

Excerpts from Danish Legislation

(Unofficial translation)

I. Danish Criminal Code

Section 25 – A legal person may be punished by a fine, if such punishment is authorised by law or by rules pursuant thereto.

Section 26 – (1) Unless otherwise stated, provisions on criminal responsibility for legal persons etc. apply to any legal person, including joint-stock companies, co-operative societies, partnerships, associations, foundations, estates, municipalities and state authorities.

(2) Furthermore, such provisions apply to one-person businesses if, considering their size and organisation, these are comparable to the companies referred to in subsection (1) above.

Section 27 – (1) Criminal liability of a legal person is conditional upon a transgression having been committed within the establishment of this person by one or more persons connected to this legal person or by the legal person himself. As for punishment for attempt, Section 21 similarly applies.

(2) Agencies of the state and of municipalities may only be punished for acts committed in the course of the performance of functions comparable to functions exercised by natural or legal persons.

Section 75 – (1) The proceeds gained from any criminal act, or an amount equivalent thereto, may be confiscated, either in full or part. Where the size of such an amount has not been sufficiently established, an amount thought to be equivalent to the proceeds may be confiscated.

(2) The following objects may also be confiscated where this must be regarded as necessary in order to prevent further offences, or if warranted by special circumstances:

- 1) objects which have been used or were intended to be used, in a criminal act;
- 2) objects produced by a criminal act; and
- 3) objects with respect to which a criminal act has otherwise been committed.

(3) In place of confiscation of the objects referred to in Subsection (2) above, a sum may instead be confiscated which is equivalent to their value or a part thereof.

[...]

Section 76 – (1) Confiscation under Section 75(1) of this Act may from any person to whom the proceeds of a criminal act have directly passed.

(2) Confiscation of the objects and amounts referred to in Section 75(2) and (3) of this Act may be from any person who is responsible for the offence and also from someone on whose behalf such a person has acted.

[...]

Section 110c – [...] (2) Any person who, intentionally or through negligence, contravenes any provisions or prohibitions that may have been provided by law for the fulfilment of the state's obligations as a member of the United Nations shall be liable to a fine or to imprisonment for any term not exceeding four months or, in aggravating circumstances, to imprisonment for any term not exceeding four years.

Section 122 – Any person who unduly grants, promises or offers some other person exercising a Danish, foreign or international public office or function a gift or other privilege in order to induce him to do or fail to do anything in relation to his official duties shall be liable to a fine or imprisonment for any term not exceeding three years.

Section 144 – Any person who, while exercising a Danish, foreign or international public office or function, unlawfully receives, demands or accepts the promise of a gift or other privilege shall be liable to imprisonment for any term not exceeding six years, or in mitigating circumstances, to a fine.

Section 152 – (1) Any person who is exercising or who has exercised a public office or function, and who unlawfully passes on or exploits confidential information, which he has obtained in connection with his office or function, shall be liable to a fine or to imprisonment for any term not exceeding six months.

[...]

(3) Information is confidential when made so in an Act or by other stipulations, or when it is necessary to keep it a secret in order to protect important public or private interests.

Section 152e – The provisions in Section 152-152d of this Act do not apply in cases where the person in question: 1) was under an obligation to pass on the information; or 2) acted in order to lawfully safeguard obvious public interests or the interests of himself or other persons.

Section 290 – (1) Any person who unduly accepts or obtains for himself or for others a share in proceeds obtained by a criminal offence and any person who unduly, by hiding, storing, transporting, assisting in disposal a criminal offence and or in a similar manner later acts to secure for another proceeds of a criminal offence is guilty of handling stolen goods and is liable to a fine or imprisonment for up to one year and six months.

(2) The punishment may increase to imprisonment for six years where the handling of stolen goods is particularly aggravating, particularly due to the commercial nature of the offence or as a result of the gain obtained or intended, or where a large number of offences have been committed.

[...]

