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Denmark

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SECTION A: BRIEF SURVEY OF THE LOCAL SYSTEM

1. Type of System

The legal system in Denmark is a civil law system. **15.01**

The law of Denmark covers only Denmark and not the Faroe Islands or Greenland. Denmark is a member state of the European Union but has not adopted European Succession Regulation 650/2012 ('Brussels IV'). The EU Regulation may, however, be applicable to the estates of Danish citizens who are resident of another EU member state. **15.02**

2. Wills

Four types of wills are described in the Danish Inheritance Act: **15.03**

1) Wills signed before a *notary*.
2) Wills signed before *two witnesses*.
3) *Emergency* wills.
4) Wills that only concern household items and personal effects.

Mutual wills are recognized (and very common) in Danish law. All the four types of wills mentioned above can be made as either a mutual will or a single will. Typically, Danish couples (cohabiting couples or spouses) make one mutual will, expressing their mutual wishes. **15.04**

A mutual will is a single document executed by two people, which has effect in relation to each signatory's property on his or her death. **15.05**

A mutual will typically expresses a couple's mutual intention of wanting to ensure that the surviving person inherits as much as possible. Also, a mutual will (normally) expresses a mutual wish as to how the estate is to be divided when the survivor dies. **15.06**

Mutual wills are mutually binding—it is part of the will-writing process for the two parties to agree on whether their mutual will is partly or fully irrevocable by the survivor following the first death. It can be agreed that following the first death the survivor is **15.07**

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constrained in his or her ability to make a new will/revoke the mutual will. See also Section A2 15.18.

15.08 The most common type of will is a will acknowledged before a notary public. The will is usually prepared in cooperation with an attorney, after which the testator/trix signs the will before the local notary. The notary witnesses the signing of the will and assures that the testator/trix is of sound mind to execute a will. In Denmark, the office of notary is not carried out by attorneys or other private individuals, but by the local Probate Court. The notary's fee for witnessing and filing the will in the national will register is fixed, DKK 300 (about € 40). For more information about notaries, see Section A2 15.25. A will signed before a notary is difficult to contest. For more information on validity of wills and onus of proof, see Section A11.

15.09 A will can also be signed before two witnesses who are not related to the heirs or in other ways connected with the heirs. Both witnesses must be present when the will is signed. The witnesses must be aware that they are witnessing the signing of a will. Immediately after the testator/trix has signed the will, the witnesses must sign the will. The testator/trix must file the will him- or herself and ensure that it will be found after his or her death. Only wills signed before a notary can be filed with the national register of wills in Denmark. Wills signed before witnesses are more often contested than wills signed before a notary—which is also a reason why notary wills are much more frequently made than wills before witnesses in Denmark. For more information on validity of wills and onus of proof, see Section A11.

15.10 Where illness or an emergency prevents the execution of a will before a notary or before two witnesses, an emergency will may be made in *any form*: Any indication from the deceased that expresses a testamentary disposition that can be sourced to the deceased is valid. This may be a testamentary disposition made in writing or orally, or could be by use of video, text, e-mail, phone, or other means of communication.

15.11 It is a condition that it can be proved that the testator/trix was in a situation which made it impossible to find two witnesses or to meet with a notary. If a person commits suicide, it will be considered an emergency, and a farewell letter or another declaration from the individual in question will be considered a valid emergency will. Emergency wills will lapse if, within a three-month period of the execution, there have been no circumstances preventing the execution of the will in accordance with the rules for making 'ordinary' wills.

15.12 If the testator/trix only wants to distribute *household items and personal effects*, few requirements exist regarding the will. It does not have to be signed before a notary or two witnesses to be valid. It only needs to be in writing, dated, and signed. It is a condition that the will covers only household items and personal effects. Collections of paintings, etc., are not considered household effects. A will regarding household effects and personal effects can be an informal supplement to an existing will signed before a notary.

15.13 A will may be revoked or amended only by execution of a new will or codicil. An informal expression of an intention to revoke the original will (e.g. crossing out one or more parts of the will) will not be accepted as a valid revocation.

