

THE DANISH BAR  AND LAW SOCIETY

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The Danish Bar and Law Society

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The Danish Bar and Law society

1. Overview

The Danish Bar and Law Society ("the Society") conjoins lawyers holding the Danish title "advokat" authorised to practice law whether conducted in Denmark, Greenland, The Faroe islands or abroad. Registration with the Society is mandatory and today the Society comprises approximately 5,300 lawyers.

The objects for which the Danish Bar and Law Society is established are:

- to guard the independence and integrity of lawyers;
- to ensure and enforce the discharge of the duties and obligations of lawyers;
- to maintain the professional skills of lawyers; and
- to work for the benefit of the Danish legal community.

The Society was established in 1919. By law it is vested in the Society to supervise that lawyers adhere to the legal and ethical rules regulating the legal profession. The Board of the Society has in that capacity adopted a professional Code of Conduct with guidelines stating the rights and duties of lawyers. The Society also manages the education of future lawyers by a compulsory education including a bar exam that all trainee lawyers must follow and pass. Further, the Society acts to promote justice and protect the constitu-

tional and human rights. The Society bears actively to the law-making process by participating in the governmental hearing-procedures of perspective law proposals as well as appointing members to governmental committees.

The Society is governed by a Council of 15 members. The President is elected for a four year term by the members' direct vote whereas the 14 members of the Council are elected in the 8 local constituencies. The term of office is 4 years but the council members may be re-elected for a further 2 years term. The secretariat of the Council and the Society is led by a Secretary General.

The Disciplinary Board (advokatnævnet) is a part of the Danish Law Society and handles complaints against lawyers. The Disciplinary Board is chaired by a Supreme Court Judge and the members are representatives of the public and the legal profession. The chairman and the vice-chairmen are appointed by the president of the Supreme Court. The composition of the Disciplinary Board is laid down in article 144 of the administration of Justice act (aJa).

The Society publishes a journal called "advokaten" (The lawyer), a journal issued to all registered lawyers, media and public institutions etc.

2. The regulatory framework

The Regulation of BOTH lawyers and the Danish Bar and Law Society is laid down in the aJa. an english translation of the relevant chapters of the act can be found on The Danish Bar and Law Society's webpage. in addition to the aJa, a number of departmental orders issued by the Ministry of Justice regulates specific aspects of the practicing of law, e.g. further regulation on professional corporations of lawyers, the mandatory continuing education programme etc. additionally, the General assembly of the Danish Bar and Law

Society has approved on a By-Law stipulating the purpose and main activities of the society as well as the procedural rules regarding the composition and competences of the official bodies of the Society etc. Besides the departmental orders and the By-Laws, the legal framework also includes the Code of Conduct for lawyers issued by the Council. all these acts are translated into english and can be found on the Danish Bar and Law Society's webpage www.advokatsamfundet.dk.

3. The legal status of the Danish Bar and Law Society

The Danish Bar and Law Society is established by law (see AJA § 143) and is as such recognised as an official authority under the Danish legal system. However, the Society enjoys full independence from the state. Thus, the Society is not a governmental authority and is not part of the public sector or the executive. The Society is not subject to instructions from governmental authorities and the Society receives no public funding. The Society may be described as an independent, self-governing and self-funding public law institution comprising all lawyers.

The legal status of the Society was strengthened and clarified through a substantial reform of the judicial framework enacted in 2008. The reform is based on a thorough scrutiny and report published by the Royal Commission on the Future Regulation of Lawyers appointed by the Ministry of Justice in 2006. In view of the European initiative to strengthen competition also in the field of service providers such as lawyers, the broadly composed Commission was asked to assess the rules regarding lawyers' mandatory membership of the Danish Bar and Law Society and to discuss and describe possible solutions that could allow for an abolition of the mandatory membership by some seen as an obstacle to a freemarket for providing legal services.

The Commission formulated and analysed 5 different models for the future regulation of the role and functioning of the Danish Bar and Law Society, spanning from a model changing the Society into a public authority under state control, like for instance the Danish Financial Supervisory authority, to a model allowing for several law societies to compete over lawyers' membership.

