GLOBAL

An ALM Publication

Disputes Guide

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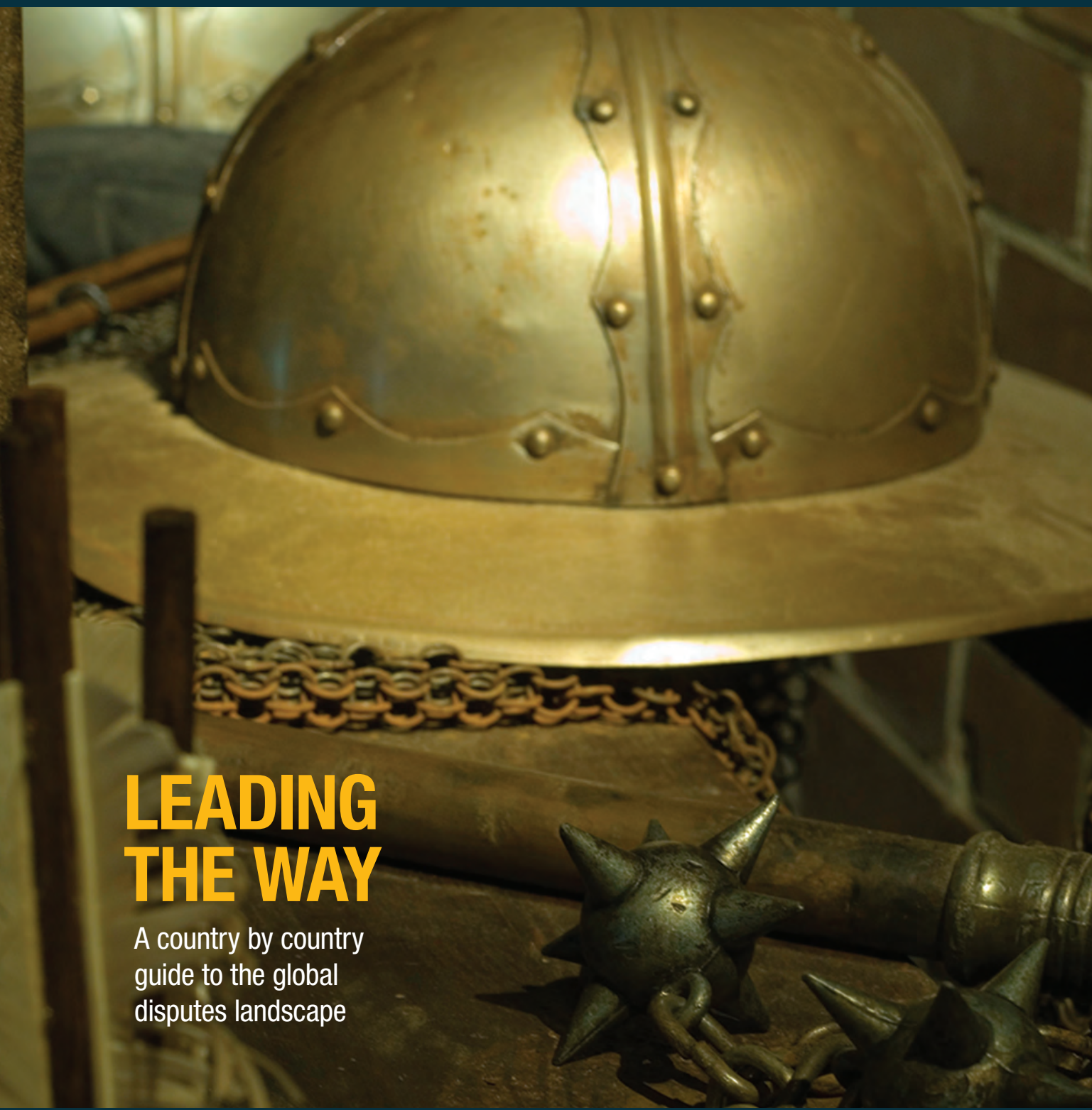

LEADING THE WAY

A country by country guide to the global disputes landscape

EXPERT ANALYSIS FROM LEADING DISPUTES LAW FIRMS AROUND THE WORLD

Welcome

Dear Colleague,

The expansion and globalization of cross-border investment and trade has led to increased and ever more complex commercial relationships between businesses, investors and states. As, inevitably, some of those relationships break down, parties need to consider the best means of resolving any disputes which may arise.