A codicil can be prepared as a supplement to an existing will. The execution of a codicil is covered by the same formal requirements as the execution of a will. It is typically recommended that a new will should be executed rather than a codicil. **15.14**

If the testator/trix executes a new will without indicating that a previous will is revoked, it is normally presumed that the previous will has been terminated, though it depends on the specific circumstances, including whether the new will is in conflict with the existing will. If a codicil includes provisions that clearly conflict with the provisions of the main will, the provision of the codicil will take precedence over the will. **15.15**

If a single testator/trix has made a will with provisions for inheritance for a different person than the person he or she subsequently marries, the will in principle is automatically revoked when he or she marries. Mutual wills made between unmarried cohabitants, who later on marry each other, will generally be considered valid after their marriage as well, unless it clearly appears from the will or other circumstances that this was not the intention of the parties. **15.16**

In the event of divorce, a will executed by one spouse to the benefit of the other spouse will be considered revoked. The same rule applies for unmarried cohabitants if they break up later on. If it is a mutual will, the will is automatically annulled with effect for both parties. **15.17**

If the will has been revoked, it is necessary to execute a new will if the testator/trix changes his or her mind and wishes to reinstate it. If a will turns out to be invalid and the will included a revocation of a previous (valid) will, the question arises how the previous will is affected by the subsequent (invalid) will. Typically, the revocation in the invalid will shall also be considered invalid. **15.18**

A civil partnership and its termination will have the same effect on a will as a marriage and its legal termination. **15.19**

A mutual will should include stipulations as to whether the surviving spouse can change the will. If this is not the case, the Inheritance Act contains some limitations to what the surviving spouse may change. If the surviving spouse exceeds these limits, the heirs may dispute the actions of the surviving spouse. If the surviving spouse has issued a new will, the will may be invalid. If the surviving spouse has given *inter vivos* gifts, it may be possible to demand the returning of such gifts. **15.20**

It is generally required that the testator/trix personally directs the distribution of inheritance in a clear and precise way in his or her will. A will is considered to be a private matter and the decision as to who is to inherit and what is to be inherited cannot be delegated to a third party. **15.21**

According to Danish law, it is possible to establish charitable foundations in a will, but not 'trusts' of the types known in other countries. According to the rules in Denmark, an irrevocable and effective separation from the person establishing the foundation must be ensured when a foundation is established—a Danish foundation must not benefit the founder or the founder's family. **15.22**

It is possible to leave money/property to an existing foundation or charity. No inheritance tax is payable. A large part of the revenue base of major NGOs originates from inheritance. **15.23**

15.24 The creation of charitable foundations in connection with succession law is possible, but not commonly used in Denmark.

15.25 Denmark has a national register of wills. If a will is executed before a notary (in Denmark a notary is an employee at the Probate Court), the will is kept in the Court's records. The will is also entered in the Danish National Central Register of Wills—*Centralregistret for Testamenter*. The fee is fixed, DKK 300 (€ 40). There is only one fee, even if the will is a mutual will for two people in one document. In registering the will in this manner, it is guaranteed that the will can be located upon the death of the testator/trix.

15.26 Among other things, because the register covers only wills signed before a notary, wills signed before a notary are much more common in Danish law than wills signed before witnesses. It is estimated that 97 per cent of all Danish wills are signed before a notary. In practice, the attorney will prepare the will for the testator/trix, after which the testator/trix visits the court notary who will witness the signature and assure the competence of the testator/trix. The will is always signed in duplicate with the notary. One original is filed with the court register, whereas the testator/trix receives the other original for his or her own files.

3. Intestacy

15.27 Intestate succession is governed by the Inheritance Act of 1 January 2008. If the deceased was married and did not have separate property as a result of a prenuptial agreement or conditions of a deed of gift or will, a division of matrimonial property is the first thing that takes place. Half of the spouses' total net assets constitutes the estate of the deceased. This then becomes subject to division between the heirs. The surviving spouse is also an heir.

15.28 If the deceased was married, but did not leave any children/descendants, the spouse inherits the entire estate. If the deceased was unmarried, but had descendants, his or her descendants inherit everything. Unmarried couples are not intestate heirs of their partner, unless they make a will that includes them.

15.29 If the deceased was married and had descendants, 50 per cent of the estate of the deceased goes to the surviving spouse and the other 50 per cent goes to the descendants. The surviving spouse keeps half of the spouses' combined total net assets, and inherits 50 per cent of the half of the estate that constitutes the estate of the deceased. The surviving spouse ends up with 75 per cent of the spouses' total matrimonial property whilst the descendants inherit 25 per cent of the spouses' total matrimonial property.

15.30 If one of the children has died before the testator/trix, his or her children will succeed to the share of the predeceased child. The distribution is *per stirpes*. There is no difference between adopted children and biological children, regardless of being born within or outside marriage.

