

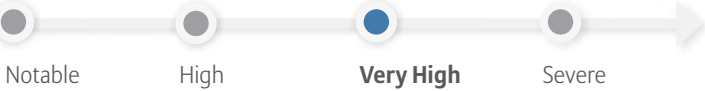


Euler Hermes
Collection Profile
Denmark

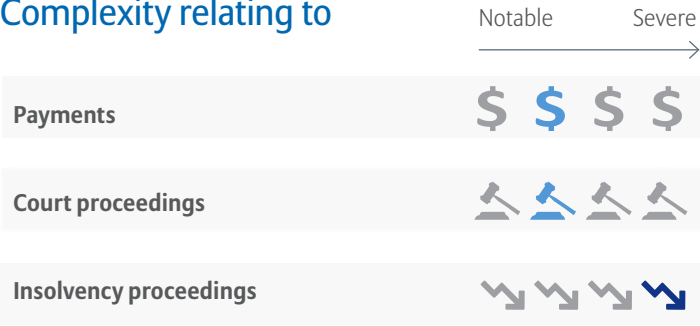
Collecting in Denmark

- Payments take 7 to 30 days on average, but delays of approximately 12 days may be expected. The EU legal framework provides reliable tools when it comes to late payment matters.
- Courts are reliable, although the system provides no fast track proceedings that suitably facilitate the undisputed collection process. Delays and costs otherwise remain significant when a claim is disputed, and EU standard proceedings are not fully applicable in the country.
- Although domestic insolvency law aims at rescuing companies to increase the chance of recovering debts, it provides no limitations as to how much of the debt may be written off in restructuration negotiations and it is rare for unsecured creditors to recover from insolvent debtors in practice.

Collection complexity



Complexity relating to



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General information

Availability of financial information

Relevant and reliable financial data may be obtained through private structures and credit reporting agencies. In addition, traders must be registered with the Municipal Trade Office which may provide information upon payment of a fee.

Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. Grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

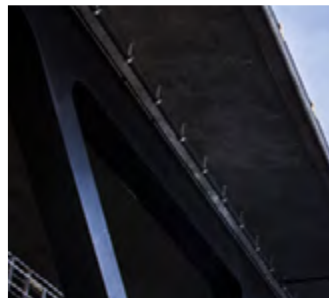
Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

- Very small enterprises often take the form of a Sole Proprietorship (Enkeltmandsvirksomhed), a business entity established by assets contributed and owned by one person acting in their own name, who may be held liable for all debts. Partnerships (Interessentselskab I/S) are founded by at least two partners who are jointly and severally liable for the obligations of the entity, but liability limitations may be put into place through Limited Partnerships (Kommanditselskab K/S) which involve one or more managing partners jointly liable for the company's operations and debts together with silent partners liable only in relation to their capital contribution.
- Private Limited Companies (Anpartselskab ApS) are commonly used even though the shares cannot be negotiated nor transferred. Its members are held liable for the company's debts in relation to their capital contribution. There must be a minimum capital fund of DKK 80,000. Public Limited Companies or Joint-Stock Corporations (Aktieselskab A/S) are rather common with large businesses. There is a minimum capital requirement (DKK 500,000) and shareholders are not liable for the company's debts.
- Co-operative Limited Companies (Andelsselskaber med begrænset Ansvar, A.m.b.A) may also be found.

Regulatory environment

The Danish legal system is governed by the Administration of Justice Act, and is composed of a hierarchy of courts, the main of which may be listed as follows: 24 District Courts, two High Courts, the Maritime and Commercial Court and the Supreme Court. There are no courts specifically dedicated to commercial matters, therefore all claims would usually be brought before District Courts (Byret), although the Maritime and Commercial Court would typically be competent to deal with international trade matters, trademarks, competition (as well as insolvency issues in the Copenhagen region).



Days Sales Outstanding (DSO): Payments take 7 to 30 days on average, but delays of approximately 12 days may be expected.



Getting Paid

Days Sales Outstanding (DSO)

Payment terms in Denmark are often calculated on a current month plus 10-12 days basis. Payments take 7 to 30 days on average, but delays of approximately 12 days may be expected.

Caution maybe needed insofar as the paying behavior of local companies has degraded over the last two years.

