



# **The Legal 500 Country Comparative Guides**

## **Denmark**

### **SHIPPING**

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Denmark.

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# DENMARK SHIPPING



## 1. What system of port state control applies in your jurisdiction? What are their powers?

The Danish Maritime Authority (DMA) is authorised to undertake port control under the Danish Executive Order on Port State Control (Executive Order no. 262 of 9 April 2018). The executive order is made under the Danish Maritime Safety Act (Consolidating Act no. 221 of 11 February 2022).

The executive order is based on and implements EU Directive 2009/16/EC on port State control (as amended by subsequent amendments) and the Paris Memorandum of Understanding on Port State Control (1982) (Paris MoU). The Paris MoU is the agreement between the maritime authorities of the 28 participating states. It implements a harmonized system of port state control. It covers the waters of the European coastal states and the North Atlantic basin from North America to Europe. Its aim is to eliminate the operation of sub-standard ships through a harmonised system of port state control.

The Danish rules on port state control are therefore generally the same as in the other member states of the EU and the Paris MoU.

The DMA is also authorised to monitor and enforce compliance with the Danish Maritime Safety Act. It implements the SOLAS Convention.

The Danish Ministry for Environment and Food monitors and enforces compliance with the Danish Marine Environment Act (Consolidating Act no. 1032 of 25 June 2023).

## 2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

The Merchant Shipping Act (MSA) (Consolidated Act no. 1013 of 29 June 2023) implements some international

conventions on wreck removal and pollution, including the following conventions and protocols:

- Nairobi International Convention on the Removal of Wrecks (2007)
- International Convention relation to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and its Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil (1973)
- International Convention on Civil Liability for Oil Pollution Damage (1992)
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992)
- Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992) (2003)
- International Convention on Civil Liability for Bunker Oil Pollution Damage (2001)

The Danish Marine Environment Act also implements MARPOL 1973/1978. The SOLAS Convention is implemented by the Danish Maritime Safety Act.

## 3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

The North Sea Area and the Baltic Sea Area are MARPOL Emission Control Areas (ECAs). They are Sulphur Emission Control Areas (SECAs). The current cap on Sulphur content in fuel is 0.1%. They are also Nitrogen Oxide Emission Control Areas (NECAs).

## 4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

The MSA implements the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (1910) and the International Convention on Salvage (1989).

**5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?**

The Convention on Limitation of Liability for Maritime Claims 1976 applies in Denmark and is implemented in chapter 9 of the MSA.

Danish law allows owners, charterers, managers and operators of a vessel to limit their liability regardless of the basis of liability. The types of claims that can be limited are listed in section 172 of the MSA: damage to property, personal injury, delay and wreck removal. Claims for which limitation does not apply are listed in section 173 and include claims relating to oil pollution damage and salvage.

**6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?**

A receiver claiming compensation for lost, damaged or delayed cargo can request an arrest of the ship in order to secure the claim under the MSA. Alternatively, arrest under the Administration of Justice Act (AJA) (Consolidated Act. no. 1655 of 25 December 2022) may also be available.

The Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Vessels (the Arrest Convention) (1952) is in force in Denmark and implemented in the MSA. However, Denmark has not ratified the 1999 Arrest Convention.

It is necessary to distinguish between arrest in accordance with the MSA and arrest in accordance with part 56 of the AJA.

As a general principle, an arrest may be made in respect of a pecuniary claim against any type of assets. If the claimant does not wish to obtain security for its claim, but only to prevent the vessel from sailing, the claimant will have to apply for an injunction instead. This procedure is governed by part 56 of the AJA. In the AJA part 56, it is provided that the rules of AJA are to be applied when: (1) a vessel is arrested for a claim which is not a maritime claim, (2) the arrested vessel is not to be detained, and (3) the arrest is made in cargo, freight or bunkers. The rules in the AJA part 56 on arrest are stricter and their conditions of application are more difficult to fulfil than the rules in the MSA on arrest of vessel.

As regards arrest of vessels in particular, the MSA section 91 provides that a ship may be arrested if the claimant has a maritime claim based on any of the following matters:

1. Damage to property caused by a vessel either by collision or otherwise.
2. Loss of life or personal injury caused by a vessel or occurring in connection with the operation of a vessel.
3. Salvage.
4. Agreement relating to the use or hire of any vessel whether by charterparty or otherwise.
5. Agreement relating to the carriage of goods on board any vessel whether by charterparty or otherwise.
6. Loss of or damage to goods, including baggage, carried on board a vessel.
7. General average.
8. Bottomry.
9. Towage.
10. Pilotage.
11. Goods or materials wherever supplied to a vessel for its operation or maintenance.

