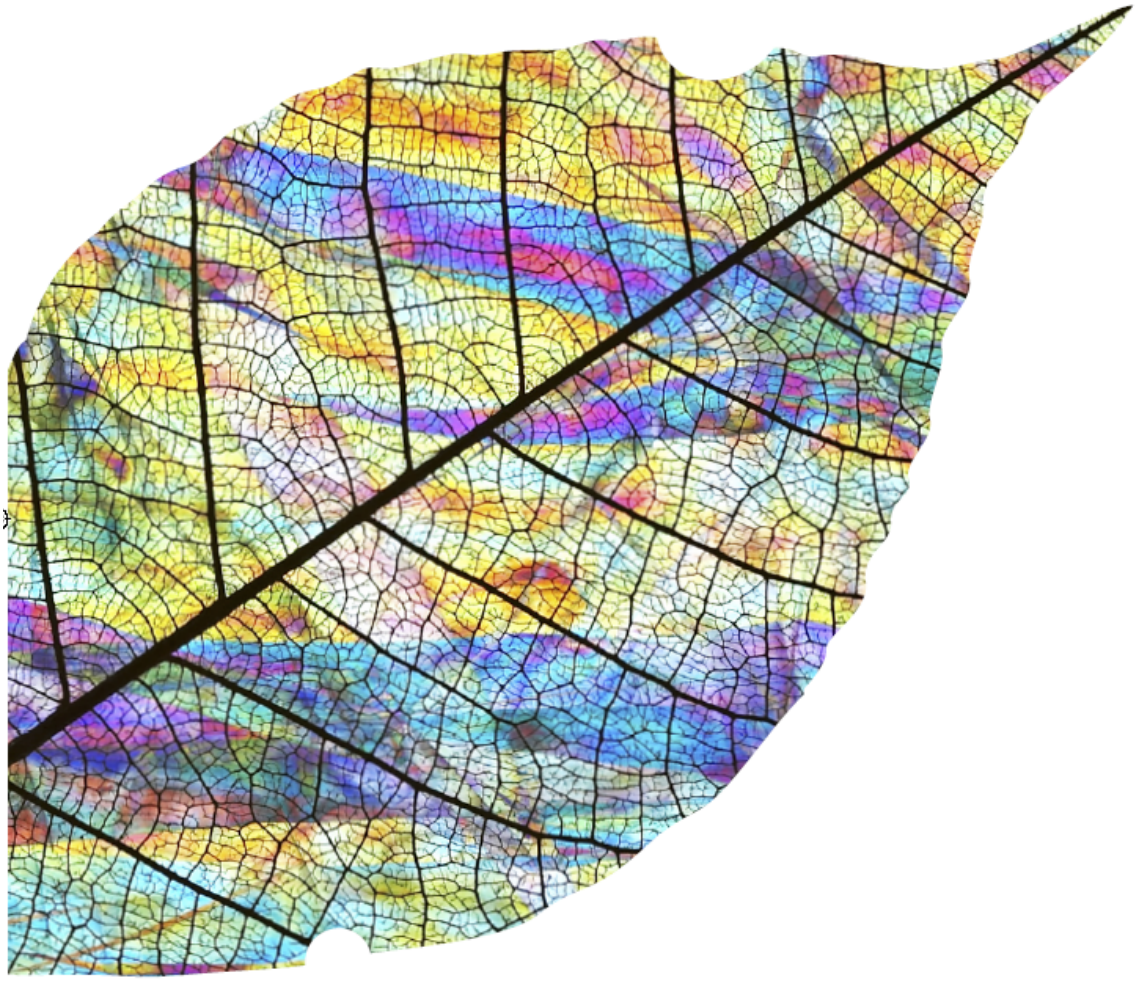
World Universities Comparative Law Project
Legal rating of Denmark

carried out by students at the University of Copenhagen

A production of the Allen & Overy Global Law Intelligence Unit



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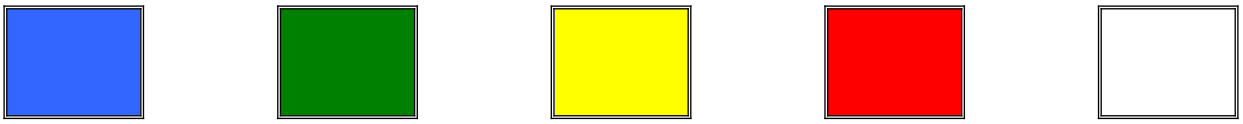

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World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Denmark was carried out by students at the University of Copenhagen.

The member of the Faculty of Law at the University of Copenhagen who assisted the students was Professor, Dr Jesper Lau Hansen.

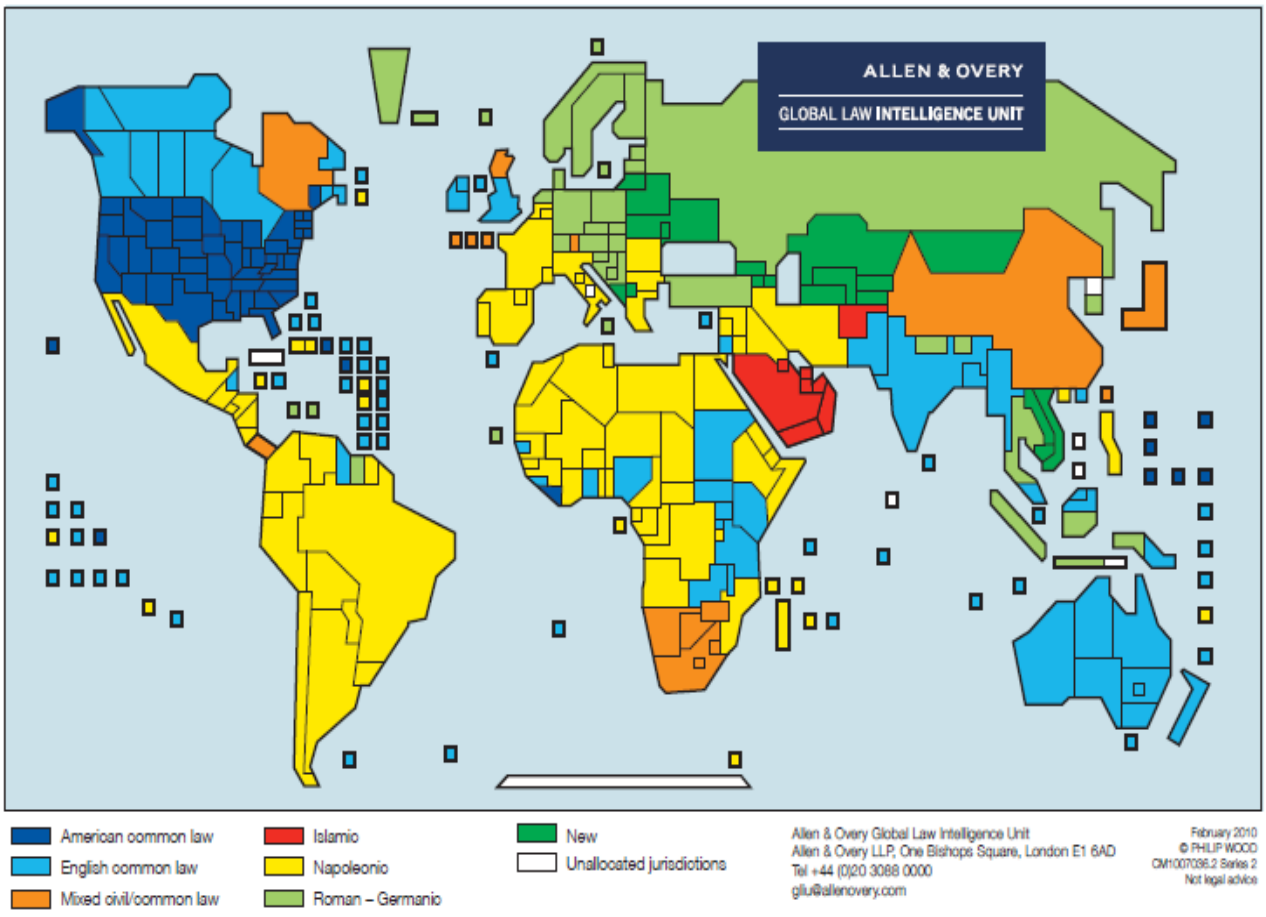
The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