In its report, the Commission emphasised the key importance of ensuring a model that would maintain that all lawyers must be conjoined in a law society fully independent both legally and financially of any governmental influence. Moreover, the Commission stated that the model must ensure full disciplinary authority over the lawyers. The Commission underlined that the importance of maintaining and protecting the values associated to the title *advokat* is essential to society and that the mandatory requirements on lawyers are necessary and proportionate to ensure confidence in the title. The Commission rejected the argument saying that competition would prosper if the mandatory requirements were lowered or indeed abolished. However, the Commission at the same time stated that the imposition on mandatory requirements on lawyers (i.e. the obligation to register with the Society as a condition for acting as lawyer) called for restrictions on what type of activities the Society could engage in. In so far as lawyers are forced to contribute financially to the Society, the activities of the Society could not go further than what may be considered prudent and necessary in order to fulfil the role as a law society. The Commission in this respect made

reference to the international standards for law societies as laid down in international documents such as The European Councils Recommendation on the freedom of exercise of the profession of lawyer (the recommendation can be found on the Society's webpage).

The Commission concluded that the regulatory competences over the legal profession was to remain in the Danish Bar and Law Society. Moreover, the Commission maintained that the representative functions of the legal profession were also to remain in the Society insofar as the representative functions do not amount to representing financial, political or marketing issues etc. The representative functions connected to the title *advokat* as well as representative functions vis-à-vis the judiciary, the executive and the legislator, the Commission proposed, was to remain with the Society.

The proposals of the Commission were transposed into law as from 2008 along with a number of other substantial changes in order to strengthen the supervisory role of the Society (see further below). Following this, The Danish Bar and Law Society has adapted its Regulation stipulating the purpose and activities of the Society.

The above stated focuses on what is the Danish Bar and Law Society. It may however also add to the perspective to mention the areas and features falling outside the competence of the Society.

The Danish Bar and Law Society is *not* an association of lawyers, a trade union or a lobby organisation arguing the commercial or financial interests of its members. Thus, the Society does *not* engage in marketing activities promoting lawyers in competition with for instance accountants, real estate agents etc. The Society is *not* engaged in any labour market issues concerning labour conditions, payment etc. for employees in law firms. The Danish Bar and Law Society does *not* run any kind of financially revenue-giving activities.

The Society does *not* offer lawyers services such as educational training, pension schemes, insurance schemes, access to discount on the buying of business utilities etc. All these activities are considered to fall outside the activities necessary for maintaining an independent bar and law society and is therefore left to private initiatives for those lawyers who wish to contribute financially to such on a voluntary basis.

4. The functions of the Danish Bar and Law Society

4.1 GUARDING THE INDEPENDENCE AND INTEGRITY OF LAWYERS

Independence and integrity are fundamental values surrounding the notion of *advokat*. The Danish Bar and Law Society is active in safeguarding these principles. The safeguarding has two aspects – one is ensuring the clients that their lawyer is not in a conflict of interests due to other client relationships. This is safeguarded through the supervisory functions described below. The other aspect is to ensure lawyers full independence from the state. The role of the Society in this respect is to assist lawyers in maintaining the possibility of remaining independent.

The Council works to ensure that the individual lawyer, to protect the client's due process rights, may serve his client in a confidential business relationship independently of any interests other than those of the client and with access to information of significance to the client's case.

In performing this task, the Council may assist a lawyer whose independence or integrity comes under pressure, for instance in connection with contact to relevant authorities or the conduct of legal proceedings. Where relevant, the Council may contact national and international authorities in its own name or on behalf of a lawyer and may conduct legal proceedings in its own name to fulfil its tasks. In cases pertaining to the regulation of lawyers or the lawyer's position in the administration of justice, the Council may step in to conduct a case for a lawyer or decide that the legal costs be payable by the Bar and Law Society.

4.2 SUPERVISORY FUNCTIONS – ENSURING AND ENFORCING THE DISCHARGE OF THE DUTIES AND OBLIGATIONS OF LAWYERS

The Danish Bar and Law Society is the supervisory authority over lawyers. In this respect the Society registers and keeps track on all appointed lawyers whether actively practising law or having deposited his practising certificate. The registration of information goes beyond the facts of the lawyer's name etc. and also includes information on professional indemnity insurance, ownership of law firms, appointments to appear before higher courts etc. Thus, the register of lawyers contains all relevant factual information on lawyers in Denmark.

