions made by the employee. The right to receive reasonable compensation may, however, not be excluded by such agreement.

Inventions made by employees' at public research institutes are subject to the Act on Inventions made at Public Research Institutes.

The Designs Act does not solve the question of ownership of registered design rights created by an employee in the course of performance of his duties. Presumably the mere design rights are automatically transferred to the employer. However, if the design is cumulatively protected by

copyright the transfer of rights to the employer will be subject to the rules that apply with respect to transfer of copyright, cf. the below paragraph.

The Copyright Act implies that any employment agreement (at least for creative staff) includes an implied assignment to the employer of the right to exploit the employee's copyright protected works. This implied assignment by the employee to the employer of any work covered by copyright is limited; an automatic assignment is implied only in so far as and to the extent that the exploitation of the copyright protected work is necessary for the employer's performance of his normal business activities.

The question of copyright and ownership of computer programs created by employees is specifically dealt with in the Copyright Act which provides for total assignment (unless otherwise agreed) of the copyright in the program to the employer in all cases where the program has been created by the employee as a normal integral part of his work duties.

Finally, it is generally assumed that the right to exploit protectable know-how developed by employees as part of their duties is automatically assigned to the employer. However, this does not bar an employee from using his professional and general skills after having left the employment, provided that this use does not extent to use of trade secrets and provided that the employee acts in accordance with good marketing practices.

Enforcement of intellectual property rights
The Danish judicial system provides for efficient enforcement of intellectual property rights.

Proprietors may obtain interlocutory relief at the Enforcement Court if the proprietor is able to render it likely that the activities in question infringe the proprietor's rights. Under the same conditions, proprietors can request the Enforcement Court to execute a search of the alleged infringer's premises in order to seize evidence in respect of the infringement and the scope of the infringement.

If the proprietor is successful in obtaining interim relief and/or a court ordered search, the proprietor needs to initiate a confirmatory action on the merits. An action on the merits may also be initiated as the first move against an infringer. During a case on the merits, the proprietor may i.a. claim damages and compensation.

13. COMMERCIAL LAW

Doing business in Denmark necessarily involves having to employ and/or be familiar with local rules and standards for general business terms and conditions, to what extent liabilities may be

limited or even excluded, default interest issues, any constraints on marketing practices, specific consumer protection, etc.

Each particular business will of course have to consider the impact of such rules and regulations to the extent that they apply to that particular business and obtain the necessary legal advice.

The following are some of the relevant issues.

Standard terms and conditions

Both wholesale and retail businesses often rely on standard terms and conditions but retail businesses should be aware that sales to consumers are subject to a number of statutes protecting the consumer. This protection includes mandatory minimum rights set out in the Danish Sale of Goods Act, which, as an example, entitles the consumer to demand rectification of defects. In case of a credit sale to a consumer, the Danish Credit Agreements Act requires detailed information to be provided to the consumer with regard to interest rate, other costs, total purchase sum including interest and other costs, as well as strict formal requirements to be observed concerning any enforced repossession if title has been retained by the retailer.

Limitation and exclusion of liability

In commercial contracts, a party may limit or, in some cases even exclude, his liability. An important exception to this is product liability where liability for personal injury cannot be excluded or limited.

An outright exclusion of liability may also be censored by the courts as being a grossly unfair or unreasonable provision and most contract partners choose to rely on specific limitation clauses where a maximum limit for liability is agreed.

Default interest

Agreements and terms and conditions may include provisions fixing a certain default interest rate, e.g. 2% per month in commercial contracts. Even if no such provision is included in the contract, a business may take advantage of the Danish Interest Act. In case of a payment default, the claim will carry interest as from the date of maturity, provided that a date of maturity has been agreed upon in advance. If a date of maturity has not been agreed on in advance, the claim will carry interest as from 30 days after a written demand for payment has been dispatched by the creditor. This statutory default interest is calculated as the Danish discount rate (updated for this purpose every 6 months) + a margin of 7% p.a. In a contract with a consumer this statutory default interest rate must not be derogated from to the detriment of the consumer.

Sale of Goods

The fundamental legislation on sales of goods under Danish law is the Sale of Goods Act of 1906, which applies to the sale of goods between parties having their places of business in Denmark or where the parties have agreed so.

The Sale of Goods Act is based on the principle of freedom of contract. This means that parties to a sale of goods, which falls within the scope of the Sale of Goods Act, thus have the power to derogate from or vary the effect of most of the Act's provisions. The rules will therefore only apply to the extent the parties have not agreed otherwise, or where trade custom or usage does not imply otherwise.

