

ONE-MINUTE GUIDE TO DANISH LAW

Danish law – overview

Danish and Nordic law share several common denominators with continental European legal systems. Nevertheless, the legal systems of the Nordic countries have evolved with their own distinctiveness. Danish law has many common law traits. The Nordic countries are, however, significantly different from Common Law countries. It is commonly held that – despite strong ties to continental legal systems – Denmark and its fellow Nordic countries make up a legal family of their own.

The Parliament – passing legislation

The Parliament (“Folketinget”) sits in a single chamber. It consists of 179 elected members, two of whom are elected from the Faroe Islands, and two from Greenland. Parliamentary elections are held every four years, unless an election is called earlier. Legislative bills must be presented and accepted three times in the same Parliamentary year.

Sources of law

Major sources of law in Denmark include the *Constitutional Act*, *statutory legislation*, *regulatory statutes*, *precedent*, and *customary law*. The recognition of *tradition of culture* (“forholdets natur”) is somewhat disputed, though it does bear significantly on Danish law in a variety of contexts. In addition, *Statements of the Parliamentary Ombudsman* are of particular relevance in the area of administrative law.

Statutory legislation has primacy over other written legal sources, save for the Constitutional Act. Under the authority of the Constitutional Act, European Community commitments, or national statutory laws, the administration may issue regulations, typically in the form of “*bekendtgørelser*”, “*cirkulærer*”, and “*vejledninger*”.

Danish law is characterized by extensive bodies of systematic and written law. Private law is dominated by a range of individual statutory acts and, in some areas, by unwritten law guided mainly by precedent and custom.

Generally, criminal law is governed by the Criminal Code, and administrative law is governed by two general statutory acts of public administration (“*Forvaltningsloven*” and “*Offentlighedsloven*”) and a complex body of substantive, sector-specific statutory acts.

Danish law in relation to the EU

Since Denmark joined the European Community, which transformed into the European Union, its legal system has been influenced significantly by European Community law. A large proportion of Danish statutes and regulations are the result of obligations to the European Union.

Denmark has been a member of the European Community since 1973. Because of the Edinburgh agreement, Denmark has four opt-outs to the Maastricht Treaty. First, Denmark does not participate in European Union citizenship (this provision has been incorporated into the Amsterdam Treaty). Second, Denmark does not participate in the European economic and monetary union. Third, Denmark does not take part in supranational decisions and actions in the area of common defense. Fourth, Denmark does not take part in supranational cooperation in the area of justice and home affairs.

Dispute resolution

The Danish court system is based on the so-called two-tier principle, which means that the parties to a case generally have the option of appealing the ruling of one court to a higher instance. The higher court can then either reach the same conclusion (uphold the ruling) or change the ruling.

Outside the ordinary courts, arbitration is common especially within the area of construction law.

District courts:

Most cases begin at district court level with the option of appealing to one of the high courts. There are 24 district courts in Denmark. As a rule, all court cases start in one of the district courts. In special cases, the district court can refer a civil case to the high court if the case has to do with principles of general interest. The enforcement courts and the probate courts are divisions under the district courts.

Court cases can generally be divided into civil cases and criminal cases.

The High Courts:

The high courts are the instances of appeal for the district courts. In most cases, a district court ruling can be appealed to one of the two high courts of Denmark: the Western High Court in Viborg, which handles cases from Jutland, or the Eastern High Court in Copenhagen, which takes on cases from the rest of the country. High court cases are normally heard by three judges. In criminal cases, lay judges may also be involved.

The Maritime and Commercial High Court:

The Maritime and Commercial High Court in Copenhagen is a special court that only handles certain types of cases. The court is divided into two divisions: the legal division and the probate division. The legal division deals with international commercial cases, competition cases and cases about patents, designs or trademarks.

The Supreme Court:

The highest instance in the Danish legal system is the Supreme Court. Located in Copenhagen, it is a court of appeal dealing with rulings by the high courts and precedent-setting cases from the Maritime and Commercial High Court. Supreme Court cases are heard by at least five judges.

The Land Registration Court:

The Land Registration Court is located in Hobro, but in practice all registration of property has been digital since 2009. In Denmark, registration of property involves the registering of all rights to real property and other assets.

Contracts

Danish law is built on a general principle of freedom of contracts; however, the legal system contains a wide range of rules protecting the commercial environment, especially in terms of consumer protection.

IPR

The Danish IPR regulation is primarily based on EU legislation and international conventions and is subject to detailed statutory regulation. The purpose of the regulation is the protection of rights to various types of intellectual property such as science, literature, art etc.

Marketing practice

In Denmark, there are regulations and restrictions regarding marketing of products. All marketing shall be performed pursuant to good marketing practice. In essence, marketing may not be deceptive, aggressive, or otherwise improper. There are specific restrictions for the sale and marketing of certain products, such as alcohol, tobacco, gambling, pharmaceuticals and financial products. There are regulatory authorities and sanctions may be imposed if marketing is performed in breach with legal requirements. There is also an independent public authority who monitors marketing practices; the "Forbrugerombudsmand".

Property law

Foreigners are as a general rule restricted by law from buying residential property in Denmark unless you make Denmark the "center of your life". In practical terms this means getting a permit from the Ministry of Justice confirming that you are taking up permanent residence in Denmark. EU citizens working in Denmark are exempt from these rules.

There are some special restrictions on foreign ownership in some areas, especially when buying summer holiday homes. This is particularly prevalent in coastal areas.

Resident legal entities are allowed to acquire property, so forming your own local limited company to do the buying for you is an option.

Denmark has a high level of consumer protection when buying real estate, a thorough building inspectors report and the offer from the seller of paying ½ of the insurance for hidden faults being mandatory by law. Furthermore, Denmark has fairly low transaction costs regarding purchasing real estate.

If you have any queries regarding Danish law you are welcome to contact us on copenhagen@nordialaw.com or via www.nordialaw.com

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The purpose of this "one-minute guide" is to give a very brief introduction to Danish law only, based on the legislation as of 2020. It cannot substitute legal advice.