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Global Practice Guides

# Private Wealth

Denmark – Law & Practice

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2017



# DENMARK

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## **LAW AND PRACTICE:**

**p.3**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

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# DENMARK LAW AND PRACTICE

Contributed by LETT Law Firm P/S **Authors:** Torben Mauritzen, Mathias Yde Frank

LETT Law Firm P/S / DLA Piper real estate team of 34 - including 14 partners - offers expertise in the financing of properties, sale and purchase of properties, development of properties, distressed properties, building and engineering

projects and infrastructure projects, lease law, properties of bankruptcy estates and dispute resolution relating to real estate. It was recently announced that LETT Law Firm P/S will merge with DLA Piper.

## Authors



**Torben Mauritzen** is a partner and specialises in real property transactions and financing. He has extensive experience in representing foreign real property investors in Denmark, including in the optimal structuring and completion of investments in Danish real property and subsequent development of the acquired properties. He has vast experience in working with the Danish public sector and its political processes regarding, for example, local development plans and amendments to municipal plans, building and other permits and changed use of property.



**Mathias Yde Frank** is a junior lawyer and is engaged in real estate and construction law, including in particular construction law and advising in relation to litigation, arbitration and survey proceedings. Moreover, Mathias has experience of the completion of real-estate transactions. In addition, Mathias is engaged in the general issues of commercial law as well as of company law.

## 1. General

### 1.1 Main Sources of Law

Danish real estate law is, like Danish law in general, based mainly on legislation rather than on case law. The regulation of real estate is wide-ranging: from surveying and registration of real estate and the registration and protection of rights to area planning, tenancies, pollution, etc.

Rights in Danish real estate can be registered with the Danish Land Registry. The registry is an electronic register in which each individual property has its own section. Examples of rights that can be registered are title, mortgages, rights of use and restrictions. A registration in the Land Registry means that the registered right is protected against third parties and future opposing rights. Furthermore, a registration made in good faith extinguishes existing but non-registered rights. Thus, all significant rights in real estate should be registered with the Land Registry.

Property limits are registered with the Danish Cadastra maintained by the Danish Geodata Agency. Land surveyors report to this agency.

Freedom of contract applies to real estate transactions between professional parties. As a Danish contract will be supplemented by balanced principles and rules of law, eg the Danish Contracts Act (in Danish 'Aftaleloven'), it can be made shorter and simpler than contracts under UK and US-law.

Construction contracts in Denmark normally rely on a set of agreed documents. Contracts between contractors and developers will, for instance, often include a reference to 'General Conditions for the provision of works and supplies within building and engineering' (in Danish: 'Almindelige betingelser for arbejder og leverancer i bygge- og anlægs-virksomhed', commonly referred to as AB 92).

### 1.2 Main Market Trends and Deals

Since 2012, the transaction and building activity in the major cities of Denmark has been steadily increasing, and in 2016 this activity rose to the record levels seen before the financial crisis. Prices have also reached pre-crisis levels. The increase in transactions is primarily caused by international investors entering the Danish real estate market. In 2016, around 35% of the transaction volume in Copenhagen could be ascribed to foreign investors. The increase in building activity is primarily driven by public infrastructure and building projects and the increased demand for residential properties caused by people continuing to relocate to the major cities of Denmark and the lack of people moving away from these cities. The latter demand has also led to a substantial number of older office buildings being converted into residential buildings.

Big players with deep pockets such as Danish pension funds, foreign and Danish real estate funds and high net worth individuals dominate the Danish real estate market. This contrasts with the pre-crisis market situation dominated by a number of Soldiers of Fortune. This is partly due to an increased regulation of the financial sector and a more strin-

gent lending requirement. An equity requirement of 40 – 50 % of the investment is not uncommon.

