



# BUILDING IN DENMARK

A manual for the construction industry

**NJORD**  
LAW FIRM

# BUILDING IN DENMARK

Denmark is a country in progress with many large infrastructural projects and public building projects well underway and new ones being put out to tender such as the construction of the Fehmarn Belt Fixed Link – at the planned 17.6 km the longest bridge ever constructed – six new super hospitals, an additional line for the Copenhagen Metro, new tram lines around Copenhagen and much more. Many projects aim to improve sustainability by supporting a business environment for innovative construction solutions, including electrification of the national railway network, reconstructing waste water treatment plants from energy consumers to producers, and setting up smart city projects in the streets of the capital to improve the environment and living conditions.

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

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

## WEB

### PRACTICAL TIP

[njordlaw.com](http://njordlaw.com)

### FURTHER INFORMATION

[njordlaw.com](http://njordlaw.com)

## ABOUT THE GUIDE

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

information in English on the various topics.

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

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# 1

## **INVITATIONS TO TENDER AND CONSTRUCTION CONTRACTS IN DENMARK**

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

# 1.1 PUBLIC INVITATIONS TO TENDER IN DENMARK

In Denmark, as in the other EU member states, there is a fundamental obligation to issue public invitations to tender for construction projects that are conducted by the state, municipalities, or other entities governed by public law.

## 1.1.1 Overview of Ongoing Invitations to Tender

It is relatively easy for foreign contractors to obtain an overview of public projects in Denmark for which invitations to tender have been issued. The website [udbud.dk](http://udbud.dk) (“udbud” = invitation to tender) lists all public invitations to tender in Denmark. The website lists both national and EU invitations to tender and is updated daily. However, the actual invitations to tender on the website are only available in the Danish language. Search criteria relevant to one’s own enterprise can be entered on the website. A free e-mail service provides automatic notification when a new invitation to tender matching one’s own profile is published. It is also possible to find other suppliers via the website to draw up a joint bid with them.

### PRACTICAL TIP

**The Danish register of invitations to tender, [udbud.dk](http://udbud.dk) lists all public invitations to tender in Denmark. The information about relevant invitations to tender is updated regularly and provided free of charge via an e-mail service.**

## 1.1.2 Obligation to Issue an Invitation to Tender

The applicable Danish regulations on invitations to tender obliges the state, municipalities, and other entities governed by public law to issue a public invitation to tender for contracts involving a total volume of € 67,000 and above. For construction activities, the threshold for this obligation to invite to tender is € 5,350,000. Contracts for services and purchases of goods placed by public entities with a total volume of or above € 139,000 and contracts for services and purchases of goods placed by municipal entities with a volume of € 214,000 or above also have to be advertised throughout the EU. The invitation to tender documents has to state the criteria according to which the bidder will be chosen, i.e., whether the tender will be awarded to the least expensive or the most suitable bid.



### 1.1.3 Requirements of the Bid

The relevant requirements have to be observed when submitting a bid. The authority issuing the invitation to tender must refuse bids that do not meet the requirements set out in the documents of the invitation to tender. The requirements regarding the precision of a bid are strict. If the bidder has to provide evidence of the quality of its performance and provides such evidence in a manner diverging from the requirements established by the authority awarding the tender, then that authority must disqualify the bidder.

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

#### **PRACTICAL TIP**

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



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

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

It is, therefore, recommendable to examine the potentially breached procurement regulations carefully before filing a complaint and to set out arguments in detail in the written complaint. Complaints should be worded in the manner of a statement of a claim in court proceedings and it is important to state the facts and submissions in detail. It is advisable to consult a lawyer when preparing a complaint. Where a contract has been awarded based on a breach of procurement regulations, unsuccessful bidders can claim damages. However, the enforcement of damages claims often fails because unsuccessful bidders fail to present sufficient evidence of the loss incurred. In cases, where contracts are awarded on the basis of a breach of procurement regulations, and the breach is a breach of fundamental procurement rules, the Bo-

ard may declare contracts already concluded null and void so that the invitation to tender must be re-issued.

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

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

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

### **PRACTICAL TIP**

**During the so-called “stand-still” period of 10 or 15 days a complaint filed to the Complaints Board for Public Procurement (“Klagenævnet for udbud”) can prevent a contract from being finally awarded to the preferred bidder.**

## 1.2 CONSTRUCTION CONTRACTS

Danish law does not contain provisions on construction and engineering contracts. Construction law is primarily based on – un-written – general principles of law as expressed in published arbitral practice. If the parties fail to decide on the choice of law, Danish law will apply for construction in Denmark. In practice, the majority of construction contracts in Denmark are governed by the standard terms for engineering and construction works – called the AB-system. Currently, these comprise of ABR 18, AB 18,

and ABT 18 which replaced ABR 89, AB 92 and ABT 93 as of 1 January 2019.

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

### PRACTICAL TIP

**The vast majority of construction projects in Denmark are governed by the standard terms called AB. It is recommended to obtain expert legal advice to understand the particulars thereof.**

**An English version of the AB 18 terms will be available with the Danish Construction Association at <https://www.danskindustri.dk/>**

### 1.2.1 The AB system

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

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

## FURTHER INFORMATION

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

### 1.2.2 Providing Security

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

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

amounting to the average amount of three monthly construction payments and at least 10% of the contract sum. While international contractors might have experienced similar security systems, the Danish system entails a dispute resolution method, which allows either party to challenge the other party’s call on the guarantee (or use of other security).