The Sale of Goods Act does, however, also contain some mandatory rules on the sale of goods to consumers, e.g. a right to rectification of defects, which cannot be derogated from. Furthermore, the Act is supplemented by other mandatory legislation, e.g. the Consumer Contracts Act and the Credit Agreements Act.

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

Where a sale of goods involves a contract between a Danish party and a foreign party, the sale may be governed by the UN Convention on Contracts for the International Sales of Goods ("CISG"). If a sale of goods is subject to the CISG, the rules of the CISG will override those of the Danish Sale of Goods Act. The CISG entered into force in Denmark on 1 March 1990.

The CISG applies to contracts on the sale of goods between parties whose principal places of business are in different states:

- when the states are contracting states (to the CISG); or
- when the rules of private international law lead to the application of the law of a contracting state.

This means that a contract on sale of goods between a Danish party and a party whose business is in another CISG contracting state outside Scandinavia, automatically becomes subject to the CISG.

Contrary to the Danish Sale of Goods Act it should be noted, that the sale of goods to consumers lies outside the scope of the CISG. Furthermore, it should be noted that the contract formation rules in Part II of the CISG are not applicable in Denmark. With respect to international sales of goods between parties in Denmark, Finland, Norway and Sweden, respectively, the domestic sale of goods acts will apply, and inter-Scandinavian sale of goods therefore renders the CISG inapplicable.

Credit agreements

The Danish Credit Agreements Act governs all types of credit agreements in a consumer setting, including credit sale, agreements on money loans, account contracts etc. The Act imposes a duty on the creditor to provide the consumer with certain information, inter alia interest rate, other costs and yearly costs in per cent etc., with respect to a credit agreement before it is entered into and to inform the consumer of the credit arrangement during the course thereof. Furthermore, the Act requires the creditor to fulfil several formal requirements, e.g. that the credit arrangement must be made in writing. It should be noted that some rules of the Act, which apply in the consumer context, including primarily a number of rules on the sale of goods with retention of title, are also applicable in case of credit sales to other than consumers.

Jurisdiction rules

Denmark is party to the Brussels Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, which applies in most legal actions with a commercial aspect.

In order to determine whether the Brussels Convention applies, the decisive factor will be whether the defendant is domiciled in a contracting state to the Brussels Convention or not.

If the defendant is domiciled in a contracting state, the Brussels Convention applies. In general, a case must be decided in the country in which the defendant is domiciled. Consequently, a Danish court will in general only have jurisdiction to decide a case, if the defendant is domiciled in Denmark. The Brussels Convention contains several exemptions from the general rule. Therefore, Danish courts may also have jurisdiction in other cases, if there is an express provision to that effect in the Brussels Convention.

If the defendant is not domiciled in a contracting state, and in the absence of a valid choice of forum/venue agreement between the parties, the jurisdiction of Danish courts will depend on Danish procedural law, i.e. the Danish Administration of Justice Act. The general rule under the Administration of Justice Act is that legal actions should be brought in the defendant's country of residence. In general, this means that a Danish court will only have jurisdiction if the defendant is domiciled in Denmark, however, there are substantial exemptions to this general rule, e.g. in matters relating to a contract and in consumer matters.

It should be noted that the Brussels Convention does not interfere with national procedural rules on the subject matter jurisdiction, i.e. the territorial jurisdiction between the different Danish courts is determined in accordance with the Administration of Justice Act.

Furthermore, it should be noted that Denmark did not participate in the adoption of Council Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and is therefore not bound by it nor subject to its application.

Governing law

Denmark is party to the Rome Convention, which in general regulates the proper choice of law in Denmark with respect to contracts.

The general principle under the Rome Convention - and therefore also under Danish law - is the freedom of contract. Parties to a contract are free to agree on the substantive law of the contract and Danish courts will in general respect such choice. The contractual freedom under the Rome Convention is limited to international contracts and exempts certain contracts, e.g. consumer contracts.

In the absence of an express choice-of-law clause, the law of the country to which the subject matter has the closest connection will usually govern the contract. In a non-consumer contract the presumption will be the laws of the country in which the party to carry out the characteristic performance is domiciled. Thus, the buyer will be subject to the laws of the country in which the seller was domiciled at the time of placement of the order. In real estate cases, however, the presumption will be that the contract has its closest connection to the country in which the disputed piece of real estate is located.