The question has come up as to whether a new price-bubble is being inflated - in Copenhagen and Aarhus in particular. However, up until now this has been rejected for three main reasons:

- the current prices are based on actual yields and not on a speculation in continued price increases and quick resales at such higher prices;
- the yields are still more attractive than bond rates; and
- due to the heavy equity requirements, the majority of the present investors should be able to sit in during a new crisis, whereby oversupply of properties and consequent huge price drops should be prevented.

### 1.3 Proposals for Reform

The agreed documents used for construction contracts (AB 92 and ABT 93) are currently being revised. The committee tasked with the revision was created in March 2015, and the committee's work was estimated to last for three years. At present, however, there is no official date for the completion of the revision.

In November 2015, the Danish government announced a plan to support growth in Denmark, particularly in the areas outside the main cities such as Copenhagen, Aarhus, Aalborg, Odense. Among the suggestions was a liberalisation of the Planning Act aiming to give more freedom to the municipalities in their planning as well as making it easier for businesses and citizens to use and develop properties. These suggestions are expected to be passed by the Danish Parliament in May 2017 and take effect as of 1 July 2017.

## 2. Sale and Purchase

### 2.1 Categories of Property Rights

The main categories of rights in real estate that can be obtained are title, mortgages, and rights of use. A title can be shared by two or more natural persons and/or legal entities, eg with a certain percentage share for each person/entity, and registration in the Danish Land Registry can take place accordingly. Rights of use will normally be partial and non-possessory, eg a lease of a certain part of the property or a right to use a road on the property. Such rights can be registered as restrictions on the property.

### 2.2 Laws Applicable to Transfer of Title

'Consumer Protection in the Purchase of Real Estate Act' applies to sales and purchases if the purchaser intends to use the property as his or her home or summerhouse. The law only applies to land with pre-existing buildings, including town-houses and owners' flats. It does not apply to undevel-

oped properties, properties where construction has begun but has yet to be completed, or to real estate that under the law is required to be used for agricultural purposes. The Real Estate Agent Act governs commercial commissioning, offer and sale of real estate and other commercial advice regarding the sale of real estate to consumers. The Valuation of Real Estate Act applies to the public valuation of all real estate in Denmark.

### 2.3 Effecting Lawful and Proper Transfer of Title

According to standard terms in purchase and sales agreements in Denmark, the purchaser must pay the purchase sum into an escrow account in the name of the seller or secure payment of the purchase sum on the take-over date by bank guarantee. Moreover, the purchaser is obliged to register his or her title to the property with the Danish Land Registry as soon as the take-over date has passed and to release the purchase sum to the seller when the title is finally registered without conflicting rights. It is strongly recommended that this procedure be followed, which ensures that the purchaser obtains the title for the property and – if the title is registered in good faith – will be protected against all existing and future conflicting rights. Any deviation from the process could imply liability for the professional advisers involved. Title insurance is neither available nor necessary in Denmark.

### 2.4 Real Estate Due Diligence

Due to the values and risks involved, it is highly recommended that the purchaser of real estate carries through due diligence investigations of the property in question before he or she finally approves a purchase. The normal procedure will be to sign a letter of intent or a purchase agreement with the seller before the due diligence investigations are started, but on the condition that the purchaser has a certain period following signing to carry out their investigations and that the LOI or purchase agreement can be annulled at the purchaser's request if the investigations reveals issues depreciating the expected value of the property. It is also highly recommended that the due diligence investigations include both technical and legal investigations and that consultants are instructed accordingly: a consulting engineering company and a law firm respectively. If land or property could be polluted, it could also be relevant to instruct an environmental investigation firm. If properties are purchased through companies, the due diligence investigations should of course include the companies in question. The agreement with the seller could include that the seller pays the costs of the due diligence investigations or a part thereof against getting access to the full due diligence reports, if the purchaser walks away from the deal. In structured sales processes, where the seller invites a number of potential buyers to submit a tender for the property or portfolio, the seller would normally have made a due diligence investigations him- or herself and would present the due diligence reports for the potential

buyers as part of the sales materials and thereby as a basis for the tenders.

