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EDITOR  
JOHN NEVIN

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# THE REAL ESTATE LAW REVIEW

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## Chapter 10

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# DENMARK

*Torben Mauritzen*<sup>1</sup>

### I INTRODUCTION TO THE LEGAL FRAMEWORK

#### i Ownership of real estate

Like Danish law in general, Danish real estate law is based on legislation rather than case law. Regulation is comprehensive covering surveying and registration of real estate; the registration and protection of rights in real estate; area planning; construction of buildings, including safety and energy efficiency; tenancies, pollution, tax valuations and real estate taxes; compulsory acquisitions and compulsory sales, etc. Moreover, real estate financing is subject to intensive regulation as part of Danish financial law, which to a wide extent reflects EU regulation.

#### ii System of registration

Real estate in Denmark is accurately mapped in a grid covering all Danish land that is made available and maintained by the Danish Geodata Agency. All rights in Danish real estate, including ownership, can be registered in the central Danish land registry, an electronic register that includes a section for each individual property.<sup>2</sup> The land registry is administered by the Danish courts.

All substantial rights in Danish real estate should be registered in the land registry, as such a registration made in good faith extinguishes existing, non-registered opposing rights, and protects the registered rights against future opposing rights. Among the rights that should be registered are title (ownership rights), mortgages and rights of use extending the rights according to the legislation on tenancies.

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<sup>1</sup> Torben Mauritzen is a partner at LETT Law Firm.

<sup>2</sup> Land with possible buildings, a building on leased land or owners' flats that include a share in the 'parent' property.

Moreover, public registers regarding buildings, ascertained pollution and pollution risk, tax valuations and area plans are maintained and are sources of information about Danish real estate. Private registers of real estate for sale and hire and of real estate sold are also available.

**iii Choice of law**

Investment in Danish real property is generally made through one or more Danish companies, normally a Danish holding company with subsidiaries each owning a single property or a group of properties. The structure creates a profit centre for each property or groups of properties and is tax efficient both when operating the property or properties and in the event of sale. This will be explained further in Section IV, *infra*.

Direct investment in real property or investments through limited partnerships are also widely used. The limited partnership structure combines limited liability for the investor and taxation as if the investor had owned the property directly (the limited partnership is tax transparent). This will be elaborated on in Section IV, *infra*.

Under Danish law, the parties are free to agree on any term and condition for the purchase and sale of Danish real estate, including that the transaction be governed by the laws of a country other than Denmark,<sup>3</sup> or that legal proceedings be instituted before the courts in a country other than Denmark or be resolved by arbitration. However, the parties should take into consideration that a number of legal issues regarding the real property, including registration and protection of rights, tenancies and public regulation, will be subject to Danish law and venue in any case.

**II OVERVIEW OF REAL ESTATE ACTIVITY**

The Danish real estate market has been divided in two since the gradual bursting of the Danish real estate bubble, which started in 2007 and culminated following the credit crunch. While transaction activity in the major urban and industrial areas in Denmark – including Copenhagen,<sup>4</sup> Aarhus<sup>5</sup> and the Triangle Region<sup>6</sup> – has been steadily increasing since the credit crunch, and in 2016 came up to pre-crisis levels, activity in the rest of Denmark remains low, and a number of properties in the peripheral regions are simply unsaleable and will inevitably have to be pulled down.

Through the Danish mortgage credit associations, financing of real estate is available at relatively low cost when compared internationally. However, because of the increased regulation of the financial sector following the credit crunch and the financial crises, and more careful lending policies, requirements for financial solidity in investments, including

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3 Danish law includes, however, an *ordre public* rule, meaning that no agreement must infringe basic Danish principles of law.

4 The capital of Denmark situated on the island of Zealand and is by far the biggest city in Denmark.

5 The biggest city in Jutland, the Danish mainland – the western part of Denmark that borders Germany, as opposed to the Danish islands, the eastern part of Denmark including Zealand and Funen.

6 Industrial growth area in Jutland, including the cities Kolding, Vejle, Fredericia, Billund and Middelfart.

requirements for equity and sustainable positive cash flow from the target property, are strict. Normally, equity at 30–50 per cent of the investment will be required even if cash flow from the target property is clearly positive and the risk of vacancies or falling market rents is low.

