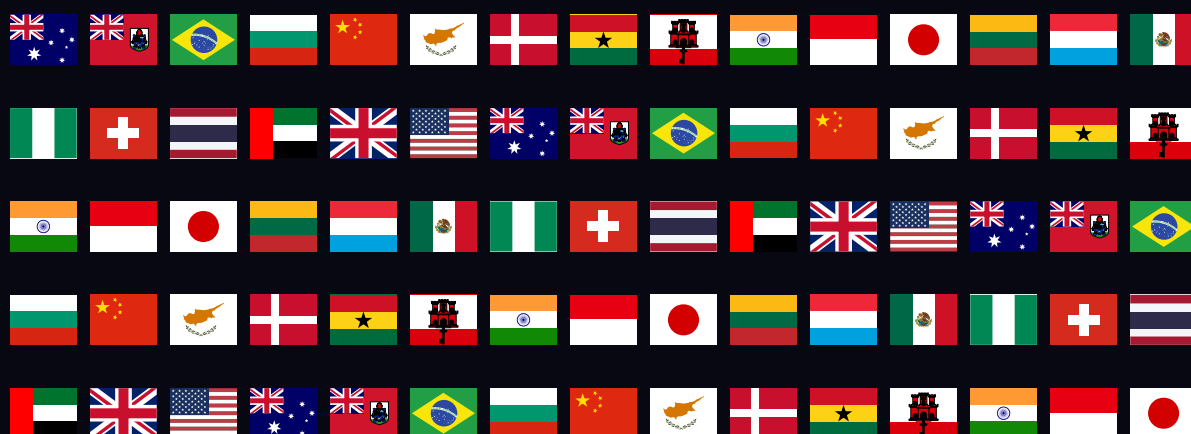


COMPLEX COMMERCIAL LITIGATION

Denmark



Complex Commercial Litigation

Consulting editors

Simon Bushell

Seladore Legal

Quick reference guide enabling side-by-side comparison of local insights into the litigation market and legal framework; pre-action considerations (including alternative dispute resolution); bringing and defending a claim; procedural steps; funding; costs; appeals; cross-border enforcement; the advantages and disadvantages of litigating in this jurisdiction; and recent trends.

Generated 15 September 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

Table of contents

BACKGROUND

Frequency of use
Litigation market
Legal framework

BRINGING A CLAIM - INITIAL CONSIDERATIONS

Key issues to consider
Establishing jurisdiction
Preclusion
Applicability of foreign laws
Initial steps
Freezing assets
Pre-action conduct requirements
Other interim relief
Alternative dispute resolution
Claims against natural persons versus corporations
Class actions
Third-party funding
Contingency fee arrangements

THE CLAIM

Launching claims
Serving claims on foreign parties
Key causes of action
Claim amendments
Remedies
Recoverable damages

RESPONDING TO THE CLAIM

Early steps available
Defence structure
Changing defence
Sharing liability
Avoiding trial

Case of no defence
Claiming security

PROGRESSING THE CASE

Typical procedural steps
Bringing in additional parties
Consolidating proceedings
Court decision making
Evidence
Time frame
Gaining an advantage
Impact of third-party funding
Impact of technology
Parallel proceedings

TRIAL

Trial conduct
Use of juries
Confidentiality
Media interest
Proving claims

POST-TRIAL

Costs
Appeals
Enforceability

OTHER CONSIDERATIONS

Interesting features
Jurisdictional disadvantages
Special considerations

UPDATE AND TRENDS

Key developments of the past year

Contributors

Denmark



Kasper S R Andersen
kra@les.dk
Lund Elmer Sandager



Morten Schwartz Nielsen
msn@les.dk
Lund Elmer Sandager



BACKGROUND

Frequency of use

How common is commercial litigation as a method of resolving high-value, complex disputes?

Litigation is one of the historic main ways of handling complex disputes, especially liability claims. However, there is a tendency in the Danish market for complex high-value disputes to have been subject to arbitration using different institutional arbitration mechanisms or other alternative dispute mechanisms – especially if the dispute revolves around contract matters, hereunder M&A transactions.

Law stated - 15 August 2023

Litigation market

Please describe the culture and 'market' for litigation. Do international parties regularly participate in disputes in the court system in your jurisdiction, or do the disputes typically tend to be regional?

