

Doing Business in Denmark

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

The legal system is based on civil law.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Foreign investment is encouraged and, in general, no authorisation is required. However, there are restrictions in a few specific sectors, including those involved in national security.

In addition, approval from the Danish Financial Supervisory Authority is required (for both Danish and foreign investors) before acquiring certain qualified interests in a company in some sectors (such as banking and insurance).

Acquisition of real property by foreign (including EU and European Economic Area (EEA)) companies or nationals usually requires permission from the Ministry of Justice, but certain exceptions exist for EU and EEA companies and nationals.

3. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations, except for those restricting money laundering.

Payments to foreign companies incorporated in any country or state which is currently the subject of United Nations (UN) or EU sanctions may be subject to restrictions under these sanctions as implemented in Danish law.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

There are no special incentives available to foreign investors. For general information on investment in Denmark, see www.investindk.com.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors' liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common form of business vehicle used by foreign companies is a subsidiary in the form of either a public limited company (*Aktieselskab*) (A/S) or a private limited company (*Anpartsselskab*) (ApS).

Public and private limited companies are governed by the Danish Companies Act (Companies Act), which became partly effective from 1 March 2010. At the time of writing, it was not yet known when the Companies Act would come into full effect, but it was expected to be in 2010. This article describes the legal position with the Companies Act in full effect.

- **Registration formalities.** The company must submit to the Danish Commerce and Companies Agency (DCCA) the:
 - memorandum of association;
 - articles of association; and
 - registration form setting out the company's details.

The registration procedure takes one to three days using online registration, or up to four weeks through paper registration.

- **Share capital.** An A/S must have a minimum share capital of DKK500,000 (as at 1 October 2010, US\$1 was about DKK5.5) and an ApS must have a minimum share capital of DKK80,000. There is no maximum share capital. A minimum of 25% and of DKK80,000 of the share capital must be paid-in.
- **Non-cash consideration.** Shares can be issued for non-cash consideration, although a formal valuation process is required. However, a non-cash consideration must have a value which can be expressed in monetary terms and cannot consist of an obligation to perform work or render services.
- **Rights attaching to shares.** Restrictions on rights attaching to shares are set out in the articles of association of the company and the Companies Act. Restrictions can also be set out indirectly in the shareholders' agreements (if any), but these are not binding upon the company.
- **Foreign shareholders.** There are no restrictions on foreign shareholders, except in certain regulated industries (see *Question 2*).
- **Management structure.** An A/S must have a two-tier management structure comprising a board of directors (with at least three members) and one or more managing directors. 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. Instead of a board of directors, an A/S may have a supervisory board, which has the responsibility of controlling the managing directors' management of the company. An ApS can have the same management structure

or, in some instances, it can choose to have only a board of directors or a managing director. There are no restrictions on foreign managers or directors.

- **Directors' liability.** A board member, member of the supervisory board or managing director can be held liable if he acts negligently, that is, if he:
 - engages the company in business clearly outside the company's objective;
 - acts in the interest of others rather than that of the company;
 - fails to perform his duties in a proper and business-like manner.

If found negligent, a board member, member of the supervisory board or managing director can be disqualified for up to five years or for an indefinite period.

- **Parent company liability.** Group companies are regarded as separate legal entities and the parent company is not liable for acts of subsidiaries, except where the parent company as shareholder acts negligently.
- **Reporting requirements.** Companies must submit an annual report to the DCCA and, in general, register with the DCCA any:
 - constitutional documents;
 - amendments to the articles of association;
 - new or resigning board members, members of the supervisory board, managing directors or accountants.

Public fees are not charged in connection with a timely fulfilment of the reporting requirements, unless a company register has more than five secondary names.

EMPLOYEES

6. What are the main laws regulating employment relationships?

Danish employment law is generally governed by statutory legislation, which increasingly implements EU directives.

The majority of these statutes are mandatory and cannot be derogated from to the detriment of the employee, irrespective of a choice of law clause.

Danish employment law applies to all employment carried out in Denmark. Employees working abroad may not be protected by Danish law.