In result, the Danish commercial real estate market is now dominated by players with deep pockets, including Danish pension funds, foreign and Danish real estate funds and high net worth individuals. In the attractive areas, especially Copenhagen and Aarhus, competition for high-quality real estate is high and prices have been increasing and yields decreasing accordingly. For the most attractive properties, yields down to 3 per cent are seen, even if there is no immediate potential for improving profitability. The purchase interest even at these yields is driven by professional investors seeking alternatives to investments in bonds generating yields at between 0.5 per cent and 2.5 per cent, which for the long-term bonds are combined with a substantial price risk.

In debates about the health of the real estate markets in Copenhagen and Aarhus, the question about whether a new price bubble is being inflated has been asked. Until now, however, the answer has been no. In contrast to the market situation that existed before the bubble started to burst in 2007, (1) prices are based on actual yields not on speculation on quick resales at higher prices, (2) the yields are attractive in comparison to bond rates, and (3) the strict requirements regarding investors' equity ensure that most of the present investors will easily survive any possible new crises, including rising vacancies and falling rents. But it is obvious that investors should consider a scenario with rising interest rates and hedging the investment against such a scenario (e.g., by financing the investment with a mortgage loan based on long-term bonds).

### III FOREIGN INVESTMENT

Traditionally, the Danish property market has been regarded as local and non-transparent by foreign investors, who have focused instead – as far as Scandinavia is concerned – on Sweden, especially Stockholm. The increased attention given to the safe harbour of politically stable and economically strong Nordic countries<sup>7</sup> has, however, drawn interest among foreign investors to Denmark – first and foremost to the Copenhagen region – and a number of foreign real property funds have been very active on the Danish real estate market in recent years and have made successful investments. In 2016 35–40 per cent of the transaction volume in Denmark could be ascribed to foreign investors. In light of this, Denmark cannot be regarded as a local market any longer.

Legally, the Danish property market has been – and still is – open for foreign investors, who in all legal aspects have the same standing as domestic investors.

However, investors domiciled outside Denmark<sup>8</sup> need permission from the Ministry of Justice to acquire real estate in Denmark, unless the investor is domiciled within the European Economic Area (EEA)<sup>9</sup> and needs the property as a permanent residence or the

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7 Denmark, Sweden, Norway, Finland – Iceland is a fifth Nordic country but is disregarded in this context due to the reconstruction of the Icelandic economy following the financial crises.

8 Hence, the criterion is not nationality but domicile.

9 EU countries and EFTA countries (Iceland, Norway and Liechtenstein). Although not a member of the EEA, Switzerland remains a member of the EFTA and through bilateral agreements participates in the internal market.

acquisition is a precondition for conducting business or delivering services.<sup>10</sup> As hiring out real estate constitutes service delivery, purchases of both commercial property and residential property for hiring out can be made by investors domiciled within the EEA without permission. For investors domiciled outside the EEA, permission for such purchases can be obtained. If, however, the purchase is made through a Danish company or other legal entity domiciled in Denmark, the rules and permission are in any case irrelevant.

It should be added that the rules effectively prevent investors, etc. domiciled outside Denmark from purchasing holiday houses in Denmark. As regards such houses, no exceptions for EEA-domiciled buyers exist, and in practice permission from the Ministry of Justice is not achievable. Moreover, the rules are complemented by rules also preventing Danish companies and other legal entities from purchasing such houses without permission. These rules and practice are based on the agreement on Denmark's admission into the EEC.<sup>11</sup> The Danish government negotiated a reservation for fear of great demand for Danish holiday houses from the citizens of neighbouring EEC countries that would prevent ordinary Danes from purchasing a holiday house in Denmark.

#### IV STRUCTURING THE INVESTMENT

As noted in Section I.iii, *supra*, investments in Danish real property are normally made through a Danish holding company with subsidiaries each owning a single property or a group of properties. The structure creates a profit centre for each property or groups of properties.

Moreover, the structure is tax efficient. The net income from the property will be subject to Danish corporate tax at the rate of 22 per cent for the subsidiary. If the Danish holding company owns 10 per cent or more of the shares in the subsidiary, dividends can be distributed from the subsidiary to the holding company free of tax.

