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# Legal Tender

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## INTRODUCTION

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Issues relating to means of payment are of interest to the general public, and consequently Danmarks Nationalbank is often asked whether the vendor of a product or service can reject certain banknote denominations, damaged banknotes or coins, coins issued to commemorate special occasions, or foreign currency. Others wish to know whether the vendor or buyer can demand a certain method of payment. Such enquiries all relate to the concept of "legal tender". This article describes this concept and analyses its legal and practical implications.

As described below, Danish banknotes and coins can, as a general rule, always be used for payments in Denmark. However, there are special circumstances where a recipient is entitled to reject payment, e.g. if the banknotes or coins are damaged. In addition, Danish legislation prevents some retailers from receiving cash exceeding a certain amount, and there are also rules governing the number of coins of each denomination that a recipient is obliged to accept. Finally, the right to use Danish banknotes and coins as payment can to some extent be limited by agreement.

## WHAT IS LEGAL TENDER?

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Legal tender, also known as current coinage, comprises the means of payment that buyers are entitled to use for acquiring goods and services or for release from a payment obligation in Denmark. Where no other agreements or legal provisions apply, such as anti-money-laundering legislation, Danish banknotes and coins are always legal tender.

In relation to banknotes, the statutory basis is found in section 8 of the Danmarks Nationalbank Act, under which Danmarks Nationalbank has the sole right to issue banknotes. Such banknotes are "*legal tender between man and man and for payments and disbursements which take place in public pay-offices*".

In relation to coins, section 4 of the Coinage Act states that all coins minted pursuant to current or previous coinage legislation shall be legal tender, unless they have been called in and withdrawn, cf. below.

Unless it has been agreed to use another means of payment than Danish money, or special legal provisions apply, a creditor, i.e. the person to whom money is due, who refuses to receive Danish banknotes or coins is subject to creditor's delay. This means that the creditor's circumstances prevent the debtor, i.e. the person owing the money, from effecting payment. In such a situation the creditor cannot invoke any remedies for breach of contract, e.g. interest on overdue payments, since the delay is caused by the creditor's own circumstances.

However, it may have been agreed or otherwise legally determined that other means of payment are to be used, e.g. credit transfers, payment card transactions or cheques. This entitles the creditor to reject cash payment.

In general, the debtor cannot expect the creditor to be able to *give him change*. In other words, the debtor must provide the exact sum. However, the creditor is hardly entitled to reject the debtor's offer of payment if change can be given without problems.

### **Payment in other currencies than Danish kroner**

Foreign currencies are not legal tender in Denmark.

However, the parties involved are free to agree on payment in another currency than kroner.

Where claims are issued in a foreign currency, the debtor is free to choose whether to effect payment in that currency or in kroner. If the debtor opts for the latter, the exchange rate on the payment date applies. This is stipulated in section 7 of the Debt Instrument Act.

If an agreement does not state the currency in which an obligation must be met, it is generally assumed that the currency of the place of payment applies<sup>1</sup>. In other words, a person in Denmark who concludes an agreement for the purchase of a product from a vendor in e.g. Germany must effect payment in euro if the place of payment is Germany. This applies irrespective of whether the agreement was concluded in Denmark.

Under the Companies Act and the Financial Statements Act it is possible for a company to state its share capital and present its financial statements in euro. Likewise, the Tax Control Act provides for accounts to be kept in foreign currency pursuant to the provisions of the Book-keeping Act and the Financial Statements Act. However, statutory notifications to the Danish tax authorities shall in principle be denominated in Danish kroner. The provisions do not provide for payments to be made in euro.

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<sup>1</sup> Mads Bryde Andersen and Joseph Lookofsky, *Textbook on the law of obligations* (in Danish), 2005, 2nd edition, p. 124.

## Greenland and the Faroe Islands

Greenland and the Faroe Islands are part of the Kingdom of Denmark and the Danish currency area. Danmarks Nationalbank is responsible for issuance of banknotes and coins in the currency area.

The same banknotes are used throughout the Kingdom, except in the Faroe Islands<sup>1</sup>. Faroese banknotes differ from Danish banknotes in that they have text in Faroese, as well as their own illustrations. The sizes and denominations of the Faroese banknotes are the same as the banknotes used elsewhere in the Kingdom of Denmark.