ALM, publisher of *The American Lawyer* and the world's largest legal media group, is delighted to announce the publication of the *2015 Guide to Global Dispute Resolution*. This Guide provides updates across Europe and the Middle East, offering valuable insights from leading law firms, addressing issues such as the enforcement of foreign rulings, the growth of arbitration, and the allocation of jurisdiction within crossborder disputes.

This Guide will be circulated to over 350,000 lawyers across the U.S. and around the world, offering firms with a top-tier disputes practice the opportunity to reach out to potential clients in Europe and the Middle East.

We trust you will find it a useful tool.

Danny Collins
Managing Director
International Division ALM

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PLESNER

Expedient efficiency and cost reductions via IT

Money, months and room saved in litigation and arbitration – some personal experiences.

There are three major fora for the handling of disputes in Denmark, being the ordinary law courts, the Arbitration Institute, and the Construction Arbitration Board, apart from more specialized set ups, ad hoc solutions and mediation. Within the last couple of years they have all adopted new rules and practices allowing for the use of various IT solutions and higher flexibility in practical terms. The benefits of IT technology are great in time, logistics, quality and costs to all parties to a dispute. The access to justice has in every way changed to a different level.

EMAIL COMMUNICATION AND ELECTRONIC DOCUMENTS

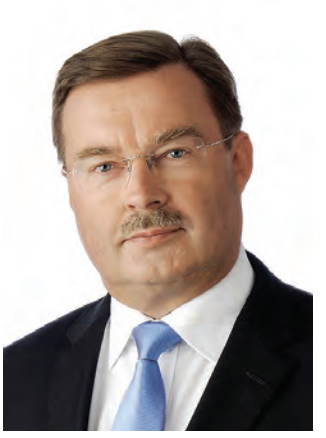
All correspondence, writs and documents relied upon are now emailed to the courts, and the courts communicate with the parties by email. The arbitration institutes have accepted this practice for some time, and since 1 January 2015 electronic communication has also been the starting point with the law courts. In fact, in small claims cases worth up to about Euro 7,000, citizens may fill in online forms with their claims and responses, and the courts may rule on that basis, if no one requests an oral hearing.

The law courts accept receiving attached files in PDF and JPG formats, as well as Word and Excel files, all in A4 paper size, and other formats subject to agreement with the court, including sound files and video files. However, the maximum size of emails is limited to 50 MB. Memory sticks can be used for larger submissions. Fairly similar rules apply in the two arbitration institutes, however, with a freer access to submit different formats.

The savings and other benefits are paramount in larger cases. In a rather average construction-arbitration dispute started up in June 2015 with altogether 12 parties involved at present, I have submitted the Statement of Claim, as well as terms and questions for expert evidence together with documentation electronically only, which would otherwise comprise four full ring binders. The documentation includes approx. 20 drawings in A1-format, approx. 60 in A3-format, several large Excel files, a number of photos and various technical documentation, in addition to normal text documents. I communicate with the parties and the Institute by email, but forwarded everything to all on memory sticks sent by ordinary post to be sure that everyone would receive identical documentation and that it would not be stopped or distorted by filters. I could have used DVDs instead, but memory sticks are faster and may contain more; can be reused and it is easy for everyone to make additional copies.

In comparison, regarding the cost savings, just a single A1-format photocopy may easily cost 30 Euro in a printing shop. Later, when we are close to oral evidence or the final hearing, we may of course

decide to print particularly important evidence, which we probably will, but for the fact-finding expedition of experts it would be a waste of paper to print everything for everyone involved. By contrast, only five years ago I had a major case where the Construction Arbitration Board ruled that the full content of a web-hosted platform for developing and distributing constructions drawings should be submitted in hardcopy to allow the other parties to peruse the documentation before allowing court-appointed expertise to answer questions - at a cost of almost 20,000 Euro per set of prints. Those times seem to be over.



FRANTS DALGAARD-KNUDSEN
PARTNER, PLESNER

THE LANGUAGE

The Arbitration Institute has always accepted entire cases in the English language, but the Construction Arbitration Board did not. In fact, in a major case I had 12 years ago the Construction Arbitration Board ruled that the language of the Institute and of the proceedings was Danish, despite the parties having agreed in a specific clause that the valid language regarding their contract was English only. The venue clause overruled the language clause. The starting point in the law courts is also Danish.

However, earlier a party could protract proceedings by requesting sworn translations into the Danish language of all documents. Sometimes unauthorized office translations were accepted. Nowadays one may see machine translations finding their way into supporting documents in disputes. Now original documents may be submitted in the English language (and possibly also other languages), if the judge of the law court feels sufficiently in command of the foreign language, and only parts of central importance may be requested to be translated. The Swedish and Norwegian languages have traditionally been accepted in court without interpreters, but now oral evidence in court can also be given in English, as a starting point without an interpreter assisting.