- Dan Moalem (Moalem Weitemeyer Bendtsen)
- Jacob Hjortshøj (Bech-Bruun)
- Jens Steen Jensen (Kromann Reumert)
- Klaus Søgaard (Gorrissen Federspiel)
- Trine Bøgelund (ACCURA)

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

The Faculty of Law at the University of Copenhagen strives to promote a strong research environment in order to support its goal of conducting excellent scholarly work with an international impact. In all its core activities, the Faculty aims at being completely up to date with respect to important legal aspects of the rapidly developing globalisation.

The Faculty of Law wishes to engage in a comprehensive and dynamic dialogue with the outside world. Among other specific initiatives, this is accomplished by arranging a large number of conferences and seminars, where Faculty staff disseminates their scholarly achievements. The Faculty's scientific staff members are involved in numerous relations with fellow researchers from other institutions as well as a vast variety of private enterprise and public institutions. A large number of part-time lecturers, who have their main occupation as practitioners, contribute significantly to the strengthening of a fruitful interaction, thereby also furthering the students' insights concerning work requirements and potential opportunities after graduation.

The Faculty of Law is constantly improving and upgrading the educational curriculum for prospective legal practitioners and vests a great deal of resources into ensuring that students acquire the optimal competences to meet the current as well as future exigencies of the labour market and the surrounding society. Thus, the Faculty encourages its researchers and educators to interact with relevant segments and stake holders outside the university in order to establish and maintain mutually rewarding co-operation with private business and public institutions, including other universities.

The World Universities Comparative Law Project in perfectly in line with the Faculty's strategy of expanding students' international and practical experiences, thereby advancing their approach to solving legal issues. Consequently, it is an honour for the Faculty of Law at the University of Copenhagen to have been selected as a contributor to this project. I profoundly acknowledge the need for focusing on transnational legal issues and enhancing transparency and mutual understanding concerning the many differences among various jurisdictions of the world. Therefore, I am happy to hereby express my full support for this project.

February 2014

Jørn Vestergaard,
Dean (Acting),
Faculty of Law
University of Copenhagen

Foreword by the students

As an introduction to the legal analysis of Danish law set forth below, we shall provide readers with an introduction to Danish law in a European and international perspective.

The Danish legal system belongs to the civil law system and is highly inspired by both Roman-Germanic law and in part by the French Code Civil. The central authoritative source is codifications in a constitution and statutes passed by legislators to amend existing acts. Thus, legislative enactments are considered to be the highest source of law (opposed to legal precedents, as in common law). Danish courts often render their rulings with emphasis on written statutory law and derivative legislation. Preparatory works of legislative proposals also constitutes an important legal source in Danish law to construe the purpose and meaning of the law.

To position Danish law in general, the Danish legal system belongs to the Scandinavian (or Nordic) family, while still acknowledging internal distinctions, both at the regional and national levels. An institutionalised cooperation between the Nordic countries is the Meetings of Nordic Jurists held every third year for more than 100 years now. The focal point of this institution has been the aim of similar legislation and uniformity in private law. The main result of the Nordic cooperation in the legislative field is the general conformity that has been achieved through the years especially in such areas as sales of goods, instruments of debt, the law of obligations, the law of contract, tort law and also in the fields of family law, maritime law, intellectual property law and company law.

This Nordic family is rightly described as a separate system, which can be distinguished from other legal families in Continental Europe, including the Roman-Germanic ambit.

By legal historians and scholars of comparative law in Denmark, it has been the opinion that Danish law is a national law distinct from Roman law and legal systems based on Roman law, although it has borrowed much from others like the Germans.

As Denmark is a part of the European Union, EU law applies and large parts of Danish law must be construed by reference to the underlying law stemming from EU.

February 2014

Amanda Line Staun, Harald Peen, Johannes Malmvig Jensen, Julie Cathrin Rovsing, Tim Johan Christensen, Sonny Gaarslev, students at the University of Copenhagen, Faculty of Law

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Denmark with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

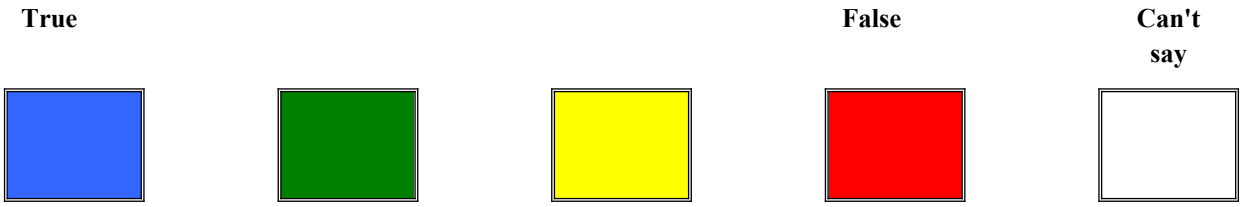
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at the University of Copenhagen. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of, the University of Copenhagen, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Denmark. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread across just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Denmark, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
	X			

Comment:

Set-off is permissible against companies and individuals through section 42 of the Danish Bankruptcy Act. The section states that claims incurred before the bankruptcy may be set-off against other claims equally incurred prior to the bankruptcy. Furthermore, claims incurred after the date of commencement of bankruptcy – usually at the time of the petitioning for bankruptcy - but before the courts issue the declaration of bankruptcy, may be set-off against claims incurred in the same period. Subsequently, claims incurred before the date of commencement of bankruptcy may not be set-off against claims incurred after the date of commencement of bankruptcy.