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

A written document is required, setting out the main terms of employment, including the following ten specific terms:

- The names and addresses of the employer and employee.
- The place of work or the place where the work is primarily carried out, and information about the headquarters or the address of the employer.
- A description of the work or an indication of the title, rank, position or job category of the employee.
- The commencement date of the employment.
- Where the employment is not intended to be permanent, the period for which it is expected to continue.
- The employee's entitlement to paid holidays, including any entitlement to receive salary during holidays.
- The length of notice required for both the employer and employee to terminate the employment contract or an indication of the termination rules.
- Details of salary, and other related benefits.
- Details of the normal daily or weekly working hours.
- Any collective agreements which affect the terms and conditions of the employment. Where made between parties outside the company, a description of those parties must be given.

The main terms, including the ten specific terms, can be, for example, in a contract, by a statement or an engagement letter, but it is customary to provide a contract.

Some terms can also be implied into the contract or incorporated by the following:

- Employee handbooks.
- Collective agreements.
- Practice.
- Statute.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

If the company has, on average, more than 35 employees, the employees are entitled to management representa-

tion. The management representatives are considered to be ordinary board members and have the same decision-making powers as any other member of the board.

Danish companies employing more than 35 employees must also inform and consult employees about all company-related matters of significant importance to the employees. In particular, they must:

- Inform employees of the recent and probable development of the company's activities and economic situation.
- Inform and consult employees regarding the situation, structure and probable development of employment within the company and any anticipatory measures envisaged (in particular, where there is a threat to employment).
- Inform and consult employees regarding decisions likely to lead to substantial changes in work organisation or in contractual relations.

Special consultation and information requirements apply where the number of redundancies within a 30-day period exceeds:

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

Requirements to consult and negotiate with employee unions generally apply if the employment is subject to a collective agreement.

9. How is the termination of individual employment contracts regulated?

Rights against dismissal vary depending on whether the employee is a blue or white-collar worker. Generally, the employer must pay compensation if the dismissal is not reasonably justified. If the dismissals are caused by restructuring or net downscaling, they are generally considered to be reasonably justified.

For white-collar workers, the maximum compensation is six months' salary. For blue-collar workers, the maximum compensation is generally up to 52 weeks' salary.

In addition, employees are protected by various anti-discrimination Acts.

10. Are redundancies/mass layoffs regulated? If so, please give details.

Employees are entitled to specific notice periods and may be entitled to a severance payment, if they are made redundant. There are no other regulations, except as set out in *Questions 3 and 4*.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Non-EU/EEA employees require a work and residence permit to work in Denmark. The average processing time is 60 days and no payment is required. However, the diplomatic mission requires a fee for their services.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

According to internal legislation, employees are generally deemed to be under a full tax liability to Denmark if they are domiciled in Denmark, that is if they either:

- Have a permanent home available in Denmark.
- Are present in Denmark for more than six months, including short stays abroad.

In addition, employees are deemed to be under a limited tax liability to Denmark if, for example, they receive salary for work performed in Denmark or receive other income from sources in Denmark.

13. What income tax or social security contributions must the following pay:

- Tax resident employees?
 - Non-tax resident employees?
 - Employers, in relation to their employees?
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Tax resident employees

From 1 January 2010, tax resident employees must pay income tax at a progressive rate of up to 51.5% as a tax ceiling, (labour market contribution and church tax not included).

The following tax rates apply for 2010:

- Municipal tax: about 24.9%.
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- Health contribution: 8%.
- Bottom bracket tax: 3.67%.
- Top bracket tax (of income exceeding DKK389,900): 15%.
- Labour market contribution: 8% gross tax.

Members of the Danish church must also pay church tax of about 0.7%.

Taxes are levied on any income exceeding a personal allowance of DKK42,900. In addition, persons who are employed or self-employed are entitled to a job allowance of up to DKK13,600.

Non-tax resident employees

Non-tax resident employees working in Denmark for employers in Denmark are under a limited tax liability in Denmark and must pay Danish taxes at the same rates as tax resident employees (*see above, Tax resident employees*). A relief for double taxation may be available under a double tax treaty.

A special expatriate regime is available for certain foreign employees employed by Danish-resident employers. Under this scheme, the salary income is (under certain circumstances and at the choice of the employees) taxed at a flat rate of either:

- 25% for a maximum of three years.
- 33% for up to five years.