Often international parties will choose arbitration for various reasons. However, the courts are available for international parties, although the language of the proceedings will be Danish. Most international disputes are filed at the Danish Maritime and Commercial Court, which holds special competencies in handling cross-border commercial disputes. The Court also can allow foreign documents in a broader sense without translation into Danish – after the Court's discretion.

Law stated - 15 August 2023

Legal framework

What is the legal framework governing commercial litigation? Is your jurisdiction subject to civil code or common law? What practical implications does this have?

The courts are governed by the Danish Administration of Justice Act .

The Danish legal system is neither a civil code nor a common law system but has strong elements from both systems. The legal hierarchy consists – in regards to pure Danish sources of law – of the following:

- the Constitutional Act;
- statutory legislation;
- regulatory statutes;
- precedent; and
- customary law.

This means that a lower source of law will be overruled by a higher source of law if there is conflict between an earlier precedent and, for example, statutory legislation. The law can be clarified through precedent from the courts where there is, among other things, ambiguity or the rule is imprecise or vague.

Matters not governed by statutory legislation or regulatory statutes will also be decided by the courts and become precedent, at least until statutory legislation or regulatory statutes governing the same matter are introduced.

BRINGING A CLAIM - INITIAL CONSIDERATIONS

Key issues to consider

What key issues should a party consider before bringing a claim?

As a rule, there are no formal requirements for pre-action considerations to be considered before commencing proceedings by filing a writ of summons with the court.

An exception to the main rule is monetary collection claims. As a pre-action consideration, the claimant must submit a demand by letter to the debtor with a deadline for a payment of at least 10 days and information that further costs will be imposed if payment is not made. If the requirement is not fulfilled, there will be a cost issue, as the creditor will not be able to claim the full costs of the case. Furthermore, in cases of collection of rent, there is a special requirement involving the notice given to the tenant.

Law stated - 15 August 2023

Establishing jurisdiction

How is jurisdiction established?

Unless otherwise provided in the Administration of Justice Act or other enactments, civil cases are tried in the district court in the first instance, and in general, the courts do not have specialised subject matters; however, cases concerning EU trade marks and cases concerning Community designs, must be tried in the Maritime and Commercial Court, which also has the competence to hear certain cross-border disputes and other disputes, and in some types of cases, the parties can choose the Maritime and Commercial Court as the forum for the dispute (the Administration of Justice Act, chapter 21).

Regarding the territorial jurisdiction rules, unless otherwise provided by law, proceedings must be instituted in the defendant's home court, and for companies, that's where the main office is located, but many exemptions and special rules apply (see the Administration of Justice Act, chapter 22).

The parties may also agree on which of any equally competent courts to institute proceedings. However, concerning consumer agreements, a prior jurisdiction agreement is not binding for the consumer.

Law stated - 15 August 2023

Preclusion

Res judicata: is preclusion applicable, and if so how?

If a case has been brought to a court, another court will refuse to handle the same case. Also, it's not possible to raise the same matter again when there has been a final judgment and that is no longer subject to appeal. This principle also applies to claims that are based on the same grounds and could have been raised in the original case.

Further, preclusion also applies, so judicial findings contained in a judgment have a binding effect in other proceedings before the Danish courts.

Law stated - 15 August 2023

Applicability of foreign laws

In what circumstances will the courts apply foreign laws to determine issues being litigated before them?

The courts will apply foreign law if the dispute is governed by foreign law. This can be based on a choice by the parties or if private international law points to a specific foreign law governing the dispute or if the use of rules of private international as defined in the Danish Administration of Justice Act and the applicable EU regulations.

Foreign law can only be applicable to the merits of the case. All procedural matters are governed by Danish law. It will then be the parties' obligation to provide the court with necessary information about foreign law, which can be done by submitting written legal opinions on foreign law, by having experts on foreign law at the oral hearing or by the court requesting an expert be appointed. Lastly, the courts can require information from the authorities in another country – if recognition is agreed.

Law stated - 15 August 2023

Initial steps

What initial steps should a claimant consider to ensure that any eventual judgment is satisfied?
Can a defendant take steps to make themselves 'judgment proof'?