ELECTRONIC HEARING OF WITNESSES

A few clients like to communicate via Skype or Facetime, possibly connected to a monitor to the benefit of more people. This method of communication was used, for instance, in a major Arbitration Institute hearing a year ago. We used Skype during the hearing, because Skype technology allowed the Tribunal to be in contact with two different witnesses at the same time, and also allowed the two witnesses giving evidence to see and hear each other. Thus, legal experts situated in Beijing and Shanghai, respectively, could give their comments to each other's evidence on mandatory Chinese law to the Tribunal sitting in Copenhagen, using the English language.

We may see more online hearings of witnesses as a result of a recent opening up for written witness statements and party-appointed experts in legal practice in Denmark.

Court reporters and transcription services for sound files are industries, but not yet very developed in Denmark, so foreign online services are often used when arbitration hearings are in the English language. It is a help to the lawyers to receive the court reporter's searchable Word files in the evening of the day of a hearing. But transcripts made afterwards are also usable. During the Copenhagen Metro arbitration cases a couple of years ago, we received the sound tracks as electronic files on the same day, as the evidence was given, and transcripts were prepared prior to the following sessions some months later.

CLOSING HEARING AND ELECTRONIC AIDS

Earlier this year a district court judge suggested to me that a one day hearing, including the reading in, the hearing of a couple of witnesses and the closing pleadings should be carried through on the basis of having all documentation on Ipads only. It is still a precondition that the parties agree on this, and on that occasion we did not reach agreement, but the possibility is here now.

However, it is now quite common to use power point presentations and other presentations on screens or monitors during the closing arguments of the lawyers in major arbitrations, possibly with links to central documents and photos. Electronic presentation of developments over time, in documents, charts, site-photos, timelines or a cyclogram can prove very strong. A couple of years ago, a searchable harddisk database of all the bookkeeping of a major construction project was given to the members of the Tribunal and was used during the closing hearing. The law courts, including the Supreme Court, have also become open to the use of various electronic evidence on screens in the closing hearings.

"Any good lawyer must be at the forefront to bridge gaps between traditional thinking and IT-based evidence and communication."

FRANTS DALGAARD-KNUDSEN, PARTNER, PLESNER

It is now standard that the law courts request that the final written overall summary submissions of the parties are forwarded in Word format and that these submissions are copied directly into the text of the judgment or the award.

JUSTICE OR INJUSTICE BY IT

My client and I did not consider it access to justice, rather the contrary, when we had to print out and submit a web-hosted drawing database at high cost as mentioned above, but we probably would not have received justice at the time if that Tribunal had not seen traditional hardcopy drawings. Fair trial and access to justice are corner-pillars, but IT skills are becoming another basic pillar. Judges and arbitrators generally do their utmost to provide justice or at least a fair treatment of the parties to a dispute. This is their job. But it is for the lawyers to provide the necessary basis, also when it comes to IT. Thus, the lawyers need to take the capability, traditions and mindset of the panel into consideration when presenting and facilitating evidence, in particular when coming up with real life IT-based factual evidence or new IT-based eye openers. It is obvious that any good lawyer must be at the forefront to facilitate and bridge any gaps between traditional thinking in the legal world and IT-based evidence and communication. ■

ABOUT THE AUTHOR

Frants Dalgaard-Knudsen is a partner of Plesner, one of the very largest law firms in Copenhagen, Denmark, with close to 200 lawyers. He has been a partner for 20 years and the head of the commercial department for more than 10 years.