The Bankruptcy Act contains certain provisions restricting access to set-off claims. This is for example the case where the debtor obtains a counterclaim at a time where the bankruptcy was imminent, or if the payment would otherwise be voidable. There are several rules in the Danish Bankruptcy Act that aims at rendering certain transactions carried out in a specific period up to the bankruptcy null and void. Transactions that may be rendered null and void, regardless of fraudulent intent or knowledge of the insolvency, include providing security interest in connection with previous indebtedness, dubious payments made within three months from the date of commencement of bankruptcy, unreasonable remuneration to closely related persons within six months of the date of commencement of bankruptcy, and execution levied against the company's assets within three months of the date of commencement of bankruptcy.

In addition, the Bankruptcy Act also contains a provision under which transactions may be declared null and void if they constitute an undue preference to one creditor at the expense of others, provided that the company was insolvent at the time and that the creditor was aware of the insolvency. Although there is no specific time limit for such transactions, transactions made more than 24 months prior to the date of commencement of bankruptcy will usually not be declared void.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Denmark, the law offers a security interest which is highly protective of the secured creditor.

True			False	Can't say
X				

Comment:
Denmark provides the secured creditor with a strong protection if the formalities for the attachment of the security interest to the underlying asset are fulfilled and the secured interest is enforceable under the debtor's bankruptcy.

The formalities are different depending on the asset that is sought attached to the security interest. Of course it should be noted, that the security interest only protects the creditor completely as long as the value of the attached asset encompasses the security interest.

The most common type of security interest for bank credit in Denmark are mortgage loans, which are mortgage loans, as the mortgagor remains in control over the asset. To promote and ensure financial stability, Denmark's real estate equity institutions operate under a balance principle, meaning that a bond on the market is created and sold with the same terms as the mortgage loan issued to the mortgagor. This means that the risks of the mortgage loan through the bond, is shared by the market.

Security interest over real estate and cars needs to be registered in the appropriate registers, "Tingbogen" and "Bilbogen". After the secured creditor has their security interest noted in the registry, they are immune to extinction from others ex tunc. It should be noted, that security interest over real estate in Denmark is not a non-recourse obligation like it is in the United States, meaning if the borrower defaults, then the creditor can still go after the other assets belonging to the obligor, unless otherwise agreed upon through a valid agreement to so relinquish their further right to press claims. Security interest over other movable assets than cars, needs to be unconditionally appropriated and outside the mortgagor's sphere of influence; in other words, a true legal mortgage.

Security interest over simple debt instruments needs to be notified to the debtor in order for the creditor to protect their security interest. The creditor enters the debt relationship on the same terms as the previous creditor, no better no worse.

Security interest over negotiable instruments as well as mortgaging movable goods requires a true legal mortgage, where the creditor takes the negotiable instrument(s)/movable goods into their possession.

Security interest in the form of floating charge can be given to corporate entities, where the security interest attaches to the liquid value of the attached corporate entity, which does not crystallise unless the corporation should enter bankruptcy. It has recently, as of 1 June 2013, become possible for corporate entities to create floating charge as securitisation also as mortgage loans ("ejerpantebreve",) not just negotiable instruments ("skadesløsbreve") like previously. "Ejerpantebreve" has the advantage that they can be transferred and that partly unused instruments of this kind can be mortgaged to another party in regards to the unused part.

For security interest to be enforceable during bankruptcy, the above requirements need to be followed. Furthermore, security interest will be null and void, if the attachment was made after the debtor became bankrupt.

The attachment of the security interest to the asset can be sought revoked, if it was not created at the same time as the debt it was meant to secure or if the proper requirements for protection against other creditors - as detailed above, were not taken without unnecessary delay after the creation of the debt and if given less than 3 months before the day which constitutes the date of commencement of bankruptcy according to section 1 of the Danish Bankruptcy Act.

It is also notable that if a floating charge has been registered less than 3 months before the date of commencement of bankruptcy, and if the assets of the bankrupt debtor is increased due to reversals as dealt with in chapter 8 of the Danish Bankruptcy Act, then the extension of the floating charge would only extend to the added assets, if that addition could be construed as ordinary.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Denmark has a universal trust for all assets.

True			False	Can't say
			X	

Comment:
Denmark has not ratified the Hague Trust Convention of 1 July 1985, and trusts as known from common law jurisdictions are generally not a recognised legal concept under Danish law. Before 1919, a special type of trust ("fideikommis") was broadly used in Denmark. However, the revision of the Danish Constitution in 1953 introduced a prohibition against these types of trusts.

As stated in the Danish Report on the Book of Principles on European Trust Law, 1999, there are however, a number of institutions in Danish law that have similar traits as trusts known from common law jurisdictions, eg foundations and limited partnerships. It is also possible to make an arrangement where one person has a legal title of property, which is held and managed for the benefit of another under an irrevocable pledge. However, there is no set of rules governing basic trust elements such as the fiduciary relationship of the parties and the responsibilities of the ‘trustee’.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Denmark the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True		False		Can't say
	X			

Comment:
This answer regards both public (listed as well as non-listed) and private limited companies.

Danish law does not recognise any explicit fiduciary duties (duty of care and duty of loyalty) of the directors and management, as it is known under eg English law. The personal liability of the directors and management is regulated in section 361 of the Corporations Act. The standard of liability is culpa. The liability is owed both to the company as a legal entity and to its shareholders.

Crucial to the assessment is whether the damaging event is exercised on a prudent and examined basis. Furthermore, the basis for decision has to be updated and current. Danish law recognises a business judgment rule, thus a loss is not necessarily equal with liability.

Case law suggests that letting the company proceed despite of economic hardship does not per se lead to liability. Crucial to the assessment is whether a reasonable outlook for proceeding without further losses existed for the company at the time of the decision to proceed. However, if it is clear to the directors that the company is insolvent and they proceed with operations, that deepens the insolvency, they will be personally liable. The financial crisis has caused an increased number of bankruptcies, which has led to an increased focus on personal liability for directors.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Denmark permits a company to grant financial assistance for the purchase of its own shares.

True			False	Can't say
		X		

Comment:
Denmark is subject to the European prohibition of self-financing, incorporated in section 206 of the Companies Act. However, under Danish law there exists an exemption to the prohibition.

The exemption is located in section 206(2) of the Companies Act. To be activated, the exemption requires the approval of the general meeting, soundness of the decision, a report from the management and finally, that the transaction is based on common market terms.

Further to that, sections 213-214 of the Companies Act exempts from the prohibition (i) banks and (ii) self-financing arrangements of acquiring shares from or selling shares to associates in the group of companies.

All three exemptions are only true provided that the resources used could have been allocated as dividend as described in section 180 of the Companies Act.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Denmark is open and has few restrictions.