There are no formal requirements. If the case concerns a monetary collection claim, it's wise to investigate the debtor's solvency. In special circumstances, prior to the actual trial, it will be possible to obtain an order through the bailiff's court to get the debtor's assets frozen if there is reason to assume that the possibility of later having a judgement fulfilled will otherwise be significantly impaired.

Law stated - 15 August 2023

Freezing assets

When is it appropriate for a claimant to consider obtaining an order freezing a defendant's assets? What are the preconditions and other considerations?

It's relevant to consider obtaining an order freezing a debtor's assets if it's not possible to levy distress now and, if there is reason to assume that the possibility of later having a judgement fulfilled will otherwise be significantly impaired.

As the main rule, a request for a freezing order is submitted in writing to the bailiff's court.

The creditor must be able to prove or make it plausible that the order to freeze assets is warranted.

A 'freezing order' will make sure that if the debtor tries to dispose of his assets, a buyer of such assets won't be able to claim to be in 'good faith' about the freezing order. The bailiff's court can also decide to deprive the debtor of possession of an asset if the asset is movable when it must be assumed that the possibility of obtaining cover will otherwise be significantly impaired.

The bailiff's court can also condition a freezing order on collateral from the creditor.

After obtaining an order to freeze assets, the creditor must follow up with a lawsuit against the debtor within one week.

Law stated - 15 August 2023

Pre-action conduct requirements

Are there requirements for pre-action conduct and what are the consequences of non-compliance?

There are no formal requirements.

Law stated - 15 August 2023

Other interim relief

What other forms of interim relief can be sought?

It's possible to request the bailiff's court to assist the person having obtained the prohibitory or mandatory injunction in upholding the injunction, including by preventing the prohibitory injunction from being breached, by ensuring that the mandatory injunction is complied with or by destroying what has been done in breach of the prohibitory or mandatory injunction.

In relation to the infringement of different kinds of intellectual property rights, a licensee may request the bailiff's court to initiate investigations to ensure evidence of an alleged infringement. The party requesting the bailiff's court to initiate such investigation must prove or make it plausible that an infringement has been made and the extent of the infringement.

Following the investigations, a lawsuit must be filed within four weeks to finally prove the infringement and the legitimacy of the preliminary securing of evidence.

Law stated - 15 August 2023

Alternative dispute resolution

Does the court require or expect parties to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR at these stages?

The courts don't require any ADR at the pre-action stage or later in the case.

The courts may offer the parties court-based mediation once the trial has been initiated (see the Danish Administration of Justice Act, chapter 27).

Law stated - 15 August 2023

Claims against natural persons versus corporations

Are there different considerations for claims against natural persons as opposed to corporations?

There are no specific formal considerations regarding if the claim is against natural persons or corporations.

Law stated - 15 August 2023

Class actions

Are any of the considerations different for class actions, multiparty or group litigations?

Special considerations apply for class actions (see the Administration of Justice Act, section 254b, subsection 1).

In a new decision, the High Court deemed under which circumstances several individual persons have uniform claims in accordance with the potential responsibility for a prospectus in connection with a public offering. According to this ruling, uniformity based on responsibility for a prospectus is when the person:

- has bought the shares of their own account and risk at the time of the initial public offering or closely related to the initial public offering;
- was in possession of the shares at the date of the bankruptcy; and
- had jurisdiction in Denmark, when the company went bankrupt.

A class action is conducted by a representative appointed by the court on behalf of the class. The system is based on the opt-in principle, contrary to the opt-out principle known in the United States. Only the parties who have signed up and actively joined the lawsuit are included.

Law stated - 15 August 2023

Third-party funding

What restrictions are there on third parties funding the costs of the litigation or agreeing to pay adverse costs?

No restrictions apply and third-party funding is allowed. Therefore, no rules prevent third parties from funding the cost of litigation or agreeing to pay adverse costs. Further, third-party funding can also receive a percentage of successful claims.

Law stated - 15 August 2023

Contingency fee arrangements

Can lawyers act on a contingency fee basis? What options are available? What issues should be considered before entering into an arrangement of this nature?

Generally, a lawyer may not demand a higher fee for their work than what can be considered reasonable. A fixed or variable amount (eg, payment in shares) can be agreed upon, just as it's possible to agree that the lawyer's fee is completely waived if the case is lost ('no cure, no pay') and such like.