Recognition and enforcement of judgements and arbitral awards

The Brussels Convention also contains rules on recognition and enforcement of judgements originating from courts of the EU Member States. According to the Brussels Convention, the courts of one Member State will not review the merits of a judgement rendered by the courts of another Member State. Therefore, a judgement from another EU Member State will presumably be recognised and enforced by Danish courts, provided that the defendant had reasonable access to safeguard his interests.

Denmark is also party to the Lugano Convention containing rules on recognition and enforcement of judgements substantially similar to those of the Brussels Convention. Thus, Danish courts will generally recognize and enforce judgements originating from EEA Member States also.

The Nordic countries (Denmark, Finland, Norway, and Sweden) have signed a Convention to which decisions pronounced or made in one of the countries shall be recognised and enforced in the other countries in accordance with the national laws of each country. The significance of this

Nordic Convention is limited since the other Nordic countries are all parties to the Lugano Convention.

Judgements from courts in countries outside EU or EEA (and therefore not parties to the Brussels or Lugano Conventions) are generally not recognised and enforced by Danish courts. However, the Minister of Justice may set down rules whereby judgements from such foreign courts and authorities regarding claims in civil matters shall have binding effect and be enforceable in Denmark. Furthermore, special rules on enforcement of foreign decisions apply in a number of special areas, e.g. under the Maritime Act and under the law regulating international carriage contracts.

Regarding enforcement of foreign arbitration awards in commercial matters, the 1958 New York Convention applies. The requirements for enforcing an arbitral award under Danish law are that the award has binding effect in Denmark and that the award was made in a country which has acceded to the New York Convention. Where the arbitration award is not comprised by the New York Convention, it will be incapable of immediate enforcement in Denmark.

Marketing practices

The Danish Marketing Practices Act includes a number of specific provisions aimed at protecting consumers in Denmark. The Marketing Practices Act prohibits, among other things, measures, which are not in accordance with "good marketing practice".

The Act also protects traders by prohibiting unfair trading practices such as free-riding and product imitations.

Some of the provisions of the Marketing Practices Act serve as a codification of general principles of law, which must be considered in connection with the relatively extensive case law and administrative practice. The Marketing Practices Act is supervised by an independent Consumer Ombudsman, whose decisions and general guidelines are valuable guides as to what is considered acceptable marketing practice.

Some of the measures prohibited by the Act, either expressly or as considered not being good marketing practices, are: misleading price information, misleading information as to country of origin or commercial origin, or misleading or incorrect terms of agreement.

The Act contains special provisions regarding collateral gifts, drawing of lot and prize competition, direct marketing and other marketing efforts.

Data protection

The Danish Data Protection Act implements Council Directive 95/46/EC on protection of individuals with regard to the collection and processing of personal data.

According to the Data Protection Act, collection of data can only take place for specified, explicit and legitimate purposes and any processing subsequent to the collection shall be compatible with such purposes. It is not admissible to collect personal data, which is not necessary in order to fulfil the purpose of the collection of data.

The Data Protection Act contains some very intervening rules on the collection and particularly disclosure of data for marketing purposes.

In addition to the Data Protection Act, Danish law contains special legislation regarding the collection and processing of specific types of data, e.g. the Danish Act on Information Databases Operated by the Mass Media and the Danish Financial Business Act.

14. PERSONNEL AND LABOUR MARKET

Foreign investors will - regardless of whether they set up a new business or acquire an existing one - need to be aware of the rules relating to employment of personnel in Denmark.

Some areas are subject to statutory law applicable to all categories of personnel; this is the case with respect to holiday entitlement, maternity leave, parental leave, educational leave, and working environment.

With regard to hiring, notice periods, salary levels etc. the applicable rules will depend on the category of employees involved: Salaried employees are subject to the Danish Salaried Employees Act and often also a collective agreement, whereas manual workers (blue-collar workers) are usually covered by collective agreements that are in most cases negotiated with the relevant trade union(s). Compared to other countries, the percentage of both employers and employees who belong to an association or union is very high. Many employers are members of the Danish Employers' Confederation (Dansk Arbejdsgiverforening/DA) or one of the special employers' associations (e.g. the Financial Sector or Agriculture). Employees are often members of the relevant trade union (Metal Workers, Commerce and Office etc.), although most of these unions are also members of the "umbrella" employee confederation, The Danish Federation of Trade Unions (Landsorganisationen/LO), a service organisation that undertakes to negotiate or co-ordinate various matters common to all trade unions. The labour market is thus to a very large degree regulated by collective agreements. Setting up or acquiring a business will therefore require detailed advice and information on both Danish employment legislation and the relevant collective agreements.

