

## THE DANISH CONTRACTS ACT

### Summary

In general, the principle of freedom of contract governs Danish contract law and constitutes the fundamental principle for contracting in Denmark. However, the Danish Contracts Act does provide a general legal framework for entering into contracts as well as regulating the use of proxies and invalidity.

Generally, the contracting parties may deviate from the rules set out in the Act and parties engaging in business-to-business transactions are thus provided a great deal of latitude to negotiate and enter into individual agreements and contracts. However, these agreements may not conflict with other regulations such as competition law, the rights of third parties or specific rules and regulations governing certain kinds of businesses.

### Does the Danish Contracts Act regulate how the Danish Courts will interpret agreements and contracts?

The Act does not regulate how agreements and contracts are to be interpreted. Instead, the interpretation follows general principles of interpretation used in Danish law, according to which the intentions of the parties, the formal wording of the agreement and the normative interpretation are considered to be the primary interpretation principles.

The original intentions of the parties at the time the contract was entered into are of substantial importance. In order to ensure that these intentions are complied with, the contract may be interpreted under these intentions with the effect that the implied terms and conditions are considered to exist even if this does not appear directly from the contract. However, it should be emphasised that it is the wording of the contract which composes the basis for the interpretation and is still considered to express the original intentions of the parties, unless evidence to the contrary exists. If the parties intentions may not be determined based on the contract, a more objective interpretation based on the wording of the contract will often be applied.

Furthermore, contracts will be interpreted in accordance to relevant background law. This shall include customs and previous business practices between the parties to the extent this has not been deviated from by agreement between the parties.

In case of ambiguity in a contract, the ambiguity will often be construed against the party who has drafted the contract and thus has had the opportunity to choose the wording which results in the ambiguity, the principle *contra proferentem* or the draftsman's rule. This is a fundamental principle in Danish contract law and applies particularly in connection with standard terms and standard contracts.

### **How are standard terms and conditions interpreted?**

In various kinds of businesses, standard terms and conditions are relied upon during the usual course of business. A distinction should be made between agreed documents and unilaterally worded documents, such as terms of business and conditions of sale.

While agreed documents are generally considered to express the intentions of both parties, the Danish courts will often interpret unilaterally worded documents in accordance with the abovementioned draftsman's rule if these do not express normal trade usage, custom, or the normal course of business between the parties.

### **Are there specific rules governing business-to-consumer relationships?**

The Act includes a section which consists of mandatory legislation in favour of the consumer, cf. Section 4 of the Act. Amongst other things, this section regulates how consumer contracts shall be interpreted and states that if the contract has not been entered into following individual negotiations, the contracts must be interpreted in favour of the consumer. Contracts with consumers must in any case be drawn as lucid and comprehensible as possible.

### **Is it possible to limit the liability of the parties under Danish law?**

The Act does not regulate the possibility to limit liability. Therefore, as a consequence of the freedom to contract principle, it is generally possible to limit or exclude liability between the contracting parties. However, such provisions are subject to a restrictive interpretation and may be set aside if adopted in an unfair manner. Accordingly, it is not likely that the courts will respect an agreement that limits a party's liability, if the damages are caused by gross negligence or wilful misconduct. This will normally also apply to provisions limiting liability in connections with personal injury.

### **Is it possible to have unreasonable contracts nullified?**

The Act contains a general clause which may be used in order to have unreasonable or dishonest contracts or clauses declared null and void. In practice, the general clause is primarily used to declare a contract or a specific provision null and void in exceptional cases such as where retention of the contract or provision is unreasonable. The invalidity of one or several provisions in a contract will not automatically affect the rest of the contract.

The general clause was originally intended to be used primarily in business-to-consumers relations, but it is also used in commercial relationships, namely where the balance of power between the parties was uneven at the moment of the drafting of the contract or when circumstances may have resulted in very unreasonable terms to the disadvantage of one of the parties.

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