The counter to this flexibility is another general rule that states that a lawyer must not enter into an agreement with clients or others that the lawyer's fee must be set in a way that could affect the lawyer's independence during the performance of the duties.

Law stated - 15 August 2023

THE CLAIM

Launching claims

How are claims launched? How are the written pleadings structured, and how long do they tend to be? What documents need to be appended to the pleading?

Proceedings are instituted by the filing of a writ of summons with the court on a special digital platform where all correspondence with the court is done. The writ of summons must (mainly) state the name and address of the parties, including a postal address in the European Economic Area, state the plaintiff's claim, including submissions on points of fact and law in support of their claim and include the documents and other evidence on which the plaintiff intends to rely.

The length of a writ of summons varies from just one or a few pages in simple cases and up to many hundred pages in complicated cases.

When the writ of summons is handed to the court, the plaintiff must usually also pay a small court fee.

After the writ of summons is approved by the court, it will then be served on the defendant. This process is handled by the court.

Law stated - 15 August 2023

Serving claims on foreign parties

How are claims served on foreign parties?

Serving claims is a duty of the court, which will request a foreign court in the relevant territory to assist. Different rules apply depending on where the foreign party is located. Pursuant to the Danish Administration of Justice Act, the court will use the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965 or the Hague Convention on Civil Procedures of 1954.

The service of a judicial or extrajudicial document on a party located in another EU member state is exclusively regulated by the recast Regulation (EU) 2020/1784 if the matter falls within the scope of the Regulation.

Law stated - 15 August 2023

Key causes of action

What are the key causes of action that typically arise in commercial litigation?

Breach of contracts, tort or liability matters in a transaction – either completed or the negotiations – or in the management of a company, both for the daily management and the board of directors.

Law stated - 15 August 2023

Claim amendments

Under what circumstances can amendments to claims be made?

It's possible – without limitations - to amend a claim in favour of the other party.

If a party wishes to amend a claim in favour of that party (eg, increasing the amount the plaintiff wants the other party to pay), this can normally only be done before a deadline fixed by the court that by default is four weeks before the

actual trial.

An objection to such an amendment will most likely only be successful if it violates the requirements of due process, would unduly delay the proceedings or would unreasonably harm the defendant in its defence.

Law stated - 15 August 2023

Remedies

What remedies are available to a claimant in your jurisdiction?

The parties have two types of claims available as substantive remedies. The main one is a claim for damages suffered in the form of a claim payment, including the payment of a contract price, a reduction in price and damages. Interest is payable, as a main rule, from the filing of the case until payment is made. If the claim prior to the filing has also incurred interests, this will be calculated until the filing of the case and included in the claim.

The second remedy is a claim for a party to recognise an obligation to do or not to do certain actions, or to recognise the rights of a party or establish a legal fact, for instance, that a contract is null and void or that a party is liable for damages towards the claimant.

Law stated - 15 August 2023

Recoverable damages

What damages are recoverable? Are there any particular rules on damages that might make this jurisdiction more favourable than others?

Damages, which can be considered to be the loss, can be claimed. Claims for the payment of a contract price, a reduction in price and damages can be claimed. Parties cannot ask for punitive damages as they may in Anglo-Saxon legal tradition. The only exception is if the parties have agreed on a certain penalty clause in a contract. Such penalty may, however, not exceed what is fair. If it's seen to be unfair, it can be declared to be void.

As a rule, only damages that arise from an actual economic loss are recoverable, subject to the burden of proof.

Law stated - 15 August 2023

RESPONDING TO THE CLAIM

Early steps available

What steps are open to a defendant in the early part of a case?

A defendant can contest the claim and can also make counterclaims. If the defendant believes that a third party is liable in whole or part for the claim by the plaintiff, the defendant has the option to issue a third-party writ of summons against that third party. The defendant will, in relation to this third party, be seen as the plaintiff.

If the defendant believes that the court does not have jurisdiction to hear the case, an objection must be made already in the defence, or the objection will, as the main rule, otherwise be seen as forfeited.

Law stated - 15 August 2023

Defence structure

How are defences structured, and must they be served within any time limits? What documents need to be appended to the defence?