15.31 Only if the deceased was unmarried and had no descendants, are the parents of the deceased entitled to inherit. If the deceased leaves no spouse or children, the estate will be inherited by the parents of the deceased. If one of the parents has died, the deceased parent's

(other) children succeed in that share. If the predeceased parent leaves no (other) children, the other parent (or his or her other children) will succeed to the entire estate.

15.32 If there are no surviving relatives in the line of parents or their descendants, the estate will go to the grandparents of the deceased or their children. Intestate succession stops with the children of the grandparents (siblings of the deceased's parents)—the cousins of the deceased are not legal heirs. If there are no legal heirs, the inheritance goes to the Danish state.

15.33 There is no difference between moveables and immoveables as regards to the division of an intestate estate.

4. Freedom of Testation

15.34 Danish law provides for compulsory legal heirs. The spouse and the descendants are *compulsory heirs*, which means that they cannot be disinherited without their written consent. All other legal heirs (parents etc.) can be disinherited by writing a will.

15.35 The compulsory share is 25 per cent of the estate of the deceased. The compulsory share is divided between the surviving spouse and the descendants.

15.36 Freedom of testation is governed by the Inheritance Act. The testator/trix is free to dispose of all of his or her assets. If the testator/trix leaves a spouse and/or descendants, he or she may freely dispose of only 75 per cent of the estate in a will.

15.37 If the testator/trix is unmarried but leaves descendants, the descendants are entitled to inherit a compulsory share of 25 per cent of the deceased's estate for division in equal shares. The remainder is shared in accordance with the will.

15.38 If the testator/trix is married yet leaves no descendants, he or she may make a will whereby the spouse's share is reduced to the compulsory 25 per cent.

15.39 By will the testator/trix can reduce the compulsory share to each of his or her children—but not to his or her spouse—to a fixed maximum amount of DKK 1,000,000. This amount is updated annually—in 2020 the amount was DKK 1,320,000 (approximately € 177,000).

15.40 Contracts of inheritance are acknowledged in only two forms:

- an heir may contract with the testator/trix to *renounce* his or her right of inheritance (with or without financial compensation); or
- an heir may contract with the testator/trix not to revoke a will or to write a will. In order for the contract to be binding, the statement must be made in accordance with the rules for the execution of wills.

15.41 Advance distribution of inheritance and *inter vivos* gifts are fairly common under Danish law as it has advantages as far as taxes are concerned. Unlike *inter vivos* gifts, advancements must be set off against inheritance after the death of the testator/trix. A document proving such advancements must be drawn up at the time when the heir receives the advanced amount. Otherwise, the advancement will be considered an *inter vivos* gift that shall not be equalized against the inheritance of the heir later on.

15.42 In Denmark, an *entailed estate* (resembling *pactes successoraux*) can be legally established through a will. A testator/trix can plan the disposal of his or her estate over several generations. This means that a certain heir (the prior heir) may be nominated to inherit a specific part of the estate (e.g. a house) and, on the death of the heir, the specific inheritance transfers automatically to another heir (the subsequent heir) named by the testator/trix, if the inheritance is still intact.

15.43 The chain of heirs may include only one unborn heir; the rules of entailed estates do not apply to the compulsory shares to be given to the surviving spouse and/or children of the testator/trix.

15.44 If a will fulfils the formal requirements concerning the validity of a will and if the will complies with the rules for compulsory share/s, the will is binding. Thus, there is no avenue, statutory or otherwise, through which a disappointed heir may seek relief. See Section A11 on invalidity of wills.

15.45 All children of the testator/trix have the same right to their compulsory share. It makes no difference if the children are born out of wedlock, adopted, etc.

5. Maintenance

15.46 Specific rules relating to maintenance for the descendants or the spouse of the deceased do not exist in Denmark. However, the surviving spouse takes priority as regards the inheritance of the deceased's estate, if the estate is of 'insignificant value.'

6. Community Property between Husband and Wife

15.47 The Danish property regime is community property. When marriage terminates (divorce or death), each party is to receive 50 per cent of the total net property of the two spouses. Only pensions are exempt from this distribution.
Spouses may execute a marital agreement (*ægtepagt*), either before or during their marriage, stating that another division of property shall apply between them.

5.48 The surviving spouse keeps his or her 50 per cent. The 50 per cent that constitutes the deceased's estate is distributed according to his or her will or the rules governing succession on intestacy.