The Faroese banknotes are not legal tender in Denmark, nor are Danish banknotes legal tender in the Faroe Islands. However, Danish banknotes are widely accepted as payment in the Faroe Islands.

Faroese banknotes can be encashed at Danmarks Nationalbank in the same way as Danish banknotes.

The same coins are used throughout the Kingdom of Denmark.

## Special coins

Under section 2(1) of the Coinage Act, the Minister for Industry (today the Minister for Economic and Business Affairs) may have coins minted and may issue coins, including coins to commemorate special occasions, e.g. in the royal family, after negotiation with Danmarks Nationalbank. Such coins are referred to as commemorative coins.

Commemorative coins are usually issued as ordinary coins in circulation, but are typically also minted in a limited edition in silver. The coins minted in a precious metal often deviate from the standard denomination; for example, an ordinary 20-krone coin and a silver coin with a denomination of kr. 200 are issued.

In recent years Danmarks Nationalbank has also issued series of coins with a common theme. These are 10- and 20-krone coins of which the reverse depicts, respectively, illustrations from Hans Christian Andersen's fairy tales and motifs of Danish towers. These coins circulate in the same way as the ordinary 10- and 20-krone coins. The fairy tale coins are also issued in silver and gold editions. The denomination of the silver and gold coins is kr. 10, like the ordinary Hans Christian Andersen 10-krone coins. However, the metal value of the silver and gold coins far exceeds their denominated value.

Irrespective of whether their denominated value exceeds the standard coin denominations, all thematic and commemorative coins are legal

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<sup>1</sup> On 7 April 2006 the Danish Prime Minister's Office issued a press release stating that the Prime Minister and the Greenland Premier, in collaboration with Danmarks Nationalbank, have initiated a project to issue special Greenlandic banknotes that are to be legal tender in Greenland only. The bill for an Act on banknotes, etc. in Greenland was submitted for official consultation on 18 August 2006.

tender and can be used for payment unless otherwise agreed with the creditor. This also applies to the coins minted in precious metals.

The thematic and commemorative coins with a higher denomination than the ordinary coins and/or coins minted in precious metals are rare in circulation, however, and in practice it may therefore be problematic to use such coins for payment.

## **RESTRICTIONS TO THE RIGHT TO USE BANKNOTES AND COINS**

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As stated above, Danish banknotes and coins are legal tender in Denmark, unless otherwise agreed or special legal provisions exist. The following section describes the special legal provisions restricting the right to use banknotes and coins, and the right of retailers to reject banknotes of a certain size.

### **Payment of large amounts in coins**

Under section 4(3) of the Coinage Act, no-one shall be bound to receive more than twenty-five coins of each denomination in one payment transaction, i.e. a maximum of twenty-five 25-øre coins, twenty-five 50-øre coins, etc. The reason is that payment of large sums in small coins can constitute a nuisance and might in some cases be deemed harassment.

### **Act on Preventive Measures against Money Laundering and the Financing of Terrorism**

As part of efforts to combat money laundering and the financing of terrorism, retailers and auctioneers may not receive kr. 100,000 or more in cash. This applies irrespective of whether payment takes place as a lump sum or as several payments that appear to be linked. This provision, which is found in the Act on Preventive Measures against Money Laundering and the Financing of Terrorism<sup>1</sup>, constitutes a departure from the above general rule that the debtor can always be released from his obligations by making payment in cash.

### **Act on Public Sector Payments, etc.**

The Act on Public Sector Payments, etc. provides a basis for modernising and streamlining the administration of public sector payments. The Act includes provisions on the NemKonto (Easy Account), among other things.

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<sup>1</sup> Act no. 117 of 27 February 2006.

### **NemKonto (Easy Account)**

In order to facilitate the administration of payments from public authorities, persons over the age of 18 and business enterprises must designate a bank account to which various payments from the public purse should be transferred, e.g. tax reimbursements, child allowances, pensions, student grants and cash benefits. The special Act on Public Sector Payments, etc. stipulates that in such cases payment in full discharge takes place electronically.