The same applies to dividends from a Danish company to foreign companies that own 10 per cent or more of the shares in the Danish company, if the foreign company is (1) domiciled within the EEA, or (2) within a country with which Denmark has entered into a double taxation avoidance agreement (DTAA).<sup>12, 13</sup> However, if the foreign holding company is only a 'flow through' company for an ultimate owner in a tax haven (the beneficial owner), this owner becomes liable to tax in Denmark, and the tax authorities will request that 27 per cent withholding tax of dividends be paid by the Danish company.

If the foreign company is domiciled in a country with which Denmark has entered into a DTAA, including countries within the EEA, and the foreign company owns less than 10 per cent of the shares in the Danish company, withholding tax must be paid by the Danish company according to the relevant DTAA. A normal rate for withholding tax in these

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10 The rules accommodate the requirement for free movement of workforce, goods and services within the European Economic Area.

11 Denmark joined the EEC as of 1 January 1973.

12 Denmark has entered into DTAA's with most countries of the world.

13 It is a further condition that Denmark is obligated to waive or reduce taxation of dividends according to Directive 2011/96/EU or the relevant DTAA, which in general will be the case.

instances is 15 per cent of the dividends.<sup>14</sup> In any case, where withholding tax must be paid according to a DTAA, either the withholding tax should be credited in the foreign company's domestic taxes, or the foreign company should be able to reclaim the withholding tax from the Danish tax authorities.

If the foreign company is domiciled in a country outside the EEA with which Denmark has not entered into a DTAA, including tax havens, 27 per cent withholding tax of dividends must be paid by the Danish company.

When selling a property owned by a Danish subsidiary, the subsidiary can be sold as an alternative to selling the property itself. Such a sale of the subsidiary will be tax free for the owner. In selling the Danish subsidiary, any agreement regarding, for example, administration or maintenance of the property will be transferred with the Danish subsidiary to the purchaser. Normally the loan agreements, including agreements with Danish mortgage associations, will include change of control clauses. Accordingly, such agreements will not automatically be upheld in the event of sale of the Danish subsidiary. If the purchaser is well reputed and financially sound, the lender will, however, normally offer to uphold the loan agreements. The sale of the subsidiary instead of the property also means that tax on capital gains in the subsidiary will not be released and there is no issue with registration in the land registry (the property will still be owned by the subsidiary), whereby registration duties<sup>15</sup> will also be saved.

If an investment has been made in residential property not divided into owners' flats,<sup>16</sup> sale of the property and the controlling interest in a company owning the property is subject to a pre-emption right for the tenants according to the Danish act on residential tenancy. If instead a holding company owning the company owning the property is sold, the pre-emption right does not apply. Therefore, a double-holding structure should be considered if investments are made in residential property that is subject to the pre-emption right for the tenants.

The costs of forming Danish companies (A/S or ApS)<sup>17</sup> and fulfilling financial reporting requirements etc. are limited, and the number of Danish companies used in the structure has therefore little influence on the cost base for the investor.

In short, and in general, investment in Danish real property through Danish companies provides tax efficiency and flexibility if and when the investor wants to exit.

As an alternative to investing through one or more Danish companies, direct foreign investment in real property or investment through a partnership (I/S), a limited partnership (K/S) or a limited liability partnership (P/S) could be considered. By choosing any of these options, the foreign investor will become the tax subject, as the I/S, K/S and P/S are all

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14 Corresponding with the Organisation for Economic Co-operation and Development's Model DTAA.

15 1,660 Danish kroner plus 0.6 per cent of the highest of the purchase sum for the property and the public valuation of the property; see also Section V.iii *infra*.

16 Other exceptions exist, although these are less important.

17 The public limited company (A/S) and the private limited company (ApS) are both subject to the same regulation, primarily the Danish Companies Act. However, as an A/S 'light', the ApS is subject to requirements that are less strict in some areas, including the minimum requirement for capital of 50,000 Danish kroner as opposed to 500,000 Danish kroner for an A/S.

tax transparent entities.<sup>18</sup> The foreign investor will be liable to pay tax in Denmark on the net income from the property,<sup>19</sup> including an obligation to calculate this net income on an annual basis and to file annual tax returns with the Danish tax authorities.