15.49 If the spouses have community property, the surviving spouse has an advantage according to Danish law: The surviving spouse has a right to choose not to divide the deceased's estate between heirs and instead choose to retain undivided possession of the estate of the deceased (*uskiftet bo*) This rule is often applied in Denmark and roughly 22 per cent of all estates remain undivided. The purpose of the rule is to shorten the duration of estate administration and at the same time make it easier for the surviving spouse to maintain a stable financial position.

15.50 The children of the deceased's spouse have a right to demand division of the estate provided they are children of a former relationship. Children of the current marriage cannot oppose the wish of a surviving spouse to retain an undivided possession of the estate.

15.51 The surviving spouse must manage the estate in respect of the suspended right of inheritance of the deceased spouse's children. If the surviving spouse dies, the estate is divided between the heirs of each of the spouses.

15.52 If the spouses have executed a marital agreement specifying division of the estate, the marital agreement will be of decisive importance in determining the amount in the estate left by the deceased.

15.53 If the marital agreement states that spouses shall have full separate property (*fuldstændigt særeje*) instead of community property, all the deceased's assets will constitute the estate.

15.54 A marital agreement may also state that the deceased's assets shall be subject to full community of property, whilst the surviving spouse's assets shall be separate property (*kombinationssæreje*). In this event, the surviving spouse keeps his or her property separate and also has a right to claim for 50 per cent of the deceased's assets by virtue of marriage to the deceased. In this case, only 50 per cent of the deceased's assets will constitute the estate.

7. Joint Property

15.55 The deceased's share of jointly owned property is considered to belong to the deceased's estate and is distributed according to his or her will or according to the regular rules governing succession in intestacy. Joint ownership is not dissolved by the death of any joint owner.

15.56 If an heir jointly owns part of an asset with the deceased, the heir has priority to take over the deceased's part of the asset. If the value of the deceased's part exceeds the value of the heir's allotted inheritance, the heir has priority to take over the deceased's part of the asset against paying the excess amount to the estate in cash. It should be noted that if other arrangements have been agreed by the owners in an owners' agreement with the deceased, the terms of their agreement will take precedence.

8. Gifts (*Inter Vivos*)

15.57 In Danish law a distinction is made between *gifts* and *advancements of inheritance*. Gifts to an heir prior to death are not equalized against the heir's inheritance unless both the recipient and the person giving the gift have acknowledged in writing that the gift is intended to be counted as an advancement against the estate. Advancements of inheritance are not common.

15.58 If the parents have the funds necessary, giving annual pecuniary gifts to children is widespread in Denmark. If the gift is kept below the annual amount which is exempt from taxation, the money can be transferred without having to pay gift tax or inheritance tax. As mentioned above, gifts are not set off against the inheritance later. The maximum amount

for tax-exempt gifts to children is DKK 67,100 per year (about € 9,000). The maximum amount is regulated annually according to the price index.

15.59 A gift made to an heir at a time when death is imminent (deathbed gift) is equalized against the heir's inheritance, as they are not valid if they are not given in a will. However, this requires that the other heirs can prove that death was imminent, both from a medical perspective and from the testator /trix's personal perspective. If the gift was given more than an estimated two months prior to the death, it will typically not be considered a deathbed gift. Minor presents (birthday presents, etc.) are never set off against the heirs' inheritance.

9. Capacity

15.60 A testator/trix must be of full age (18 years) or be married to be considered capable of making a will. Furthermore, the testator/trix must be of sound mind to issue a will.

15.61 Individuals witnessing a will must be no less than 18 years of age, of sound mind, and impartial. In practice, the requirement that the witness must be impartial may cause doubt. If a witness has been included in the will as an heir, or if the witness is a close relative of an heir, he or she is not considered impartial.

15.62 In principle, there are no restrictions on the capacity of heirs. Minors may, however, not inherit real property unless the relevant authorities allow it as an exception. Ordinarily, if a minor inherits real property, such property must be sold and the proceeds deposited in a trust account until the heir reaches the age of 18.

10. Authority (Court, Notarial, or Other)

15.63 In Denmark, only the courts—i.e. the Probate Court in the judicial district in which the deceased was living—are responsible for the administration of estates of deceased persons. The Probate Court must ensure that the assets and liabilities of the deceased are calculated correctly, that the inheritance is distributed to the heirs, and that inheritance tax is calculated correctly and paid.