True			False	Can't say
	X			

Comment:
The Danish public takeover regime is based on European law; hence it is quite strict. The regime recognises an obligation to make a so-called mandatory bid when a non-shareholder is acquiring control of a company, cf. section 31 of the Danish Securities Trading Act. The bidder must pay the same price and conditions to all shareholders within the respective share classes. This mandatory bid has to be made in a so-called offer document containing all relevant information.

Despite the regime being quite strict, frustration of the bid is not prohibited, but limited to a certain extent (with the purpose of ensuring equal treatment of the shareholders). However, each particular company can incorporate certain limitations of the management's discretion to use defensive measures in its articles of association.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Denmark, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
X				

Comment:
It should be noted, that under Danish law oral agreements is as binding as written agreements. As a general principle, heads of terms are only binding when they are adopted into the parent contract and subsequently agreed upon. However, the parties should be cautious when using heads of terms or other declarations of intent under Danish contract law if the terms are sufficiently clear, since this might be enough to establish rights and obligations between the parties under certain circumstances. This is a very different approach compared to contract law in common law jurisdictions, where the interpretation is objective and solely based on the written words in the contract.

Whether a given provision is binding under Danish contract law depends on an interpretation of the individual terms. The Danish courts apply a subjective interpretation, which means that in case of doubt the courts will try to recreate the parties' intentions based on the written contract as a whole and the given circumstances such as preceding and following correspondence as well as actual contractual performance. Naming the document "heads of terms" will not be decisive.

But if the parties expressly state that the terms are "non-binding" or "subject to contract", the parties will generally not be bound to the heads of terms, unless there is very clear evidence that the parties intended to be bound. As a precaution, parties should never construct the heads of terms as a regular contract and refrain from using contractual terms such as "agree" or "shall/must" and replace these with less definitive terms such as "aim at" or "intend".

Clauses that relate to the termination of the parent contract, such as survival clauses or break fee clauses, will generally be upheld, even though the rest of the contract is not binding after the termination.

As a difference to common law jurisdictions, Danish law does not recognise a requirement of consideration.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Denmark, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True			False	Can't say
X				

Comment:
Termination clauses will usually be upheld according to the general principle of freedom of contract. Termination clauses are generally only set aside within legal fields that require consumer protection, such as consumer or employment law, where mandatory rules provide that termination clauses can be deemed invalid and set aside by the Danish courts.

As regards termination clauses between sophisticated companies, the termination clause may be deemed invalid under the provisions in chapter 3 of the Danish Contract Act about invalid declarations of intention, such as fraud, coercion, exploitation etc.

The most relevant provision for invalidity is section 36 of the Danish Contract Act, which states that contracts may be modified or set aside, in whole or in part, if it would be unreasonable or at variance with the principles of good faith to enforce it. It appears from Danish case law that the provision only applies between companies if an exploitation of unequal strength between the parties leads to imbalanced provisions. It is generally assumed that sophisticated companies are able to weigh the advantages against the risks and prepare a basis for their decisions before entering a commercial agreement. The provision is primarily used on onerous obligations such as liquidated damages, clauses where the debtor is not entitled to terminate the lease or clauses that exclude the opportunity of dispute resolution. Given the rare use of the provision in transactions between companies, termination clauses will usually be upheld, even if the event concerned is relatively trivial. However, it is important to be aware of the provision.

If there is no termination clause in the contract, the Danish courts will generally imply termination terms into the contract using a reasonable notice of termination, unless it is clear that the parties agreed the contract to be non-terminable.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Denmark, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True			False	Can't say
	X			

Comment:

As a general principle, exclusions of liability in commercial contracts are generally upheld if they are clear.

An important exception to this is that the Danish courts apply a sceptical view of exclusions with extraordinary terms by requiring clear evidence that the other party has actually agreed to the term, such as demanding that the term is clearly emphasised in the contract. If the exclusion of liability is ordinary, the courts set no such condition.

In relation to contractual interpretation, the courts will normally set aside exclusion clauses, if they contain atypical provisions, such as exclusion of liability despite gross negligence or wilful misconduct or exclusion of product liability for death or personal injury. Exclusion clauses will prima facie be interpreted as only including direct loss, unless it is clearly stated that the exclusion of liability includes indirect/consequential loss, such as loss of data, loss of profit or loss of goodwill.

An exclusion clause can also be set aside because of contractual invalidity under section 36 of the Danish Contract Act (as described above) or the Danish doctrine of fundamental breach. The doctrine is primarily used if the exclusion of liability is subject to the condition that one party will have other available remedies for breach of contract available, such as delivery of substitute goods. If the obligated party fails in performing these other remedies, the other party may be entitled to claim damages despite the exclusion of liability.

In conclusion, exclusions of liability in commercial contracts are generally enforced, but the contractual freedom is not unlimited.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Danish courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Danish public policy and mandatory statutes.

True			False	Can't say
X				

Comment:
The 1980 (EC) Convention (80/934) on the Law Applicable to Contractual Obligations (Rome Convention) has been in effect in Denmark since ratification in 1991. Article 3(1) of the Convention provides that a contract is governed by the law chosen by the parties irrespective of the connection to that country. This choice of law (ie foreign to Danish law) must be expressed or demonstrated with "reasonable certainty" in the contract or by the relevant circumstances.

The Rome Convention article 3(3) regulates the relationship to mandatory rules by the law of that state, which would have been applied by the courts, if not a choice of law had been made by the parties. This article has the effect that mandatory rules cannot be derogated from by the parties' choice of law, if the contract has an exclusive connection to one country only. However, this only affect parties where mandatory rules of the law of the exclusively connected state conflicts with the rules of the chosen law. In these situations, the choice of law rules is subordinate to mandatory rules.

International Sale of Goods (Hague Convention)

In matters relating to international sale of goods, the Danish courts will apply the 1955 Hague Convention on the Law Applicable to International Sale of Goods which has been ratified and in effect in Denmark since 1964. Under Danish law, the Rome Convention yields to the specialist Hague Convention when determining the applicable law to contracts on international sale of goods either by agreement or without any such agreement. The Hague Convention applies to the choice of law in any merchant or private sale where other sale of goods and other contracts are covered by the Rome Convention. Under article 2 of the Hague Convention, a sale shall be governed by the domestic law of the country designated by the contracting parties, also irrespective of the connection to that country. Further, such designation must be contained in an express clause, or unambiguously result from the provisions of the contract. The Convention applies to all international sales, apart from mere national sales or sales where only the applicable law is of another country than the parties.

In conclusion, the courts of Denmark will apply and uphold a choice of a foreign law irrespective of the connection to that country between sophisticated companies, but subject to public policy and mandatory statutes.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Danish courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True			False	Can't say
X				

Comment:
The 2001 (EC) Regulation (44/2001) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation), came into force in 2002, but is implemented in Danish legislation by a special 'Parallel Agreement' effective of 1 July 2007.