Further, AB performance bonds do generally not have fixed expiration dates, which often causes trouble for international banks.

## PRACTICAL TIP

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

### 1.2.3 Payments

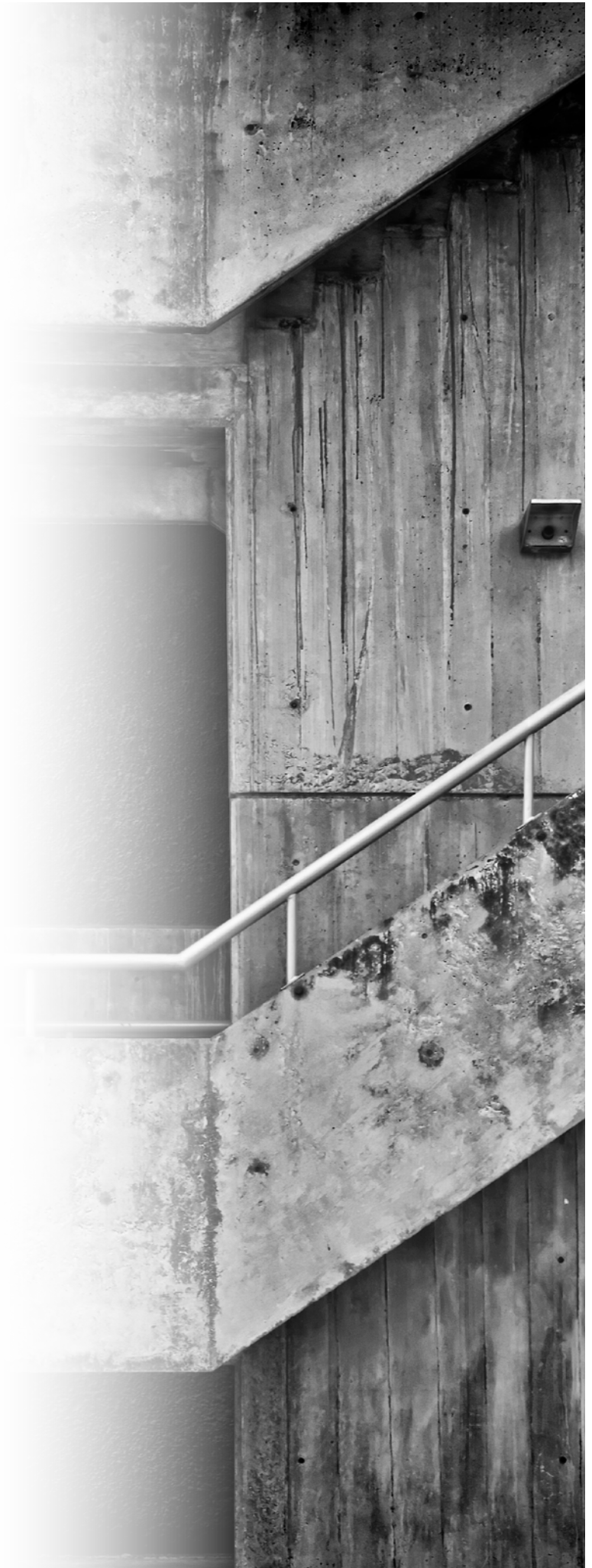
The default rule under the AB-system (from 2019) is bi-monthly payments based on progress. No advance payment takes place, though there is an option for claiming such payment for order-

ing materials and against additional security.

The provisions concerning payment are often modified by employers.

## 1.2.4 The Right to Stop Work if Payment is not Effected

The contractor is entitled to stop construction work if due payments are not paid with a prior written notice of 3 working days for private employers and 5 for public employers. The discontinuation of work always entails the risk that the contractor will be considered in willful default of the contract, leaving the contractor liable without limitation to the employer.





## 1.2.5 Extension of Time

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

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

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

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

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

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

## 1.2.6 Liquidated Damages

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

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

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

Strict notice requirements apply in relation to liquidated damages and additional requirements apply to liquidated damages for exceeding interim deadlines.

Caps on liquidated damages are rarely below 10% of the contract sum.

## 1.2.7 Handing-over

Immediately before completion, the contractor has to send a completion notice to the employer, indicating the exact date of completion. The employer shall then convene a meeting for formal acceptance within 10 days of completion. Failure to issue an invitation to a meeting for formal acceptance means that the construction project will be deemed accepted on that date. The handing-over date is not the date

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

## 1.2.8 Defects and damage

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

Defects and product liability are separate issues governed by separate rules though the remedial works required are often overlapping leaving substantial grey areas. Defects established must be

ascertained at handing-over, at which time a period for rectification shall be set. If the defects are not rectified within this period, the employer is generally entitled to have a third party undertake the rectification work.

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

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

## 1.3 CONSTRUCTION DISPUTES

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

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

First, the project managers should try to settle the dispute within five days. Afterwards, the representatives of the company management also have five days to settle the dispute. If this does not settle the case, the dispute must be submit-

ted to mediation. Only when this has failed may the parties submit the dispute to arbitration.