Late payment interest

The Recast Directive 2011/7/EU which stipulates that payments in the EU must be made within 60 days was transposed into Danish law through the Renteloven law which was set in effect on 1 March 2013. The rules in Denmark are stricter than the EU requirements: as a general rule, business-to-business transactions must be paid within 30 calendar days following the invoice due date. Thus, late payment interest may be claimed from the day following the due date. The applicable interest rate ought to be agreed upon as a contractual matter, but the law otherwise provides that interest may be calculated on the basis of the reference rate fixed twice a year (in January and July) by the National Bank of Denmark, increased by at least 8 percentage points.

Debt collection costs

In line with the Directive, the law furthermore entitles creditors to receive a flat EUR 40 compensation covering their collection costs. Beyond this amount, collection costs are determined by the Danish Ministry of Justice and depend on the size of the principal amount.

Debtors would normally tend to use costs as a negotiation tool, but Euler Hermes always endeavors to have these paid to the creditor during the collection phase.

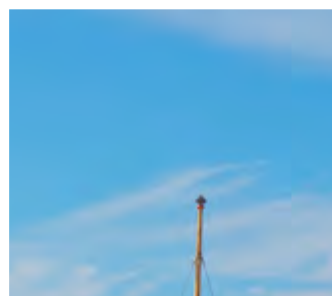
Ownership protection

Retention of Title (RoT) provisions aiming at preserving the seller's ownership over goods until the related invoice has been paid in full are rarely used in Denmark as the proceedings are extremely formal and constraining. In addition, sophisticated RoT provisions aiming at preserving ownership despite transformation or sale to a third party are not valid.

Payments

The most common payment methods are as follows: Bank transfers are the most popular payment means as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers may be guaranteed through Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) which constitute reliable guarantees since they can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment.

Generally speaking, obtaining guarantees from local banks is not common. Although checks are considered as debt recognition titles enforceable through a bailiff, they are very rarely used in practice and should be avoided. Negotiating down payments would essentially depend on the amounts at stake, but would be advisable if the commercial partner is in a difficult financial situation.



Late payment interest:

As a general rule, business-to-business transactions must be paid within 30 calendar days following the invoice due date.



Collecting overdues

Amicable action

Negotiating

Amicable settlement opportunities should always be considered as a strong alternative to formal proceedings. Before starting legal proceedings against a debtor, assessment of assets is important as it allows verification as to whether the company is still active and whether recovery chances are good. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt (see below).

Legal action

There is no formal Payment Order procedure in Denmark aiming at solving undisputed claims but since 2008, small claims not exceeding DKK 100,000 are typically dealt with by District Courts under simplified proceedings (forenklet inkasso). An enforcement order would generally be rendered within 14 days though amicable (undisputed) files could usually be resolved in three to eight months, but larger delays should be expected for more complex cases (see below). If the amicable phase fails or if the debtor questions the claim, the option of starting legal proceedings remains. A Writ of Summons must be served by a judicial officer to the debtor ten days prior to filing a claim. The latter is then given two weeks to bring a defense. The court may invite the parties to reach a compromise through mediation (Chapter 27 of the Administration of Justice Act), but hearings would normally take place in order to help the court render a decision (usually within four weeks).

The courts then typically order remedies in the form of damages or specific performance, but punitive damages cannot be obtained unless the parties' contract provides for a penalty provision. Domestic tribunals are reliable however judicial procedures are lengthy. It should also be noted that Denmark is not bound by the various dispute settlement mechanisms put in place at the EU level.

Necessary documents

Copies of invoices, statement of account, a debt collection letter stating that the claim will be forwarded to debt collection if the debt is not settled within 10 days and, if possible, correspondence between the parties involved.

Time limitations

As a general rule, business claims must be brought to court within three years (one year for transportation claims), starting from the due date of the invoice. The courts are very strict with limitation matters and would most likely prevent legal action when the delays are not respected.

Precautionary measures

Precautionary measures may help preserve the creditor's interest pending a final and enforceable judgment. Indeed, the courts may

order interim remedies (injunctions) ex parte (without the presence of both parties) to avoid irreparable damage (deposit, order to do something, preservation of the status quo, protection of rights, etc.), to obtain or protect evidence. It is generally required to demonstrate an emergency situation justifying the need for such measures.

