Baker Ing

EU Factsheet

DENMARK

BAKERING.GLOBAL

Baker Ing

EU Factsheet

DENMARK

Business structure. What types of business structures are there?

- **Enkeltmandsvirksomhed** (Sole trader / sole proprietorship): Unlimited liability of the owner with business and private funds; In order to pursue such debtors, you must have both the first name(s) and surname of the debtor.
- **Interessentskab** (Partnership): Unlimited liability of owners with their business and private funds; In order to pursue such debtors, you must have both the first name(s) and surname of the debtor.
- **Anpartselskab ApS** (Private limited company) (Limited liability): A minimum capital of DKK 50,000 divided into shares; Liability is limited to company capital.
- **Aktieselskab A/S** (Joint-stock company) (Limited liability): A minimum capital of DKK 500,000 divided into shares; Liability is limited to company capital.

Data sources. Where can I find information about a company?

- Corporate information is available at the Danish Central Business Register: www.cvr.dk

Credit Checks. Where can I find financial information about a business?

- You can obtain information on the financial state of affairs for companies and industry at the Danish Central Business Register. There are also numerous private reporting agencies offering credit checks.

EMAIL

admin@bakering.global

TELEPHONE

+44 (0) 0207 871 1790

WEBSITE

bakering.global

REGISTERED OFFICE

Office 7, 35 Ludgate Hill,
London EC4M 7JN, UK

REGISTERED COMPANY

09787114

Baker Ing

EMAIL

admin@bakering.global

TELEPHONE

+44 (0) 0207 871 1790

WEBSITE

bakering.global

REGISTERED OFFICE

Office 7, 35 Ludgate Hill,
London EC4M 7JN, UK

REGISTERED COMPANY

09787114

Judgment Search. Can I find out if a business already has a judgment against it?

- Normally you find this information in a credit report. Credit reports are offered as a service online.

Contracting. How do businesses contract with each other and which documents do you need if you have to go to court?

- As a minimum you will need the following documents;
  - copies of the contract, invoices, and a clear statement of account indicating payments and credit notes that have been booked against the outstanding invoices.
- In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available starting with the contract, orders, order confirmations, delivery notes and invoices.
- Every part of the trading relationship between all parties should be provable by documentation.
- All notes and conversations between the creditor and the debtor should be kept in case of dispute.
- In the case of any verbal negotiations, you will need copies of any reports and names of any witnesses.

Retention of title

- Retention of title is rarely used, although it might have been agreed between the debtor and the creditor, it is rarely enforceable in Denmark. The goods in question must be specified in detail. The use of individual numbers as a general description is not sufficient.

PRE-LITIGATION

Letter before action. Do you have to send a demand letter to a debtor before going to court?

- Entering into legal proceedings is only possible with a prior warning to the debtor, which must include:

EMAIL

admin@bakering.global

TELEPHONE

+44 (0) 0207 871 1790

WEBSITE

bakering.global

REGISTERED OFFICE

Office 7, 35 Ludgate Hill,
London EC4M 7JN, UK

REGISTERED COMPANY

09787114

- Ten days of notice;
- The name of the creditor;
- The specifics of the debt (interest rate, date, amount, etc.);
- A warning that non-payment will lead to legal action and further costs.

- It is useful to know that, in Denmark, a debtor with an unknown address can be traced via the Registration of Address office. Private persons are **legally obliged** to officially deregister when moving from one town to another and re-register in their new town. Occasionally some debtors do not follow this procedure and cannot be traced, despite this being **a punishable offence**. Even if a debtor is untraceable, you are still able to obtain a judgment through the official Gazette.

Can you claim interest and collection costs from customers if their payment is late?

- Interest is awarded on costs. The unsuccessful party must pay a penal interest (8.20% as at July 2014) if no agreement exists between the parties on this matter. Interest accrues from the time proceedings commenced.

Baker Ing

LITIGATION

Limitation period. How much time do you have before you must start legal proceedings?

