



DENMARK

REMEDIES THAT CROSS BORDERS

The Legal System Generally

Denmark is a civil law country. There is no right to a jury in a civil case. Instead, cases are typically tried by one judge. In more complex cases, however, a panel of three judges may hear the case.

Class/Collective Actions

Class actions are relatively new in Denmark. The rules creating and governing class actions only entered into force on January 1, 2008. Class actions are not limited to a particular area of law and claims made by multiple individuals can generally be tried as a class action. In order to proceed as a class action: 1) the matter must concern “uniform claims from several persons,” 2) Denmark needs to have proper jurisdiction over the claims, 3) the Danish court must possess the necessary expertise to handle the claims, 4) the court must deem the class action to be the best way of examining the claims, 5) the class members must be capable of being identified and notified about the proceedings in an appropriate manner, and 6) there must be the possibility that a suitable class representative can be appointed.

Both opt-in and opt-out class actions are available but the opt-in procedure, which requires potential class members to affirmatively join the action, is utilized most frequently. In opt-in proceedings, the court will set a specific deadline for potential class members to join the action. The court also determines the method of providing notice to potential class members. Those wishing to join the action must petition to join by written submission. In opt-in proceedings, a class representative is appointed by the court and may be either a member of the class, an association, a private institution or organization, or a public authority authorized by law to act. The class representative must represent the best interests of the class during the course of the proceedings.

The opt-out procedure, in which all potential class members are automatically included in the case unless they take action, may only be used when claims are so small in value that it is clear they cannot be pursued as individual actions. In opt-out class actions, only a public authority may serve as the class

representative. The consumer ombudsman is a public authority in Denmark that has the authorization to be appointed as class representative under the Danish Marketing Practices Act, the Danish Act on Financial Activities, the Danish Investment Association Act, and the Danish Securities Trading Act. This means that the consumer ombudsman may sue corporations on behalf of hundreds or thousands of consumers and that the ombudsman may utilize the opt-out model.

Costs of Litigation

- Denmark is a “loser” pays systems and the costs that are awarded to the prevailing party are usually a standard value based on the value of the claim that was made. When a result is not clear cut, courts will typically not award the prevailing party all their costs and fees.
- If a plaintiff is not a citizen of a member state of the European Union, the defendant can require the plaintiff to provide security for the potential legal costs the plaintiff may have to pay. If security is required, the amount of security will be the maximum costs and risk that the plaintiff would be expected to incur in connection with the litigation.
- Attorneys in Denmark are prohibited from representing clients on a contingent basis, in which they agree to only take a percentage of the proceeds if they are successful.
- Attorneys are allowed to enter an agreement in which they will not invoice a client for any fees unless a particular result is achieved. In that case, the fees must be based on the actual work performed. It is rare for attorneys to actually enter such agreements.

Kessler Topaz’s Experience in Denmark

Kessler Topaz devotes considerable resources to monitoring both cases pending in Denmark and Danish legal developments related to class/collective actions and shareholder rights. Although we are not involved in an action in Denmark, we are confident that we are ready to assist our clients with making a determination as to whether to get involved in a pending action in Denmark and helping them effectively navigate the legal system once an action has commenced.