When carrying out real estate due diligence investigations, the key areas are in general: the physical condition of the property, the consequent need for maintenance or renovation, the registrations in the Land Registry including restrictions, a transcript from the Danish Building and Housing Register (BBR transcript), public valuation, notices from the relevant municipality, issues with regard to planning, including a possible district plan, especially if the purchaser intends to develop the property, possible pollution, any pending judicial cases concerning the property, tenancy contracts and relations, financing, yield and any tax issue.

## 2.5 Typical Representations and Warranties

The seller of a property will normally provide warranties of title, mortgages and other encumbrances, but with regard to most other issues, the seller will normally only refer to relevant documents and provide information 'to the best of his or her knowledge'. The seller is, however, obliged to disclose all relevant information known to them to the buyer, and the seller will normally be liable for information which he or she knew or should have known was incorrect or misleading.

## 2.6 Condemnation, Expropriation or Compulsory Purchase

Under the Danish Constitution and the Expropriation Act, the Danish State can purchase real estate in Denmark compulsorily if the purchase is needed for the benefit of the common good of society and if the purchase is authorised by law and is conducted at market value (offering the owner full compensation).

## 2.7 Legal Restrictions on Foreign Investors

Investors domiciled outside Denmark need permission from the Danish Ministry of Justice to be able to purchase and own real estate in Denmark. However, investors domiciled within the European Economic Area (EEA) can acquire real estate without permission if the investor needs the property as a permanent residence or the acquisition is a precondition for conducting business or delivering services in Denmark. Please note that these rules are not relevant, if the property is purchased through a Danish legal entity, eg a Danish limited liability company (an A/S, ApS or IVS). See also 'Investment Vehicles' below.

# 3. Real Estate Finance

## 3.1 Financing Acquisitions of Commercial Real Estate

The provision of real estate finance in Denmark is dominated totally by the Danish mortgage credit associations. Based on the issue and sale of bonds in huge quantities on the Copen-

hagen Stock Exchange (Nasdaq Copenhagen) and mortgages on the property in question, these mortgage institutions offer a wide variety of loans enabling the property owner to choose between both variable (short term) interest rate and fixed interest rate (fixed for up to 30 years) and different repayment profiles including grace periods of normally up to ten years.

Margins depend on a risk assessment based both on the quality of the property, the creditworthiness of the owner, the level of financing relative to the market value of the property, the length of the fixation of the interest rate and the chosen repayment profile. Based on these factors, margins vary significantly, normally in a range of between 0.5 and 2 percentage points. Even the highest margins are normally price-competitive with alternative loans, eg from banks, which the huge market share of loans from the Danish mortgage credit institutions reflect. Furthermore, loans from the Danish mortgage credit institutions are generally committed loans and are thus more secure loans for the property owner than the alternative bank loan or other loan, which will often be subject to renegotiation each year.

The only real limitation for loans from the Danish mortgage credit institution is that by law they are limited to a certain percentage of the market value of the property in question. For land, the percentage is 40. For commercial buildings including industry, logistics, office, stores, the percentage is 60. And for residential buildings, the percentage is 80.

The mortgage credit association will register its mortgage deed in the land registry to secure the mortgage against possible conflicting rights. With only a few exceptions, the mortgage credit institutions will request first mortgage on the property.

## 3.2 Typical Security Created by Commercial Investors

A mortgage on a Danish property will by law include the land (except in the case of financing of buildings on leased land), the buildings and any objects that are considered permanent fixtures on the property. There are no restrictions for granting mortgages to foreign lenders, nor any restrictions on repayments being made to such lenders. Granting a mortgage is in itself free of duties. However, as previously noted, a mortgage should be registered in the Land Registry to protect it against opposing rights. The registration duty is DKK1,660 plus 1.5% of the amount secured by the mortgage.