Lodging an appeal

Decisions rendered in first instance may be appealed before the High Court, which is competent to deal with issues of fact and law. Decisions made in second instance may also be brought to the High Court, which would however only consider questions of general public importance. In this case, the Danish Appeals Permission Board must approve the claimant's leave for appeal. Appeal must be brought within four to eight weeks following the decision. Decisions from the Maritime and Commercial Court may only be appealed once, before the Supreme Court. Default judgments cannot be appealed.

Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted). If the defeated party fails to abide by the judgment, the claimant may have it enforced through the Bailiff's Court within two weeks of delivery. Enforcement proceedings may take the form of a payment arrangement or a seizure (and auctioning) of the debtor's assets (all properties and registered vehicles owned by the debtor, as movable property).

How long could legal action take?

Fast-track proceedings would usually take six months but it is common for ordinary legal proceedings to take one year before the courts render a final and enforceable order. Enforcement may then take an additional six to twelve months on average. The timeframe for legal proceedings in Denmark will always be the same, whether the parties are nationals or foreign. However, difficulties may appear in terms of case management when international disputes are at stake, especially because strict deadlines must be observed for a dispute to go on before the courts.

Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.

How much could this cost?

The courts may order that the debtor contributes to the creditor's costs but rarely award full compensation. Having said this, it is essential for a claimant to mention in the original demand letter whether compensation for costs will be requested of the court. Failing to do this would typically lead the court to reduce the compensation awarded to cover the claimant's costs.

Fixed legal fees apply when entering legal proceedings:

- Order of payment: DKK 700
- Application fee: DKK 400

Fixed bailiff fees would also apply:

- Principal amount below DKK 3,000: DKK 300
- Principal amount in excess of DKK 3,000: DKK 300 + 0.5% of the amount that exceeds DKK 3,000.
- Fee for presenting the debtor to the court by the police (if debtor is not present at the first hearing): DKK 400.
- Additional fees may apply if the bailiff visits the debtor (DKK 400 to DKK 5,000).

Conditional arrangements, whereby attorneys are not paid upfront but rather receive of a fixed sum upon success, and contingent fees, whereby the legal professionals are entitled to receiving a percentage on the final award, are common. Use of third-party litigation funding companies is allowed though uncommon.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

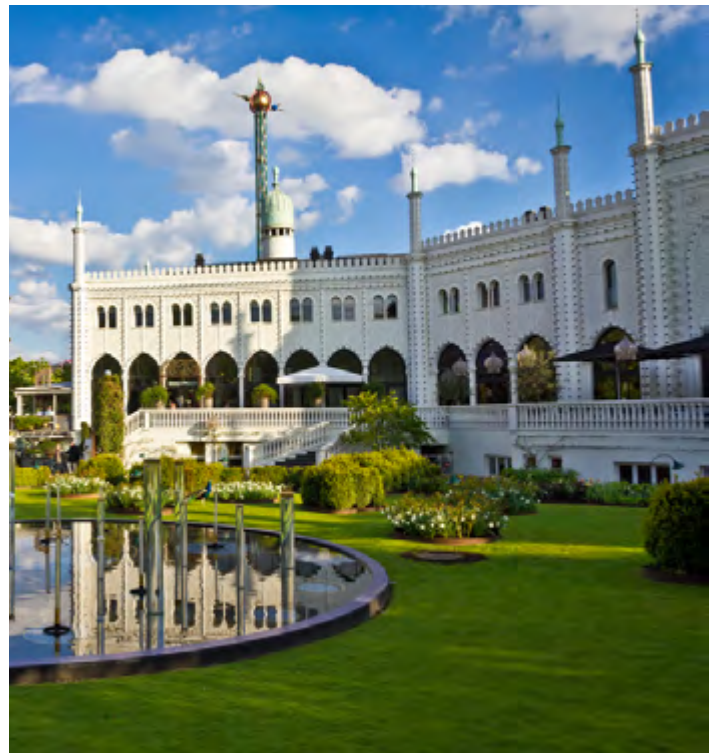
Mediation is commonly used in Denmark, particularly because the courts tend to invite the parties to reach a compromise before dealing with the case.