Collective agreements are usually negotiated between employers' and employees' organisations for two to four years at a time and cover wage levels, number of working hours and other terms.

Whatever terms any employee (white- or blue-collar) enjoys, such terms will have to be accepted by any purchaser who acquires a company or business. This obligation for the purchaser is mandatory according to the Danish Transfer of Undertakings Act (implementing the EC Directive 87/1987). The possibilities of re-negotiating employment terms should be investigated and considered carefully in advance of any acquisition.

Further, minimum requirements for the content of an employment agreement, which has to be in writing, are laid down in the Danish Act on Statements of Employment Particulars. If an employer does not fulfil such requirements, the employee may be entitled to compensation.

Notice periods

Salaried employees

The Salaried Employees Act regulates most of the matters relevant to the relationship between employer and employee and it is important to note that the Act cannot be derogated from to the detriment of the employee. The Act therefore serves as a "minimum standard" for this category of employees.

Notice periods of the employer will depend on the length of the employee's continuous employment; the longer the employment, the longer the notice period. Statutory notice periods are:

Employment period	Notice period
5 months	1 month
2 years & 9 months	3 months
5 years & 8 months	4 months
8 years & 7 months	5 months
in excess of the above	6 months

The 6-month notice period is the maximum afforded by the Salaried Employees Act.

The employee may terminate the employment agreement with one month's notice to the end of a month regardless of the length of the employment. It is possible to agree on a probationary period (3 months) during which both parties can terminate the agreement with 14 days' notice. The 14 days' notice must expire before the expiry of the 3-month probationary period.

The employer is liable to pay compensation if he dismisses salaried employees who have been continuously employed for 12 years or more - regardless of the fairness of the dismissal. The amount of compensation depends on the length of the employment. 12 years of employment entitles the employee to a compensation of 1 month's salary, 15 years of employment will attract a compensation of 2 months' salary and 18 years will attract the maximum of 3 months' salary.

Manual (blue-collar) workers

Notice periods for manual workers vary according to the relevant collective agreement. A typical collective agreement, "Industriens overenskomst 2004-2007", provides the following notice periods:

Notice from the employer:

Employment period	Notice period
less than 6 months	no notice
6 months	14 days
9 months	21 days
2 years	28 days
3 years	56 days
6 years	70 days
+ in respect of employees of at least 50 years of age:	
9 years	90 days
12 years	120 days

Notice from the employee:

Employment period	Notice period
less than 6 months	no notice
6 months	7 days
3 years	14 days
6 years	21 days
9 years	28 days

Notice periods for un-skilled workers, particularly part-time employees, may be very short (e.g. three days' notice). Where no collective agreements apply, the notice period can be fixed by the employer at his own discretion, although on the one condition that the length of the notice period is "appropriate".

Unfair dismissals

Salaried employees

According to Section 2b of the Salaried Employees' Act the employer may be obliged to pay a compensation for unfair dismissal, if the employee dismissed has been employed by the employer for at least 1 year, and if the dismissal is not deemed reasonably justified in the conduct of the employee and/or the circumstances of the company.

Any compensation as a result of unfair dismissal will be based on the employee's length of employment and an estimate of the circumstances of the case, and will generally represent a maximum amount equal to the salary paid to the salaried employee in half of the period of notice. The compensation may amount to up to 6 months' salary.

Manual (blue-collar) workers

If the employment is covered by collective agreements, special rules about compensation as a result of unfair dismissals will normally apply. The compensation may amount to up to 52 weeks' salary.

Special anti-discrimination acts

Special acts protect employees from being dismissed due to pregnancy, race, ethnic origin and the like. The compensation may amount to up to 2 years' salary.

Large-scale redundancies

The Danish Act on Collective Redundancies (which implements EC Directive 75/129 as amended by Directive 92/56) requires that employers, at the earliest possible stage, inform the Local Labour Board and initiate negotiations with the employees or their representatives with the intention to reach an agreement so that redundancies are either avoided or limited, or to alleviate the effects, e.g. by replacing or re-training the affected employees. If the redundancies are to be effected after such negotiations, the redundancies must be notified to the Local Labour Board and will at the earliest be effective 30 days (in some cases 8 weeks) after such notification. The planning and timing considerations are therefore important where these provisions apply.