In general, mortgages on real estate will be placed in the priority order according to the time at which they are registered. When preceding mortgages are being reduced in accordance with the mortgage deed by payment of pre-agreed instalments, the subordinated mortgages will normally advance. If, however, extraordinary payments are being made

by the mortgagor, the subordinated mortgages will not advance. This will result in free spaces in the order of priority called owner's mortgage, which the owner can use to secure new loans or expand already existing and secured debts. In this way, the existing mortgages can become subordinated to newly created debts. However, the subordinated mortgagees must give their consent to any expansion of the superior mortgages that will result in a real downward move of the mortgagee's priority.

A legal entity must comply with its signing powers and the corporate benefit rules to mortgage its property legally. The corporate benefit rules mean that all decisions regarding the company must be in the best interest of the company.

### 3.3 Formalities When a Borrower is in Default

If the mortgagor fails to fulfil the obligations to the lender, the mortgage can be realised by the mortgagee forcing a sale of the property on a public auction. A request for such an auction is filed with the bailiff's court where the property is situated, and the auction is carried out by this court according to the Danish Administration of Justice Act. Mortgages are covered by the obtained sales price in the priority order - first mortgage first etc as far as the price covers. If a mortgagee is not covered in full, the mortgagee will normally have an unsecured personal claim on the - now - former property owner for the uncovered debt.

Before the auction, the claimant must collect relevant information regarding the property including its debts, produce sales material in accordance with a format given by the Danish Ministry of Justice, and distribute this material to all interested parties. The claimant must also place adverts regarding the auction and enable interested parties to inspect the property. A sale by public auction will usually take between three and five months from when the request is filed. The mortgagor can ward off the auction by paying the amount due up until the auction takes place.

### 3.4 Effects of Borrower Becoming Insolvent

If the mortgagor goes bankrupt, any security created and perfected less than three months before the reference date can be made void on the request of the bankruptcy trustee, if this security secures debt already existing at the time of the perfection of the security.

## 4. Planning and Zoning

### 4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

The Danish planning and zoning system consists of an overall state regulation of framework planning conditions, subject to which the country is divided into urban, rural and holiday-house zones, and the local planning is placed with

the 98 Danish municipalities. Planning is regulated in the Danish Planning Act.

The municipalities set out local planning and requirements in structure plans for the municipality as a whole, 'municipality plans', and in district plans regulating smaller areas within the municipality. Both types of plans are subject to public enquiry and political approval. A district plan will often be prepared in dialogue with the developer or investor owning or willing to purchase the area in question.

District plans are directly binding, not only on land-owners but also on lessees, infrastructure owners and other parties who use property within the area of the district plan. A district plan can regulate a wide range of issues, including appearance, design, development of the area, designated use of the area, etc. The possible use of an area and the content of a district plan for the area widely depends on the zone status of the area - if the area is laid out as urban, rural or holiday-house zone. To exemplify, the possibilities to erect new buildings in rural areas are highly restricted.

### 4.2 Regulatory Authorities

In addition to the regulation following from district planning, requirements in the Danish Act on Construction and the ancillary executive order 'The Building Regulations 2015' setting out the technical requirements for new buildings, must be adhered to both in green-field projects and major refurbishment projects.

### 4.3 Obtaining Entitlements to Develop a New Project

It is important that building permission must be obtained from the municipality before any construction work is started, and an occupation permit from the same source must be obtained before the building is taken into use. The process of obtaining a building permit could also include application for exemptions from the planning rules, ie a municipality plan or a district plan. During its assessment of an application for a building permit, the municipality must ensure that both the relevant planning rules, including a possible district plan, and the building regulations are followed; the municipality will normally specify and clarify a number of requirements in the building permission. In this way, the building permission will serve as an extension of the planning and the building regulations. The rules are interpreted and enforced strictly. If a new building or major refurbishment is completed without or non-compliant with a building permit, the building may be ordered to be changed or demolished at the cost of the developer. If a project is expected to affect other parties directly, eg neighbours, particularly if the project requires exemptions from either the Construction Act, the building regulations or district planning, it is likely that any such directly affected parties will be heard in the approval process, in connection with which they can object to the



project. District plans, building permits or non-permits, and decisions on exemptions from district planning can also be appealed or tried in court by the applicant or other directly affected parties.