- The standard limitation period is three years from the breach of contract or when the damage occurred. This applies to:
  - Contractual claims.
  - Claims in tort.
- However, a creditor's unawareness of a debt may suspend the limitation period.
- Other limitation periods include:
- Ten years under the Danish Limitation Act (Act 522/2007 on Limitation of Claims) for (sections 5 and 6):
  - salary demands;
  - some claims based on a specific legal basis (such as an overdraft on a bank account);
  - claims under financial loans;
  - claims under deposits; and
  - claims against guarantors whose guarantee was accepted for loans.
- One to two years under Maritime Law, depending on the nature of the claim.
- One year under the Convention on the Contract for the International Carriage of Goods by Road (CMR).
- The limitation period is suspended by initiation of legal steps such as:
  - Filing of a statement of claim.
  - Initiating arbitration proceedings.
  - Suspension agreement entered into the by parties.

ADR. What forms of Alternative Dispute Resolution are available and are they compulsory?

- Large commercial disputes are often settled through litigation or arbitration. Use of other forms of ADR is limited. However, mediation is occasionally used.
- The courts can offer the parties court-based mediation in accordance with chapter 27 of the Danish Administration of Justice Act. Participation in this form of mediation is voluntary and both parties must accept it. Refusing to participate in this type of mediation will not subsequently adversely affect that party's case.

EMAIL

admin@bakering.global

TELEPHONE

+44 (0) 0207 871 1790

WEBSITE

bakering.global

REGISTERED OFFICE

Office 7, 35 Ludgate Hill,
London EC4M 7JN, UK

REGISTERED COMPANY

09787114

Baker Ing

EMAIL

admin@bakering.global

TELEPHONE

+44 (0) 0207 871 1790

WEBSITE

bakering.global

REGISTERED OFFICE

Office 7, 35 Ludgate Hill,
London EC4M 7JN, UK

REGISTERED COMPANY

09787114

- Additionally, the Danish Institute of Mediation, which is a self-governing institute, handles mediation in all types of commercial and private cases.
- There are no requirements for the parties to consider ADR either before or during proceedings. Courts and tribunals cannot compel the parties to participate in ADR proceedings, although they may suggest it.

Court Proceedings. What forms of court proceedings are available, and do you need legal representation?

- The Danish court is composed of:
  - The Supreme Court (**Højesteret**), which functions as a civil and criminal appellate court for cases from the subordinate courts.
  - The High Court of Western Denmark (**Vestre Landsret**) and the High Court of Eastern Denmark (**Østre Landsret**), which function both as civil and criminal courts of first instance and civil and criminal appellate courts for cases from the subordinate courts.
  - The Copenhagen Maritime and Commercial Court (**Sø- og Handelsretten i København** (national jurisdiction)).
  - The Land Registration Court.
  - 24 district courts (**Byretten**).
- Additionally, the Danish judicial system consists of the Appeals Permission Board, the Special Court of Indictment and Revision, the Danish Judicial Appointments Council and the Danish Court Administration.
- Generally, cases are brought primarily before the District Court (**Byretten**) irrespective of the size of the case. Occasionally, cases can start in one of the two high courts if the subject matter of the case is of general public importance. Cases can also be brought directly before the Maritime and Commercial Court if particular knowledge of the subject matter is needed.
- Court hearings are open to the public unless there is a compelling reason that all or part of the hearing should be held in private.
- Proceedings are commenced by submitting a writ of summons to the court stating the:
  - Claim.
  - Facts of the dispute.
  - Legal arguments.
  - Evidence that will be presented to the court.
  - Suggestion from the claimant about the form of the proceedings in court (that is, the number of judges, expert lay judges, etc).
  - Exhibits that the case is based on.
- The creditor must pay a court fee when submitting a writ of summons. The amount of the fee is based on the amount of the claim. An additional

Baker Ing

EMAIL

admin@bakering.global

TELEPHONE

+44 (0) 0207 871 1790

WEBSITE

bakering.global

REGISTERED OFFICE

Office 7, 35 Ludgate Hill,
London EC4M 7JN, UK

REGISTERED COMPANY

09787114

court fee (equalling the filing fee) is due when the case is scheduled to be heard at the final hearing.