Section 296 – (1) Any person who, in circumstances other than those covered by Section 279 of this Act,

1) ...; or

2) makes incorrect or misleading statements concerning the economic conditions of joint-stock companies, co-operative societies or similar undertakings through channels of public communications, in reports, in statements of accounts or in declarations to the general meeting or any proper official of a company, in notifications to the Registrar of Commercial Undertakings or to ...; or who

3) contravenes the provisions governing joint-stock companies or any other limited liability companies in regard to the issue of share certificates, ...;

shall be liable to a fine or to imprisonment for any term not exceeding one year and six months.

[...]

Section 302 – Any person, who in particularly aggravating circumstances

1) makes incorrect or misleading statements in ledgers or accounts which he is under an obligation to keep by law; or

2) fails to keep ledgers or accounts as he is under an obligation keep by law; or

3) fails to file ledgers or vouchers or other accounting materials as is prescribed by law, or destroys such material;

shall be liable to a fine or to imprisonment for any term not exceeding one year and six months.

Section 303 – Any person who is guilty of gross negligence in acquiring by purchase or in receiving in any other similar manner objects acquired through an acquisitive offence shall be liable to a fine or to imprisonment for any term not exceeding six months.

Section 306 – Companies etc. (legal persons) can be held criminally liable according to the provisions in Chapter 5 for violation of this Act.

2. *Administration of Justice Act*

Section 98 – (1) The Minister of Justice is the superior of the public prosecutor's performance and shall superintend their work.

(2) The Minister of Justice may lay down provisions governing the public prosecutor's performance of their duties.

(3) The Minister of Justice may give instructions to the public prosecutors concerning the processing of concrete cases, including instructions to institute or continue, omit or discontinue prosecution. An instruction in pursuance of this provision to institute or continue, omit or discontinue prosecution must be given in writing and be accompanied by grounds. Furthermore, the President of Parliament (*Folketingets formand*) shall be notified of the instruction in writing. If the considerations which are mentioned in section 729c(1) makes it necessary, notification may be postponed. The instruction is in regard to access to documents in pursuance of sections 729a-d considered as materials provided by the police to be used for the case.

(4) The Minister of Justice shall hear appeals concerning decisions made by the Director for Public Prosecutions at first instance, *cf.* however the provision in section 1018e (4).Section 720(1) of the AJA

Section 705 – (1) If prosecution, either before an examining court or before the sentencing court, is to take place simultaneously against the same person being charged for several crimes or against several persons being charged as having contributed to one crime, then this should happen under one case, to the extent this can be done without severe delay or difficulties.

Section 720 – (1) The Minister of Justice may provide that public prosecution in specific cases is conditional on the decision of the Minister of Justice or the Director of Public Prosecutions.

Section 721 – (1) Charges in a case may be withdrawn in full or in part in cases –
i) where the charge has proved groundless,
ii) where further prosecution cannot anyway be expected to lead to conviction of the suspect, or
iii) where completion of the case will entail difficulties, costs or trial periods which are not commensurate with the importance of the case and with the potential punishment in case of conviction.

(2) The Chief Constable has the right to withdraw charges pursuant to subsection (1)(i) above. In other cases, such right rests with the prosecutor unless otherwise provided for by the Minister of Justice.

Section 724 – (1) In case of decisions concerning withdrawal of charges, the suspect and others who may be deemed to have a reasonable interest therein are notified. In case of decisions concerning discharge, the suspect is notified. An appeal of the decision to withdraw charges can be lodged with the superior public prosecutor under the rules of Part 10. Under the same rules, the suspect can appeal a decision on discharge.

(2) Where a decision has been made concerning withdrawal of charges or discharge, prosecution of the former suspect may only be continued by the superior prosecuting authority if a notice to that effect has been served on the person in question within two months from the date of the decision, unless the circumstances of the suspect have prevented service in due time or the conditions for reopening of the case under section 975 are fulfilled.

Section 742 – (1) An information on a criminal offence shall be laid with the police.