If the investor or owner is a foreign company, the tax rate for the net income from the property will be the Danish corporate tax rate of 22 per cent. If the investor or owner is a natural person, the tax rate will be between approximately 41 per cent and 56 per cent; however, by choosing the Danish tax scheme for private businesses, and keeping the income in the Danish establishment, the natural person will be able to defer all taxes above the corporate tax rate of 22 per cent until exiting the investment in Denmark.

By investing through a K/S or a P/S, the investor can create a corporate wall around the investment in Denmark and thereby limit his or her liabilities to the amount invested and to possible guaranties that the investor has given to mortgage credit associations, banks or other suppliers to the Danish property. However, as the investor – with the exception mentioned in footnote 18 – is the tax subject in these cases, he or she will not be able to curtail his or her liability in relation to the Danish tax authorities through the corporate wall.

## V REAL ESTATE OWNERSHIP

### i Planning

Planning in Denmark is governed by the Danish Planning Act.<sup>20</sup> The planning authorities in Denmark are the Danish Ministry of the Environment and below that the Danish municipalities, of which there are 98.

According to the Planning Act, each area of Denmark is labelled as rural, urban or as a holiday-house area, and the land use depends primarily on this label. The options for building in rural areas are largely restricted to buildings and other facilities necessary for the farm units in the area. Similarly, the options for building in holiday-house areas are restricted to primarily holiday houses, camping huts, hostels and smaller shops, cafes and restaurants, and similar facilities aimed at the holidaymakers in the area.

Each municipality must develop a 'municipality plan', which must be updated at least every 12th year. The municipality plan must include a framework for the infrastructure in the municipality and the purpose and building density of each sector of the area. A local development plan, detailing the geometry and use of buildings under the municipality plan will normally be required for land development and the erection of new buildings. Such a local development plan will be prepared by the municipality, often in dialogue with the developer or investor owning or being willing to purchase the area to undertake the development works. However, political approval is in any case required, and final approval cannot take place until a public hearing has been held.

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18 However, in some jurisdictions, including the United States, the entities will not be regarded as tax transparent or the investor will have the option to choose if the entity is to be regarded as tax transparent or not (tick-the-box rules).

19 The property will form a permanent establishment in Denmark.

20 Consolidated Act No. 1529 of 23 November 2015.



To protect the urban environment in the city centres and support a diversified supply of shops, the Planning Act includes restrictions on the development of shopping malls outside the city centres and on the size of shops. To protect an open and accessible coastline, the Act also includes restrictions on construction on and along the coast.

The use of property, including buildings, can – as far as the Planning Act is concerned – be changed within the limits set by the relevant municipality plan and, if such a plan exists, the local development plan for the area. To achieve changes beyond these limits, an addendum to the municipality plan or a new local development plan is required.

Besides the restrictions stated in the Planning Act, limits for land use are stipulated in a number of other acts, including the Nature Protection Act,<sup>21</sup> the Forestry Act<sup>22</sup> and the Act on Agricultural Property.<sup>23</sup>

## ii Environment

Under the Act on Contaminated Soil,<sup>24</sup> the Danish regions map contamination and possible contamination of land on the basis of available information on the use of the land – both past and present – and on the basis of pollution studies. Such studies are, however, only carried out on land likely to be so heavily contaminated or so located that public health, including drinking water, or the environment is endangered. The registrations made by the Danish regions are publicly available.

The Environmental Protection Act<sup>25</sup> lays down the ‘polluter pays’ principle, which is repeated in the Act on Contaminated Soil. The principle implies that the polluter is liable to carry out, and pay the costs of, all measures necessary to prevent or clean up the pollution.

On the other hand, no one but the polluter can be ordered to clean up or pay for decontamination. This also goes for a subsequent purchaser of contaminated land. However, if such a subsequent purchaser wants to build on the land, he or she can be forced to carry out decontamination or measures to encapsulate the pollution to fulfil requirements in the building permit. Such requirements are normal in building permits for residential buildings, institutions or other buildings in which people will have longer stays, or with surrounding areas to be used as playgrounds or the like.

## iii Tax

No transfer tax or stamp duty applies to the purchase of real estate or real estate financing.

However, all substantial rights in Danish real estate should be registered in the land registry, as such a registration made in good faith extinguishes existing, non-registered opposing rights, and protects the registered rights against future opposing rights.