- The writ of summons is served on the defendant by a judicial officer. The summons must be served on the debtor in person or to a member of his household. If the debtor is not a person, the summons must be served on the head of the legal entity or on an authorised staff member.
- The court will inform the debtor that they have at least two weeks from the date the writ of summons was served to submit a statement of defence. The court will subsequently meet with the counsels to agree on other procedural matters (for example, memoranda, evidence and other steps) and set the date of the final hearing.

Time frame. How long does it take before you can get a judgment against a debtor?

- The average duration of a legal court procedure can take up to 12 months or longer, depending on the complexity of the case and the availability of the judge and lawyers on both sides.

How much does it cost to go to Court?

- Costs of the civil law procedure (court costs and lawyers' fees) are determined by the Ministry of Justice.
- All costs depend on the outstanding amount. There are different fees that can apply during a procedure, which makes it difficult to predict the total cost.
- In addition to this, costs of witnesses and/or experts might also arise.

Enforcement of a court judgment. How do you enforce domestic/overseas judgments?

- Enforcement proceedings are handled by a bailiff's court and can only take place when there is a judgment or a written acknowledgement of the due debt from the debtor.
- The bailiff will investigate if the debtor has any assets that can be taken as security for the debt and can be sold by the creditor following specific rules.
- The bailiff will try to establish a payment arrangement with the debtor.
- Debtors will often try to delay the process by not attending the meeting in the bailiff's court. In such cases, you must wait until the police have traced the debtor and a new bailiff's court meeting is held. The cost of

enforcement proceedings depends on the size of the debt. It will cost DKK 300, plus 0.5% of the amount above DKK 3,000, plus lawyers' fees.
- The time frame is between six and 12 months on average.

Insolvency

- The aim of the insolvency proceedings is to pay out all creditors with the same quota by liquidating the assets of the debtor company or collecting the enforceable income of the individual who is declared bankrupt.
- There are four insolvency proceedings in Denmark:
  - Enforced dissolution
  - Reconstruction
  - Bankruptcy
  - Debt restructuring (personal liability)
- After the debtor or a creditor files for insolvency of the debtor, a preliminary liquidator is appointed to check if sufficient assets are available to cover the costs of the proceedings (court costs and costs of the liquidator).
- If these costs are deemed to be covered, then insolvency proceedings start, and a liquidator will be appointed; usually this is the preliminary liquidator.
- If any other process is followed, the court will reject the declaration of bankruptcy due to insufficient assets. The creditors can then lodge their claims and take back any goods delivered under retention of title.
- For goods in stock, the liquidator can choose whether to pay the original price to the creditors or to return the goods.
- After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If the claim is disputed, the creditor may only file a claim in court to prove the justification of their claim when further documentation does not convince the liquidator to confirm the debt.
- At the end of the proceedings, all creditors with confirmed debts will receive a dividend if there are enough assets in the estate. Often there will be no dividend paid at all.

The information in this document is accurate to our knowledge as of July 2019.

The know-how in this fact sheet is not intended to constitute a definitive or complete statement of the law, nor is it intended to constitute legal advice for any specific situation. We do not accept any responsibility for action taken as a result of information provided by us. It is your responsibility to take specific advice when dealing with specific situations. The fact sheet is intended as educational in nature and may not reflect all recent legal developments and may not apply to the facts and circumstances of individual transactions and cases.

EMAIL

admin@bakering.global

TELEPHONE

+44 (0) 0207 871 1790

WEBSITE

bakering.global

REGISTERED OFFICE

Office 7, 35 Ludgate Hill,
London EC4M 7JN, UK

REGISTERED COMPANY

09787114

Baker Ing

Nothing in this fact sheet shall be construed or relied on as providing any legal representation, advice or opinion whatsoever on behalf of us or our staff.

EMAIL

admin@bakering.global

TELEPHONE

+44 (0) 0207 871 1790

WEBSITE

bakering.global

REGISTERED OFFICE

Office 7, 35 Ludgate Hill,
London EC4M 7JN, UK

REGISTERED COMPANY

09787114