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

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



## FURTHER INFORMATION

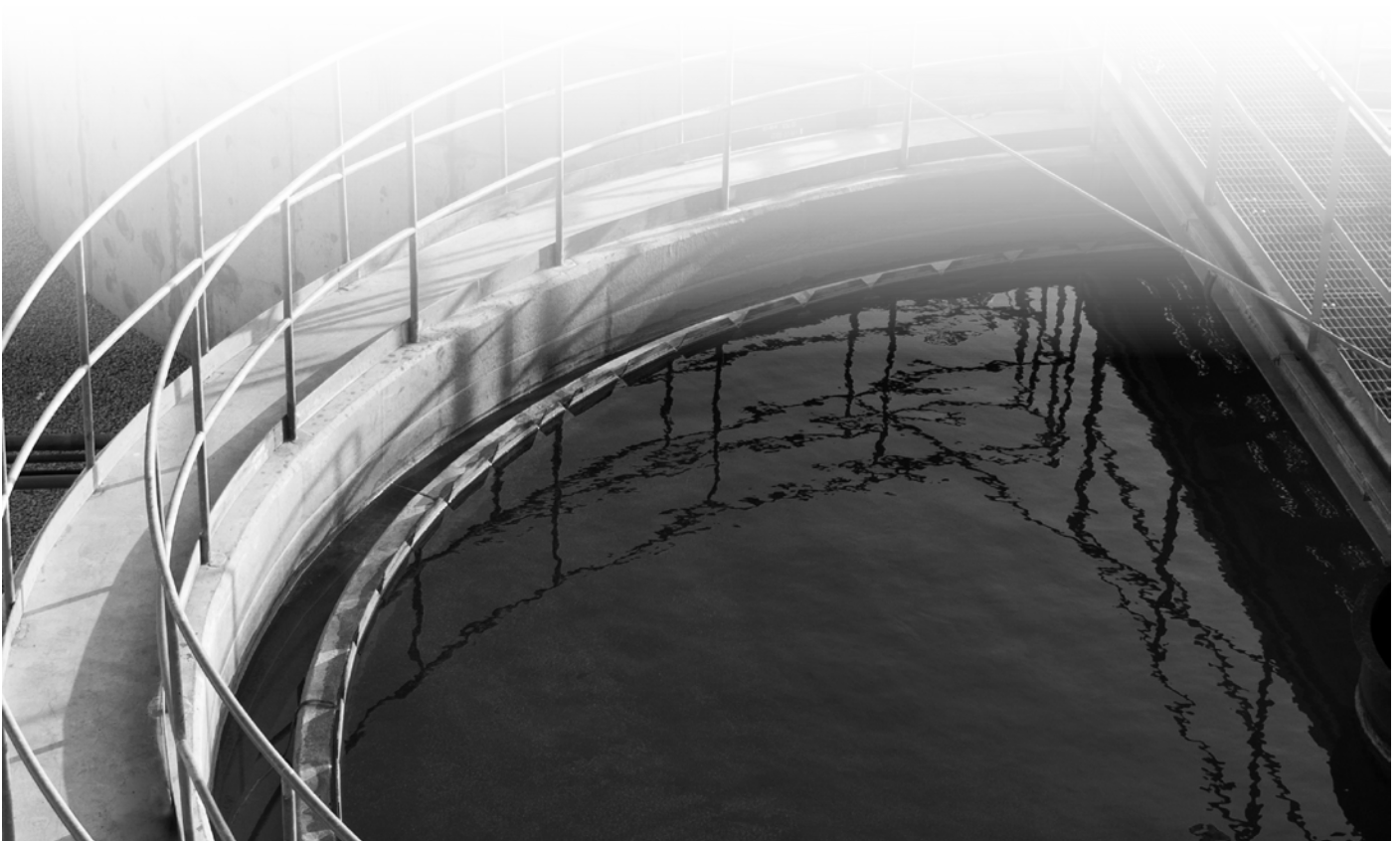
See the website of the Danish Building and Construction Arbitration Board [voldgift.dk](http://voldgift.dk)

### 1.4 SECURING EVIDENCE IN DANISH CONSTRUCTION DISPUTES

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

and generally requires that the parties obtain local legal advice.

It must be noted that evidence obtained by other means than through an expert survey may be disregarded, when an expert inspection and survey could have been performed.



# 2

## ESTABLISHMENT IN DENMARK

Participation in construction work in Denmark will – as the main rule – constitute a permanent establishment with corporate tax liability and registration requirements.

For this reason, it will be necessary to choose a corporate form when the business activity constitutes a permanent establishment. Here, the choice of corporate form will be highly dependent on

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

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



## 2.1 PERMANENT ESTABLISHMENT

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

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

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

### Subcontracts:

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

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

### Exceptions:

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

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

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

### 2.1.1 Choice of corporate form

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

1. A branch (permanent establishment); or
2. A limited company

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

### **Branch vs. limited company:**

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

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

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

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

**2. Liability:** For a branch office, the head office – being the foreign company – is fully liable for the obligations of the branch. The liability for a company (A/S or ApS) is limited to the value of shares subscribed, which can be either DKK 40,000 (ApS) or DKK 400,000 (A/S). Although participating in construction projects often requires issuing of guarantees, such guarantees are often limited to certain amounts and to certain parties. Accordingly, the limitation of liability in a company will be effective towards all other creditors in relation to the project.