The Society's supervisory activities are focused on the adherence of lawyers to the requirements laid down in the legal framework. This means that the Society is proactively seeking to respond to information from clients, lawyers, the media or any other source suggesting that a lawyer is not observing the requirements properly. In fulfilling this task, the Society has a number of instruments. The Society may order a financial audit of a lawyer seeking evidence that the rules concerning the handling of client fees are adhered to. The Society may at any time ask a lawyer to give a statement

on the handling of a concrete case in order to ensure full compliance with the ethical standards, statutory regulation etc. The Society may, in more grave circumstances, order an interview with a lawyer, and may also impose a temporary supervision conducted by an appointed practising lawyer to ensure that cases are handled correctly. Lawyers who refuse to comply with measures initiated by the Society are considered in breach of the ethical standards and are brought before the Disciplinary Board.

Traditionally, the majority of the supervisory activities has been based on the suspicion of a specific breach of behaviour. Thus, traditionally the Society has not focused on random checks of lawyers in general. However, during the preparatory discussions in connection with the reform of the Danish Bar and Law Society in 2008 it was inserted as a political precondition that the supervisory and disciplinary function of the Society be carried out effectively and uniformly. In the wake of the reform, the Council has therefore decided to launch a proactive supervisory regime based on outgoing visits at law firms and other places employing lawyers in order to ensure full adherence to the requirements attached to the appointment as *advokat*. The supervisory regime is run as a random check and the ambition is to cover at least 10 per cent of all lawyers annually. During these visits, the Society will ask for verification of the information registered with the Society as well as documentation for the lawyer's adherence to a number of specific requirements including handling of conflicts of interests, anti-money laundering requirements, mandatory consumer information, verification of participation in mandatory educational training etc. Failure to comply with the requirement may lead to filing of a complaint to the Disciplinary Board. As to the competences and structure of the Disciplinary Board see further below, subsection 7.

Supplementing the outgoing random controls, the Society takes action on the basis of information conveyed by lawyers, clients, the media etc. on possible infringements of ethical standards etc. Such information is investigated where deemed necessary and may lead to the initiating of disciplinary procedures against a lawyer before the Disciplinary Board.

With the 2008-reform, two new supervisory tools have been enacted to strengthen the Society's powers.

First, the Order on calling lawyers for an interview with the district committee now allows the Council to order that a lawyer shall be called for an interview with the district committee if such lawyer is assumed to have grossly or repeatedly neglected the duties involved in his position.

The interview is held by the district committee in one of the local districts that border the district in which the lawyer

concerned has his business. at least two members of the district committee participate in the interview and in addition one or more representatives of the Council secretariat may also participate in the interview.

The interview is held in the law firm's offices and the interviewee may be accompanied by an adviser at the interview. The lawyer called for an interview shall participate in the interview except where such person must be considered to have a lawful excuse because of illness or other special circumstances. Failure to participate may in itself be a violation of the ethical standards.

in connection with an interview, representatives of the district committee may agree with the lawyer on changes in his routines if such changes are found expedient in preventing the lawyer from neglecting his duties as a lawyer, etc.

after the interview, the Council makes a draft report that is forwarded to the lawyer having participated in the interview, with a deadline within which to comment on the report. When the district committee has received any comments from the lawyer concerned, the final report shall be made and forwarded to the Council. The report shall contain the district committee's recommendation on the further process, including whether an auditor's examination is required and whether there is a basis for bringing the matter before the Disciplinary Board.

Secondly, the By-Laws now includes the possibility of the Council ordering the establishing of a special supervision be initiated if the lawyer is suspected of having committed offences that may lead to disbarment or disqualification from owning shares in a professional corporation of lawyers. The purpose of this tool is to prevent a lawyer from committing even further offences during the hearing of a disciplinary procedure. in such the measure is primarily of an intermediatory nature but is not restricted to such situations.

The period of supervision shall usually not exceed three months but the supervision does not prevent the Council from performing a simultaneous auditor's examination of the lawyer or professional corporation of lawyers. Moreover, the investigation of a pending disciplinary case, if applicable, is not affected by the supervision.