After the writ of summons has been served, the defendant is typically (and at least) awarded 14 days to deliver the defence, which is structured much like the writ of summons.

The statement of defence must state the defendant's plea, any counterclaims and include the submissions on points of fact and law made by the defendant in support of their plea and any counterclaims and be supported by documents and other evidence on which the defendant intends to rely.

Law stated - 15 August 2023

Changing defence

Under what circumstances may a defendant change a defence at a later stage in the proceedings?

Until a deadline is fixed by the court (by standard four weeks before the hearing), the defendant is free to change the defence. After the fixed deadline is passed, the defendant can't make new submissions on points of fact and law or increase counterclaims without the approval of the court. However, such approval requires a good explanation as to why such changes should be allowed, which will typically not be granted if it harms the plaintiff's ability to take due care of its interests.

Law stated - 15 August 2023

Sharing liability

How can a defendant establish the passing on or sharing of liability?

The defendant has the option to issue a third-party writ of summons against that third party and can claim that the third party is party or in whole liable for the claim that the defendant has been met with by the plaintiff.

Law stated - 15 August 2023

Avoiding trial

How can a defendant avoid trial?

The defendant can avoid the trial if a settlement with the plaintiff is reached. The term trial in Denmark refers to the entire process, which normally starts with the summoning kicking off the trial and the trial is concluded with a hearing. There is not a discovery phase, as known in other territories.

A party can argue that the case should be dismissed due to no competence at the Danish court.

Law stated - 15 August 2023

Case of no defence

What happens in the case of a no-show or if no defence is offered?

In case of a no-show at the hearing, no defence is offered, or other crucial deadlines are not met, the court will rule in favour of the claimant if this seems appropriate based on the information provided by the plaintiff.

It's very unusual that the court will refuse to rule in favour of the plaintiff if a defence is not offered or if the defendant does not appear at the hearing.

Law stated - 15 August 2023

Claiming security

Can a defendant claim security for costs? If so, what form of security can be provided?

Typically, a defendant can't claim security for costs. However, in special circumstances, it's possible, for example, if a plaintiff is a bankruptcy estate.

Also, If the plaintiff does not have residence in the European Economic Area (cf, the Administration of Justice, section 321), then security must be provided if the defendant makes a request for this.

Law stated - 15 August 2023

PROGRESSING THE CASE

Typical procedural steps

What is the typical sequence of procedural steps in commercial litigation in this country?

After the writ of summons and the defence, a pre-trial hearing will be held. At the pre-trial hearing, the procedural matters will be determined, including on what date the hearing will take place, how much time is needed for the hearing, at what date the preparation of the case will be completed (usually four weeks before the hearing) if neutral experts, among others, are to be asked to answer factual questions of relevance to the case (expert evidence) and so on.

Until the date that the preparation of the case is completed, the parties will usually exchange submissions of fact and law.

Two weeks before the hearing, the parties must each submit a case summary with the final submissions on fact and law. As this will be after the date of the preparation of the case is completed, no new exhibits or submissions of law may be presented. The plaintiff must also, at this point, file a trial bundle and a timetable for the hearing that both or all parties agree upon.

Four weeks after the hearing has taken place, the court will make its ruling public to the parties.

Law stated - 15 August 2023

Bringing in additional parties

Can additional parties be brought into a case after commencement?

If a plaintiff wants to bring in a new party after the commencement of the case, a writ of summon must be filed with a

request that the cases are being handled together and the reasons for this to be appropriate.

The defendant has the option to issue a third-party notice with the claim that this third party is wholly or partly liable for the claim that the plaintiff has brought against the defendant.

Law stated - 15 August 2023

Consolidating proceedings

Can proceedings be consolidated or split?

The plaintiff may make more than one claim against the defendant in one action and, during the proceedings, the defendant may make a counterclaim. More than one party may sue or be sued in one action and each party may add claims against third parties to the proceedings (see the Administration of Justice, chapter 23 regarding the conditions that must be met).

By filing a writ of summons with the court, a third party may, in some situations, also join a first-instance case as a party.

For all of the above apply in general, if the court lacks subject-matter jurisdiction to hear a claim in separate proceedings, it may transfer the claim for adjudication by the competent court.

Law stated - 15 August 2023

Court decision making

How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?