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

### **PRACTICAL TIP**

**A limited company is easy to establish from day to day and no local management is required.**

**Establishing a limited company in Denmark is both cost- and tax efficient compared to the establishment of a branch.**

## Joint venture

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

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

1. General partnership (interessentskab - I/S): A general partnership is transparent for Danish tax purposes. The foreign entity will be deemed to participate through a permanent establishment (branch) as described above. The participants of the joint venture will be jointly and severally liable for all obligations of the joint venture.

2. Limited partnership (partnerselskab - P/S or kommanditselskab - K/S): A limited partnership is transparent for tax purposes the same way as a general partnership. However, the participants are only liable up to an agreed amount equivalent to their share of the limited partnership.

3. A company (A/S or ApS): If the joint venture is structured as a company, no double taxation occurs, as the company is a separate tax entity. The liability of the participants is limited to their shares in the company.



## 2.1.2 RUT-Register

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

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

In addition to the registration of the foreign enterprise, the individual employees employed by the enterprise for the work to be performed in Denmark also have to be entered by name in the RUT-Register. In case of failure to register in the RUT-Register, a fine of a minimum of DKK 10,000 (€ 1,350) and daily coercive fines of DKK 1,500 (€ 200) may be imposed. The RUT-Register is publicly accessible and is used by the Danish unions as a “checklist” for foreign

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

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

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

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

### PRACTICAL TIP

Registration in the RUT-Register can only be done online at [virk.dk](http://virk.dk)

## 2.2 CORPORATE TAX

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

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

Inter-company transactions and ascertaining revenue within a gro-

up with a permanent establishment or a company in Denmark is obliged to follow the Danish transfer pricing rules. In Denmark, the transfer pricing regulation in accordance with the OECD-guidelines. Small and medium-sized enterprises are exempt from documentation requirements, but not from applying the arm's length principle. If the taxpayer is considered a "large group", meaning that the group on a consolidated basis has (i) more than 250 employees and (ii) as-sets of more than DKK 156 million (approximately € 21 million) or a turnover of more than DKK 313 million (approximately € 42.1 million) full transfer pricing documentation is required.

## 2.3 HIRING-OUT OF LABOUR TAXATION

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

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

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

However, the employee will in such cases be subject to the Danish hiring-out of labour tax if working in Denmark for up to 6 months. This will imply that the customer must withhold the hiring-out of labour tax at the amount of 30 %





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

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

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

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

## 2.4 VAT

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

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

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

The “reverse charge” provision does not apply if the foreign enterprise performs other activities in Denmark that are subject to VAT, i.e. sells to private individuals. In practice, the “reverse charge” provision means that the invoice for work in Denmark has to be issued by the foreign construction enterprise without Danish VAT. In return, the VAT ID No. (in Danish: “momsnummer”) of the Danish principal has to be indicated on the invoice. The invoice also has to contain the statement: “The sale is subject to reverse charge. The recipient is liable for the VAT”.

## 2.5 SAFETY ON CONSTRUCTION SITES IN DENMARK

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

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

### PRACTICAL TIP

**The Council on Safety at Work in the Construction Industry (in Danish: “Branchearbejdsmiljørådet for Bygge & Anlæg”), in cooperation with the Danish Working Environment Authority (in Danish: “Arbejdstilsynet”), has prepared an English-language manual on safety at work in the construction industry which is available free of charge at [haandbogen.info](http://haandbogen.info)**

**Further information in English can be obtained at [safe-construction.dk](http://safe-construction.dk)**



## 2.5.1 Permits Required by Enterprises and Individuals

In principle, there is freedom of trade in Denmark. However, in skilled trades, special permits apply to the performance of electrical, sanitary, and gas installation work. A permit for the performance of such work must be obtained from the Danish Safety Technology Authority (In Danish: "Sikkerhedsstyrelsen").

A certificate of good conduct has to be provided in addition to proof of a certified quality management system (e.g. ISO certification). Work involving safety considerations may only be carried out following the presentation of proof

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

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

### PRACTICAL TIPS

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



## 2.5.2 Safety on Construction Sites

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

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

### PRACTICAL TIP

**The website of the Working Environment Authority (“Arbejdstilsynet”) offers several brochures in English, German, Polish, and Lithuanian concerning safety on construction sites: [amid.dk](http://amid.dk)**

## 2.5.3 Insurance Against Accidents at Work

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

for example, are as follows:

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

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

# 3

## MOTOR VEHICLES IN DENMARK

Viewed from the international perspective, the taxes for registering a motor vehicle in Denmark are very high (up to 150 % of the value of the vehicle). Strict laws ensure that the taxes are actually paid. As a rule, in order to use a motor vehicle in Denmark the vehicle must be registered in the Danish Register for Motor Vehicles (“Motorregistret”) and a permit for its

use must be issued. A person residing in Denmark must obtain a permit for the use of his or her vehicle within 14 days of having imported it into the country. The regulations are complicated and in the majority of cases, the substantial Danish registration tax has to be paid. For cash flow reasons leasing is often more cost-efficient.







## 3.1 REGISTRATION OBLIGATIONS AND TAXES

### 3.1.1 Passenger Cars as Company Cars

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

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

A person who is entered into the Danish Civil Registration System (in Danish: “Det Centrale Personregister”), and who therefore has a Danish personal ID number (in Danish: “CPR-nummer”), has his or her place of residence in Denmark based on the entry in the Civil Registration System alone. A person who is not entered into the Danish Civil Registration System will nevertheless be considered a resident in Denmark if he or she has spent at least 185 days in Denmark during the last 12 months. Consequently, the vast majority of company cars made available to employees who are resident in Denmark are subject to the Danish registration charges.