When an employee opts for this scheme, the employee cannot make any deductions to the taxable income.

Employers

As a general rule, Danish payroll taxes are levied on the employees and not on the employers. Thus, Danish employers are generally not required to pay any taxes or social contributions with respect to their employees. However, Danish employers must generally withhold the due taxes and social contributions payable by the employees. Employers must also make certain small social security contributions (for example, to the Danish Labour Market Supplementary Pension Fund).

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

Business entities are generally deemed to be tax resident if they are incorporated in Denmark. However, if the seat of the management of a foreign incorporated company is located in Denmark, the company may be

considered resident in Denmark and be under a full tax liability to Denmark.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

Tax resident business entities are generally subject to corporation tax at a flat rate of 25% on their worldwide income, after deduction of costs.

However, Danish companies are not taxed on income and gains deriving from permanent establishments and real property situated outside of Denmark, provided:

- The source country has not, in a double tax treaty or other international agreement, waived the right to tax the income and gains deriving from the branch or real property.
- The permanent establishment would not have been subject to Danish CFC taxation, had it been a company.
- The Danish company has not opted for Danish international joint taxation.

The following are automatically jointly taxed in Denmark of their Denmark source income:

- Group related companies that are tax resident in Denmark.
- Permanent establishments in Denmark of group related companies that are not tax resident in Denmark.
- Real estate located in Denmark and owned by such companies.

The joint taxation may, at the request of the ultimate parent company, be extended to include all group-related non-resident entities. In this case, income derived from all group related foreign entities will be subject to Danish corporate taxation.

16. How are the activities of non-tax resident business vehicles taxed?

Non-tax resident business entities are subject to limited tax liability in Denmark in respect of income derived from specific sources related to Denmark (such as a permanent establishment, immovable property, royalties, interest on controlled debt and dividends) at a rate of 25%.

17. Please explain how each of the following is taxed:

- Dividends paid to foreign corporate shareholders.
 - Dividends received from foreign companies.
 - Interest paid to foreign corporate shareholders.
 - Intellectual property (IP) royalties paid to foreign corporate shareholders.
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- **Dividends paid.** As a general rule, foreign shareholders that receive dividends derived from Denmark are subject to a 27% withholding tax. This rate can be reduced under a double tax treaty.

Dividends distributed to a foreign corporate shareholder are exempt from Danish withholding tax, where:

- the parent company holds either subsidiary shares or group shares; and
- the foreign parent company is resident in another EU/EEA country, or in a country with which Denmark has entered into a tax treaty according to which Denmark must grant relief or reduction from withholding tax.

Subsidiary shares are shares where the corporate shareholder owns at least 10% of the shares.

Group shares are shares where the corporate shareholder holds a controlling influence and therefore could elect to be subject to Danish international joint taxation (generally, this requires that the corporate shareholder controls more than 50% of the votes in the company).

- **Dividends received.** Dividends received by a Danish parent company from Danish or foreign subsidiaries are generally tax exempt. However, this tax exemption only covers dividends from subsidiary shares or group shares (*see above, Dividends paid*).
- **Interest paid.** As a general rule, a 25% withholding tax applies to interest payments made between controlled companies. However, due to a number of exceptions, the withholding tax generally only applies to interest payments to affiliated companies in low tax countries outside the EU/EEA. The withholding tax may for example be waived or reduced under a tax treaty or under the EU Interest/Royalty Directive (Directive 2003/49/EEA).
- **IP royalties paid.** A 25% tax is withheld from royalty payments deriving from Denmark in relation to patents, trade marks, technical know-how and so on. This withholding tax can be reduced under a tax treaty. The withholding tax does not apply if the royalties are attributable to the receiver's permanent Danish establishment, or the receiver is subject to the protection of the EU Interest/Royalty Directive (Directive 2003/49/EEA).

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

The interest on the excess part of the controlled debt can not be deducted if both the:

- Debt-to-equity ratio exceeds 4:1.
- Controlled debt exceeds DKK10 million.