According to article 23 of the Brussels I Regulation a contract between parties that provides jurisdiction to a specific country's courts, will be upheld by the national courts. The scope of application follows certain circumstances/conditions:

1. It is a requirement that at least one of the parties has its residence in an EU Member State at the time of the conclusion of the contract.

2. Article 23 is only applicable if the forum agreement provides jurisdiction to an EU Member State. However, it is not a requirement that the case or the parties have a connection to the forum of choice; cf. 56/76 Zelger, 1980.89, chapter 4.

3. The agreement must relate to "any disputes which have arisen or which may arise in connection with a particular legal relationship".

4. The legal relationship must be of international character, ie that the parties resides in different Member States or a Third Party State and one member State, or that the actual circumstances of the case has evolved in another State when both parties has their residence in the same country.

Validity of the contract

The agreement must be either (a) in writing or evidenced in writing; or (b) in a form which accords with practices which the parties have established between themselves; or (c) in international trade commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Lugano Convention

Between Denmark and Iceland, Norway, Switzerland and Poland the 1988 (EC) Convention (592/88) on jurisdiction and the enforcement of judgments in civil and commercial matters (Lugano Convention) applies in matters of jurisdiction.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Denmark, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Danish courts.

True			False	Can't say
X				

Comment:
Denmark has signed and ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), and this is implemented in Danish legislation under the Danish Arbitration Act ("Voldgiftsloven"), which is based upon the 1985 UNCITRAL Model Law on International Commercial Arbitration.

According to section 6 of the Danish Arbitration Act, the parties may agree to arbitration in any legal matter that they have free disposal of, unless national regulation limits the use of arbitration.

It is also a general rule that the arbitration agreement is applicable whether the seat of arbitration is situated in Denmark or a foreign country, or if it hasn't yet been determined, cf. section 1(2).

The parties may by contract submit any disputes which have arisen or which may arise in connection with a particular legal relationship under contract or tort to arbitration. This means that the arbitration agreement must be specified or limited to a particular legal relationship and must be agreed by the parties as a clause or in a separate contract, cf. section 7(1). Limitations are set forth in section 7(2), where arbitration agreements in consumer contracts not will bind the consumer if signed before the dispute.

Under the Danish Arbitration Act there is no written requirements for the arbitration agreement, however, it is in practice advised to conclude such agreements in writing or evidenced in writing for further proof and recognition by the courts.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Denmark, class actions where the class is bound if they do not opt out are generally not allowed.

True			False	Can't say
	X			

Comment:
In Denmark, the Danish Administration of Justice Act allows both opt-in and opt-out group actions. As a general rule according to section 254 e (5), the group action includes the members of the group that have opted in. As such, group actions are generally based on an opt-in model.

As an exception, section 258 e (8) of the Danish Administration of Justice Act sets out that the court may decide that the group action shall be based on an opt-out model by the request of the group representative under the following circumstances:

1. when it is clear that the individual claims are of such small amount (usually less than DKK 2,000) that personal claims would not be brought before the court individually; and

2. an opt-in group action is not considered the most appropriate way to try the claims.

The application of this rule is very narrow, since the competence to represent and bring the group action before the court is limited to the "Consumer Ombudsman", an independent public authority supervising that business and trade complies with the Danish Marketing Practices Act and the principles of fair marketing practices. As a result, the scope of application is currently limited to consumer cases.

It depends on a complete evaluation of the case, particularly the number of persons affected, whether the opt-in group action not will be considered as the most appropriate way to try the claims. An example of these situations would be where a large number of subscribers to a phone company are invoking that the phone company has charged more than allowed in standard terms and legislation over a period of time.

Generally for both opt-in and opt-out group actions the same requirements for group actions must be met. Under section 254 a of the Danish Administration of Justice Act, similar claims can be brought before the court by group action (minimum of two persons). The claims may not need to be identical, but they have to be legally similar and originate from the same actual circumstances from parties similarly situated. Group actions are allowed subject to section 254 b when following requirements are met:

1. the claims are similar as stated in section 254 a;

2. Danish courts have the jurisdiction on all the claims;

3. the specific Danish local court is the forum for one of the claims;

4. the court is actual competent with regards to one of the claims;

5. group action is deemed to be the best way of trying the claims;

6. the group members can be identified and contacted about the trial in an appropriate way; and

7. a group representative can be appointed, cf. section 254 c.

The court determines a time limit for the group participants to either opt in or out depending on the relevant circumstances, cf. section 254 e (6) and (8), and all participants are notified of the conditions and legal effects of either opting in or out of the group action.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Denmark nationals and local corporations are entitled to own land absolutely.

True			False	Can't say
X				

Comment:
Danish citizens and corporations may purchase real estate property in Denmark. If you own land in Denmark, you own it absolutely, but not as if it was its own country. Therefore, no declarations can be made onto the property as in regards to eg nuclear proliferation, cf. UfR.1983.306H. The laws of Denmark must still be met on the property such as the owner may not hunt species on the country's endangered species list.

The owner must also respect the subterranean limitations listed below, and if obligations are correctly registered on the property, then the owner must respect those obligations if it follows from the national register for real estate ("Tingbogen"), that the given property has some obligations and restrictions registered on it.

The real estate gives its owner rights to the land, and above and below it, if it is deemed to be of importance to the private economy of using your property, be it pumping water from private wells, or setting up windmills. The subterranean ground belongs to the owner with the same limitations, with the notable exception of oil and gas. If oil or gas is present, they belong to the state.

Greenland is treated with respect of its self-governing policy though, meaning that all subterranean ground on Greenland belongs to Greenland, according to Greenland's national policy made by the national Greenland's self-governing committee on 28 October 1975.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Denmark is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True			False	Can't say
X				

Comment:
Registration of land in Denmark is divided into three distinct areas - the Cadastre, the Land

Register ("Tingbogen") and the Municipal Property Data System ("BBR").

The Cadastre contains registrations of real property where each individual plot has its own cadastral number as well as information regarding area size and other statutory registrations.

The Municipal Property Data System is based on the Cadastre and contains information on property value, land type, taxes, addresses, fees etc.

The Land Register is also based on the cadastral identification of the land parcels and is regulated by the Land Registration Act. Section 1 of the act states that any legal interest over land, typically rights of ownership, deeds, easements and mortgages, must be registered in the Land Registry Book to be secured against claims from a third party. Consequently, a purchaser of real estate must respect registered rights. However, potential unregistered rights usually do not have to be recognised by the seller’s subsequent purchaser or creditors unless otherwise specified in law. This can for example be the case of transference of registered rights and usual rights of use.

Unlike other civil law jurisdictions, Denmark has no notary system for land registering. The registration of rights is administered by the Land Registry Court and is fully digitalised and largely automated. The information in the Land Registry Book is legally binding, thus the Government of Denmark is liable and accountable for any mistakes in accordance with sections 31-35 of the Land Registration Act.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Denmark, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
		X		

Comment:
In Denmark, both the environmental and spatial controls are carried out by the Ministry of the Environment, agency for spatial and environmental planning. This agency controls that the requirements put in place by the Planning Act in Denmark consolidated act no. 813 of 21 June 2007 are fulfilled. The application of commercial estates in Denmark may be restricted though the Planning Act, so this should always be researched so as not to run into any restrictions upon which form of commerce may be practiced from the given real estate.