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

### 3.1.2 Commercial Vehicles with “Yellow Number Plates”

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

The registration tax for vans with yellow number plates amounts to 50 % of the value of full registration tax in excess of DKK 62,500 (approx. € 8,350).

For vans with a total weight of more than 2.5 tonnes the registration charge is 30 % of the full registration tax in excess of DKK 38.200 (approx. € 5,150), if:

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

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

### 3.1.3 "Special Vehicles"

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

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

### 3.1.4 Use of Leased Motor Vehicles

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

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

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

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

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

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

### 3.1.5 Liability and Penalties

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

tion to the registration tax. Furthermore, the vehicle can be impounded.

It is evident that the failure to comply with the regulations leads to harsh penalties.

## 3.2 REGISTRATION PROCEDURE

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

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

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

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

### 3.2.1 Registration Charge for New and Used Motor Vehicles

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

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

### 3.2.2 Calculation of the tax

Generally, the registration tax amounts to 105 % of the value of the motor vehicle up to the amount of DKK 202.000 (approx. € 27,100) and 150 % of the amount exceeding that amount. When calculating the value, deductions can be made for safety equipment etc.

Furthermore, the registration tax for motor vehicles with low fuel consumption is deducted. The registration charge will be deducted with DKK 4,000 (approx. € 550) for every km exceeding 20 km/l petrol (22 km/l for diesel).

### 3.2.3 Quarterly Payment in case of Temporary Stay in Denmark

On request, the Tax Office may permit quarterly payment of the registration charge for motor vehicles registered in Denmark for a limited period. The pre-requisite for this is that the motor vehicle is owned by a foreigner and is used by that person solely during a temporary stay in Denmark. Together with payment of the first quarterly instalment, a deposit in the amount of one quarterly instalment also has to be paid.

The registration tax is determined based on the value of the motor vehicle for which the tax is payable. Depending on the age of the motor vehicle, 2% (0-3 months), 1% (3-36 months) or 0.5% (36+ months) of the total registration charge is payable each month. The obligation to register a motor vehicle ends as soon as the temporary stay in Denmark ends; the Tax Office will return the deposit and reimburse any excess amounts paid.

## 3.3 OBLIGATION TO MARK VEHICLES TRANSPORTING GOODS

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

This also applies to leased motor vehicles.

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





# 4

## WORKING ENVIRONMENT IN DENMARK

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

## 4.1 DANISH LABOUR MARKET

### 4.1.1 Flexicurity - the “Danish Model”

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

In Denmark, the unions thus accept a “hire and fire” concept since this creates a flexible labour market with better employment opportunities.

There is no legislation on protection against dismissal in Denmark, but certain laws provide a right to compensation in case of unfair dismissal, for example anti-discrimination laws and, for white-collar employees, the Danish Salaried Employees Act.

As described, the “Danish Model” also consist of the labour market parties entering collective bargaining agreements for a specific field of work. The “Danish Model” can only function if the parties to collective bargaining agreements negotiate reasonable working conditions within the context of collective agreements and monitor those conditions. One of the purposes of this model is to provide stability, which is created when the unions negotiate the working conditions as an alternative to statutory legislation, since the labour regulation will then be independent of changing governments. Hence, the unions are sceptical towards working conditions that are not agreed upon by parties to collective agreements in Denmark



## 4.1.2 Unions and Employers' Associations

In principle, neither the employer nor the employee is under an obligation to join an employers' association or a union respectively. Hence, the terms of employment can be freely negotiated. However, parties to collective agreements, especially the unions, have an interest in achieving a high degree of organisation. Employers can either join one of the employers' associations – thus being directly covered by the terms of collective agreements – or may enter into their own “company agreements

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

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

### PRACTICAL TIP

The website of DI Dansk Byggeri, <https://www.danskindustri.dk/brancher/di-dansk-byggeri/the-danish-construction-association/> contains further information in English about membership of the employers' association.

## 4.1.3 Various Categories of Employee

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

Blue-collar workers (“workers”) are typically characterised by working with practical work, e.g. physical work related to the construction industry. The definition of white-collar employees (“employees”) is directly defined in the legislation, according to which office/sales workers and employees who supervise and issue instructions to other employees fall within the ambit of the legislation.

Due to the flexicurity model, workers are only covered by a few Danish laws. Instead, detailed collective agreements typically apply to blue-collar workers.

Employees are governed by the Danish Act on Salaried Employees (in Danish: “Funktionærloven”), and insofar as agreed by the provisions of a collective agreement. The Salaried Employees Act is the most important legal instrument in labour and employment law for employees, and most provisions are mandatory to follow when hiring employees.

## FURTHER INFORMATION

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

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

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

### 4.1.4 Employee Representation and Works Council

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

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

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

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



## 4.2 WORKERS (BLUE-COLLAR)

### 4.2.1 Applicable Law

The applicable law is firstly dependent on the type of employment, in particular, whether the worker is seconded or is locally employed. Seconded employees are usually governed by the law applicable to their original contract however depending on the duration of the secondment, and unless otherwise agreed in a secondment agreement. However, if the worker subsequently works permanently in Denmark, Danish law will then

govern the employment. According to EU law, an employee may not be placed in a worse position than under the mandatory provisions in force in the country where he or she usually performs the work, but there are hardly any mandatory Danish provisions governing workers. The unions in Denmark, thus, attempt to enforce their local collective agreements to the best possible extent for all workers engaged in Denmark.