#### 4.4 Enforcement of Restrictions on Development and Designated Use

The municipal councils have a duty to carry out supervision on houses and buildings in the relevant municipal. If the council becomes aware that the use of a house or building may be connected to a potential health risk or an increased risk of fire, the council has an obligation under the Urban Renewal Act to investigate the case and to prohibit residential use (condemnation) of the building. Simultaneously, the council must set a date for vacating and clearing the condemned premises.

## 5. Investment Vehicles

### 5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Investments in real estate in Denmark are generally made through one or more Danish limited liability companies – often through a holding company with subsidiaries, each owning one or more properties. Investments through limited liability partnerships or direct investments are also widely used. The limited liability partnership has the advantage that, aside from the limited liability for the investor, the limited liability partnership is tax-transparent, which leads to taxation of the investor as if the investor owned the property him- or herself.

#### Legal entities

The entities most commonly used by investors to hold real estate in Denmark are the limited liability companies ‘anpartsselskab’ (‘ApS’) and ‘aktieselskab’ (‘A/S’). Both of these entities have capital requirements: DKK50,000 for the ApS (approximately EUR6,700) and DKK500,000 for the A/S (approximately EUR66,700). A limited liability partnership (‘P/S’) has the same capital requirements as the A/S. As of January 2014, a new limited liability company was made available in Denmark, the ‘iværksætterselskab’ (‘IVS’), with a capital requirement of only DKK1 (approximately EUR0.15). However, the IVS is not as flexible, as there are requirements for saving profits and paying dividends. When the IVS reaches a company capital of DKK50,000 it can be converted into an ApS. Given the relatively low capital requirements of the ApS and the A/S compared to an investment in real estate, the IVS is not commonly used for real estate investments in Denmark. It is mandatory for an A/S and a P/S to have a two-layer governing body consisting normally of a board of directors (minimum three people) as well as a CEO or management board, whereas in an ApS or IVS

a one-layer governing body consisting normally of a small board of directors or a CEO will suffice.

### 5.2 Main Features of the Constitution of Each Type of Entity

#### Holding Company with Subsidiaries

Structuring a real estate investment through a holding company (a limited liability company, A/S, ApS or IVS) with subsidiaries (also limited liability companies) owning the property is highly tax efficient. The net income of the investment will be subject to Danish corporate tax at the current rate of 22%. Furthermore, the dividend from a subsidiary can be transferred free of tax to the holding company if the holding company owns 10% or more of the shares in the subsidiary. The rule also applies to foreign holding companies that own 10% or more of the shares in the Danish company if the foreign company has its domicile: i) within the EEA, or ii) within a country with which Denmark has entered into a double taxation avoidance agreement (DTAA). If, however, the sole purpose of the foreign company is to be a ‘flow-through’ company and the ultimate owner’s domicile is in a tax haven, the owner becomes liable for tax to Denmark and the Danish tax authorities will request the Danish company to pay withholding tax at 27%.