To register rights in the land registry, the following registration duties must be paid:

- a Registration of title to the property: 1,660 Danish kroner plus 0.6 per cent of the highest of the purchase sum for the property and the public valuation of the property.<sup>26</sup>

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21 Consolidated Act No. 1217 of 28 September 2016.

22 Consolidated Act No. 1577 of 8 December 2015.

23 Consolidated Act No. 27 of 4 January 2017.

24 Consolidated Act No. 1190 of 27 September 2016.

25 Consolidated Act No. 1189 of 27 September 2016.

26 However, if the property is purchased as a private home for the purchaser, the public valuation is irrelevant.

- b* Registration of mortgages on the property: 1,660 Danish kroner plus 1.5 per cent of the principal of the mortgage deed. However, if mortgage deeds previously registered on the property are cancelled simultaneously, the registration duties paid on such mortgage deeds can be deducted. The same goes for registration duties represented by duty mortgage deeds.
- c* Other rights, including rights of use: 1,660 Danish kroner.

When purchasing building land or new buildings, VAT, at 25 per cent, on the purchase sum must normally be paid.

#### **iv Finance and security**

In general, the Danish mortgage credit associations provide financing of Danish real estate at low costs, when compared internationally. Moreover, these associations normally offer a wide variety of loans, enabling the real estate investor or owner to choose (1) duration (up to 30 years), (2) short, medium or long-term interest rate, and (3) repayment profile (some loans are offered with grace periods of up to 10 years). Margins will normally be between 0.6 and 1.5 per cent depending primarily on the seniority of the mortgage, the assessed creditworthiness of the borrower, and the quality of the property. The loans are granted against mortgage security in the property, normally first mortgage. Mortgage credits can be granted up to a certain percentage of the market value of the property depending on the type of property: 40 per cent for land, 60 per cent for commercial buildings and holiday houses, and 80 per cent for residential houses and buildings. However, for credits beyond 70 per cent, the margins will be substantially higher than for credits below this level.

In view of the relatively low prices and wide selection of loans, Danish mortgage credit loans are the preferred source of financing for real estate in Denmark. Accordingly, most security granted over Danish real estate is first mortgages with Danish mortgage credit associations.

## **VI LEASES OF BUSINESS PREMISES**

Leases of business premises are governed by the Danish Act on Business Rentals,<sup>27</sup> which provides for freedom of contract and, with a few exceptions, only comes into force to the extent that the parties have not deviated from it by their agreement or lease contract. This contrasts with rental of residential units, which is subject to intense, mandatory regulation under Danish law based on the lawmaker's assumption that residential apartments are a limited resource and that the tenant is the weaker contract party and needs protection.

In accordance with the freedom of contract, the rent for commercial premises can be agreed by the contract parties without restrictions. So can subsequent regulation of the rent. However, the rent or the regulation can be set aside by the courts under the Danish Act on Contracts<sup>28</sup> if the rent or the regulation is found to be unreasonable, but this option is very rarely used.

Furthermore, the following rules apply unless the parties have agreed otherwise: if during the contract period the rent proves to be materially higher or materially lower than

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27 Consolidated Act No. 1714 of 16 December 2010.

28 Consolidated Act No. 193 of 2 March 2016.

the market rent (meaning the rent that a competent landlord and competent tenant would agree on), each of the parties is entitled to an adjustment of the rent to the market rent if he or she so requests. Such an adjustment, however, cannot take place until the later of four years following (1) the beginning of the contract period, (2) the most recent requested adjustment to market rent in the same direction as now requested, or (3) any negotiated adjustment of the rent or other material terms and conditions for the rental. The adjustment is made in equal steps over a four-year period.

Similarly, the following rules apply unless the parties have agreed otherwise: if real estate taxes or duties for the premises or its supplies of water, electricity, renovation, waste water disposal, etc. are changed, the landlord is entitled and obliged to pass on the cost increase or decrease to the tenant through a rent adjustment as of the date on which the change in taxes or duties takes effect.