### 4.2.2 Recruitment Procedure

A criminal record certificate (in Danish: "straffeattest") lists all offences under the Danish Criminal Code for a period of 5 years. This can be required at the time of recruitment if considered objective and necessary in relation to the specific position, e.g., applicants for a position of trust.

When conducting employment interviews, there are certain questions and topics which are not permitted, for example:

- Pregnancy (and relevant plans)
- Number of days taken off sick
- Religious beliefs and sexual orientation, political views

### 4.2.3 Employment Contract

Under Danish law, it is a requirement that all workers employed for 30 days and for more than 8 hours per week on average are provided with a written employment contract. Due to the special nature of the Danish labour law system, most employment conditions for workers are not regulated by law but in the collective agreements in force.

Whether such collective agreements must be observed, depends on whether the employer is a party to such collective agreements. Collective agreements may contain special rules on the conclusion of employment contracts, such as relevant contract templates that can be used.

#### 4.2.4 Working Hours

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

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

#### 4.2.5 Remuneration

There is no minimum wage determined by law in Denmark. However, collective agreements often specify a certain minimum salary. Detailed provisions on wages and salaries are usually set out in the

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

#### **FURTHER INFORMATION**

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

## 4.2.6 Vacation

According to the Holiday Act, a worker accrues 2.08 days of holiday for each month of employment. The accrued holidays can be taken from the next month. This corresponds to 25 holidays per holiday year.

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

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

The workers accrue holiday from 1 September to 31 August (12 months) which can be taken during the same period from 1 September to 31 December (16 months) - also called the holiday period.

The holiday can be placed by the employer with a notice of 3 months before the main holiday (15 days) and a notice of 1 month before the remaining holiday (10 days).

A worker may carry holidays in excess of 20 days forward into the next holiday year. However, this is subject to a written agreement with the employer entered into by 31 December. Collective agreements may contain divergent provisions

Most collective agreements entitle the workers to 5 additional holidays (in Danish: "Feriefridage"), so the total number of holidays is 30. However, if the employment is not covered by any collective agreement, the question of additional holidays is a negotiable term in the contract. Though not a requirement under Danish law to grant these 5 additional holidays, it is a usual market standard in the private labour market.

Normally, holiday pay is disbursed from FerieKonto when the holiday is taken. In certain situations, the holiday pay can be disbursed without the holiday having been taken, for example if the worker leaves the Danish labour market to return to his or her home country.

### FURTHER INFORMATION

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

[karnovgroup.dk](http://karnovgroup.dk)



## 4.2.7 Maternity and Paternity Leave

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

The employer must be notified at least 3 months before the expected date of birth as to how the expectant mother intends to take her pregnancy and maternity leave. No later than 8 weeks after the birth, the mother must inform her employer about the planned

length of her maternity and parental leave.

The father is entitled to take two weeks of paternity leave during the first 14 weeks after the birth of the child and is also entitled to take at least 32 weeks of parental leave. He must inform his employer at least 4 weeks prior to the paternity leave and no later than 8 weeks after the birth, he must inform about any planned parental leave.

The above-mentioned regulations apply to the right to absence from work. The question of payment during the absence, if any, is governed by the relevant collective agreement in force.

## 4.2.8 Termination of Employment Relationships

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

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

According to a typical collective agreement in the construction industry, workers who have been

with the company for less than 6 months can be dismissed with immediate effect.

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

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



## 4.2.9 Mass Redundancies

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

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

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

The regulation on mass redundancies in Denmark is less restrictive than in other countries. Where “mass redundancies” are planned, the only requirement for the employer is to initiate and hold negotiations with different parties, but

there is no requirement of consent from these parties.

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

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

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

### FURTHER INFORMATION

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

## 4.3 EMPLOYEES (WHITE-COLLAR)

Denmark has the most flexible hiring and firing legislation in the EU. The following section explains the basic legal status of white-collar employees on the Danish

labour market. Contrary to the legal status of workers, the rights of employees are largely governed by statutory provisions and not collective agreements.

### 4.3.1 Applicable Law

Firstly, the applicable law depends on the type of employment, in particular whether the worker is seconded or locally employed. Seconded employees are usually governed by the law applicable to their original contract, however depending on the duration of the secondment, and unless otherwise agreed in a secondment agreement. However, if the employee subsequently works permanently in Denmark, Danish law will then

govern the employment

According to EU law, an employee may not be placed in a position that is worse than under the mandatory provisions in force in the country where he usually performs the work, meaning that even though it is agreed that the secondment is governed by the rules of the original contract, the employee is still entitled to the mandatory provisions in Danish law.



### 4.3.2 Recruitment Procedure

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

### 4.3.3 Employment Contract

According to Danish law, it is a requirement that all employees employed for 30 days and for more than 88 hours per week on average are provided with a written employment contract. It is not a legal requirement to provide a bilingual employment contract.

However, where employment contracts are only drawn up in one language, the risk is that at least one of the parties may not fully understand parts of the agreement at the time of signing. This is not the best basis for a good employment relationship.