Section 8 of the Danmarks Nationalbank Act states that banknotes issued by the bank are "*legal tender between man and man and for payments and disbursements which take place in public pay-offices*". However, this provision does not regulate how disbursements from public authorities should be made, including whether it must be possible to make such disbursements in cash. Section 3 of the Debt Instrument Act states that payment shall take place at the creditor's residence or business premises, but not how disbursements from the public sector must take place. Consequently, these rules are not contrary to the provisions of the Act on Public Sector Payments, etc.<sup>1</sup> In relation to persons or business enterprises that either do not wish to have or are not able to open a bank account, the Act enables the Minister of Finance to lay down provisions for the method of disbursement that discharges the public authorities from their obligations, provided that the person or business enterprise in question has been notified hereof. For example, a public authority may open a bank account in the government's name from which the citizen/business enterprise can make cash withdrawals<sup>2</sup>.

### **Cash payment centres**

The Act also empowers the Minister of Finance to lay down rules on the establishment of one cash payment centre for several public authorities within a geographical area to receive payments and make disbursements in cash. These powers also enable rules to be laid down on *payments to cash payment centres* by citizens and business enterprises<sup>3</sup>.

### **Can retailers reject banknotes of a certain size as payment?**

As stated above, the buyer is, as a main rule, entitled to discharge his obligations by means of legal tender. Under the principle of freedom of contract a vendor is, however, entitled to stipulate as a condition for entering into a sales contract that for instance payment is not effected

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<sup>1</sup> See also the explanatory notes to the Bill.

<sup>2</sup> At present these powers have not been exercised.

<sup>3</sup> At present these powers have not been exercised.

in 500-krone banknotes. The vendor must draw attention to this condition, e.g. via clearly visible signs, so that the buyer is aware of the condition before the agreement is concluded.

If the buyer is only made aware of this requirement after having concluded the agreement, the vendor in principle forfeits his right. In that case a monetary claim has arisen that the buyer must meet, and in theory this can always be done by means of legal tender.

The question is whether rejection of several banknote or coin denominations is a violation of section 10 of the Act on Certain Means of Payment, prohibiting discrimination of cash payment in relation to payment cards. This provision is described below.

This must be assumed to apply if e.g. a commercial operator generally refuses to accept banknotes of a certain denomination since this can, indirectly, force the buyer to use a payment card. On the other hand, refusal to accept particular banknote or coin denominations would be acceptable, the circumstances taken into account, if it is justified by e.g. recent information that counterfeit banknotes or coins of certain denominations are in circulation.

## **PAYMENT METHODS**

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### **Can the debtor or creditor demand a particular method of payment?**

Payment can be effected in several ways, such as cash at the creditor's business premises, by payment card, by cheque, via direct debit, via SWIFT or via a bank transfer. Section 3 of the Debt Instrument Act states that payment shall take place at the creditor's residence, but the Act does not stipulate *how* payment is to be effected. The possible payment methods are determined by agreement between the parties, the nature of the legal relationship and usage within the sector.

Danish law operates with a principle of freedom of contract, so that the parties are free to agree the method of payment. Where no such agreement has been made, the issue often arises of whether the creditor can demand a certain method of payment, or whether the debtor is entitled to select the method of payment.

As stated above, the debtor is, in principle, always entitled to use Danish banknotes and coins to discharge his payment obligation, unless the nature of the contractual relationship, usage or an agreement between the parties calls for another method of payment. Nevertheless, a creditor may usually stipulate that payment is to take place to a bank account, and likewise if the creditor has not stipulated any method of payment, the debtor is usually entitled to pay the amount due to the

creditor's bank account<sup>1</sup>. The debtor is also assumed to be entitled to pay by cheque, unless the parties have explicitly agreed that payment must be in cash<sup>2</sup>. The creditor is, however, entitled to refuse a cheque if he risks incurring a loss due to insufficient funds. On the other hand, the circumstance that it is inconvenient to receive a cheque does not entitle the creditor to refuse payment by cheque.

Payment by cheque is presumably not possible either if the debtor knows beforehand that it is very inconvenient to the creditor. This only applies outside business relations, however, and therefore presumably has only limited practical significance<sup>3</sup>.