The court decides on the evidentiary value of the evidence presented at its own discretion. Claims or statements are considered to be proven if they are based on facts and:

- have been established or made plausible in the course of the proceeding (for instance, through witness statements or other evidence);
- have not (sufficiently) been disputed by the parties; or
- are generally known and do not require evidence (ie, public information).

The burden of proof generally lies with the party making an allegation with a certain legal consequence. Under certain circumstances (required by the principle of reasonableness and fairness) or if a special rule applies, the burden of proof may shift (partially or entirely) to the counterparty.

Law stated - 15 August 2023

How does a court decide what judgments, remedies and orders it will issue?

The court cannot award a party more than the party has claimed and can only consider submissions of law which the party has asserted, or which cannot be waived. Therefore, the court will make its ruling based on whether the plaintiff has proven that the claim made by a party is warranted, both regarding what facts the court should consider to be true and what legal consequences the facts have.

Law stated - 15 August 2023

Evidence

How is witness, documentary and expert evidence dealt with?

Documents must be presented to all the parties when they are filed to the court and it's up to the court to decide what weight to give to a specific piece of evidence in a concrete situation.

If the case requires an expert opinion, it's possible to request the court to assist with obtaining a pretrial expert opinion before filing a claim. The other party will be forced to be part of this process. These opinions will be allowed to be presented to the court in a later trial regarding the merits of the dispute. This option is relevant in many situations where there is a special need to secure evidence for the claim for the later trial. This could be relevant in situations where the object of the expert opinion (eg, perishable goods) may not exist when the actual trial takes place. An expert opinion can also be required during the actual trial.

Statements on specific matters of a technical, financial or similar nature, which a party on its own behalf has obtained from experts – before - the proceedings are commenced, may also – as a general rule – be presented as evidence and can be decisive evidence in a court case, especially if there is no expert opinion in the case. If a party has submitted such a statement, the other party may, under otherwise identical conditions, submit a similar statement, even if this statement can only be obtained after the case is instituted.

Concerning witnesses, there is no obligation to file a written testimony before the trial (the contrary applies); just the overall general themes of the testimony must be stated before the trial. By default, this means that the party that presents the witness has somewhat of an advantage as the party should have a more detailed insight as to what the witness will testify.

The other party has the right to contact the other party's witnesses to discuss what the witness can testify about. However, the witness is under no obligation to talk to the lawyer of the other party and the lawyer has an obligation to mention this fact to the witness and an obligation to disclose to the party that is presenting the witness that contact to the witness will be made.

It should also be noted that all kinds of evidence deemed irrelevant to the case cannot take place.

Law stated - 15 August 2023

How does the court deal with large volumes of commercial or technical evidence?

No special rules apply. However, it's up to the party that presents any piece of evidence to make sure that the court understands the significance of the evidence being brought forward to the court. The court is reasonably competent to deal with such.

Law stated - 15 August 2023

Can a witness in your jurisdiction be compelled to give evidence in or to a foreign court? And can a court in your jurisdiction compel a foreign witness to give evidence?

The matter depends entirely on whether a relevant treaty is in force between Denmark and the other country (cf, the Administration of Justice, article 342).

It follows from legislation that a Danish Court can request persons from the Nordic countries (Sweden, Norway, Finland and Iceland) to give testimony.

Regulation (EU) 2020/1783 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters (Taking of Evidence) (Recast) is not in force in Denmark.

The Hague Evidence Convention 1970, to which Denmark is a party, provides for several methods of obtaining evidence abroad, such as letters of request and the taking of evidence by diplomatic employees.

Law stated - 15 August 2023

How is witness and documentary evidence tested up to and during trial? Is cross-examination permitted?

All forms of evidence are considered to have the same value. However, it's up to the court to decide what weight to give to a specific piece of evidence in a concrete situation. Cross-examination of witnesses is permitted.

Law stated - 15 August 2023

Time frame

How long do the proceedings typically last, and in what circumstances can they be expedited?

In general, proceedings typically last between eight and 18 months, depending on how complicated the case is, how many witnesses and parties must be heard, the parties' willingness to advance the case and the court's other caseload. It's usually not possible to have the case expedited.

However, the parties can agree to ask the court to transfer the case to another court with less of a case burden.