Normally lease contracts regarding commercial property state that the rent will be regulated annually in line with inflation expressed by the net price index calculated and published monthly by Statistics Denmark. Often, the landlord will also try to include in the contract a minimum annual rent rise of 2 or 3 per cent, which was a harmless clause when inflation was well above these levels, but with inflation now close to zero, such a clause can create an imbalance in the rent level over time.

Almost without exception, lease contracts regarding commercial premises in Denmark will include an obligation for the tenant to pay for the internal maintenance of the premises in addition to the rent. The same goes for the tenant's consumption of water, heat, cooling, electricity and gas. The costs of these supplies will normally be included and distributed among the tenants in annual consumption accounts for the property.

Moreover, it is becoming more and more common to include in lease contracts also an obligation for the tenant to pay for (1) the real estate taxes for the property; (2) the property insurance; (3) cleaning and maintenance of common areas in and outside the building; (4) consumption of heat, water and electricity in these common areas; (5) maintenance and renewal of doors, windows and gateways in the building; (6) operation, maintenance and renewal of heating, air conditioning or ventilation, sprinkler, elevator, alarm and other systems in the building; and (7) maintenance and renewal of water pipes, sewage, and electrical installations, all in addition to the rent. These costs will normally be included and distributed among the tenants in annual operation accounts for the property.

This leaves the landlord with only the costs for the maintenance of the building shell (except doors, windows and gateways) and the administration and financing of the property, providing a very predictable and stable yield from the property.

If the landlord builds or otherwise tailors the premises to the specific requirements of the tenant, the tenant will normally undertake between five and 12 years' security of tenure. If the tenant is to make material investments in the premises, the landlord will normally undertake similar security of tenure.

It should be noted that the Danish Act on Business Rentals to a wide extent protects a tenant from termination of the lease, even if the landlord has not undertaken security of tenure. Thus, as one of its very few mandatory rules, the Act states that the landlord can only terminate the lease contract for normal business premises in the following situations: (1) the landlord wants to use the premises him or herself and termination is fair, taking both parties' interests into consideration, (2) the landlord proves that demolition or alteration of the building means that the tenant must move out, (3) in spite of complaints from the landlord, the tenant or his or her personnel or his or her visitors by their behaviour cause

insecurity, a health hazard or similar inconvenience for the property or those who legitimately come there, and (4) when material reasons make it particularly important for the landlord to be released from the lease contract and such release is fair, taking both parties' interests into consideration. Unless the contract stipulates a longer notice period, the landlord must give one year's notice in the first of these situations and three months' notice in the other three of these situations.

In addition to the above situations, the landlord can terminate the contract with immediate effect in the event of material breach of contract on the part of the tenant; for example, non-payment of rent or subleasing without permission. However, in both these cases, the landlord must first give notice, requesting that the breach be remedied and informing the tenant that the lease will be terminated if the request is not complied with.

If the landlord rightfully terminates the contract, he or she will be obliged to pay damages to the tenant including the tenant's costs for moving, unless termination takes place in result of breach of contract on the part of the tenant. If the value of the business that the tenant runs from the premises is dependent on the premises (e.g., a store dependent on the location of the premises), the amount to be paid by the landlord must include damages for loss of goodwill. If the value of the business run from the premises is not dependent on the premises, the obligation for the owner to pay damages to the tenant is not mandatory. Accordingly, in such cases, the parties can agree that no damages are to be paid to the tenant in the event of the landlord's termination of the contract, and such an agreement is practically a standard in Denmark.

## VII DEVELOPMENTS IN PRACTICE

By an amendment to the Planning Act, dated 3 March 2015,<sup>29</sup> the former Danish government, led by the Social Democrats and with supporting parties, authorised the municipalities to include in local development plans the provision that up to 25 per cent of housing stock in an area should be social housing stock. In general, such provision will impose a loss on landowners, as building rights to social housing do not hold the same value as building rights to commercial buildings or residential buildings not meant for social housing. Furthermore, decisions according to the Planning Act are regarded as regulation without compensation under Danish Law, meaning that no compensation is achievable from the Danish state or municipality for the landowners. The new Danish government under the Liberal Party, which took office on 28 June 2015, however, said that it would repeal the authorisation (see also Section VIII, *infra*).

As of 1 July 2015, the Danish legislation on residential leases has been amended. The most important amendments are as follows.