The supervision is undertaken by one or more lawyers (the supervisory lawyer) appointed by the Council. The supervisee has an opportunity to comment on the choice of the supervisory lawyer unless this would defeat the purpose of the supervision. in connection with the supervision, the supervisory lawyer shall at all times maintain complete independence, and there shall be no circumstances that may give rise to doubt about the supervisory lawyer's impartiality.

During the supervision, the supervisory lawyer will pay one or more visits to the business premises of the supervisee. The number of visits is adjusted to the circumstances and

shall be organised so as to cause minimum nuisance to the supervisee.

The supervisee is obliged to supply the supervisory lawyer with any information, documents, etc. which the supervisory lawyer considers to be of importance to the supervision, and the supervisee is obliged to be present during the supervisory lawyer's visit unless other agreement has been made with the supervisory lawyer or the supervisee's absence is lawfully excused.

By the end of the period of supervision, the supervisory lawyer shall prepare a draft report to be forwarded to the supervisee stating a deadline within which the supervisee may comment on the report. The finalised report to be forwarded to the Council shall be capable of providing the basis for the Council's assessment of the supervisee's circumstances. The report shall contain a recommendation on the further process, including whether an auditor's examination is required and whether the Council should bring the matter before the Disciplinary Board.

Supervisory lawyers must be experienced lawyers of not less than ten years experience of law practice within the last 15 years and must be worthy of the respect and confidence demanded by the supervisory office. Moreover they cannot be a member of the Council or Disciplinary Board of the Bar and Law Society.

Moreover, the Society follows closely the case law of the Disciplinary Board in order to institute supervisory measures against lawyers who are convicted on several occasions. a formal procedure to identify recidivists has been enacted. The procedure entails that the Council based on the number or graveness of disciplinary cases heard by the Board may ask the Board to give notice to the Council if the said lawyer is again tried before the Board. at the same time, the lawyer in question is informed of the decision to ask the board to give such notice in the event of further complaints over the said lawyer. On the basis of such notification, the Council may decide to intervene in the case asking the Board to disbar the lawyer, if the lawyer once again is tried before the Board following complaints. This measure to prevent repeated violations by the same lawyer is known as the "yellow card" procedure since it serves as a last warning for lawyers having been sanctioned several times already by the Board.

4.3 MainTaininG Lawyers' Professional skILLs

4.1.1 The Bar exam

under Danish law, all who applies for appointment as advokat must fulfil a number of requirements (see further below, subsection 5). among the requirements is the completion of an educational programme managed by the Society.

it is a condition for admission to practise law that the person concerned has completed theoretical basic education

for lawyers, has passed an examination in matters of special importance to the profession of lawyer (the theoretical examination) and passed a practical test in litigation (the litigation test); cf. section 119(2)(v) of the AJA.

The *theoretical basic education programme* is run by the Council. Persons with a Danish Bachelor's and Master's degree in Law may be admitted to the basic education programme. Moreover, persons can be admitted who hold a Master's degree in Law from another eu Member State or from a country covered by an agreement with the Community that involves acknowledgement in Denmark of a foreign Master's degree in Law, provided that such person satisfies the conditions for authorisation as assistant attorney. The same applies to persons who hold a Bachelor's degree in Law from one of the countries mentioned and hold a Danish Master's degree in Law.

The theoretical basic education programme consists of 20 course days spread over one year and is concluded with a written examination where participants receive the assessment "passed" or "not passed". Participants can only enter for the examination three times.

The *Practical test in litigation* consists of the conduct of one case before a district court, the High Court or the Maritime and Commercial Court. Persons who satisfy the conditions for registering for the basic education programme may enter for the litigation test. Candidates can only enter for the litigation test three times, unless special reasons exist. Candidates receive the assessment "passed" or "not passed".

Where the court is composed of only one judge during the legal action that is to serve as a litigation test, a censor shall assist in assessing whether the candidate has passed the litigation test. Where three professional judges participate in the case, no censor shall participate.

The candidate has passed the litigation test if the professional judge and the censor agree that this is the case. If the candidate fails the test, he shall be given reasons for the decision, but without information about the distribution of votes among judges and censor. Censors who participate in the litigation test are appointed by the Bar and Law Society.

If it proves impossible for the candidate to find a suitable case for the litigation test, the candidate may, when a maximum of one year of the candidate's time as assistant attorney remains, apply to the course committee established by the Ministry for Justice to have the litigation test carried out as a mock trial. The mock trial is carried out with the participation of one judge and one censor.