When considering buying real estate in Denmark, one should consider:

- Whether the given property fulfil the minimum requirements in accordance with the Construction Act.
- The Municipality Property Data System ("BBR") – building and residence register – giving a quick overview of the property's status, and which construction obligations are registered on the property.
- The Planning Act.
- The Local Plan.
- The zone status of the property - Denmark is divided into zones, where the status of the given zone determines what the property can be used for.
- If the real estate is protected, nature wise, architecturally or culturally.
- If the property has an obligation to maintain its woods.

A real estate property in Denmark must respect its characterisation as an agricultural property, all year or seasonal residence, a commercial property, or a hybrid. The characterisation has importance for the amount that can be lent against a mortgage in the given property.

If it is an agricultural property, very strict regulations are imposed upon the property as it is a comprehensively regulated industry receiving large amounts of subsidies. As a result hereof, the agricultural property must be used for agricultural purposes.

If it is a real estate not intended for commercial use, the property may not be used commercially, unless a permit is obtained from the municipal council, cf. section 35 of the Planning Act, however sections 36–38. The permit may not be given by the council, until it is in accordance with the municipal planning in its final form, and 2 weeks has elapsed from the time that the municipal council has informed the neighbours.

If the real estate is in a coastal area, the permit may just be given if it is of negligible importance in relation to the national planning interests.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Denmark, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
	X			

Comment:
In a global perspective, the Danish "flexicurity" model offers a high flexibility in hiring and firing employees which is unique compared to some European countries eg France. The employer is entitled to dismiss employees at any time, and Danish rules on hiring and firing of employees are not burdensome except that dismissal without cause entitles the employee to certain benefits.

Danish labour law is based on three kinds of legislation; collective agreements between employers' organisations and employees' unions, individual agreements between employers and employees, and Danish legislation. Furthermore, there are three groups of employees in Denmark; blue-collar workers, salaried

employees (white-collar employees) and senior management. The legal status of the employee determines the legal framework of the employee.

In regard to blue-collar workers, the terms of employment are normally based upon collective agreements entered into between a union of workers and an employers' organisation. Also non-organised private employers and employees join these collective agreements. But, only trade unions and organisations are able to negotiate the collective agreements. A collective bargaining agreement typically applies to a specific industry of work and includes employment terms such as wage, salary, working hours, overtime pay, holidays, notice period etc. Employers may choose to grant blue-collar workers better, but not inferior, terms than what follows from the collective agreements. During the duration of a collective agreement, workers are not allowed to go on strike. During negotiation of a new collective agreement, both parties are allowed to make use of industrial dispute procedures such as to go on strike.

Regarding salaried employees the fundamental terms of employment are regulated by law. The Danish Act on Salaried Employees lays down the minimum obligations of the employer towards salaried employees, such as severance payments, absence due to illness and requirements for the contents of competition, and customer clauses etc. However, this act does not regulate wages and working hours as these terms are governed by individual agreements. Moreover, according to the Danish Act on Employment Contracts, employers must inform employees in writing of all significant terms of employment, including ten specific terms listed in the Danish Act on Employment Contracts, when entered into.

Senior management is not regarded as within the scope of 'employees', and most often senior management is neither covered by collective agreements nor the Act on Salaried Employees. Senior management contract of employment enjoys the freedom of contract rules. Therefore, the parties are free to agree on the terms and conditions of the employment.

A small group of employees in the public sector benefit from the particularly advantageous terms of employment regulated in the Public Servants Act.

The Salaried Employees Act, the collective agreement or the individual employment contract determines the notice period for termination. Danish rules on termination of employment are as mentioned relatively uncomplicated compared to other European countries. White-collar employees are entitled to a notice period on 1-6 months depending on the length of their employment. On the part of the employee, the notice of termination is one month. Salaried employees are generally protected against unfair dismissal.

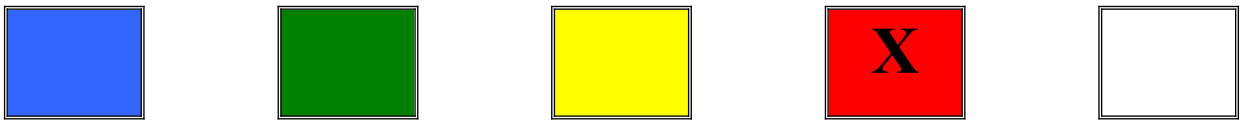
Denmark has one Labour Court. Failure to comply with Danish employment law and collective agreements can result in liability.

In conclusion, there are not few controls on terms of employment in Denmark. But, there are, compared to other European countries, few controls on hiring and firing employees in Denmark.

Environmental restrictions

Q18 In Denmark the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say



Comment:
Denmark has very comprehensive rules regarding the environment and liability for clean-up. Denmark has implemented most of the European acts regarding the environment and liability for clean-up, but also has several rules specific for its jurisdiction.

Polluters are liable for the pollution. According to the Danish Act on Soil contamination, which intends to protect human health and the drinking water resources, it follows that:

- For pollution occurred before 1 January 2001, orders to clean-up can only be issued if there was an actionable negligent conduct establishing the liability.
- If the pollution occurred after 1 January 2001, orders to clean-up the pollution may be issued to the polluter on a strict liability basis without the requirement for an actionable negligent conduct.

Denmark has implemented EC Directive on Environmental Liability, meaning that pollution after 1 July 2008 can be held liable to the person or company responsible for an industrial or commercial activity causing damage to the threatened species, international areas of protection, nature conservation, the aquatic environment, and soil against environmental damage.

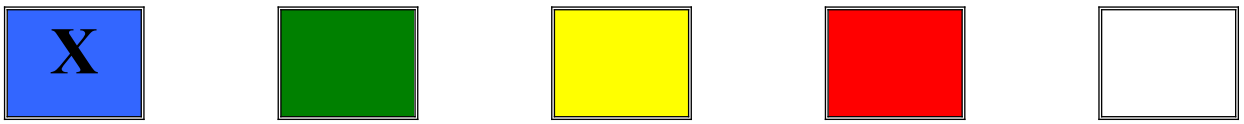
Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Denmark foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True **False** **Can't say**



Comment:
Danish trade and investment policies are very liberal and encourage foreign investment. The government agency "Invest in Denmark" is part of the Danish Trade Council and situated within the Ministry of Foreign Affairs. Denmark actively participates in the international flow of foreign direct investments both inwardly and outwardly.

There are no restrictions for direct foreign investments beyond what applies to Danish nationals.