### **Prohibition of discrimination of cash customers**

Under section 10(1) of the Act on Certain Means of Payment<sup>4</sup> the payment recipient must accept cash payment if he otherwise accepts payment by a method comprised by the Act (e.g. payment card). This does not apply in connection with remote sale or payment transactions in unstaffed self-service environments.

Consequently, the recipient can, in principle, not make the sale of goods or services conditional on payment by payment card or another method comprised by the Act, such as e-money. In other words, the recipient cannot – via signposting, in his terms and conditions or via actual measures – indicate that cash payment is not possible.

The Minister for Economic and Business Affairs is empowered to grant exemptions from this provision. These powers have been delegated to the Danish National Consumer Agency.

In situations without any personal contact between the consumer and the payment recipient, e.g. remote sale (such as traditional mail order sale or Internet sale) and in unstaffed self-service environments (such as petrol or train stations), the recipients are exempt from the obligation to receive payment in cash.

The provision thus prohibits discrimination of cash customers in favour of e.g. payment card holders. In accordance with the provisions of the Act on Preventive Measures against Money Laundering, etc. the obligation to accept cash payment does not apply to retailers and auctioneers receiving an amount of kr. 100,000 or more, cf. above.

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<sup>1</sup> A. Grathe, *Money Claims* (in Danish), 1992, p. 25.

<sup>2</sup> Mads Bryde Andersen and Joseph Lookofsky, *Textbook on the law of obligations* (in Danish), 2005, 2nd edition, p. 134.

<sup>3</sup> Bernhard Gomard, *The Lawyer* (in Danish), 1954, p. 483.

<sup>4</sup> Consolidated Act no.1501 of 20 December 2004.

## CALLING IN BANKNOTES AND COINS

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### Banknotes

Under section 8(3) of the Danmarks Nationalbank Act, banknotes may be called in with the permission of the Minister of Trade, Industry and Shipping (today the Minister for Economic and Business Affairs) and shall then cease to be legal tender from the date fixed by ordinance. After the expiration of twelve months from this date the called-in banknotes shall lose their validity vis-à-vis Danmarks Nationalbank, but Danmarks Nationalbank shall have the right to redeem the banknotes (i.e. exchange them for new banknotes) also after this time if justified by the circumstances.

### The substitution of banknotes

1945 saw the largest substitution of Danish banknotes in recent times. It was implemented immediately after liberation on 5 May 1945, following a strong increase in the volume of banknotes in circulation during the war years. The substitution of banknotes took place as part of the extraordinary stocktaking of assets by the Ministry of Finance. The substitution was carried out in the course of a few days. As from 23 July 1945, all banknote series issued before 1944 lost their status as legal tender<sup>1</sup>, but retained their validity vis-à-vis Danmarks Nationalbank up to and including 30 July 1945<sup>2</sup>. This constituted a deviation from the one-year limit described above. Under special circumstances, banknotes that had not been exchanged by this date could be redeemed by Danmarks Nationalbank at a later date. Danmarks Nationalbank's redemption of called-in banknotes finally ceased on 15 February 1946<sup>3</sup>.

### Called-in banknotes

Banknotes have only twice been called in pursuant to section 8(3) of the Danmarks Nationalbank Act since the substitution of banknotes in 1945. As of 1 July 1953, 5-krone banknotes of the blue series, printed from 1944 (in circulation from 23 July 1945), 10-krone banknotes of the brown series, printed in 1944 (in circulation from 23 July 1945), and 10-krone banknotes of the green series, printed from 1945 (in circulation from May 1947) ceased to be legal tender. However, they retained their validity vis-à-vis Danmarks Nationalbank up to and including 30 June 1954<sup>4</sup>.

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<sup>1</sup> However, 5- and 10-krone banknotes could be used for certain purposes in the period 23-25 July.

<sup>2</sup> Act no. 352 of 22 July 1945.

<sup>3</sup> Danmarks Nationalbank's Report and Accounts 1945.

<sup>4</sup> Executive Order no. 345 of 14 October 1952.

As of 1 January 1955, 10-krone banknotes of the light brown series issued from 14 October 1952 ceased to be legal tender, but retained their validity vis-à-vis Danmarks Nationalbank up to and including 31 December 1955<sup>1</sup>.

Danmarks Nationalbank still redeems all banknotes issued after the substitution of banknotes in 1945<sup>2</sup>, i.e. also the above 5- and 10-krone banknotes.