The landowner is now under an obligation to inspect the leased residences together with the tenant and make a report on the condition of the residence both when the tenant takes it over at the start of the lease term and when the tenant returns the residence at the end of the term. If the landlord fails to make the inspections and the reports, the landlord loses his or her claim against the tenant for maintenance and repair of the residence in connection with its return. As a result of this obligation, it is important for purchasers of

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29 Act No. 221 of 3 March 2015.

residential buildings to check that the reports have been made and are handed over to the purchaser. Furthermore, owners of residential buildings must allocate resources to handling these inspections and reports.

Obligations for the tenant to return the residence in a freshly renovated condition (i.e., newly painted, with freshly varnished floors, etc.) is no longer valid even if the tenant took over the residence in such a condition. Now, the tenant is only obliged to maintain and repair the residence to the extent 'necessary'. This can give rise to discussions on the level to which maintenance and repair of the residence is to be performed. Furthermore, renovating costs may be imposed on the landlord, as the landlord may be forced to renovate each returned residence to a freshly renovated level to maintain the same rent as before when reletting the residence.

These amendments to the legislation on residential leases only apply to lease contracts entered into on or after 1 July 2015.

## VIII OUTLOOK AND CONCLUSIONS

In November 2015, the new Danish government under the Liberal Party announced a plan, 'Growth and development in the whole of Denmark', with a number of suggestions to support growth in Denmark, particularly in rural areas, which are lagging seriously behind Greater Copenhagen and Eastern Jutland, having never overcome the effects of the financial crises. Among the suggestions was a liberalisation of the Planning Act to give the municipalities more freedom in their planning, and businesses and citizens more freedom to use and develop their properties. Among the specific suggestions was a withdrawal of the authorisation for municipalities to include in local development plans the provision for 25 per cent of the housing stock in an area to be social housing stock.

Following political negotiations, the government entered into an agreement 'Denmark in Better Balance' with parties representing a vast majority of votes in the Danish parliament, including the Social Democrats, in June 2016 to modernise the Planning Act and amend the Nature Protection Act. The main elements are:

- a* less interference from the government in municipal planning;
- b* more possibilities to develop areas along the coasts, including transfer of holiday house area to urban area, and the establishment of test projects for coast and nature tourism;
- c* more freedom to develop rural areas, including villages, farms and other business in such areas, for example it will be made possible:
  - to change use of buildings no longer in use for their original purpose;
  - for businesses in rural areas to expand their buildings by up to 500m<sup>2</sup>;
  - for citizens to expand their houses up to 500m<sup>2</sup>; and
  - for farmers to build what is necessary for the farm-production, in all cases without permission under the Planning Act;
- d* more consideration for manufacturing companies in the planning so that, for example, new residential areas are not laid out close to such companies, thus creating pressure for reduction of activity;
- e* freedom for the municipalities to allow for shops – except for supermarkets – without restrictions as to size, also in the city centres, and expansion of the maximum sizes of supermarkets to the following: Local supermarkets, including supermarkets in local malls: 1,200m<sup>2</sup> (expanded from 1,000m<sup>2</sup>), supermarkets in areas to relieve the

*Denmark*

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city centres: 3,900m<sup>2</sup> plus 200m<sup>2</sup> facilities for the staff (expanded from 3,500 plus 200m<sup>2</sup>), and supermarkets in city centres and city malls: 5,000m<sup>2</sup> plus 200m<sup>2</sup> facilities for the staff (expanded from 3,500m<sup>2</sup> plus 200m<sup>2</sup>). The actual prohibition against shopping malls or the like outside the cities will be upheld;

- f* minimum deadlines for objections during public hearings will be reduced from eight to four weeks for simple amendments to municipal plans and for local development plans;
- g* that the authorisation for municipalities to include in local development plans the provision for 25 per cent of the housing stock in an area to be social housing be maintained; and
- h* a decision to provide for a further expansion of Copenhagen Airport (CPH).

The bill implementing the agreement – except for the part regarding CPH – was presented to the Danish parliament on 25 January 2017, and it is expected that the bill will be passed in May 2017 and take effect as of 1 July 2017.

## Appendix 1

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# ABOUT THE AUTHORS

### **TORBEN MAURITZEN**

*LETT Law Firm*

Torben Mauritzen 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.

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