Law stated - 15 August 2023

Gaining an advantage

What other steps can a party take during proceedings to achieve tactical advantage in a case?

The parties can request the court to decide first on certain preliminary aspects of the matter or render a partial judgment, but it is at the court's discretion to honour or dismiss such a request.

Law stated - 15 August 2023

Impact of third-party funding

If third parties are able to fund the costs of the litigation and pay adverse costs, what impact can this have on the case?

There are no formal rules regarding third-party funding, so the situation is not different from the normal scenario where a party pay its own costs. However, third-party funding might come with specific demands that might limit the possibilities of a party; for example, when offered a settlement based on whatever conditions have been agreed upon by the party and the third-party funder.

Law stated - 15 August 2023

Impact of technology

What impact is technology having on complex commercial litigation in your jurisdiction?

All civil cases are being conducted on a digital platform and any document being filed must be OCR approved, so the court will be able to copy-paste from the documents. Documents that don't meet these criteria will be deemed as not part of the case if the matter has not been fixed within a short deadline awarded by the court.

Testimony from a witness or an expert witness via video link can, under special circumstances, be allowed, but, in general, a witness must meet in court in person.

In the High Courts, usually, a paper version of the trial bundle must be delivered to the court, one copy for each judge participating in the case alongside a digital version that must be filed to the court.

In the district court, only a digital version filing is usually required.

Law stated - 15 August 2023

Parallel proceedings

How are parallel proceedings dealt with? What steps can a party take to gain a tactical advantage in these circumstances, and may a party bring private prosecutions?

It's usually possible to submit a claim for damages during a criminal case. If not, and the result of the criminal case is relevant to the outcome of the claim, a party can ask that the civil trial is put on hold until the result in the criminal case is final.

It is up to the public prosecutor if a criminal case is tried. A private party can only influence a decision by the public prosecutor not to prosecute by filing a complaint with the state attorney.

Law stated - 15 August 2023

TRIAL

Trial conduct

How is the trial conducted for common types of commercial litigation? How long does the trial typically last?

The trial (hearing) itself starts with establishing who is met, and the parties submit their respective claims and pleas.

The plaintiff will then introduce the dispute that the court must decide upon in a balanced way and then proceed to introduce the written documentation (and other types of evidence besides oral testimonies) and highlight the parts that each party deems to be relevant for the court. The other party or parties will have the opportunity to make supplement commentaries. As a rule, the court will not pay attention to anything not mentioned during this phase of the trial.

The next phase consists of testimonies from parties, the witnesses and, finally, the lawyers will deliver their closing arguments.

The length of the hearing itself is agreed upon in advance at a pre-trial hearing.

Law stated - 15 August 2023

Use of juries

Are jury trials the norm, and can they be denied?

Jury trials are only used in some criminal cases.

Law stated - 15 August 2023

Confidentiality

How is confidentiality treated? Can all evidence be publicly accessed? How can sensitive commercial information be protected? Is public access granted to the courts?

Generally, there is public access to the courts, which applies almost with no exemptions to commercial litigation, and everyone can request a copy of a ruling for a small fee. However, when deemed necessary, the courts can decide to close the doors when the handling of the case in a public hearing will expose someone to an unnecessary violation, including when an explanation about trade secrets must be given.

Law stated - 15 August 2023

Media interest

How is media interest dealt with? Is the media ever ordered not to report on certain information?

Witnesses are not allowed to hear other witnesses give testimony before they have given testimony. For this reason, live blogging and such like is usually now allowed. Taking pictures or recording videos inside the court also requires the court's permission.

Law stated - 15 August 2023

Proving claims

How are monetary claims valued and proved?

The assessment of damages usually takes place at the same time as the trial of the merits. One example of an exemption is when a plaintiff claims that the defendant infringes the IP rights of the plaintiff. In such a case, it's normal that a claim for damages takes place as a separate case after the ruling of the court on the matter if the defendant did infringe the intellectual property rights of the plaintiff.

Law stated - 15 August 2023

POST-TRIAL

Costs

How does the court deal with costs? What is the typical structure and length of judgments in complex commercial cases, and are they publicly accessible?