15.64 According to Danish law, the estate of a deceased person is an independent legal entity. The heirs are not entitled to act in the name of the estate of a deceased person, including getting access to the residence of the deceased, until the Probate Court has issued a grant of probate authorizing an heir or an administrator to act on behalf of and in the name of the estate of the deceased person.

15.65 Normally, five to six weeks will pass after the death before a grant of probate is issued. Once the grant of probate has been issued, the heirs must pay the bills of the deceased, including bills in connection with the funeral, and sell and distribute the assets of the estate. This process may take a while. For example, if real estate is to be sold in the name of the estate, if there are other assets which are difficult to sell, or in the event of disagreement among the heirs. In an administration out of court, in which the heirs are in charge of the administration of

the estate, the administration must be completed no later than 12 months after the death, so that a final estate inventory can be sent to the authorities no more than 15 months after the death. For administration by the court, where the Probate Court has appointed an executor, the administration of the estate must have been completed no later than 24 months after the death, so that a final estate inventory can be sent to the authorities no later than 27 months after the death.

15.66 If the surviving spouse chooses to retain undivided possession of the estate, a fee of DKK 500 (€ 67) must be paid to the Probate Court. For all other estates, there is a fixed fee to the Probate Court of DKK 2,500 (€ 335) to be paid before a Probate Court order is issued. Should the value of the estate exceed DKK 1,000,000 (€ 134,000), an additional fixed fee of DKK 6,500 (€ 871) must be paid when the final inventory is submitted to the Probate Court for final approval. If the deceased leaves assets of separate property as well as assets of community property, two fees must be paid (up to two times DKK 9,000 (€ 1,200)). In addition to estate fees to the court, attorney's fees, among others will also need to be paid. This includes paying the executor, as mandated by the Probate Court.

15.67 If the heirs have chosen administration of the estate out of court, any heir may during the process contact the Probate Court and state that he or she no longer wants administration out of court. In this case, the Probate Court will appoint an executor to take over administration of the estate.

15.68 If the heirs want to complain about the executor appointed by the Probate Court—either because of behaviour, decisions, or the fee—they may do so to the Probate Court, which will then make a decision on the basis of the complaints.

11. Invalidity of Will

15.69 If a testator/trix does not satisfy the requirements for testamentary competence or if the will does not fulfil the requirements in legal form, the will may be declared invalid. A testator/trix must be of sound mind at the execution of the will. A will may furthermore be considered void if it is established that it has been written under duress, improper influence, or if a person has abused the testator/trix's lack of judgment, weakness of will, or dependent position. The grounds for invalidity are covered in detail in Chapter 12 of the Danish Inheritance Act.

15.70 In general, wills are voidable. However, not everyone may contest a will—only a person who would be entitled to inherit if the will is declared invalid may contest a will.

15.71 (c) A court would not rectify a will that is invalid in form. Although the formalities for executing a will are strict, the principles in interpreting the wishes of the testator/trix are flexible. The courts will admit extrinsic evidence in aid of the interpretation of a will and take into account the circumstances in which the will was created (the 'Armchair Principle'). If the intentions of the deceased are clear, then effect must be given to it. However, there are limits. The courts will not rewrite the will or include more heirs than are explicitly mentioned in the will.

15.72 If a will has been executed before a notary, it is up to the claimant who wants to contest the testamentary disposition to prove that the will is invalid. If the claimant cannot prove the invalidity of the will, the will is binding.

15.73 If a will has been executed before two neutral witnesses, it is for the heir under the will to prove the validity of the will in fact, including the capacity of the testator/trix.

15.74 Regarding the question as to whether the formal requirements for a will are satisfied, the signature of the notary or the two witnesses implies a presumption that the formal requirements have been observed.

15.75 The aforementioned distinction regarding the burden of proof contributes to the widespread proliferation of notarial wills in Denmark—wills signed before a notary are rarely declared void by the court.

12. Simultaneous Death

15.76 If two individuals who are entitled to inherit from each other die, and there is no evidence as to who survived the other, neither party will succeed to the estate of the other.

15.77 If two or more potential testators/trices/heirs die and there is no evidence as to which party survived the other, it is presumed that they died simultaneously and neither party will succeed to the estate of the other.

13. Presumption of Death

15.78 The court may decide whether or not a person is to be presumed dead. This is decided no sooner than five years after the disappearance of the person in question. However, if the missing person at the time of disappearance was in danger of his or her life, or other circumstances indicated that the person was most probably dead, the waiting period is six months.