#### Selling Subsidiary as Alternative to Selling the Property

When selling property in Denmark owned by a Danish subsidiary, selling the subsidiary itself could be an alternative to selling the property. Generally, when selling the subsidiary, all contracts etc which the subsidiary has entered into will follow the subsidiary and thereby indirectly be transferred to the new owner. This will, for instance, be the case for any agreement regarding administration and/or maintenance of the property. Loan agreements, however, including agreements with Danish mortgage associations, will often include change of control clauses. Accordingly, such agreements will not automatically be upheld when selling the subsidiary. However, if the new owner is well reputed and financially stable, the lender will normally uphold the loan agreements. An advantage of selling the subsidiary instead of the property is that the sale of the subsidiary will normally be tax-free for the owner company, (however, the purchaser will normally request that tax on any capital gain on the property be reserved in the balance sheet for the subsidiary and be deducted in the purchase sum for the subsidiary, whereby this capital gain tax will be paid indirectly by the owner company). Selling the subsidiary instead of the property also means that there will be no issue with registration in the Land Registry, as the property will still be owned by the subsidiary, and registration fees (DKK1,660, approximately EUR220, plus 0.6% of the higher of either the purchase sum or the public valuation of the property) will be saved.



**Tenants' Pre-Emption Rights**

If a residential property that is not divided into condominiums (normally older residential properties) is sold, the tenants in the property normally hold a pre-emptive right to buy the property, according to the Danish Rent Act. However, if the property is owned by a subsidiary and the holding company owning the subsidiary is sold, the pre-emptive right does not apply. Thus, a double-holding structure should be considered by investors investing in residential property in Denmark, subject to the pre-emption right for tenants.

**Partnerships and Direct Foreign Investments**

If an investor chooses not to invest in Danish real estate through one or more Danish liability companies (A/S, ApS or IVS), investing through a limited partnership (K/S) or a limited liability partnership (P/S) should be considered. As previously mentioned, these entities are tax-transparent, and the investor will become subject to paying tax instead of the company, in the same way as if the investment was made directly by the investor. At the same time, however, the investor will limit their potential liability by the corporate wall of the K/S or the P/S.

In any case where an investor chooses not to invest through one or more Danish liability companies (A/S, ApS or IVS), the investor will be liable to pay tax to Denmark of the net income of the property. Furthermore, the investor will be obliged to calculate this net income on an annual basis and to submit annual tax returns for the property to the Danish tax authorities. If the investor is a foreign company, the Danish tax rate is 22%. If the investor is a natural person, including that investor investing through a tax-transparent entity (K/S, P/S or a simple partnership, an I/S), the tax will be between approximately 41% and 56%. However, a natural person will be able to defer all taxes that exceed the corporate tax rate at 22%, until the investor exits the investment in Denmark.

## 6. Commercial Leases

### 6.1 Types of Commercial Leases

There are basically three different types of leases in Denmark: residential, commercial and lease.

**Residential Lease**

Such leases are regulated by the Rent Act. If the building has come into use for residential purposes after 31 December 1991, rents can be agreed freely between the landlord and tenant ('market rent'). If, however, the building has come into use for residential purposes earlier, restrictions regarding rent levels apply. In all big municipalities, including all big cities in Denmark, the principle of 'cost-based rent' according to the Housing Control Act applies directly or indirectly, meaning that the rent levels for many apartments are

maximised far below market rent. For the rest of the apartments, the principle of 'the value of the premises' applies. This means that the rent levels for these apartments generally will be maximised somewhat below market rent. The purpose of the Rent Act and the Housing Control act is to protect the tenant as the presumed weaker contract party, and the regulation is extensive and complex and includes a very high number of mandatory rules. A form authorised by the Ministry of Housing and Urban Affairs should be used for all contracts regarding residential tenancies. In the light of all this, it is highly recommended that assistance is sought from Danish legal experts in the field of residential leases to peruse contracts, rent levels etc when buying Danish residential property.

**Commercial Lease**

Such leases are subject to the Commercial Rent Act. Contrary to the Rent Act, the Commercial Lease Act is not based on a presumption that the tenant is the weaker contract party, and the act does not include many mandatory rules. Consequently, the landlord and the tenant have a large degree of freedom to agree on what they can negotiate ('freedom of contract'), and there is no authorised form used for lease contracts regarding commercial tenancies.