However, the limitation only applies to the part of the debt which should have been equity in order to avoid the limitation. Furthermore, interest can be deducted if the taxpayer can show that a similar loan could be obtained from an independent third party without any security from the controlling shareholder(s) or its affiliates. In addition, the following rules limiting the deductibility of interest apply:

- **Interest ceiling.** Net financing costs exceeding a ceiling calculated as a standard rate of return (variable; in 2010 it was 5% each year) on the tax value of the company's assets and exceeding DKK21.3 million (2010) are not deductible.
- **Earnings before interest and taxes rule.** This maximises the deductibility of net financing costs to 80% of the earnings before interest and taxes.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

As a general rule the profits of a foreign subsidiary is not included in a Danish parent company's taxable income unless the foreign subsidiary is covered by Danish CFC rules.

The CFC regime applies to all subsidiaries (irrespective of their tax residency and the taxation actually incurred by the subsidiaries) that meet the following conditions:

- They are controlled by a Danish parent.
- They have financial income that constitutes more than 50% of their total income.
- They have financial assets constituting more than 10% of their total assets.

A part of the total income of a CFC, equalling the Danish parent company's average ownership, is included in the taxable income of the Danish parent company, and relief

is granted for tax payments made by the CFC. Insurance companies and banks with substantial activities in the relevant foreign jurisdiction can apply for an exemption from Danish CFC taxation.

The CFC regime also applies to foreign permanent establishments of Danish companies. Therefore, a Danish company is subject to taxation on any positive CFC income derived from a permanent establishment in a foreign country, provided the CFC conditions are met.

20. Are there any transfer pricing rules? If so, please give details.

All transactions between connected parties must be concluded on market terms, in accordance with the OECD Guidelines. Danish transfer pricing legislation is based on the general principle of arm's-length transactions. Accordingly, all transactions between connected parties must be concluded on general market terms as if the parties to the transactions were independent entities. A "connection" exists between parties if a company or an individual (or a group of affiliated companies or related persons) owns, directly or indirectly, more than 50% of the shares in the relevant company or may exercise more than 50% of the votes in the relevant company.

In general, Danish companies must prepare written transfer pricing documentation. A general exemption applies to small and medium-sized companies and to controlled transactions that are deemed immaterial in respect of either volume or frequency.

The tax authorities are afforded the opportunity to commence a taxation case concerning transfer pricing issues for a period of up to five years and four months after the expiry of the relevant tax year.

21. How are imports and exports taxed?

Imports to Denmark from outside the EU are generally subject to VAT of 25%, which is payable by the importer in accordance with the reverse charge mechanism.

Customs duty and excise duties may also be payable by the importer.

Exports of goods to countries outside the EU and to VAT-registered traders in other EU member states are usually zero rated.

22. Is there a wide network of double tax treaties? If so, please give details.

Denmark has concluded more than 70 tax treaties, all of which are typically based on the OECD Model Tax Convention on Income and on Capital.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

The main anti-trust legislation is contained in the Competition Act (*Act No. 972, 13 August 2010*) (Competition Act). A consolidated version of the Competition Act is available on the Danish Competition Authority's website at www.ks.dk.

The Competition Act is modelled on the provisions of EU competition law. Accordingly, the main provisions are:

- A prohibition against anti-competitive agreements (*section 6*).
- A prohibition against the abuse of a dominant position (*section 11*).
- Provisions on merger control (*section 12*).

One of the Danish block exemptions, which generally have also been modelled on the EC block exemption regulations, may apply to restrictive agreements and practices. Alternatively, it remains possible under Danish competition law to notify restrictions of competition with a view to obtain an individual exemption.

There is a leniency programme for cartel conduct.

The Competition Council is the principal enforcer of competition law. In practice, the Competition Authority, which is the secretariat of the Competition Council, is in charge of the day-to-day administration of the Competition Act. Their decisions are subject to appeal before the Competition Appeals Tribunal, which are in turn subject to appeal before the courts.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
 - **How protected.**
 - **How enforced.**
 - **Length of protection.**
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Patents

- **Nature of right.** To be patentable, an invention must:
 - be novel;
 - involve an inventive step;
 - be capable of industrial application; and
 - not be specifically excluded by law.

A patent holder can prohibit third parties from exploiting the invention covered by the patent.