15.79 When the legal decision is made the general rules of inheritance become effective. If it so happens that after the legal decision was rendered the missing person is found to be alive, he or she may reclaim his or her distributed property from heirs within ten years post judgment.

14. Estate Taxes

15.80 (a) The Inheritance Tax Act 1995 governs the taxation of estates as well as *inter vivos* gifts.

15.81 If the deceased was a resident of Denmark, the deceased's worldwide estate is liable to Danish inheritance tax. If the deceased did not reside in Denmark, i.e. did not have his or her permanent home in Denmark or had had a stronger connection to a principal residence in another country, only Danish real estate or Danish assets as such (if covered by Danish probate jurisdiction) are liable to inheritance tax.

Inheritance tax is charged by reference to the estate. In general, inheritance tax is charged at 15 per cent of the net assets less an allowance of DKK 301,900 in 2020 (€ 40,500). This amount is updated annually. The inheritance allotted to a surviving spouse is not taxed. If the deceased leaves unrelated or distantly related heirs, a surcharge of 25 per cent applies to such heirs' part of the estate, less a proportion of the 15 per cent tax, which gives a total charge of 36.25 per cent on this part of the estate. **15.82**

If an inheritance includes real estate, the heir must pay a fee in connection with registration of the acquisition. **15.83**

15. Administration of Estates

The estate of a deceased person can be administered by the heirs in an *administration out of court*, which means that the heirs will jointly—possibly assisted by an attorney—calculate and administer the assets and liabilities in an estate of a deceased person. If the heirs cannot agree on the administration of the estate, the Probate Court will appoint an executor (an attorney) who will, on behalf of the Probate Court, be in charge of administering the estate of the deceased person in an *administration by the court*. The deceased person may also have appointed a specific attorney in his or her will to be in charge of the administration. In all three cases, the Probate Court has only a monitoring role in relation to the inventory forwarded by the heirs or the administrator, whereas the tax authority also plays a role in relation to ensuring that assets and liabilities have been included in the inventory at the correct value. **15.84**

It must be noted that for married couples certain estates are not subject to administration until both spouses have passed away. A surviving spouse in a marriage holding community of property is entitled to retain undivided possession of the estate (see Section A6 15.49-54). **15.85**

Reports on the administration of the estate have to be submitted by heirs of the estate or by an executor of the estate to the Probate Court. **15.86**

All estates are subject to supervision, but supervision of the administration of an estate is more detailed. The Probate Court will make sample checks of documents, correspondence, etc. for these estates. **15.87**

If the heirs administer the estate themselves, they must agree (in principle) on all transactions. If no such agreement can be reached, the administration of the estate must be passed to an executor appointed by the Probate Court. **15.88**

In relation to estates handled by an executor, all heirs have a right to take part in decisions regarding dispositions made by the estate. A legatee to a 'pecuniary legacy' (a fixed sum) or a 'specific legacy' (an item) is not considered an heir and does not have any voting right in relation to the estate. **15.89**

Assets are formally transferred to the estate's heirs, who then administer the estate themselves in accordance with a court order. The heirs then distribute the estate's assets between themselves. **15.90**

15.91 In relation to other estates, assets are transferred to the heirs once the executor no longer requires them for the purpose of the administration of the estate. A transfer deed is required in respect of real estate, whilst other assets may be transferred by whatever normal manner of transfer applies to the particular asset.

15.92 All estates must immediately publish a notification in the public gazette (*Statstidende*) whereby any potential creditors are formally notified. This enables creditors to register their claim with the estate within eight weeks of the date of publication of the notification. At the same time, the estate must make a separate written notification to all known creditors domiciled outside Denmark advising them of the time limit for registration of a claim.

15.93 All creditors who have registered a claim are then paid by the heirs or the executor. If the estate is handled by the heirs and they have already depleted the estate's assets, the heirs are personally, directly, and jointly liable for payment of the creditors.

15.94 See (a).

15.95 Before the end of the administration of the estate the heirs are entitled to enter into an agreement allowing for a division of assets other than that stated in the will or provided for by the laws of intestacy. Normally, this is done by making a full or partial renunciation of inheritance by one or more heirs. This changes the distribution of the estate to the advantage of those heirs who have not renounced their inheritance. The reallocation of assets does not have taxation consequences in itself. However, if the estate is distributed to the advantage of an heir who pays a lower estate tax (e.g. to the advantage of the surviving spouse who pays no estate tax), it lowers the total taxation.