The right to own and control companies is mainly regulated in the Danish Company Act on public and private limited companies supplemented by special legislation.
Furthermore, mergers and takeovers are subject to both the European and the Danish merger control regimes, if the relevant thresholds are met.

Exchange controls

Q20 In Denmark, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True			False	Can't say
X				

Comment:
Since 1 October 1988 there has been no requirement for authorisation or permission in order to make investments in or payments into Denmark, nor is any authorisation or permission required in relation to the repatriation of funds. Foreign currencies can be bought and sold freely. There are no restrictions on foreign currency bank accounts in Denmark. However, formal reporting requirements are required by the Central Bank. Some restrictions apply to foreigner's investment in real estate (see Q21 below), but not due to exchange regulations.

Anti-Laundering Money rules apply in Denmark to foreigners as well as nationals. The Danish Financial Supervisory Authority (FSA) upholds financial regulations in Denmark. Financial institutions not overseen by the FSA has to register with and send reports to the public Prosecutor for Serious Economic and International Crime.

Alien ownership of land

Q21 In Denmark, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True			False	Can't say
		X		

Comment:
There are certain restrictions on foreigners' right to own land in Denmark, which are regulated in the

Acquisition of Real Estate Act. The principle of free establishment and free movement of capital within the European Union ensures that the Danish rules are applicable to all EU members. Therefore, one must distinguish between foreign European Union companies and foreign non-European Union companies.

Thus, all foreign-controlled companies from the European Union can purchase any type of real estate (except weekend/holiday cottages), and have the same rights regarding acquisition of real estate as Danish companies.

Contrary, companies not domiciled within the European Union which have not been established in Denmark for at least five years in total can only purchase real estate in Denmark with the permission of the Danish Ministry of Justice.

As for lease of land all foreign-controlled companies are permitted to lease land in Denmark. However, circumvention agreements, including long-term leases or formation of a subsidiary company for the sole purpose of acquiring real estate will be set aside. The Registration of Land Office provide reports to the Ministry of Justice of registered agreements on rental conditions relating to companies that only with permission can acquire real estate in Denmark.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Denmark, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True			False	Can't say
X				

Comment:
The higher Danish courts are highly expected to apply the law equally to every party irrespective of the party's status or underlying interests. The judges are expected to base their reasoning on objective factors, unless the law states that certain interests should be favoured. As an example, consumers are favoured over big businesses based on statutory consumer protection in the Sale of Goods Act, the Contracts Act, the Consolidation Act on Rent etc. However, that is a question of the law itself and not the higher courts' application thereof.

The Danish legal system is often referred to as one of the most reliable legal systems in the world. According to Transparency International's Corruption Perceptions Index of 2013, Denmark is in the absolute top of nations with least corruption along with New Zealand. Moreover, a survey carried out by the European Commission in November 2013, shows that 85 % of the Danish population trust the Danish legal system, giving Denmark the highest score of all member states of the European Union.

Therefore - in absence of empirical data showing the opposite - there is no reason to assume that the higher Danish courts will treat big businesses less fairly than individuals or that they favour local interests over foreigners when applying the law. Given the scope and complexity of this question, it is difficult to give a more precise answer.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Denmark are not considered materially greater than in other comparable countries.

True			False	Can't say
	X			

Comment:

The Danish court system is to a great extent comparable with those of the other Scandinavian countries; ie Sweden, Norway and Finland, based on geographic measures, legal traditions, size and GDP. The structure of the court system is also rather similar.

The rule in Denmark is – like the comparable countries - that the losing party will bear the costs of the case. However, contrary to the other Nordic countries, it can never be expected to recover the full, real costs. The Danish case law suggests that no more than approximately half of the real costs are usually recovered. A complicated scheme of standardised rates exists.

It will usually be able to close a Danish City Court case within one year, if everything goes well, which is the case in approximately half of the first instance cases – the rest have a delay of up to one and a half year, but it is also a matter of how "pushy" the lawyers are. The Higher Courts have a fair waiting time, while the Supreme Court suffers from excessive delays. The Danish court system is not known for its speediness. Despite that, article 6 of the European Convention on Human Rights is seldom raised as a problem.

Since the delays are individual from case to case depending on its complexity and process, it is difficult to compare the different jurisdictions. Nevertheless, it can be established, that the delays are not materially greater than in the other Nordic countries. However, with an average delay of less than a half year, especially the Norwegian first instance cases are a lot speedier than the Danish ones.

It should be noted that the Danish regime, like eg the Swedish, recognises an expedited process for cases of smaller value.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True			False	Can't say
	X			

Commentary and suggestions for change

In general, the Danish legal system is highly-developed. However, the group has determined the following two issues open for changes:

As a result of the Edinburgh agreement of 1992, Denmark has an active opt-out on Justice and Home affairs in the European Union. This opt-out has the effect that European Regulations are not directly applicable for Danish companies and citizens. This has to some extent a detrimental effect on the Danish legal system, and is often by critics emphasised as a reason for annulling the opt-out. However, this is a political debate, but it is a fact that Denmark is losing possibilities to cooperate with the rest of the European countries in many matters. As an example, Denmark tried to adopt a parallel agreement to the Insolvencies Regulation, as it has succeeded in with regard to other matters. Despite intensive endeavours, Denmark's proposal was rejected with respect to the thesis that, "if Denmark wants some of the benefits, they have to cooperate fully". This has a detrimental effect to Danish bankruptcies, which loses access to assets located without Danish borders. This is definitely an area open for changes resulting in better legal positions for Danish companies and citizens, but also for the general wealth of society.

Regulation (EC) No.864/2007 of the European Parliament and of the Council of 11 July 2007 (Rome Regulation) on the law applicable to non-contractual obligations defines the conflict-of-law rules applicable to non-contractual obligations in civil and commercial matters, including product liability, negotiorum gestio (acts relating to the affairs of another person) and culpa in contrahendo (non-contractual obligations arising out of dealings before the conclusion of a contract). It has been implemented all throughout the EU and Ireland, except from Denmark. We recommend that Denmark would implement and opt-in on the Rome Regulation - either through another parallel agreement or generally revoking the opt-out reservations (see the discussion above) - which could unify the convention rules of applicable law among all EU Member States and clarify the existing law.

Profiles

The survey was carried out by the following students:

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Amanda Line Staun is a postgraduate student at University of Copenhagen, Faculty of Law. Her areas of interest are Corporate and Commercial Law. She has participated in a student exchange program at University of California, Hastings College of the Law in San Francisco in 2013. Amanda can be reached at amandalinestaun@gmail.com.

Harald Peen

Harald Peen is currently writing his master thesis. His main fields of study are international, EU and domestic economic law, which primarily has been undertaken at the university of Copenhagen , with a brief stay at the University of Oxford, during the summer of 2010. Harald can be reached at infin_p@hotmail.com.