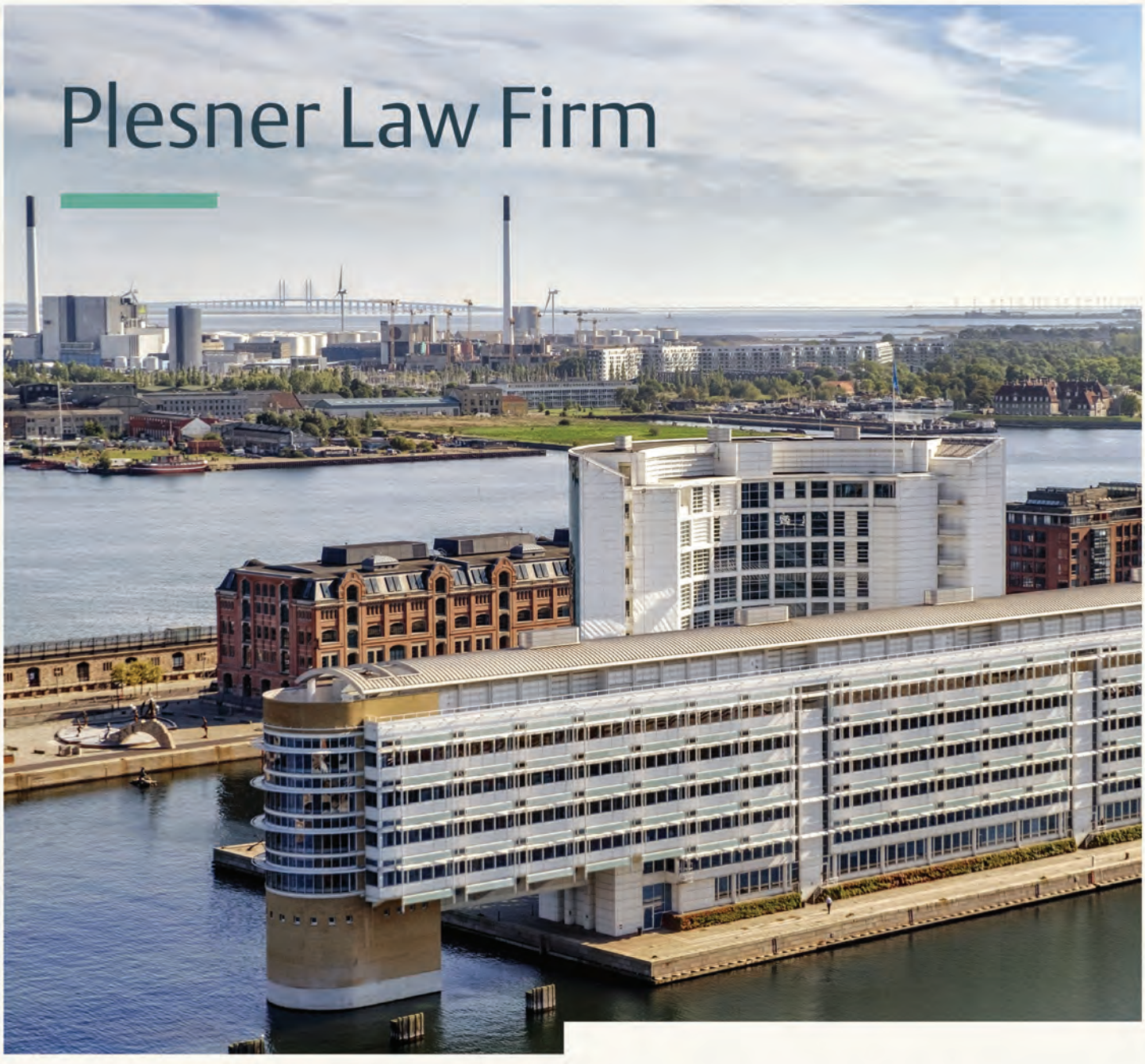
Frants has extensive experience regarding disputes in corporate and commercial matters and in particular in construction, technical deliveries and infrastructure. He has assisted with major construction disputes, including hospitals, railroads, motorways, power plants, wind turbines, the Copenhagen Metro and the Great Belt Bridge, and also with a number of projects and deliveries abroad under FIDIC and in Greenland. Several cases have been reported publically as leading caselaw.

Examples of specific litigation and arbitration cases completed successfully for clients within the past year include a construction arbitration in 2015 regarding the design and costs of renovation of a regional railway; an international arbitration in 2014 regarding breach of franchise rights for China for the Georg Jensen brand, and court litigation in 2014 regarding shareholder liability in a building materials company.

Frants is a member of the Danish Supreme Court Bar Association and has the right of audience before the Danish Supreme Court. He is a certified arbitrator in Denmark and a fellow of the Chartered Institute of Arbitrators, FCIArb. Frants has been listed by Who'sWho Legal Litigation, Chambers and Legal500.

Frants holds a PhD from the European University Institute and has written several articles and books. In the autumn of 2015, he released the 526 pages long "Danelaws on Contracts" in the English language.

Plesner Law Firm



Plesner is recognised as one of the leading law firms in Denmark, particularly focusing on transactions, complex dispute resolution and legal advice at executive level.

Our aim is to become a market leader in our areas of priority and to maintain such status.

We know that achieving this aim requires that Plesner constantly evolves and is Denmark's most innovative law firm and the natural home for the best and most visionary people.

Our ambition runs through everything that we do in Plesner. It governs our way of accumulating and sharing knowledge. And it is crucial to our way of thinking and collaborating, our recruiting of staff and our acceptance of work and to the solutions that we provide.