15.96 For any dispute which cannot be solved amicably among the heirs, the heirs may institute legal proceedings against each other in the Probate Court. The Probate Court can issue a court order regarding interpretation of a will, valuation of assets, correct distribution of inheritance, voiding deathbed gifts, etc. It is possible to appeal the order issued by the Probate Court to the High Court.

15.97 If the estate is administered by the court and the heirs disagree on the distribution, the executor must encourage an amicable solution, and otherwise advise the heirs on how to institute proceedings. The heirs must institute legal proceedings against each other to the Probate Court, and the executor is not party to the case. If the parties do not institute proceedings, the executor must, after hearing the parties, put forward his or her proposal for a solution to the disagreement and again recommend initiation of proceedings. If the heirs fail to institute proceedings, the executor can ushis or her recommendation as the basis for the further administration of the estate of the deceased person.

16. Domicile/Nationality

15.98 Under Danish law, the law of the deceased's principal residence at the time of death is considered to govern the distribution of all assets.

If the deceased was a resident of Denmark, the local court will give an order of probate even if the deceased had no assets in Denmark. **15.99**

17. Charitable Giving

The testator/trix is free to dispose of his or her assets unless he or she leaves a surviving spouse and/or children. If the testator/trix leaves such heirs, he or she may freely dispose of only 75 per cent of the estate. The heirs can be people, organizations, charities, etc. The estate cannot give gifts per se—the estate must be divided between the heirs as stated in the will or provided for by the laws of intestacy and then the heirs may choose to make gifts to charity on their own behalf. **15.100**

A testator/trix is entitled to decide to leave a specific amount ('pecuniary legacy') or a specific asset ('specific legacy') in his or her will. The recipient is called a legatee. In practice, this is often seen in Danish wills as an alternative to making a person/organization heir to a fraction/percentage of the estate. **15.101**

Any charity, organization, etc. can be made an heir/legatee if mentioned in the will. It makes no difference whether it is a Danish or a foreign charity. **15.102**

Charities can apply for exemption from estate tax, if it is documented that it is a 'charity,' a non-profit organization, or a religious community. **15.103**

SECTION B: APPLICABLE LAW/PROCEDURE WHERE FOREIGN ELEMENTS ARE INVOLVED

1. Jurisdiction

Under the normal rule, the law of the deceased's residence at the time of death is considered to govern the distribution of all assets. If the deceased was a resident of Denmark at the time of death, the Danish Probate Court has jurisdiction over the estate. **15.104**

If the deceased did not have his or her residence in Denmark at the time of death, a Danish Probate Court may hold that it has jurisdiction if either: **15.105**

- the deceased was a Danish citizen or had another 'special connection' to Denmark and left assets that are not included in probate outside Denmark; or
- if the deceased left assets in Denmark that are not included in probate outside Denmark.

If the deceased was a resident of Denmark at the time of death, the probate proceedings include all assets owned by the deceased globally including immoveable assets, e.g. vacation homes in other countries. **15.106**

If Danish jurisdiction applies, the local court covering the area where the deceased was a resident has jurisdiction. The Probate Court may refer the matter to another Danish Probate Court if it is found to be more appropriate that the probate procedure takes place there. **15.107**

2. Applicable Law

15.108 The Probate Court will apply Danish succession law if the deceased had his or her residence in Denmark at the time of death. Please note that Denmark is not a signatory to the European Succession Regulation 650/2012 ('Brussels IV'), but Danish nationals living in EU countries other than Denmark and Ireland can use the European Succession Regulation 650/2012.

3. Foreign Succession/Inheritance Orders

15.109 Foreign orders are usually acknowledged in Denmark.
Danish law contains no statutory rules regarding acknowledgement of administration abroad, but the main rule is that such administration abroad is acknowledged, so that the foreign administrator of the estate of a deceased person can expect transfer of the assets from Denmark. Regarding real property located in Denmark, estate tax must be paid in Denmark on the value of the real property.

15.110 An order from the local Danish Probate Court must be obtained to give a foreign authority/executor possession of assets of the deceased and to give effect to a foreign succession. The Probate Court will require a banker's guarantee for any estate tax that may apply in respect of real property.

15.111 A petition to the Probate Court must be filed by the foreign authority or executor. There are no special formalities concerning documentation of foreign succession or inheritance order. The petition is prepared as a normal letter explaining the circumstances.

15.112 It is possible to establish charitable foundations according to Danish law, but not 'trusts' of the types known in other countries. According to the rules in Denmark, an irrevocable and effective separation from the person establishing the foundation must be ensured when a foundation is established. A Danish foundation must not benefit the founder or the founder's family.