As a general rule, the winning party will be awarded costs from the losing party, including:

- all court fees will be awarded in full;

- costs for an expert opinion will be awarded in full if the questions were relevant to the decision made by the court; and
- an 'appropriate' amount will be awarded to cover costs for a lawyer; however, this amount rarely comes close to the actual legal costs incurred by a party. The amount uses a document called Note on legal costs in civil cases as a starting point.

As a rule of thumb, if a party wins the case by at least two-thirds, that party will be considered the winner of the case.

Law stated - 15 August 2023

Appeals

When can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

An appeal typically takes about 10 months and may be for modification, reversal or remission. The period allowed for appeal is four weeks (but district court orders on costs may be brought separately before a high court only by interlocutory appeal within two weeks). Time begins to run on the date of the judgment, and the appeals process begins with the filing of a notice of appeal with the court whose judgment is being appealed.

The high court may, in some situations, refuse to hear an appeal if there are no prospects of the high court reaching another conclusion than the district court and the appeal does not concern fundamental legal questions etc.

Judgments delivered by a high court as the court of first instance may be appealed to the Supreme Court by the parties unless otherwise prescribed by law.

Judgments delivered by a high court as the appellate court may not be appealed. However, the Appeals Permission Board may grant permission to a third-instance review of the case if it concerns fundamental legal questions.

Judgments delivered by the Maritime and Commercial Court may be appealed to the Supreme Court or the high court by the parties. Appeal to the Supreme Court is subject to the outcome of the case being of fundamental legal importance and of general importance to the application and development of the law or having significant societal implications in general, or where there are other special reasons why the case should be heard by the Supreme Court as the appellate court.

Special rules apply if special circumstances are present, and it should be noted that whenever a dispute has arisen, the parties may agree that a judgment delivered on the merits is non-appealable.

Law stated - 15 August 2023

Enforceability

How enforceable internationally are judgments from the courts in your jurisdiction?

Denmark has entered into an agreement with the EU that the Brussels I Regulation also applies to Denmark, which has been implemented into Danish law. A judgment from Denmark is, therefore, in general enforceable in any country within the European Union (EU) (or European Free Trade Association (EFTA)) (cf. article 33 of the Brussels I Regulation). Denmark is also a signatory of the Lugano Convention.

Between the Nordic countries, recognition is regulated by the Nordic Convention on the Recognition of Civil Judgments of 1933.

Law stated - 15 August 2023

How do the courts in your jurisdiction support the process of enforcing foreign judgments?

In the absence of a treaty or convention, Danish courts will not recognise a foreign judgment. Outside of Europe, very few of these agreements exist.

Judgments from the other Nordic countries, the EU and EFTA, as well as the European Economic Area zone, will also, as a rule, be able to be enforced directly in Denmark.

Law stated - 15 August 2023

OTHER CONSIDERATIONS

Interesting features

Are there any particularly interesting features or tactical advantages of litigating in this country not addressed in any of the previous questions?

Not applicable.

Law stated - 15 August 2023

Jurisdictional disadvantages

Are there any particular disadvantages of litigating in your jurisdiction, whether procedural or pragmatic?

Not applicable.

Law stated - 15 August 2023

Special considerations

Are there special considerations to be taken into account when defending a claim in your jurisdiction, that have not been addressed in the previous questions?

Not applicable.

Law stated - 15 August 2023

UPDATE AND TRENDS





















Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

No special developments.

Law stated - 15 August 2023

Jurisdictions

	Australia	Holding Redlich
	Bermuda	MJM Barristers & Attorneys
	Brazil	Arruda Alvim, Aragão, Lins & Sato Advogados
	Bulgaria	Kinkin & Partners
	China	Jincheng Tongda & Neal
	Cyprus	Karamanolis & Karamanolis LLC
	Denmark	Lund Elmer Sandager
	Ghana	Ferociter
	Gibraltar	Signature Litigation
	India	Chadha & Co
	Indonesia	SSEK Law Firm
	Japan	Miura & Partners
	Lithuania	Triniti Jurex
	Luxembourg	Brucher Thieltgen & Partners
	Mexico	OLIVARES
	Nigeria	ÁLEX
	Switzerland	Bär & Karrer
	Thailand	Duensing Kippen
	United Arab Emirates	Horizons & Co Law Firm
	United Kingdom - England & Wales	Seladore Legal
	USA	Vinson & Elkins LLP