Domestic or international arbitration proceedings also constitute a significant means to avoid ordinary proceedings because they provide for confidential settlement opportunities while arbitral awards are final and enforceable. Arbitrators furthermore have the power to grant interim relief.

Foreign forums

Using a foreign forum in order to obtain a decision in debt-related disputes is not common in Denmark because the courts are efficient in providing timely decisions. Nonetheless, although Denmark is not a signatory to the Rome I Regulation on the law applicable to contractual obligations, the country has ratified the Hague Convention of 15 June 1955 on the law applicable to international sale of goods, which stipulates that contracts shall be governed by the law chosen by the parties, the general spirit of the agreement and the circumstances of the case.

It is however essential that the agreement be characterized by an international connection (for example, one party has elected domicile in another country, or the place of execution is located abroad), and that a jurisdiction clause is specifically drafted for this purpose.



Enforcing foreign awards

As previously mentioned, using foreign forums in order to obtain enforceable decisions against domestic debtors is rather unusual since domestic courts are efficient. Nonetheless, foreign decisions issued against foreign debtors may be recognized and enforced in Denmark provided that the issuing country is also a party to a bilateral or multilateral agreement drafted for this purpose.

Enforcement of decisions issued in the EU may however be delicate. Indeed, although decisions rendered in EU states must be enforced through exequatur proceedings under the Brussels I Convention since July 2007 (according to an agreement signed with the EU to this effect in 2005), Regulation (EC) No 1896/2006 which created a European Payment Order procedure facilitating the recovery of undisputed debts is not applicable in Denmark. Having said this, Denmark will implement the Recast Regulation EC 1215/2012 which ought to suppress exequatur proceedings from January 2015.

Denmark is otherwise a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, meaning that its domestic courts ought to recognize and enforce awards rendered through international arbitration proceedings.

Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

Handling insolvent debtors

A debtor in Denmark is regarded as insolvent if they are unable to meet their obligations as they fall due for payment, unless the inability to pay is temporary.

The Danish Bankruptcy Act (Act no. 298 of 8 June 1977, now consolidated act no. 588 of 1 September 1986, also known as the Konkursloven), is the result of many years of reform work. Once the debtor (or a creditor) has filed for insolvency, different alternatives may be considered.

Insolvency proceedings

Out-of-Court proceedings

Since judicial procedures are efficient, options for out-of-court restructuring are limited. Informal restructuring may take place through formal composition agreements (Akkord) whereby the debts owed to the creditors are strictly acknowledged and payment instalment may be agreed upon without having a judge. This reduces costs and limits negative publicity on the company's financial difficulties, but such arrangements are seldom done and tend to be mostly used as informal negotiation tools in practice.

Restructuring the debt

The act provides a restructuration procedure known as the suspension of payments proceedings (Rekonstruktion) which primarily shields the debtor from enforcement claims for a limited period of time (moratorium) and allows it to stabilize its financial situation. Suspension of payments does not theoretically involve administration of the debtors' estate but in practice, a supervisor is appointed by the Bankruptcy Court. Should the debtor fail to respect the restructuration agreement, a liquidation phase would be considered. The law does not provide for debt write-off limitations.

Winding up proceedings

A bankruptcy procedure (Konkurs) may finally be initiated. An administrator/trustee appointed by the creditors takes control of the company, with a view to sell the assets at the highest possible price and distribute the sale's proceeds to the creditors in their order of priority.

Priority rules

Claims must be lodged within four weeks of the declaration stating that the debtor has entered bankruptcy proceedings. The creditors must be able to prove the claim with relevant documents, but priority rules will normally apply while distributing the proceeds of the assets' sale to the creditors. Secured creditors would be considered first and be given priority over unsecured debtors, which overall have no guarantee to be repaid.

Cancellation of suspect transactions (clawback)

Transactions dating as far back as a year before the debtor entered the insolvency proceedings may be subject to cancellation provided that

they were concluded to the detriment of the creditors (unfair practices, undervalue deals, etc.).

How long could insolvency proceedings take?

Insolvency proceedings are lengthy in Denmark and could last well over a year.

Necessary documents

Copies of the invoices, statement of account and the letter stating that debt collection proceedings will be initiated against the debtor.



Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

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