4. Two or More Succession or Probate Orders

15.113 In the event of there being an application for an order of succession or inheritance before the court or relevant authority in the local country, and a foreign order already exists in one foreign country or more, the order of the country of domicile prevails.

5. Assets

15.114 If the deceased resided in Denmark at the time of death, estate administration and distribution is carried out in accordance with Danish law. This includes moveable and immoveable assets in other countries. The determining factor is the residence of the deceased, not citizenship or location of assets.

6. Expert Evidence

If foreign inheritance law is to be applied and the content of the foreign legislation is not known to the Danish court, the court may instruct a party to inquire into the content of the foreign legislation. Evidence from, for example, a foreign lawyer or other expert may in that case be called for. **15.115**

Such evidence can be given by means of a written witness statement without the lawyer/expert having to appear in court. **15.116**

7. Unity of Succession

Unity of succession is recognized as a basic principle in Denmark in the sense that all the assets of the deceased person are administered on the basis of the administration carried out where the deceased had his or her place of residence. **15.117**

8. Formalities

A will executed in a foreign country that is not validly executed in accordance with the requirements of the Danish Inheritance Act may still be valid. Denmark is a contracting party to the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, and so must comply with the relevant rules (see section 15.119). **15.118**

9. The Hague Convention

Denmark is one of the contracting parties to the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. Therefore, a will executed outside Denmark is acknowledged if it meets the formality requirements of *either* the laws of the place of execution (*locus regit actum*), the laws of the place of the testator/trix's domicile at the time of death, or one of several other criteria listed in Art. 1 of the Hague Convention. For further detail, see Art. 1 of the Hague Convention. **15.119**

10. Wills

In cases of conflict or foreign factors, validity requirements are normally established according to the rules of the country where the will was executed or according to the law of the testator/trix's domicile at the time of execution or the law in the country of domicile at the time of death. For further details, see Art. 1 of the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. **15.120**

15.121 This means that if a person executed a will with only one witness in a place where two witnesses are required, the will would be valid if he or she died in a country where only one witness was required.

15.122 As a main rule, the terminology and contents of a will are to be interpreted according to the rules of the country of domicile at the time of execution of the will. The presumption is rebutted where it is clear that some other law should apply, e.g. based on the nationality of the deceased.

15.123 If the deceased was a resident of Denmark at the time of death or Danish law applies for other reasons, the legal rights of the heirs are determined by Danish law, e.g. the compulsory share for descendants. Concerning inheritance from an estate in another country, the law of the country of domicile at the time of death governs the rights of heirs.

15.124 Whether a person is qualified to inherit under a will should be considered in accordance with the law of the country of domicile at the time of death.

15.125 The question of capacity to draw up or revoke a will (testamentary competence) is assessed in accordance with the law of the country of domicile at the time of execution of the will.

15.126 The question of whether a part of the will is invalid is assessed in accordance with the law of the country of domicile at the time of execution of the will.

15.127 There is no power of appointment under Danish law.

15.128 The capacity to revoke a will is assessed in accordance with the law of the country of domicile at the time of the revocation.

15.129 Foreign heirs are entitled to inherit both moveable and immoveable property in Denmark, regardless of whether they are residing in Denmark. Normally it is not possible for foreigners to *buy* a holiday home in Denmark, if they do not have permanent residence in Denmark or have previously been living in Denmark for a period of at least five years. However, foreigners are allowed to *inherit* a holiday home in Denmark.

11. Domicile/Nationality

15.130 The residence of the deceased at the time of death is normally the overriding criterion—the nationality of the deceased is not important. The domicile of the beneficiary is not relevant either.

15.131 The Danish rules of competence (extended concept of domicile) usually apply. The deceased's nationality is not important. If it is unclear where the deceased was domiciled, the court focuses on whether the deceased had a stronger connection to Denmark than to another country.

12. Taxation

15.132 There is no difference between estate taxes for a non-resident deceased or heir and those for a local deceased or heir. Inheritance tax is charged by reference to the estate, not the heir.

15.133 For estates of deceased persons administered abroad, no estate tax is payable in Denmark. Danish inheritance tax must, however, be paid on real property located in Denmark, even if the estate of the deceased person is not governed by Danish law. No inheritance tax is payable in Denmark on an inheritance received by a Danish heir from abroad, if the estate of the deceased person was administered abroad.