A lease is typically not entered into for a specific time-period. Nonetheless, the parties are free to agree upon a fixed term, after which the lease terminates without notice. The landlord is not obliged to renew the lease, but it is very important that the landlord makes sure that the tenant vacates the property on the date of the termination of the lease. If the tenant continues to use the property without the landlord's immediate objections, the tenant may continue to use the property without any time limitation, provided that the rent is still paid on time and that the tenant still meets the terms in the contract in general.

The landlord has an obligation to repair and maintain the property, unless the parties have agreed otherwise. The contract will usually state that the tenant is responsible for the interior maintenance, while the responsibility for the exterior usually stays with the landlord. The contract often limits the tenant's rights to alter and improve the leased premises without the consent of the landlord. The tenant normally has an obligation to return the premises in the same condition as they were in when they were leased. Thus, the landlord can request any alterations to be reversed. If the landlord undertakes to build or tailor the premises to meet specific requirements from the tenant, the landlord will normally ask the tenant to undertake between three and 12 years' security of tenure.

The landlord will often require the tenant to pay a deposit at the start of the lease. The deposit serves as security for the tenant's liability during the lease period and upon termina-

tion of the contract. Almost without exception, it will be agreed that rent is paid monthly or quarterly in advance. Normally the parties will also agree that the rent be adjusted each year in line with inflation by reference to the net consumer price index published by the Statistics Denmark. In addition to this, the landlord will often try to include a minimum percentage of annual rent rise in the contract.

The landlord decides whether to register the leases premises for VAT, and will often choose to do so. If so, VAT (25%) will be added to the rent and the landlord will be able to deduct VAT from his or her expenses regarding the premises in his or her VAT accounts.

Generally, the landlord can only terminate a lease if there is a statutory right to do so under the Commercial Rent Act. The landlord can, for instance, terminate the lease if the tenant does not pay rent or under certain circumstances if the landlord wants to use the property him- or herself. These are mandatory rules protecting the tenant.

If the tenant is declared bankrupt, the estate must decide whether to continue or discontinue the lease. If the lease is continued, the estate must pay rent and meet all terms of the lease contract. However, the estate is entitled to terminate the lease at any point with a notice of one month. Any payment the landlord was entitled to, for instance under a fixed-term contract, can be reduced to three to six months' payment. Any claim exceeding this period will be dealt with by the estate as a non-preferred claim.

## Lease

Lease (in Danish 'forpagtning') differs from a commercial lease as its object is not only premises but a business, eg a farm, a hotel, a restaurant, etc. Lease is not subject to the Commercial Rent Act or any other law. As lease is not regulated by the Commercial Rent Act, the parties to a lease are free to contract.

## 7. Construction

### 7.1 Common Structures Used to Price Construction Projects

As previously mentioned, Danish construction contracts are normally based on agreed documents (AB 92 and ABT 93). A specific reference in the contract to one of these agreed documents is necessary to make it part of the contract

### 7.2 Assigning Responsibility for the Design and Construction of a Project

A project is normally laid out by the developer/owner as either a turnkey project, or a project in which the owner maintains the full responsibility for the design throughout the construction period. In a turnkey project, the owner will

initially be working with a design team. At the time of contracting with the turnkey contractor, however, the contractor will take over the design and possibly also the design team. If the owner chooses to maintain the full responsibility for the design throughout the construction period, the owner will normally enter into a contract with a main contractor and/or specialized contractors. The agreed document ABT 93 (General Conditions for Turnkey Contracts) is used for turnkey contracts and for design and build contracts, while the AB 92 is used for main contracts and specialised contracts. A third agreed document, ABR 89, is used for contracts with the design team and engineers.

### Price and Payments

A construction contract will usually include a total fixed price based on the contractor's tender. Alternatively, or for some parts of the work, the contract will set out unit prices for work, material and/or materials. These can be the contractor's cost prices plus an agreed margin to the contractor, combined with an open-book principle. If only a total fixed price has been agreed upon, subsequent discussions with the contractor about the exact scope of the work to be delivered and extra payments or reduced payments in connection with any change of the project must be expected.