Complaints about the conduct and assessment of the theoretical examination as well as complaints about the assessment of the litigation test may be filed with the course committee. The course committee may decide to maintain the assessment, cancel the examination or change the assessment from "not passed" to "passed".

4.1.2 Mandatory continuing training

all lawyers – including lawyers from an eu or eea Member State or from Switzerland (eu lawyer), who permanently practise law in Denmark under their home-country professional title – and all assistant attorneys are obliged to participate in ongoing continuing education relevant to the profession of lawyer.

Continuing education relevant to the profession of lawyer means education that is either of general importance to practising law or of specific importance to the assistant attorney's or lawyer's performance of his job. Participation in the basic education programme for lawyers is not considered continuing education.

a course shall satisfy the following conditions to be considered continuing education:

- (i) each course shall consist of a total of at least three 45-minute lessons;
- (ii) a course programme, a goal description, a subject description or similar description of the course content shall be available;
- (iii) the course provider shall be able to document the teacher's professional competence within the relevant field; and
- (iv) the lawyer's or the assistant attorney's participation in the course shall be documented, e.g. in the form of a course certificate signed by the teacher.

Courses may be held both externally on the course provider's premises, etc., internally by a law firm, etc. or in cooperation between several law firms, etc.

To satisfy the requirement of ongoing continuing education, the lawyer or assistant attorney concerned must within a period of three years have participated in at least 54 lessons of continuing education. Each lesson shall have lasted at least 45 minutes.

The education may consist in the attendance of courses, teaching or academic writing.

Teaching is considered continuing education provided that the person's own participation in the course taught would satisfy the requirements set. Teaching may be credited with a maximum of 27 lessons for each three-year period.

Writing is considered continuing education provided that the person concerned

- (i) has written or has helped write a professional law book published by a publishing house;
- (ii) has written or has helped write a professional article on

law published in a journal after prior control of the professional level made by the journal's editors; or

(iii) has written or has helped write a legal research thesis, including, for example, a Ph.D. thesis.

Writing is credited with a maximum of 18 lessons for each three-year period.

education conducted via writing is translated into lessons, so that 2,340 characters, excluding spaces, make up one lesson. Where several authors have written the relevant publication, etc., the number of lessons is calculated on the basis of the share in the publication, etc., of the author concerned.

in the event that an assistant attorney retires from his position, a lawyer deposits his practising certificate or the practising certificate ceases to be valid or the lawyer is disbarred, or an eu lawyer cancels his registration with the Bar and Law Society, the requirement for continuing education are suspended. if the person later reregisters with the Bar and Law Society, the requirement for continuing education applies again to the person concerned.

in the event that, without thus terminating the employment or registration and without depositing the practising certificate or the lawyer is absent from the position for a period of two months or more, except where such absence is due to participation in continuing education, the requirement for the scope of the continuing education is reduced provided that such absence is lawfully excused, for example because of illness or leave of absence granted from the position in question.

The Council may in exceptional cases grant exemption in whole or in part from the requirement for 54 lessons of continuing education. in order for an exemption to be granted, the application for exemption must be motivated by serious personal, including health-related, circumstances, and such circumstances must be documented at the Council's request.

The obligation for continuing education for an eu lawyer who practises law in Denmark and is registered in Denmark under his home-country professional title is considered to have been satisfied to the extent that such EU lawyer documents that he is subject to a continuing education obligation in his home country that essentially corresponds to the Danish requirements. Where the rules of his home country correspond only partly to the requirements, the Society may require that such eu lawyer participates in supplementary continuing education.

The individual lawyer must submit documentation every three year as to his participation in educational activities. The documentation is subjected to the random supervisory control described above. Thus the lawyer is advised at all times to keep a copy of the documentation.

Failure to comply with the requirements may be considered a violation of the rules of professional conduct, for which the Council may file a complaint about the lawyer concerned with the Disciplinary Board.

4.4 Working for the benefit of the Danish legal community

The Society participates in the drafting of national legislation etc. on a neutral basis in terms of political party affiliation and distribution and may take initiatives for the purpose of guaranteeing respect for fundamental rights, the rule of law and security in the application of the law.