### Coins

Under section 4 of the Coinage Act, the Minister for Economic and Business Affairs, after negotiation with Danmarks Nationalbank, may determine that coins are no longer legal tender. The ½-krone coin and the 1-, 2-, 5- and 10-øre coins have all been called in and withdrawn. They are therefore no longer legal tender and cannot be exchanged at Danmarks Nationalbank. The ½-krone coin was called in on 31 December 1942. The 1- and 2-øre coins have not been redeemed by Danmarks Nationalbank since 30 June 1973, and the 5- and 10-øre coins since 1 July 1992<sup>3</sup>.

## ARE DAMAGED BANKNOTES AND COINS LEGAL TENDER?

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### Coins

Pursuant to section 4(2) of the Coinage Act, coins that are materially damaged or worn are not legal tender. The decision is based on a specific assessment.

Even though such coins are no longer legal tender, Danmarks Nationalbank, on the basis of a specific assessment, may accept damaged and worn coins with a view to exchanging them for legal tender<sup>4 5</sup>.

### Banknotes

No provision corresponding to section 4(2) of the Coinage Act applies to banknotes. However, general legal principles would entitle a payment recipient to reject a banknote if it has been materially damaged, or if there is doubt as to whether it may originate from criminal activities. The latter specifically applies to banknotes that have been discoloured by an anti-theft device in connection with a robbery and appear to have been cleaned using chemical agents.

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<sup>1</sup> Executive Order no. 64 of 15 March 1954.

<sup>2</sup> For further information, see [www.nationalbanken.dk](http://www.nationalbanken.dk).

<sup>3</sup> See [www.nationalbanken.dk](http://www.nationalbanken.dk).

<sup>4</sup> The explanatory notes to the Coinage Act stipulate that public sector payment centres and Danmarks Nationalbank should receive damaged and worn coins for exchange to the greatest extent possible.

<sup>5</sup> In connection with the exchange of coins, a fee is charged to banks and business enterprises/persons acting in a commercial capacity or who have received coins from the general public.

Danmarks Nationalbank's rules for the exchange of discoloured and damaged banknotes<sup>1</sup> state that Danmarks Nationalbank replaces discoloured or damaged banknotes under certain conditions, and that individuals and business enterprises that have received discoloured or damaged banknotes must contact the bank in which they hold an account.

Damaged banknotes can be replaced immediately by the bank if more than 50 per cent of the individual banknote is left, and the banknotes otherwise do not appear to originate from criminal activities.

Discoloured banknotes can be replaced immediately by the bank, provided that it is obvious that the discoloration is not due to anti-theft devices and the banknotes otherwise do not appear to originate from criminal activities. If this is not the case, the banknote must be submitted to Danmarks Nationalbank with a request for replacement<sup>2</sup>. Danmarks Nationalbank will exchange the banknote if the account holder can be assumed to be its rightful owner. This would e.g. be the case if a private individual has received a discoloured banknote together with several other banknotes and has not been aware of the discoloration.

In general a payment recipient cannot be expected to be familiar with the rules for exchange of discoloured and damaged banknotes at Danmarks Nationalbank. Moreover, a payment recipient should not be burdened with the risk that Danmarks Nationalbank will not exchange the banknote. For instance, it can be difficult for a payment recipient to assess whether the holder of a discoloured banknote is the rightful owner of the banknote, i.e. has extinguished all previous rights.

Furthermore, Danmarks Nationalbank's rules for exchange of discoloured and damaged banknotes urge citizens and business enterprises not to accept discoloured, burned, cleaned or otherwise suspicious-looking banknotes.

Consequently, a payment recipient is entitled to reject a discoloured banknote or a banknote of which a large part is missing or which has otherwise been materially damaged, even though there is no doubt of the authenticity or denomination of the banknote.

As a result of the above, discoloured and materially damaged banknotes are not legal tender.

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<sup>1</sup> See [www.nationalbanken.dk](http://www.nationalbanken.dk).

<sup>2</sup> A number of details should be provided with the request for replacement, including how the account holder came into possession of the banknote and whether or not the bank recommends replacement. If the account holder cannot supply or refuses to supply this information, replacement cannot take place.