The Act applies where the redundancies within 30 days exceed:

10 employees in firms having between 20 and 100 employees.
10% of employees in firms having between 100 and 300 employees.
At least 30 employees in firms having more than 300 employees.

Compliance with these requirements is important as a breach of the duty to negotiate is sanctioned by payment of compensation and possible fines. Collective agreements often have special rules on collective redundancies.

Salaries and wages

There is no statutory minimum wage level. Collective agreements will, however, invariably include a minimum wage level for the employees covered by that agreement.

In collective agreements overtime is typically subject to a 50% premium for overtime in excess of 1 hour and a 100% premium for overtime during weekends and public holidays.

There are no mandatory profit sharing schemes in force although some employers have voluntarily set up such schemes. Subject to certain conditions, these schemes can be set up with the advantage of certain tax benefits. According to section 17a in the Salaried Employees Act, upon termination of the employment, a salaried employee will be entitled to a pro rata share of the bonus, which he would normally have received for the year in which his employment was terminated. According to recent Danish case law this section also applies to stock options, if the stock options have been granted before, and according to a stock option program established before, the 1 July 2004. With respect to all grants of stock options made after that date, even if the underlying program was established before 1 July 2004, the legal position of an employee is set out in the Danish Stock Option Act.

If the employee himself resigns his position for any reason but breach of conduct, according to the Stock Option Act all his rights to stock options will lapse automatically. This will apply both to stock options that have already been granted and that have already vested as well as to unvested stock options and to any future stock options that the employee could have expected to receive had he continued his employment.

If an employee is given notice of termination by his employer for any reason but breach of contract, according to the Stock Option Act the employee will retain all rights to stock options. This will apply to all stock options that have already been granted and that have already vested as well as to unvested stock options. In addition the employee is entitled to receive a share, proportionate to the length of his employment in the accounting year, of the grants to which he would have been entitled according to agreement or custom, had he still been employed at the end of the accounting year or at the date of grant. The same applies where an employee retires because he has attained the retirement age of that particular industry or that particular company or because the employee is entitled to receive retirement pension or old-age pension from the employer.

Working hours

Denmark has implemented the EC Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time.

According to the Danish implementation law the maximum average weekly working hours cannot exceed 48 hours averaged over a 4-month period.

Holiday

The holiday entitlement of Danish employees is laid down in the Danish Holiday Act. According to this Act, the holiday year runs from 1 May to 30 April. The Holiday Act applies to all employees (with very few exceptions) but not to general managers and the like.

The entitlement to paid holiday is accrued during the calendar year preceding the holiday year. Thus, the entitlement to paid holiday in the holiday year from 1 May 2005 to 30 April 2006 is accrued through employment in the calendar year from 1 January 2004 to 31 December 2004.

Salaried employees paid by the month (white-collar workers) are entitled to receive full salary also during holiday. Further, the employer must pay to the employee a holiday supplement of 1% of the salary, including all benefits, earned in the accrual year preceding the holiday year.

Employees paid by the hour (blue-collar workers) are not entitled to receive salary during holiday but to receive a holiday allowance of 12.5% of the salary, including all benefits, earned in the accrual year. This holiday allowance is paid to the Danish Labour Market Holiday Fund (FerieKonto) by the employer and disbursed pro rata to the employee when the holidays are taken.

Employees are entitled to take at least 3 weeks of their 5 weeks holiday consecutively during the period between 1 May and 30 September.

The holiday shall be planned in agreement with the employer, but the employer shall, if possible, comply with the wish of the employee.

The holiday has to be planned as soon as possible. If no voluntary agreement can be reached with the employee on the planning of the holiday, the employer has to give a 3 months' notice before the commencement of the main holiday of 3 weeks and a notice of 1 month before the commencement of any other holiday.

The entitlement to 5 weeks' holiday (paid or unpaid) is in addition to public holidays.

If a salaried employee leaves the company, he is entitled to a holiday allowance, which is calculated as 12.5% of the salary, including all benefits, in the accrual year. If an employee is employed from 1 January 2004 to 30 April 2005, he will be entitled to a holiday allowance calculated as 12.5% of the salary, including all benefits, in the same period as none of the accrued paid holiday has been spent at the time when he leaves the company. The holiday allowance has to be paid to the Danish Labour Market Holiday Fund (FerieKonto).

When the employee takes his holiday in the holiday year 1 May 2005 to 30 April 2006, he will then have his holiday allowance paid out from the Danish Labour Market Holiday Fund (FerieKonto).