Moreover, the Society works to ensure that all persons have access to qualified, independent and confidential legal assistance and works to enhance the rule of law, both in the administration of justice and in public administration. and the Council works to give the population access to free legal aid in the form of basic oral counselling from citizens' advice bureaus, mainly by providing information about citizens' advice bureaus on the internet.

in doing so, the Council may place fundamental information about the legal problems of everyday life at the disposal of citizens and may inform citizens where they can obtain more information. The Council also informs lawyers and citizens about significant decisions and rulings by the courts of law and the Disciplinary Board, legal policy issues and any other matter falling within the scope of activity of the Society.

as it appears, the Danish Bar and Law Society is an active participant in the law-making process. For a number of years the Society has made available the expertise of lawyers to state authorities to assist in preparatory committees. Several statutory regulations contain provisions stating that the Society is to appoint or suggest a lawyer as member of disciplinary boards, committees etc. established by government. The Society appoints members of a number of public bodies including the Board of the Court administration, the Judicial appointments Council, The appeals Permission Board, The Refugee appeals Board, just to mention a few.

The Society monitors the developments in the general regulation of individuals and companies and is a strong voice in the protection of fundamental legal principles, human rights and standards for the behaviour of public institutions. The Society is a leading voice in the debate thanks to a combination of statements on every important new piece of legislation and thanks to initiatives launched by the Society itself in order to raise awareness of a certain legal problem, tendency etc. The latter may take the form of a conference on the development within say procedural law or may be the result of the publishing of a report on legal aid services.

The Society is active also by holding close contact with all relevant authorities within both the judiciary and govern-

mental bodies in order to maintain awareness on the importance of the insurance of good governance, fair trial and adherence to fundamental human rights.

Thanks to the legal expertise of lawyers within a broad number of legal topics, the Society is often asked to facilitate legal processes with experts and the statements issued on proposals are highly regarded both to governmental officials and members of parliamentary committees preparing new legislation. It is in this respect important to notice that all statements given by the Society are politically neutral. Since all lawyers are mandatory parties to the Society and since it falls outside the scope of a public law institution to

issue political statements, all statements must derive from a neutral analysis of the topic in question. This does not mean to say that the Society is excluded from criticising proposals or actions taken and as such contribute to a political debate but the statement must be founded on an objective analysis.

in a globalised world, more and more legislation is based on international agreement be it EU legislation or otherwise. In light of this, the Society is also active in the CCBE (The Council of Bars and Law Societies of Europe) contributing to the safeguarding of both lawyers' independence and to the development of sound legal systems in less developed countries.

5. admission to practise law under the title "advokat"

ADMISSION TO PRACTISE is granted by the Minister for Justice following a hearing of the Danish Bar and Law Society. However, any person who

- (i) is legally competent and not under guardianship
- (ii) has not filed for suspension of payments and is not in bankruptcy;
- (iii) holds a Danish Bachelor's and Master's degree in Law;
- (iv) has carried out practical legal work for at least three years; and
- (v) has completed theoretical basic education and passed an examination in matters of special importance to the profession of lawyer as well as passed a practical test in litigation

is entitled to hold a practising certificate. In other words, everybody fulfilling the above stated objective criteria has a right to be appointed advokat.

The qualifying work mentioned in subsection (iv) shall consist in participation in general legal practice, including acquiring experience in hearing cases, as an authorised assistant attorney with a lawyer practising law, or in work in a legal capacity in the courts, the prosecution service or the police, in which the hearing of cases forms a substantial part.

Moreover, the Minister for Justice may decide that work in legal positions other than those conducted in law firms, with the prosecution or the courts can be included in whole or in part in the 3 years of practical training required. In practise, the Ministry accepts employments in legal positions in the executive or in private firms as qualifying, though merit may in general only be given with a maximum of two years and positions in such positions are only merited with 50 per cent.

It appears from the above stated that the legal background qualification to become lawyer may be quite different.

However, it also appears that in Denmark only those with a degree in law may be granted admission to practise as advokat.

Persons who have not been admitted to practise law as advokat and persons who are excluded from practising law may not use the title "advokat" or any other title capable of being confused therewith. A lawyer who has deposited his practising certificate with the Ministry of Justice may not use the title "advokat" in connection with business matters. Violation of the provisions on the use of the title is punishable as a criminal offence.