- **How protected.** National applications for registration must be filed with the Danish Patent and Trademark Office (DPTO).
- **How enforced.** The patent owner can enforce his patent by a court ordered search, interlocutory injunction and/or an action on the merits. Remedies include damages and compensation.
- **Length of protection.** Subject to certain exceptions, protection lasts for a maximum of 20 years, provided renewal fees are paid annually.

Trade marks

- **Nature of right.** To be registered as a trade mark, a sign must:
 - be capable of graphical representation; and
 - distinguish the goods or services of one undertaking from another.

A trade mark holder can prohibit third parties from exploiting the trade mark.

- **How protected.** Protection is obtained either by registration with the DPTO or through the use of a particular mark in the course of trade. Alternatively, a Community trade mark or international trade mark can be registered.

- **How enforced.** This is the same as for patents (see above, *Patents*).
- **Length of protection.** Protection lasts indefinitely, subject to renewal every ten years. However, if a registered trade mark has not been used for five years, the registration (and protection) lapses and cannot be invoked against third parties. Trade marks established through use remain in force until the use lapses.

Registered designs

- **Nature of right.** To be registered, a design must:
 - be new;
 - have individual character; and
 - relate to the appearance of all or part of a product resulting from certain features of that product or its ornamentation.

A design holder can prohibit third parties from exploiting the design.

- **How protected.** Applications for registration must be filed with the DPTO. Alternatively, a Community design right can be registered.
- **How enforced.** This is the same as for patents (see above, *Patents*).
- **Length of protection.** Protection lasts for a maximum of 25 years, subject to the payment of renewal fees every five years.

Unregistered designs

- **Nature of right.** To be protected under the EU rules for unregistered Community designs, a design must:
 - be new;
 - have individual character; and
 - relate to the appearance of all or part of a product resulting from certain features of that product or its ornamentation.

A design holder can prohibit third parties from exploiting the design. Alternatively, designs can be protected under the general Danish standard of good marketing practices that protects against the passing off of products which have been copied outright or which closely resemble the original.

- **How protected.** An unregistered Community design is protected from the moment it is made available to the public. Under the rules on passing off, the market position of a product (and not the design) is protected against unfair competitive practices, such as the marketing of copycat products.
- **How enforced.** This is the same as for patents (see above, *Patents*).
- **Length of protection.** Protection for unregistered Community designs lasts for three years. Protection under the rules on passing off remains in force until the market position lapses.

Copyright

- **Nature of right.** Copyright subsists in any literary or artistic work, which can be:
 - written or spoken;
 - fictional or a descriptive representation;
 - musical;
 - dramatic;
 - cinematographic;
 - photographic;
 - fine art;
 - architecture;
 - applied art; or
 - expressed in some other manner (such as software).

A copyright holder can prohibit third parties from exploiting the work covered by the copyright.

- **How protected.** Protection arises automatically when the work is created.
- **How enforced.** This is the same as for patents (see above, *Patents*).
- **Length of protection.** Protection lasts for the lifetime of the author plus 70 years. However, the Copyrights Act (*Act No. 587, 20 June 2008*) also protects performers, producers of sound recordings and moving pictures, photographers, manufacturers of catalogues and databases, and various other neighbouring rights (this protection is more limited in scope and duration than the copyright protection of literary and artistic works).

Confidential information

- **Nature of right.** For confidential information to be protected, it must be either:
 - a confidential trade secret;
 - communicated in circumstances implying an obligation of confidence (that is, a contractual obligation).

Employees or trade partners to a business must not obtain or try to obtain knowledge or dispose of trade secrets of the business in an improper manner. In addition, if a person has obtained knowledge or disposal of a trade secret of a business in a lawful manner, he must not (unless authorised) pass on or make use of such secrets.

- **How protected.** The protection arises out of the fact that a piece of information is a trade secret.
- **How enforced.** This is the same as for patents (see above, *Patents*).
- **Length of protection.** There is no fixed term, but the information must remain confidential for it to be protected.

Utility models

- **Nature of right.** A technical creation can be protected as a utility model if it:
 - is new;
 - differs distinctly from the prior art;
 - is capable of industrial application; and
 - is not specifically excluded by law.