12. Construction, repair or equipment of any vessel or dock charges and dues.

13. Wages of the master, officers or crew.

14. The master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a vessel or her owner.

15. Disputes as to the title to or ownership of any vessel.

16. Disputes between co-owners of any vessel as to the ownership, possession, employment or earnings of that vessel.

17. The mortgage or hypothecation of any vessel.

A vessel can be arrested as security for a maritime claim if:

1. the claim against it is a maritime claim as defined above,
2. the debtor of the claim is the owner of the vessel being arrested and
3. the vessel is in Danish waters.

Under Danish law, there is no requirement for a prior judgement to be attained for an arrest to be made.

The Danish courts will always have jurisdiction over the subsequent confirmatory court proceedings. They are to decide whether the arrest was lawful or not when an arrest of a vessel has been made in Denmark. This follows from section 634(1) of the AJA.

If there is no jurisdiction or arbitration agreement between the parties, then the claim can be pursued on the merits in Denmark, that is in the court where the arrest was made.

If there is a jurisdiction or a foreign arbitration agreement, the claimant must still commence confirmatory court proceedings in Denmark. But the claimant must also commence proceedings in the agreed foreign court of law or arbitration tribunal within two weeks of the arrest. Otherwise the defendant can request the arrest to be set aside. This follows from section 638 of the AJA.

The parties may have agreed to refer the dispute to a foreign court of law or an arbitration tribunal whose judgement or award will not be recognised by Danish courts. In such a case it is not clear under Danish law whether an arrest should be granted.

## **7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?**

There are no special or notable procedural requirements. It is not required that a power of attorney is provided by a Danish attorney or that original documents are provided. Documents may be submitted by PDF and email.

The arrest must be made against a vessel against which a judgement may be enforced. This means that the owner of the vessel must be the debtor of the claim. It is not possible to arrest a vessel for claims against others than the owner of the vessel, for example a time charterer. The claimant must make a written application to a Bailiff's Court which outlines the facts of the claim. Accompanying documentary evidence is also required.

The test used by a Bailiff Court is whether the claim "probably" exists and whether the conditions for arrest are fulfilled. The burden of proof lies on the claimant, but in general it is not difficult to obtain an arrest in Denmark.

## **8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?**

It follows from section 51 of the MSA that the following claims are secured by maritime lien in the ship:

1. Wages and other remuneration due to the master and other members of the crew in respect of their service on board.
2. Public and private harbour dues, canal and other waterway dues and pilotage dues.
3. Compensation for personal injury arising in direct connection with the operation of the ship.
4. Compensation for damage to property arising in direct connection with the operation of the ship if the claim cannot be based on contract.
5. Salvage, compensation for removal of wreck and contribution to general average.

Maritime lien arises whether the claim is directed against

the owner, charterer, user or manager.

Further, it follows from section 74 of the MSA that a lien in a foreign ship is recognized as valid in Denmark if all the following conditions are met:

1. The lien is created and registered in accordance with the law of the state where the ship is registered.
2. The register and the documents to be kept are publicly available and extracts of the register and copies of those documents are available at the register.
3. The register or the said documents contain information on all the following:
  - (a) The name and address of the mortgagee or information that the mortgage has been issued to bearer.
  - (b) The amount of the sum secured by the mortgage.
  - (c) The date and the other circumstances which, under the law of the country of registration, determine the priority of the lien in relation to other registered liens.

This means that foreign liens and mortgages etc generally are recognised in Denmark.

### **9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessities?**

Under subsection 4 of section 93 of the MSA, vessel arrest cannot be carried out against property to which the claim in question cannot be attached. Where a claim relates to a vessel, but where the owner of the vessel is not personally liable for the claim, arrest can only take place in Denmark if the claim is secured by a maritime lien.

### **10. Are sister ship or associated ship arrests possible?**

Yes. The ship needs to be owned by the same debtor at the time of the arrest.

### **11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be**

### **liable for damages if the arrest is set aside?**

The claimant's duty to put up counter-security depends on the legal regime on which the arrest is based.

If arrest is to be made under section 94 of the MSA, counter-security must be put up. The maximum amount of security will be the equivalent to 5 days hire for the vessel. After the arrest has been made, the security may have to be increased subject to the court's discretion and decision on this.

If arrest is to be made under section 629 of the AJA, the Bailiff's Court may in its discretion order that counter-security is to be put up. The required security will probably generally be the same as the security to be provided under the MSA.

Security may be provided in the form of a Danish bank guarantee.

### **12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?**

Under section 95 of the MSA, arrest in respect of claims mentioned in section 91 of the MSA may be avoided, and the arrest shall be lifted, if security is provided, as long as the amount of security is deemed by the enforcement court as sufficient to cover the claimant's claim, including interest due and estimated future interest as well as likely costs of the arrest procedure, the arrest action and the action regarding the claim. Further, in case of arrest in respect of claims mentioned in section 91 of the MSA and if security has been put up, the person in possession of the ship may be permitted to continue using the ship, or other decisions may be made for use of the ship, during the period where the arrest has effect.