Practising law is incompatible with a legal position in the courts, the prosecution service or the police. Whereas such background may qualify as becoming a lawyer it is not compatible with being one. Practising law is also incompatible with any position in public service, unless the Minister for Justice makes an exception in special circumstances. When decisions on exemptions are made, main focus shall be on the lawyer's independence of the State, thus preventing any conflict of interest from arising between a public office and the practise of law by the person concerned.

Once appointed, an advokat has an almost exclusive right to conduct cases for others. In the past, lawyers appointed as advokat had a monopoly on professional party representation before the courts. However, since 2007 the monopoly has been modified. Today, everybody has the right to call himself "legal adviser" or similar and may appear before the district court in cases heard in the small claims procedure (cases with a value of maximum DKK 50,000) and in cases heard before the bailiff court. In other cases, the parties may appear for themselves, but in so far as they wish to be represented by a professional council this has to be conducted by an advokat.

any advokat is entitled to appear before the district court. an advokat is entitled to appear before the High Court and in all cases before the Maritime and Commercial Court when he has passed a test in litigation. The test (which is not to be confused with the litigation test carried out to become an advokat) consists in the candidate's conducting two cases, concluded with oral proceedings. One of the cases may be a district court case. The other case shall be conducted before one of the High Courts or before the Maritime and Commercial Court. a case can only form the basis of the test if the relevant court finds the case suitable for the purpose. The candidate has passed the test when the courts where the cases were conducted find the conduct of the cases satisfactory. if the case has been conducted before the High Court or the Maritime and Commercial Court, the relevant High Court or the Maritime and Commercial Court may, however, declare that in view of the nature and conduct of the first case, the candidate has passed the test on the basis of this case alone. The second case shall be conducted within five years of the conduct of the first case, unless the court in which the second case is conducted grants an exemption from this rule. Candidates may enter for the test only twice.

an advokat is entitled to appear before the Supreme Court when he has filed an application for registration with the court registry of the Supreme Court accompanied by a statement from the General Council of the Bar and Law Society that the lawyer has practised law for a minimum of five years as a lawyer entitled to appear before the High Court and a statement from the High Court that the lawyer is experienced in litigation. Thus, there is no formal test to be passed in order to be able to appear before the Supreme Court.

Denmark is a member of The european union and the rules concerning free movements of lawyers therefore also apply in Denmark. Lawyers from other Member States may therefore both conduct services and establish practises in Denmark under their home-country professional title. Moreover, such lawyers may in accordance with the directive on free establishment of lawyers be granted right to practise law as advokat. The main conditions herefore are that the applicant has worked under his home country title in Denmark for 2-3 years and has established knowledge of Danish procedural law and the Danish language. For more detailed information see Order on eu lawyers' establishment in Denmark and Order on eu lawyers' services in Denmark.

6. Practising law in law firms, corporations etc.

anADVOKAT May PRACTiSe law acting as sole practitioners or in a grouping of lawyers. The only permitted object of a professional corporation of lawyers is to practise law. it is therefore not possible under Danish law to establish multi-disciplinary partnerships. if practising in a partnership with others such law firm may only be in the form of public limited, private limited or limited partnership companies. Moreover, shares in a professional corporation of lawyers may only be owned by

- (i) lawyers who actively practise law in the corporation, its parent company or its subsidiary;
- (ii) other employees in the corporation; or
- (iii) another professional corporation of lawyers.

as it appears, apart from lawyers, only present employees may hold shares in a law firm. Jointly, the employees must not own more than one tenth of the shares in the professional corporation and may not have more than one tenth of the votes in the corporation. Moreover, employees who wish to hold shares in a professional corporation of lawyers must pass a test in the rules that are of special importance to the profession of lawyer. The Bar and Law Society is responsible for holding the test.

notwithstanding the above mentioned on the sole purpose of a corporation of lawyers it has recently been made possible to establish holding structures. a professional corporation owned solely by lawyers and whose sole object and activity is to own shares in another professional corporation of lawyers may thus own shares in a professional corporation of lawyers.

under Danish Law, the establishing of a professional corporation normally entails limited liability for the participants. However, in professional corporations of lawyers all participating lawyers (or employees holding shares) are personally liable jointly with the corporation for any claim arising as a result of their assistance to a client. The professional liability for individual actions is thus not limited in law firms. Besides, directors, except employee-elected directors, of a professional corporation of lawyers shall actively practise law in the corporation or its parent company or its subsidiary. Members of the executive board of a professional corporation of lawyers shall actively practise law in the corporation.