Johannes Malmvig Jensen

Johannes is a fourth year law student of the University of Copenhagen, Faculty of Law. He is generally concerned with Private International Law and Corporate Law; and he wrote his Bachelor thesis in English within Private International Law (Recognition of Arbitral Awards). He works as a student intern with Kromann Reumert, the leading law firm in Denmark, where he is primarily working with IT & Outsourcing along with general Corporate Law and Law of Obligations. He is currently studying one semester abroad at the University of Nottingham, School of Law. Next to law school he has been involved in volunteer work as a member of the board of the student union, Juridisk Diskussionsklub (The Legal Debate Society), for two years. Johannes can be contacted at jmj@kromannreumert.com.

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Julie is a postgraduate law student of the University of Copenhagen, Faculty of Law. Julie participated in a student exchange program in 2013 at Australian National University. Her areas of interest are property law, contract law and corporate law. Next to law school Julie is involved in volunteer work as president of the board of the student union, Nykredit students, where she also works as a student in the legal department. Julie can be contacted at jcro@nykredit.dk.

Tim Johan Christensen

Tim Johan Christensen is a fourth year student at the University of Copenhagen, Faculty of Law, as well as a first year student at Copenhagen Business School where he is pursuing a Graduate Diploma in Business Administration. He works as a legal intern at a Copenhagen based law firm and his primary focus is company law and financial law. In 2013, Tim studied Financial Law and Regulation at the London School of Economics and Political Science. Tim can be reached at tjchristensen@live.dk.

Sonny Gaarslev

Sonny Gaarslev is a fifth year law student at the University of Copenhagen, the Faculty of Law. During the spring of 2014, he is writing his master thesis within competition law and corporate criminal law, primarily focusing on the - in Danish law newly introduced - imprisonment sanction for operating cartels. As a student intern within Denmark's leading law firm, Kromann Reumert, he is primarily working with competition law (including cartel investigations and corporate criminal law), procurement law, state aid law and general European law. Besides, he possesses experience of voluntary counselling and board work. As per 1 September 2014, Sonny will be employed as an assistant attorney within Kromann Reumert. He studied at the London School of Economics and Political Science in 2013. Sonny can be reached at sgs@kromannreumert.com or sonnygaarslev@gmail.com.

The University of Copenhagen

Fundamentally, the Faculty of Law works towards creating greater knowledge of national and international law. Traditionally, the legal research has been focused on the study of Danish law, but concurrently with the internationalisation the faculty has adapted its research. Today, the researchers are also highly involved in with the interaction between Danish law and other legal orders.

The Faculty of Law was among the four original faculties at the founding of the University of Copenhagen in 1479. Ever since the faculty has educated skilled graduates for a broad and diverse labour market. Through a research-based education the faculty ensures today that the legal graduates have the skills to analyse and contribute to interdisciplinary and problem-oriented skills in both the private and the public sectors at home and abroad.

The faculty adds importance to a proactive dialogue with the outside world. Among others, this is achieved through a large number of conferences and seminars, where faculty researchers make their skills available. A large number of part-time lecturers, who have their main occupation outside the university, also strengthen the proactive dialogue. A dialogue, which also contributes to the students' understanding of their opportunities after studying.

The Faculty of Law is constantly improving and upgrading the education of future lawyers and ensures that they stand strong on the future labour market. Therefore, both research and education are in touch with reality, and the focus is on constantly creating good and valuable co-operation with public and private institutions.

The Faculty of Law employs approximately 75 members of the academic staff, some 40 PhD students and about 70 members of the administrative staff. There are also around 400 part-time lecturers. On the legal programmes there are about 4,500 students.

The faculty member managing the survey

Dr Jesper Lau Hansen is a professor of financial markets law at the University of Copenhagen Law Faculty. He works primarily with company law and financial markets law in an European and Nordic setting. He has served on various committees, including the European Commission's Reflection Group on the Future of EU Company Law and the Danish committee that prepared the Companies Act of 2009. He is currently serving as chairman of the Securities and Markets Stakeholder Group that is part of the European Securities and Markets Authority in Paris.

Members of the Practitioner Expert Panel

Dan Moalem (Moalem Weitemeyer Bendtsen)

Dan Moalem provides advice primarily regarding public and private M&A, private equity and venture capital, ECM transactions, and transactions with real estate.

He is a member of the boards of directors of several companies, including private equity management companies. Moreover, Dan was one of the initiators in establishing the Danish Venture Capital and Private Equity Association (DVCA) in March 2000. He is an active member of several legal organisations, eg the legal committee and the strategy committee of the DVCA. Dan also serves as advisory board member of the Copenhagen Centre for Commercial Law (CCCL), which deals with research and education within commercial law at Copenhagen University. Furthermore, Dan lectures on eg capital markets, company law, venture capital and investment companies, including hedge funds.

Dan Moalem is the author of several publications within the fields of company law and capital markets and has written articles on venture capital and hedge funds as well as trade relations between Denmark and Israel.

Jacob Hjortshøj (Bech-Bruun)

Jacob Hjortshøj is an expert in M&A transactions, company law, stock exchange law and public offers. He has extensive experience in business transfers and private equity, and he has advised an impressive number of Danish and international corporates, private equity funds and investment banks on M&A transactions.

Jacob is the chairman of the advisory group on corporate law under the Association of Danish Law Firms and the secretary of the Danish Association for Company Law.

Furthermore, he has also worked as an external lecturer in Company Law at the University of Copenhagen for ten years and is a regular teacher in the auspices of Danish Bar and Law Society.

Jens Steen Jensen (Kromann Reumert)

Jens is responsible for Kromann Reumert's Company Law Group. He assists clients in connection with group restructuring and adjustment, including ownership structure. Jens specialises in financial regulation, mergers and acquisitions, company law, stock exchange law, and capital markets. He assists a variety of Danish and foreign financial as well as industrial clients. His expertise includes all types of regulatory matters affecting financial businesses, business transfers, including auction processes, funding, and stock exchange matters.

Klaus Søgaard (Gorrissen Federspiel)

Klaus Søgaard primarily deals with securities law, transfer of undertakings, corporate law and general commercial law. He advises a broad range of Danish and foreign companies, primarily on transfer of undertakings, structured sales processes, public take-over bids on listed companies, mergers and de-mergers of listed companies, initial public offerings and issues and verification processes. His corporate services also include being chairman of meeting at general meetings in a number of listed companies and corporate governance questions and questions relating to shareholders and articles of association.

Trine Bøgelund (ACCURA)

Trine Bøgelund, Attorney-at-Law, LL.M., Accura Advokatpartnerselskab, is primarily engaged in advising businesses on general contract law and company law, stock exchange regulation and securities law, including mergers and acquisitions. Trine Bøgelund provides advice on general meetings in public listed companies and private companies as well as issues relating to corporate governance and compliance. Since 2009, Trine Bøgelund has been lecturing in "Company Law - Limited Liability Companies" at the University of Copenhagen. In addition, Trine Bøgelund is the author of a number of published articles on Danish company law and securities law issues.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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