(2) The police shall institute investigations upon an information laid or on its own initiative, when it may reasonably be presumed that a criminal offence liable to public prosecution has been committed.

Section 743 – (1) The police shall refuse an information laid if there is no basis for instituting an investigation.

(2) When there is no basis for continuing an ongoing investigation, the decision to discontinue the investigation may be made by the police if no charge has been preferred. If a charge has been preferred, the provisions in sections 721 and 722 apply.

(3) If the information is refused, or if the investigation is discontinued, those who may be deemed to have a reasonable interest therein are notified. An appeal of the decision can be lodged with the superior public prosecutor under the rules of Part 10.

Section 754a – (1) As part of the investigation of an offence, the police may not cause assistance to be offered or measures to be made with a view to inciting any person to commit or continue the offence, unless:

- (i) there are reasonable grounds for suspecting that the offence or an attempt thereof is being committed;
- (ii) the investigative measure is assumed to be decisive to the investigation; and
- (iii) the investigation concerns an offence punishable under the law by imprisonment for six years or more.

(2) Measures taken with a view to inciting a person to commit or continue an offence do not fall within the scope of subsection (1) hereof if the police do not thereby influence material circumstances of the offence.

Section 781 – (1) Interventions in the secrecy of communications may only be made if

- (i) there are specific grounds to assume that in the manner concerned messages are conveyed or items of mail are sent to or by a suspect,
- (ii) the intervention must be assumed to be of decisive importance to the investigation and;
- (iii) the investigation concerns an offence punishable under the law by imprisonment for six years or more, intentional violation of Parts 12 or 13 of the Criminal Code, or violation of section 124(2), 125, 127(1), 193(1), 228, 235, 266 or 281 of the Criminal Code, or violation of section 59(5) of the Aliens Act.

3. *Public Administration Act*

Section 27(1) – Any person acting within the public administration is bound by professional secrecy, *cf.* Section 152 and Section 152 c-152 f of the Danish Criminal Code, whenever information is designated as confidential by Statute or other legally binding provision or whenever it is otherwise necessary to keep the information secret to protect material public or private interests, including in particular

- 1) the security of the State and the defence of the realm,
- 2) Danish foreign policy and Danish external economic interests, including relations with foreign powers and international institutions,
- 3) prevention and clearing-up of any infringement of the law, prosecution of offenders, execution of sentences and the like, and protection of persons accused, of witnesses and others in matters of criminal or disciplinary prosecution,
- 4) implementation of public supervision, control, regulation and planning activities and of measures planned under taxation law,
- 5) protection of public financial interests, including interests relating to public commercial activities,
- 6) the interests of individual persons or private enterprises or societies in protecting information on their personal or internal, including financial, circumstances, and
- 7) the financial interests of individual persons or private enterprises or societies in protecting information on technical devices or processes or on business or operation procedures and policies.

[...]

Section 28 – [...] (3) ... confidential information may be passed on to another administration authority only when the information must be assumed to be of essential importance to the performance of that other authority's activities or for a decision to be made by that other authority.

3. *Danish Tax Assessment Act*

Section 8D – In the statement of the taxable income no deduction shall be granted for the cost of bribes of the type referred to in Section 144 of the Danish Criminal Code to an individual who has been employed, appointed or elected to carry out services or duties in legislative, administrative and judiciary agencies, be it for Denmark, the Faroe Islands or Greenland or a foreign state, including local authorities or political branches, or for an international organisation which has been constituted by states, governments or other international organisations.

Section 17 – The tax authorities shall, subject to penalty under sections 152-152a and sections 152c-152f of the Danish Criminal Code, observe absolute secrecy vis-à-vis unauthorized parties with regard to information concerning an individual's or a legal entity's financial, commercial or private matters which has come to their knowledge within the context of the performance of their duties. [...]