Under the Utility Models Act (*Act No. 1431 of 21 December 2005 as amended by Act No. 538 of 8 June 2006*), a utility model holder can prohibit third parties from exploiting the invention covered by the utility model.

- **How protected.** An application for the grant of a utility model must be filed with the DPTO.
- **How enforced.** This is the same as for patents (see above, *Patents*).
- **Length of protection.** Protection lasts for a maximum of ten years, subject to the payment of renewal fees three and six years after the application date.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
- **Distribution.**
- **Franchising.**

■ **Agency.** Denmark has implemented Directive 86/653/EEC on self-employed commercial agents (*Danish Act on Commercial Agents (Act No. 272 of 5 February 1990)*). In case of termination, agents are entitled to an indemnity provided:

- the agent has found new customers and/or extended the trade with the initial customers;
- this has led to substantial benefits for the principal; and
- it is deemed reasonable.

A substantial number of the provisions of the Act are mandatory and cannot be derogated from in agency agreements.

- **Distribution.** There is no statutory law on distribution agreements, but competition rules may apply (see *Question 23*).
- **Franchising.** There is no statutory law on franchising agreements, apart from general contract law rules. Provided the requirements set out in the general group exemption in Regulation (EC) No. 2790/99 on the application of Article 81(3) of the EC Treaty to categories of vertical agreements and concerted practices are met, franchising agreements will not infringe competition law.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

The Electronic Commerce Act (*Act No. 227, 22 April 2002*) regulates certain aspects of e-commerce (for example, it provides for certain information obligations and rules concerning transmission and storage).

The Consumer Agreement Act (*Act No. 451, 9 June 2004*) sets out a number of obligations primarily directed at the seller (for example, cancellation rights and information obligations).

The Electronic Signature Act (*Act No. 417, 31 May 2000*) regulates certain aspects of electronic signatures. However, the so-called OCES-policies (issued by the government in connection with giving all Danish private persons a government paid signature) govern electronic signatures in practice, and set out rules in relation to liability, security and registration.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

Generally, the processing of personal data is governed by the Act on Processing of Personal Data (*Act No. 429 of 31 May 2000, as amended by Act No. 552 of 24 June 2005, Act No. 519 of 6 June 2007, Act No. 188 of 18 March 2009 and Act No. 503 of 12 June 2009*) (PDA) implementing Directive 95/46/EC on data protection (although it includes some stricter national legislation). In addition, special legislation applies within certain fields of business such as financial undertakings and telecommunications.

The PDA regulates the:

- Processing of data concerning identifiable natural persons.
- Rights of data subjects.
- Notification requirements.

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

Product liability is regulated by:

- The Product Liability Act (*Act No. 371 of 7 June 1989, as amended by Act No. 1041, 28 November 2000, by Act No. 541, 8 June 2006 and by*

Act No. 523, 6 June 2007). The Act is based on Directive 85/374/EEC on liability for defective products and applies to personal injury and damage to consumer goods. A manufacturer is strictly liable for injury or damage caused by a defective product. Under the Product Liability Act, the claim can also be made against anyone who has brought the defective product into circulation if the manufacturer has acted with negligence. A distributor/supplier will have full recourse as liability within the scope of the Act cannot be contractually limited. In addition, the supplier is liable under the Act where he cannot prove that he has not acted negligently himself.

- Case law on product liability. Based on case law, the manufacturer is liable for damage caused by a defective product if it has acted negligently. The claim can also be made against anyone who has brought the defective product into circulation if the manufacturer has acted with negligence, that is, the distributor can be held liable in case the manufacturer has acted negligently, but has recourse unless liability has been contractually limited.
- The UN Convention on Contracts for the International Sale of Goods 1980 (CISG). Denmark has ratified the CISG, which covers both damage to the product itself and product liability in case of property damage.

Product safety is regulated by the Product Safety Act (*Act No. 1262, 16 December 2009*). The Act is based on Directive 92/59/EEC on general product safety and applies to consumer products. Under the Product Safety Act, anyone who brings products into circulation must ensure that the products are safe. Control is performed by the Danish Safety Technology Authority.

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