Therefore, it is necessary to consider if the employee understands English, and if so, the contract can be provided only in this language. If the employment contract is bilingual, it should be stated clearly which language is to prevail in case of doubt.

According to Danish Act on Proof of Employment conditions (“Ansettelsesbevisloven”), the employer must inform the employee in writing about the terms of his or her employment relationship.

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

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

If the employer fails to issue a satisfactory letter of employment, the employee may claim compensation of between € 130 and up to € 3,300, depending on the nature and consequence of the fault.

#### 4.3.4 Working Hours

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

Besides this legislative requirement, the weekly working hours are usually regulated in more detail

in the employee's employment contract. Usual working time in Denmark is 37 hours per week for white-collar employees, and it is common to agree that any overtime is not compensated.

#### **FURTHER INFORMATION**

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

#### 4.3.5 Remuneration

Where the employment relationship is not governed by a collective agreement - which is often the case for employees - the salary is subject to negotiation between the parties.

There is no statutory minimum wage. The salary must, however, be considered "reasonable" when compared to hours worked and differences in sa-

lary levels between employees must not be discriminatory, e.g., if a female employee is paid less than a male employee with the same qualifications.

The parties must agree on whether overtime is additionally compensated or included in the agreed salary.

### 4.3.6 Vacation

According to the Holiday Act, an employee accrues 2.08 days of paid holiday for each month of employment, which can be taken from the following month. As an example, holidays accrued in February (2.08 holidays) can already be taken in March. This corresponds to 25 days of holiday per year. The employer must pay the usual salary during the accrued holidays.

The employee accrues holidays from 1 September to 31 August (12 months), which can be taken during the same period from 1 September to 31 December (16 months) – also called “the holiday period”. Thus, the period of accruing holiday and taking holiday, respectively, extends over the same months, but the period, where the employee can take the holiday is 4 months longer.

Most collective agreements entitle the employee to 5 additional holidays (in Danish: “Feriefridage”), so the total number of holidays is 30.

However, if the employment is not covered by any collective agreement, the question of additional holidays is a negotiable term in the contract. Though it is not a requirement under Danish law to grant these 5 additional holidays, it is a usual market standard in the private labour market.

Upon an employee’s resignation/termination, the employer must pay accrued, but not taken holidays into a so-called holiday account (“Feriekonto”), for the employee to use in his/her new employment relationship. The payment amounts to 12.5 % of the salary during the time of accrual of the holidays. The general rule is that holidays must be taken and not paid out, but in certain situations, the holiday pay can be disbursed without the holiday having been taken, for example if, the employee leaves the Danish labour market to return to his or her home country.

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

### 4.3.7 Sickness and Maternity Leave

Sickness is a valid reason to be absent from work and employees are entitled to their full salary during sickness.

The rights to absence due to childbirth correspond to those described in 4.2.7.

A newborn mother is entitled to continued salary corresponding to half of her salary during pregnancy and maternity leave (18 weeks total) according to the legislation governing white-collar employees.

### 4.3.8 Termination

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

Employees may terminate their employment contracts with one month's notice, irrespective of their length of service with the company. The contracting parties may agree on a trial period of up to 3 months during which the employment relationship may be terminated by either side subject to observance of 14 days' notice. According to the Danish Salaried Employees Act, it is a requirement after one year of service with the company that the employer's termination of the employment relationship must be considered fair. A fair reason for termination can be present if, e.g., the employee does not perform as expected or if the employer is terminating the employment due to restructuring or scale down. Scale down and restructuring will most often be considered a fair reason for termination, whereas terminations based on the employee's behaviour are more often challenged. An employee who has been dismissed unfairly may file claim for a compensation of a maximum of 6 months' salary, depending on seniority.

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

On the contrary, it is illegal to use this principle as the only criteria, when determining which employees to terminate.

When an employment relationship with a company has lasted 12 or 17 years, the employee has a mandatory claim for severance pay amounting to 1 or 3 monthly salaries respectively in case of dismissal.

Protection against dismissal is also present in the Act on Equal Treatment (in Danish: "ligebehandlingsloven"). An employee who is dismissed, while pregnant or on leave of absence due to childbirth can claim significant compensation from the employer if the employer is unable to prove that the dismissal is not connected to the employee's pregnancy/absence.

Special protection also applies to employee representatives (in Danish: "tillidsrepræsentanter"), safety officers (in Danish: "sikkerhedsrepræsentanter") and other anti-discrimination legislation provides protection against unfair dismissal of disabled employees, dismissal due to age, nationality, religious beliefs etc. It is possible to dismiss an employee with immediate effect in case of gross misconduct.

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

## FURTHER INFORMATION

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

### 4.3.9 Mass Redundancies

The comments made in [section 4.2.9](#) above with reference to workers also apply to the dismissal of

large groups of employees. No distinction is made in this respect between workers and employees.







## 4.4 COURTS WITH JURISDICTION FOR LABOUR DISPUTES IN DENMARK

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

### Action Brought by Employee

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

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

### Action Brought by Employer

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

### Agreement on Place of Jurisdiction

An agreement on a different place of jurisdiction to those described above is only possible if the agree-

ment is concluded after the dispute arises.

### FURTHER INFORMATION

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

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

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

## 4.5. RESIDENCE PERMIT AND WORK PERMIT IN DENMARK

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

ended to 6 months. If the EU employees are staying in Denmark for more than 3 months, the employee shall apply for proof of registration (in Danish: “registningsbevis”) with the Danish authorities.