4. *Act on State-Authorised and Registered Public Accountants*

Section 10 – [...] (5) Where a company auditor realises that one or more members of the company management commits or has committed economic crimes in connection with the carrying out of their work, and if the auditor has a presumption on grounds that the crime involves significant amounts or is otherwise of a serious nature, the auditor must immediately notify each member of the management hereof. The notification shall always be entered into the auditing protocol. If the management has not at the latest 14 days hereafter made documentation available to the auditor that the necessary steps to stop ongoing criminal activity have been taken and made reparations to damages caused by crimes already committed, the auditor must immediately notify the Public Prosecutor for Serious Economic Crime of the presumed economic offences. The above does not apply in cases which are dealt with under rules in the Act on Preventive Measures against Money Laundering and the Financing of Terrorism.

5. *Act on Measures to Prevent Money Laundering and Terrorist Financing (March 2006)*

Section 6 – (1) The undertakings and persons covered by this Act shall pay special attention to customers' activities which, by their nature, could be regarded as being particularly likely to be associated with money laundering or financing of terrorism. This applies in particular to complex or unusually large transactions and all unusual patterns of transactions in relation to said customer.

(2) The purpose of the transactions mentioned in subsection (1) shall, as far as possible, be investigated. The results of such investigation shall be recorded and kept, *cf.* section 23.

Section 7 – (1) If there is a suspicion that a customer's transaction or enquiry is or has been associated with money laundering or financing of terrorism, the undertakings and persons covered by this Act shall investigate the transaction or enquiry in more detail. If the suspicion relates to offences punishable by imprisonment of more than one year and this suspicion cannot be disproved, the Public Prosecutor for Serious Economic Crime shall be informed immediately.

(2) In the event of suspicion as mentioned in subsection (1), members of the Danish Bar and Law Society may notify the secretariat of the Danish Bar and Law Society, which shall, following an assessment of whether the suspicion is subject to reporting obligations under subsection (1), immediately forward the notification to the Public Prosecutor for Serious Economic Crime.

(3) If the suspicion is related to money laundering, and the transaction has not already been carried out, the transaction shall be suspended until notification has been effected pursuant to subsection (1). If notification is effected pursuant to subsection (2), the transaction shall be suspended until the Danish Bar and Law Society has forwarded the notification to the Public Prosecutor for Serious Economic Crime or has stated that, following specific assessment, the notification will not be forwarded. If effectuation of the transaction cannot be avoided, or if this is deemed to be potentially harmful for the investigation, notification shall instead be given immediately after the effectuation, *cf.* however subsection (4).

[...]

(5) The Police may, under the regulations stipulated in the Administration of Justice Act, demand any information necessary for investigation of the case from the undertakings and persons covered by this Act.

Section 9 – If the Danish FSA or the Danish Commerce and Companies Agency learns of circumstances that are presumed to be associated with money laundering or financing of terrorism covered by the reporting obligation in section 7, said authority shall notify the Public Prosecutor for serious economic crime in this respect.

Section 10 – The Danish FSA may, when acting on the recommendations of the Financial Action Task Force, lay down more specific regulations on the duty applying to the undertakings and persons specified in section 1, requiring them to systematically submit information to the Public Prosecutor for serious economic crime concerning financial transactions with non-cooperative countries in connection with combating money laundering or financing of terrorism. In this connection, the Danish FSA may stipulate that notification is to be carried out systematically in all cases, even though no suspicion has arisen.

Section 25 – (1) The undertakings and persons covered by this Act shall prepare adequate written internal rules about customer due diligence, reporting, record-keeping, internal control, risk assessment, risk management, management controls and communication as well as training and instruction programmes for their employees in order to forestall and prevent money laundering and financing of terrorism.

(2) Undertakings and persons covered by section 1(1), nos. 1-10 shall appoint a person at management level to ensure that the undertaking complies with its obligations under this Act.

(3) Undertakings and persons covered by section 1 shall ensure that their employees know of the obligations stipulated in this Act.

(4) In employment relationships, the obligations mentioned in subsections (1) and (2) shall rest on the employer.