A bank guarantee or P&I Club Letter of Undertaking (LOU) from a recognized P&I Club is considered acceptable security for the claim. The debtor or its bank or P&I-club will usually provide security for the claimant's claim and interests and costs. The debtor will thus obtain permission for the ship to sail. Sufficient security is often the amount of the claim plus 30-40% as security for interests and costs.

### **13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?**

Section 478 of the Administration of Justice Act requires an execution to be levied against the vessel before a judicial sale can be initiated. An execution will normally occur if the claim has been determined by a court or arbitration tribunal or if an enforceable judgement or award has been granted against the debtor.

Once an execution has been levied against a vessel, the creditor can request a judicial sale in the same bailiff's court where the execution was levied. The court will then either choose between an assisted sale or a forced auction. As the former procedure is likely to result in higher proceeds, it is the most commonly used procedure.

The court will appoint a ship broker to facilitate the sale. Once a suitable offer has been found, it will be presented to the creditor. The offer has to cover the rights of all creditors that rank above the creditor demanding the sale. The court will only confirm the sale if it believes that any further sale efforts will not yield a higher price.

A creditor must register its execution claims with either the Danish Ship Register (DAS) or the Danish International Shipping Register (DIS) to ensure priority over other creditors or third parties. A creditor who has arrested a ship does not obtain priority with respect to the proceeds of sale, as the levying of the execution of an asset is considered to benefit all creditors.

Instead, the proceeds of the sale will be distributed among the creditors according to the general priority rules under Danish law, which are as follows:

1. Court fees and other legal costs.
2. Expenses incurred as a consequence of the arrest, for example for custody, costs and sale of the vessel.
3. Claims secured by maritime liens.
4. Claims secured by possessory liens of repair yards.
5. Claims secured by mortgages.
6. Claims secured by maritime liens acknowledged by the country of registration only.
7. Other claims.

#### **14. Who is liable under a bill of lading? How is "the carrier" identified? Or is that not a relevant question?**

The carrier is liable under a bill of lading according to the Danish Merchant Shipping Act. The carrier is the company that is responsible for carrying out the

transportation. It is not usually problematic to identify the carrier.

The bill of lading imposes a responsibility on the carrier with regards to the state of the goods being transported. Accordingly, the state of the goods when received by the carrier are assumed to be as described in the bill of lading, except if the carrier has made an explicit reservation in the bill, or if other circumstances are proved.

If the bill of lading is passed on to a third-party acting in good faith, then the carrier is prevented from invoking circumstances that prove that the goods were not as described in the bill. Accordingly, the carrier may be liable to the third-party for any loss suffered due to the goods being non-contractual.

The carrier is also liable for any loss suffered by a third party acting in good faith for misleading information in the bill of lading if the carrier knew or should have known that the information would be misleading for the third-party.

#### **15. Is the proper law of the bill of lading relevant? If so, how is it determined?**

According to the MSA, every contract regarding sea transport in Denmark, or between Denmark, Norway, Sweden or Finland, is governed by the rules in the act. This means that the act also applies to ocean transport with no relation to Denmark, provided that other of the said Nordic states are involved.

The Danish rules also apply to other transports between states which are parties to the international convention called the Hague Visby Rules when the transport has connection to one or more of the said four Nordic states. This only applies if the case is being adjudicated by a Danish court.

When the transport has no connection with the said four Nordic states, then the parties are free to agree on the application of the rules of another state which is a party to the Hague Visby Rules.

#### **16. Are jurisdiction clauses recognised and enforced?**

Jurisdiction clauses are recognised and enforced by the Danish courts. However, several restrictions regarding jurisdiction clauses are prescribed in the MSA.

For ocean transport within the said four Nordic states, a jurisdiction clause agreed upon before the conflict



commenced will be void if it prevents the claimant from commencing legal proceedings against the defendant in at least one of the following places:

1. The place where the defendant has his/her registered office.
2. The place where the contract was concluded, provided that the defendant has an office there, through which the contract was agreed.
3. The agreed place of receipt of the goods according to the transport contract.
4. The agreed or de facto place of delivery of the goods.

Irrespective of these restrictions, the plaintiff can always sue the defendant at the place agreed in the transport contract.

The restrictions do not apply after the conflict has commenced. The parties are then free to agree on the jurisdiction in which the case shall be adjudicated.

It is important to note that the restrictions also do not apply where the EU Brussels Regulation, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, applies.