7. The Disciplinary Board

The DISCIPLINARY BOARD (“advokatnævnet”) is a part of the Danish Bar and Law Society and handles complaints against lawyers.

The Disciplinary Board has 21 members. The chairmen are three judges, one from the Supreme Court, one from High Court and one from the City Court. The judges are appointed by the President of the Supreme Court. nine members are lay members, appointed by the Ministry of Justice and nine members are lawyers, elected by the members of the Danish Law Society. The Disciplinary Board may act as the full board or in divisions but each division shall consist of seven members.

The Disciplinary Board is tasked with considering complaints that a lawyer has violated the rules of professional conduct (disciplinary cases), complaints that relate to the fee charged by a lawyer for his work (fee complaints) and cases on revocation of disbarment.

any person having a legal interest therein may bring a case before the Disciplinary Board. Furthermore, the Council of the Society may bring a case before the Board.

The deadline for filing complaints shall be one year. For complaints about a lawyer’s conduct, the deadline shall be counted from the time when the complainant became aware of the matter to which the complaint relates. For complaints about a lawyer’s fee, the deadline shall be counted from the time when the complainant became aware of the final payment in the case concerned.

The Disciplinary Board may consider a complaint filed too late if the grounds for the delay are found to be reasonable.

When the Disciplinary Board assesses that a case brought before the Board may result in disbarment, the case may be submitted to the Council for a decision as to whether the General Council will enter into the case.

On the chairman’s recommendation, the Disciplinary Board may dismiss a complaint from a person who has no legal interest in the matter to which the complaint relates. The same shall apply to a complaint that cannot be determined by the Board because of the nature of the case.

On the recommendation of the chairman, the Disciplinary Board may dismiss a complaint deemed manifestly unfounded. any Board member may request that the case be considered on its merits.

Lawyers are obliged to supply the Disciplinary Board with information and documents that the Board finds are impor-

tant for deciding a case. Lawyers are obliged to make statements and appear before the Board to give evidence about matters that the Board finds are important for deciding the case. a lawyer’s obligation to submit information is though limited in accordance with the rules of the aJa on the right of exemption from the duty to give evidence.

When the General Council files a complaint, the Council may appoint a lawyer to work as prosecutor.

in cases where a lawyer risks disbarment, the Disciplinary Board shall appoint a counsel for the defendant if the defendant has not chosen one himself. in other disciplinary cases, the Board may appoint a counsel for the defendant. Moreover, the Disciplinary Board may appoint a lawyer to safeguard the complainant’s interests when deemed necessary. The Disciplinary Board may decide that all or part of the expenses for the counsel appointed for the defendant be paid by the person for whom the counsel is appointed or may decide to grant the legal aid free of charge.

The Disciplinary Board usually considers cases at meetings, based on written material and without the hearing of witnesses. However in disciplinary cases, the parties have a right to appear before the Board but the meetings of the Disciplinary Board are not public. However, in disciplinary cases, the defendant lawyer may demand that the public be given access to attend the proceedings insofar as public access will not cause unnecessary offence to anyone. Furthermore, the Board may allow public access when a case is deemed to be of public interest, and public access will not cause unnecessary offence to anyone. The Board’s deliberations are not held in public.

The decisions of the Disciplinary Board are made by a simple majority of votes. in the event of an equality of votes, the chairman holds the casting vote. The Disciplinary Board’s decision cannot be brought before other administrative authorities but in disciplinary cases, the lawyer concerned may bring the Disciplinary Board’s decision or request that such decision be brought before the court. in other words, if acquitted, no further legal action can be taken against the lawyer, but the lawyer being found guilty has a right to a court hearing. The rationale behind this system is to allow full independence in the disciplinary system but at the same time grant a convicted lawyer the right to a hearing before the courts.

The Disciplinary Board hears some 1,400 complaints annually. Persons seeking guidance on how to file a complaint may obtain further information on the Disciplinary Board’s homepage at www.advokatnaevnet.dk where the mandatory form to file complaints may also be found.



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