Collective agreements may contain alternative or supplementary holiday regulations.

Several collective agreements provide for a number of extra days off (typically an additional 3-5 days) in addition to those provided for by the Holiday Act.

Non-competition clauses

For key personnel it may be necessary to include a clause preventing the employee from any competing activities or contact with customers, agents, distributors, etc. following the termination of his employment. Such clause may vary according to need but may require that the employee receive some form of compensation following termination of his employment in order to ensure that the clause can be enforced. For salaried employees, the compensation shall amount to at least 50% of the salary (including benefits) upon termination of the employment as long as the non-competition clause is in force. Such clauses, with some exceptions, may be terminated by the employer with one month's notice. As for general managers, it is not necessary to pay any compensation.

Employee's inventions etc.

Employers should take care to have clear and enforceable clauses included in the employment contracts with relevant employees regarding not only patentable inventions but also regarding other creations of any kind which may be protectable and/or have commercial value. Reference is made to Section 12 on Intellectual Property.

Equal pay

Employers are required to provide employees with equal pay for the same work or work of equal value. This follows from the Danish Equal Pay (Men and Women) Act, which implements the EC Directive on equal pay.

Working environment regulations

The Danish Working Environment Act covers all work performed in the course of employment and requires most businesses to set up safety committees with both employers and employees represented. These committees should monitor the safety of working procedures and ensure that the staff receives proper instructions. These committees may receive guidance and counselling from a number of Occupational Health Service (OHS) units, which offer assistance for a number of special sectors (General Industry, Transport, Building & Construction etc). The Working Environment Service (Arbejdstilsynet) also carries out inspection visits in order to ensure that standards are met.

Accidents at work

The employer is liable to pay compensation/damages to an employee for any personal injury or occupational disease caused by the nature of the work performed in the service of the employer. The employer, by statute, is required to take out insurance cover to ensure that any liability to pay expenses for medical care, compensation for loss of earning capacity, compensation for permanent injury, transitional allowance at death, and compensation for loss of supporter can be met.

Further, the employer should take out special professional indemnity insurance to cover the obligation to pay compensation for pain and suffering as well as compensation for loss of earnings.

General managers

The general manager is not necessarily, but may be, a member of the board of directors. Being a member of the employer's top management, a general manager is not comprised by the Salaried Employees Act. Normally, the general manager will be given a service contract stipulating his rights and entitlements, in particular with regard to notice periods, severance pay, holidays, company car and other benefits, pension etc. If the general manager is posted from abroad, the compensation package will often include private accommodation, school fees etc.

The service contracts of general managers are of course negotiated individually although many aspects will be fixed according to what is customary for the size and type of company in question.

The notice period required from the employer is normally fixed at 6-12 months, and the notice period required from the general manager is normally 3-6 months.

Recently, it has become more common that a general manager's salary is partly linked to the company's performance but the criteria vary. Often, 15-25% of the salary is linked to a certain percentage of the profits before tax.

Usual perquisites to managers include company car, home telephone, pension, personal accident and health insurances.

The exact structuring of the total remuneration package to a general manager or senior manager will often depend on the applicable tax liabilities.

Working permits and visa requirements
Citizens of EU Member States may freely enter and stay in Denmark for an initial period of 3 months. If the EU citizen is applying for a job or is working here in Denmark, he or she may stay for an initial period of 6 months. If the stay needs to be extended beyond the 3-month or 6-month period, all citizens of EU Member States may be granted a EU residence permit, which will initially be granted for at least 5 years, and if residence has continued without interruption for 5 years, a permanent residence permit will be issued. The provisions relate not only to citizens of EU Member States who are employed or self-employed but also to the immediate family and dependants.

As of 1 May 2004 ten new countries became members of the EU. With respect to eight of these countries a special interim arrangement has been agreed, ensuring only a gradual transition to the rights regarding free movement of labour. With respect to Malta and Cypress the ordinary regulations of EU citizens apply.

Citizens of all Nordic countries may always enter and stay in Denmark without obtaining any kind of permission.

All other foreign citizens should, in principle, obtain a visa to enter and stay in Denmark although citizens from a large number of countries have been exempted from this requirement. For example, citizens of the US and Japan do not require any visa to enter and stay in Denmark for an initial period of 3 months. Residence permits for staying in excess of 3 months require permission.

All citizens of EU Member States may freely take up employment (or be self-employed) without obtaining a work permit.

Other foreign citizens will need to obtain a work permit in order to take up employment with a Danish employer.