(5) The Danish FSA may lay down more detailed regulations on the requirements mentioned in subsection (1).

Section 35 – (1) The Public Prosecutor for Serious Economic Crime may, if investigative considerations do not contradict this, inform the notifying person about the status of the matter, including whether a charge has been made, and may inform about deletion from the money laundering register at the Public Prosecutor for Serious Economic Crime, and about a final decision, on conviction possibly in the form of a judgment or a transcript of a judgment.

(2) The notifications mentioned in subsection (1) may not unlawfully be divulged to others.

Section 37 – (1) Intentional or grossly negligent violation of section 2; section 6(2), 2nd clause; section 7(1), 2nd clause, (3) and (4), 1st clause; section 11; ... ; section 25(1)-(3); section 27(1); section 30, 2nd clause; section 31(1); section 32(3); and section 34(2) and (3) shall be subject to a fine. Intentional or grossly negligent violation of section 35(2) shall be subject to a fine, unless more severe punishment is incurred under the regulations of the Criminal Code.

(2) In the event of particularly gross or extensive intentional violations of section 2; section 7(1), 2nd clause, (3) and (4), 1st clause; section 12(1)-(6); sections 14, 15 and 16(1); and section 23(1), 1st clause, (2) and (3), 1st clause, the penalty may be increased to imprisonment of up to six months.

[...]

(6) Companies, etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the Criminal Code.

6. Act on Commercial Banks and Savings Banks, etc.

Section 53a – Members of the board of directors, members of local boards of directors or similar organs, members of the board of representatives in a commercial bank or credit co-operation, auditors and inspectors and their deputies, members of the board of management and other employees may not unlawfully divulge or use confidential information obtained during the discharge of their duties.

7. Act on Extradition of Offenders

Section 2 – (1) The Minister of Justice, acting under an agreement with a state outside the European Union, may decide that a Danish national can be extradited for prosecution in that state,

- 1) if the person in question has in the two years preceding the criminal act resided in the state seeking his extradition and the act constituting the offence for which the extradition is sought is punishable under Danish law by a period of imprisonment of at least one year, or
- 2) if the act is punishable under Danish law by a period of imprisonment of longer than four years.

(2) If, in paragraph 1 does not apply, the Minister of Justice may adopt a decision on the extradition of a Danish national for prosecution if the conditions in paragraph 1 are otherwise met and this is indicated by special law enforcement relation to a state outside the European Union, one of the agreements specified in reasons.

Section 2a – An alien can be extradited for prosecution or execution of a judgment in a state outside the European Union if the act is punishable under Danish law by a period of imprisonment of at least one year. If the act is punishable under Danish law by a shorter period of imprisonment, the person can nevertheless be extradited if an agreement to that effect has been concluded with the state in question.

Section 10a – (1) The extradition of persons for prosecution or execution of a judgment in a Member State of the European Union for an offence that, under the law of the Member State that has requested the extradition, is punishable by imprisonment or a detention order for a period of at least three years can be effected on the basis of a European arrest warrant although a corresponding act is not punishable in Danish law. In the case of the following acts:

- 1) participation in a criminal organisation,
[...]
- 7) corruption,
- 8) fraud, including that affecting the financial interests of the European Communities,
- 9) laundering of the proceeds of crime,
[...]

(2) Persons can be extradited for prosecution in a Member State of the European Union for acts that are not covered by paragraph 1 under a European arrest warrant if the criminal act in the Member State renders the person liable to a period of imprisonment of at least one year and a corresponding act is punishable under Danish law.

(3) Persons can be extradited for execution of a judgment in a Member State in the European Union for acts that are not covered by Section 1 under a European arrest warrant if the judgment has sentenced the person to prison or a detention order of not less than four months and the corresponding act is punishable under Danish law.

(4) A person can be extradited for prosecution or execution of a judgment for a number of offences although the conditions in paragraphs 1-3 are met in the case of only one of those offences.