### PRACTICAL TIP

The form for obtaining proof of registration can be obtained online at: <https://www.nyidanmark.dk>

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

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

## 4.6 SOCIAL SECURITY CONTRIBUTIONS

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

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

## 4.6.1 Applicable Law

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

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

apply for relief of this social security at home if applicable.

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

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

### **FURTHER INFORMATION**

**The exact provisions are set out in EU Regulations Nos. (EC) 83/2004 and 987/2009 on the coordination of social security systems.**

## 4.6.2 Pension Schemes

### Pension Schemes Under Collective Agreements

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

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

Where an employee moves to a new job, he or she is often then governed by a different collective agreement and therefore has to move to a different pension scheme. It is possible to switch schemes, but as a rule, fees are charged. A seconded employee who falls within the ambit of a Danish pension scheme under a collective ag-

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

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

#### FURTHER INFORMATION

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

### Private Retirement Benefits Insurance

The Danish state also subsidises private retirement benefits insurance schemes by permitting contributions paid to be deducted for

tax purposes. These pensions are also taxed as income upon disbursement at a later point in time.



## 4.7 DANISH TAX SYSTEM FOR EMPLOYEES

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

### 4.7.1 Tax Liability for Individuals

The tax liability for employees will first of all depend on whether or not the salary is paid for the work performed in Denmark (the salary) and can also depend on the amount of time spent in Denmark. If the employee's country of origin does not have a double taxation agreement with Denmark, the employee will either be fully or limited liable to taxation in Denmark, depending on the amount of time the employee is in Denmark.



## Time spent in Denmark

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

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

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

## Salary paid by Danish Subsidiary or Permanent Establishment in Denmark

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

### Hired-out employees

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

Expat tax is a special tax scheme, under which certain highly-paid employees (and researchers) can choose to pay tax accordingly instead of paying tax under the regular income taxation scheme. The tax rate under the expat tax is 27%, and adding the mandatory labour market contribution; the tax rate is a total of 32.84% tax, which is a very favourable taxation rate. In order to be eligible under the expat tax scheme, the employee is required to earn a salary of at least DKK 69,600 per month (in 2021). This amount is calculated as the salary before deduction of social security contributions, but after the deduction of labour market supplementary pension fund (“ATP”) contributions, and the amount also includes the value of any fringe benefits and employer-funded health care services, etc. If the salary, including fringe benefits etc. exceeds this amount, it is possible for the employer to reduce the gross salary without it affecting the employee’s net salary. The expat tax can be applied for a period of up to 60 months.

## 4.7.2 Personal Taxation in Denmark

The taxation systems in the majority of EU member states and Denmark are different in that the social security systems in Denmark – with the above-mentioned exceptions – are financed almost exclusively by taxes. By contrast, in most other EU member states, significant social security contributions are payable in addition to taxes. For this reason, the tax burden in Denmark initially appears to be considerably higher than in the majority of EU member states. However, where the taxes, the social security contributions and VAT are viewed in their entirety, the difference between the net incomes of average employees in the countries is much less significant.

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

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

Every person has a basic tax-free amount of DKK 46,700 (2021) that is adjusted annually. Income exceeding this is taxed with a gross tax of 8% where after the remaining amount on average is taxed with 35% unless the total income amounts to more than DKK 544.800. In said case, the amount exceeding DKK 544.800 will be subject to an additional tax of 15 %. However,

in any case, taxes may not exceed 52.06% of a person's total income. Deductions are costs/amounts that can be deducted from the salary prior to taxation.

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

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

Tax returns have to be filed by 30 April of the year following the tax year. Normally, an electronic version of the tax return is made avail-



able by February/March, which has to be examined by the taxpayer in order to make any amendments. Failure to file tax returns is punishable by a fine of up to DKK 5,000

(€ 670). Every citizen can access his or her electronic tax record at the Danish Tax Agency and can modify his or her tax card and tax return online.

### **PRACTICAL TIP**

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





## 4.8 PUBLIC HOLIDAYS IN DENMARK

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

The following days are public holidays in Denmark:

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

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

## NJORD LAW FIRM

NJORD Law Firm is a leading law firm with a strong presence in the Nordic and the Baltic Sea Area. We provide legal services within all areas of corporate and commercial law with an emphasis on international transactions. The firm is placed in the top category of Danish legal advisers by independent observers and is acknowledged as a cutting-edge practice within a number of practice areas. NJORD Law Firm was granted the International Law Office's prestigious prize the Client Choice Award in 2010 and 2011.

The firm's offices in Denmark are situated in central Copenhagen and Aarhus. The firm also has offices in Tallinn (Estonia), Vilnius (Lithuania), and Riga (Latvia). NJORD Law Firm is one of the few Danish law firms committed to the development of business in the Nordic and the Baltic region, which is one of the more dynamic growth areas in Europe.

An increase in international cooperation and the pace of technical developments result in new industries. The ever-changing demands of the business world present a challenge to businesses. Changes may create opportunities, but may also increase uncertainty about the laws and regulations applicable to that business.

Legal advisers play a crucial part in identifying issues and assisting their clients in making efficient use of new opportunities. NJORD Law Firm takes pride in developing new, more efficient ways to deliver high quality legal and commercial advice to its clients within all practice areas significant to the relevant business.

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