Sections 22 of AB 92 and ABT 93 govern payments to the contractor. According to these sections, the contractor is upon written request be entitled to receive payment once a month for the work performed. alternatively, the parties may agree on payments in accordance with a payment schedule which follows the construction schedule. The parties can stipulate at which times or stages the contract sum or parts thereof shall be paid.

### 7.3 Management of Construction Risk Insurance

According to AB 92 and ABT 93, the developer/owner must take out fire and storm insurance for the works from the commencement of the work and until the construction is finalised, and any defects or lacks noted at the handing over of the works have been rectified. On request, the contractor and any sub-contractors shall be included as insured under the insurance policy. Today, most developers/owners take out not only a fire and storm insurance but an all-risk insurance for the building, works and materials.

All contractors and sub-contractors must uphold a liability insurance covering any injury or damage which they may cause by negligence during their work.

### Performance Bonds

Both the contractors and the building owner have to provide security for the fulfilment of their respective obligations under the construction contract. Unless the contract states otherwise, the contractor must provide a performance bond

corresponding to 15% of the contract sum. Provided that the contractor has corrected all defects, this bond can be reduced to 10% of the contract sum in the first year after the contractor's completion and handing-over of the works and thereafter to 2% of the contract sum in the next four years, whereupon the bond can be cancelled. If the contractor so requires, the developer/owner must provide a performance bond corresponding to the higher of i) three months' payment to the contractor, and ii) 10% of the contract sum. The performance bonds must be in the form of adequate guarantees from a bank or a savings bank, a guarantee insurance or other adequate type of guarantee.

### Alterations and Delays

In case of alterations and/or delays of the project, the parties must discuss how this will affect the timetable and/or price. Such discussions could for instance be relevant in the following situations: 1) the developer/owner wants to change the design, 2) the contractor suggests such changes, or 3) the contractor claims that external factors for which he or she is not responsible cause delay or increase in price etc. Such discussions take place almost without end on Danish construction sites. The contractor has the right to perform any work arising from changes to the project, and the developer/owner must pay a reasonable price for the work, normally based on unit prices and mark-up agreed to in the construction contract. If delays are caused by changes ordered by the developer/owner or external factors, for which the contractor is not responsible, the contractor will normally be entitled to a reasonable extension of the construction period, including compensation for the costs of upholding the building site during the extension. However, if the contractor is not

entitled to an extension of the construction period and does not complete and hand over the works on the agreed take-over date, the developer/owner will normally be entitled to compensation, often in the form of an agreed daily penalty, until the works are completed and handed over.

## 8. Tax

### 8.1 VAT

As the principal rule, purchase of Danish real estate is exempted from VAT. However, VAT is normally payable when purchasing i) building land, ii) new buildings, iii) new buildings with land and iv) land with buildings, if only the land, not the buildings are sold. The rules reflect the EU-directives and practice on VAT. The Danish VAT-rate is 25%.

### 8.2 Mitigation of Tax Liability

As also stated in the section 'Sources of Law' above, all substantial rights in Danish real estate should be registered in the Danish Land Registry. A registration in the Land Registry protects the registered rights against future opposing rights and a registration made in good faith extinguishes any previous but non-registered opposing rights. To register rights in the Land Registry the following duties must be paid: i) Registration of ownership: DKK1,660 plus 0.6% of the higher of either the purchase sum or the public valuation of the property, ii) registration of mortgages: DKK1,660 plus 1.5% of the principal mortgage deed, iii) any other right, including rights of use: DKK1,660. DKK1,660 corresponds to approximately EUR223.

### LETT Law Firm P/S / DLA Piper

Raadhuspladsen 4DK-1550 Copenhagen V

Tel: +45 33 34 00 00

Fax: +45 33 34 00 01

Web: [www.lett.dk](http://www.lett.dk)