### **17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?**

An arbitration clause stipulated in a charter party is only given effect in a bill of lading context if the bill of lading explicitly refers to the arbitration clause. The same applies for a jurisdiction clause.

### **18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted - by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?**

Denmark has ratified the Hague Visby Rules. The provisions of the MSA that regulate contracts of carriage are based on and implement the Hague Visby Rules. Some aspects of Danish law reflect the Hamburg Rules to the extent that they do not conflict with the Hague Visby Rules. The Hamburg Rules have not been ratified.

Denmark has signed but not ratified the UN Convention

on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules).

Section 274 of the MSA states when the carrier is liable for the goods. Carriage at sea for liability purposes begins when the carrier has received the goods in its possession at the port of loading and ends when it has delivered the goods at the port of discharge.

### **19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?**

Denmark has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

The Danish Arbitration Act 2005 (Act no 553 of 24 June 2005 on Arbitration, with subsequent amendments) is generally in accordance with the UNCITRAL Model Law on International Commercial Arbitration and also implements the New York Convention in Danish law.

Section 38 of the Arbitration Act provides that subject to the provisions of section 39, an arbitral award, irrespective of the country in which it was made, shall be recognized as binding and shall be enforced in accordance with the provisions of the Administration of Justice Act on the enforcement of judgments.

Section 39 provides that recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused by a court only in the following cases stated in section 39.

Recognition or enforcement of an arbitral award may be refused by a court at the request of the party against whom it is invoked if that party provides proof of any of the following matters:

1. A party to the arbitration agreement was, under the law of the country in which that party was domiciled at the time of conclusion of the contract, under some incapacity, or the said

agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made.

2. The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case.

3. The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.

4. The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or with the law of the country where the arbitration took place.

5. The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

If an application for setting aside or suspension of an award has been made to a court referred to in number 5 above, the court where recognition or enforcement is sought may adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Recognition or enforcement of an arbitral award may also be refused by a court if the court finds that any of the following matters apply:

1. The subject-matter of the dispute is not capable of settlement by arbitration under Danish law.
2. The recognition or enforcement of the award would be manifestly contrary to the public policy of Denmark.

If a ground for refusing recognition or enforcement concerns only part of the arbitral award, only that part may be refused recognition or enforcement.

## **20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).**

Section 501 of the MSA governs the limitation periods for any maritime claim. The time limits depend on the type of claim. The periods are between 1 and 3 years.

If a time limitation period for a claim is not set out in section 501 of the MSA, the applicable limitation period under Danish law is generally three years for contractual claims and 10 years for tort claims. For contractual claims, the limitation period commences at the due date for satisfaction of the claim or from the date of a breach. For tort claims, the period commences on the date on which the party suffering damage becomes aware of, or

should have been aware of, the damage and the person responsible for causing the damage.

Personal injury and environmental damage claims are subject to a limitation period of 30 years.

It is possible for the parties to agree to extend the time limits after the claim has arisen.

Maritime liens are time-barred after 1 year. The same is the case for claims for loss, damage or delay of cargo brought under the rules of part 13 of the MSA. The limitation period for most passenger claims is 2 years.

The limitation period will be suspended if the parties enter into settlement negotiations. If the parties do not reach a settlement, the claim will be time barred 1 year after the settlement negotiations ended.

The limitation period will only stop running if the claimant takes legal steps against the defendant, such as commencing legal proceedings in a court of law or arbitration proceedings. Merely presenting the claim to the defendant will not be sufficient to stop the limitation period from running.

## **21. Does your system of law recognize force majeure, or grant relief from undue hardship? If so, in what circumstances might the Covid-19 pandemic enable a party to claim protection or relief?**

Force majeure is recognised as a legal concept under Danish law. It applies when a party's non-performance of an obligation under a contract is due to an impediment which is extraordinary and beyond the control of the party and the party could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

Under Danish law, a general rule of contract law grants a contracting party exemption from liability in cases of force majeure, even if this is not stated in the contract. However, this does not apply in cases where the parties have actively stated in their contract that force majeure cannot be invoked as basis for an exemption from liability under the contract.

If the contract does not include terms on the scope of force majeure in relation to COVID-19, the question arises whether COVID-19 can be invoked as force majeure. In order for COVID-19 to qualify as a force majeure event or circumstance, it must be assessed and determined whether the specific COVID-19 event or circumstance is an impediment to the performance of



the specific obligation or obligations under the contract and can be considered extraordinary and beyond the control of the party to the contract and whether the party could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

The party claiming force majeure must prove or substantiate that it is impossible to fulfil the obligation under the contract due to force majeure.

Force majeure will not apply if it has just become more expensive or time-consuming to fulfil the contract or one or more obligations under the contract.

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