

Setting up in Denmark

5. Forms of business enterprise

Business operations in Denmark may be conducted under the following legal forms:

- public limited company
(aktieselskab)
- branch office
(filial)
- private limited company
(anpartselskab)
- partnership
(interessentskab)
- limited partnership
(kommanditselskab)
- limited partnership company
(kommandit-aktieselskab)
- co-operative society
(andelselskab)
- sole proprietorship or one-man firm
(enkeltmandsfirma)
- commercial foundation
(erhvervsdrivende fond)
- European companies – European public limited-liability companies, European Economic Interest Groupings and European Co-operative Societies
(SE companies, EØFG and SCE)

As foreign investors most often set up a public limited company or a branch office, these forms of business are explained in some detail.

All public limited companies, private limited companies, limited partnership companies, commercial foundations, sole proprietorships, partnerships, limited partnerships, co-operatives, cor-

porate funds, the various types of European companies, branch offices of foreign corporations and other limited liability businesses and societies must register with the Danish Commerce and Companies Agency. The registration is published in the Registration Gazette on the Danish Commerce and Companies Agency's Web site.

5.1 Public limited company *(aktieselskab)*

The Danish Public Companies Act reflects Scandinavian efforts to harmonise legislation with EU rules governing public limited companies and the right of establishment.

5.1.1 Formation procedure

The following procedure is mandatory:

1. The promoters must draw up and sign a memorandum of association which must contain a draft of the articles of association, the price at which shares are offered for subscription, the period within which the first general meeting is to be held, etc.
2. The articles of association must be drawn up in conformity with the memorandum of association and contain, as a minimum, the provisions required by the Companies Act.
3. There may be any number of promoters. None of the promoters may have filed for bankruptcy or a suspension of payments. If the promoter is a physical person, the person must be of legal age and not under guardianship or joint guardianship.
4. A resolution on the company's formation must be taken at the first general meeting.
5. The board of directors must apply to have the company registered with the Danish Commerce and Companies Agency not later than six months from the date of the memorandum of association. The company cannot be registered unless the subscribed capital, and not less than DKK 500,000, has been paid up. This amount is the minimum share capital required for a Danish public limited company.

5.1.2 Minimum capital

The minimum capital required, DKK 500,000, may be in forms other than cash (non-cash contributions), including tangible assets, goodwill, patents, trademarks, etc. The non-cash contributions must have a value which can be expressed as money equivalents. Such contributions may not be an obligation to perform work or render services.

5.1.3 Shares and shareholders

Shares may be registered by name or to bearer. Shares are freely transferable and non-redeemable unless otherwise stipulated by law. The articles of association may provide restrictions as to the transferability of registered shares or the conditions with respect to redemption. In principle, all shares have equal rights, but the articles of association may provide for different classes of shares. In this case, the articles of association must state the differences between the share classes, the size of the share classes, and any limit on pre-emption rights for new shares in the event of an increase in the share capital.

Shares may not be issued at price below par (that is, under 100 per cent of the shares' nominal value). Each company sets the denomination of its shares in its articles of association. Different classes of shares in the same company may have different par values.

If the minimum par value of a share is DKK 50, a share of DKK 10,000 would carry voting rights equal to 200 shares of DKK 50. Shares may be issued at a premium. If shares are issued at a premium either upon the formation of the company or upon an increase in its share capital, the premium amount is held as free reserves.

There is no minimum requirement for the number of shareholders or shares. Every share carries the right to vote, although there may be voting restrictions on some classes of shares.

As stated, a company may issue shares of various classes which may limit or extend the rights of shareholders. The usual procedure is to divide the share capital into "A" shares and "B" shares.

The "A" shares are usually the company's original (or equity) capital and are often held by a limited circle of owners. "A" shares often have trading restrictions and also a larger number of voting rights than other shares, which might be designated as "B" shares, for example. However, no share may carry more than ten times the votes of any other share of equivalent denomination. By way of compensation, "B" shares are sometimes preference shares and occasionally cumulative preference shares.

The board of directors must keep a record of all shares of the company (the register of shareholders) in which the shares must be entered in numerical order (unless they have been issued through a joint securities service agency) and - for shares registered in the name of the holder - also under the names of the shareholders.

The register of shareholders must be accessible to public authorities. In companies where the employees have not elected any members to the board of directors, the register of shareholders must also be accessible to an employee representative. In the case of a group whose employees have not elected any members to the board of directors of the parent company, the register of shareholders of the parent company must be accessible to employee representatives of the other companies in the group. The articles of association may stipulate that the register of shareholders must also be accessible to shareholders, for example, through electronic media. This policy must be approved at the general meeting by the same voting majority that is required for the adoption of an amendment to the articles of association.

The company must keep a special list of the shareholders who own shares that either carry 5 per cent or more of the voting rights or represent 5 per cent or more of the share capital (over DKK 100,000). The ownership interest stated above includes shares which the party has charged as collateral security, unless the chargee controls the voting rights and declares an intention of exercising such rights.

The list must be accessible to the public authorities, the shareholders, the board of directors, and, if the employees have not elected any members to the board of directors, a representative of the company's employees at the company's registered office. Any interested party can obtain an extract of the list.

5.1.4 The Danish Securities Centre

Danish VP Securities Services (*Værdipapircentralen*) is an organisation responsible for the computer registration of Danish shares and bonds.

All listed Danish shares are registered electronically and held electronically at Danish VP Securities Services. For listed companies, these electronic titles have thus replaced share certificates. Transactions in listed shares, bonds and investment fund units are settled via Danish VP Securities Services.

Shares are usually registered in denominations of DKK 100. However, some companies register their shares in denominations of DKK 250, 500 or 1000.

5.1.5 Management

Management is vested in a board of directors consisting of not less than three members.

If a company has employed an average of 35 or more persons during the preceding three years, its employees are entitled to elect from among themselves members to the board of directors for a period of four years. The number of members elected by employees must be equivalent to half the number elected to the board at the annual general meeting, but not less than two.

Any group company which has employed an average of at least 35 employees during the preceding three years must allow its employees the option of electing representatives to the board of the parent company, in accordance with special rules.

The board of directors must appoint a management board consisting of one to three members, in the absence of any provisions in the articles of association providing for a larger management board.

The board of directors and the management board have overall responsibility for the management of the company's business. The management board is responsible for the company's day-to-day operations, whereas the board of directors must ensure proper organisation of the company's business, make sure that bookkeeping and asset management processes are checked in a satisfactory manner, and from time to time consider whether the financial position of the company is sound.

The majority of the members of the board of directors must be non-management board members. A member of the management board may not be appointed chairman.

Members of the board of directors and management board must be of legal age and may not be under guardianship or joint guardianship.

A company is not allowed to grant loans or provide security to any shareholder or member of the board of directors or of the management board (or person closely associated with them) of the company or its parent.

No member of the board of directors or of the management board may participate in the treatment of any matter relating to contracts between the company and themselves or to lawsuits against themselves.

Authority to sign on behalf of a company is vested in the entire board of directors, a member of the board of directors, or a member of the management board. The authority to sign may be restricted only insofar as more than one member may be required to sign jointly or one or more specific members may be required to sign individually or jointly. The company's articles of association must list any such restrictions in the authority to sign on behalf of the company.

5.2 Branch office (*filial*)

Foreign public limited companies, limited partnership companies, and companies under similar forms of incorporation that are domiciled in one of the member states of the European Union may carry on business through a branch office in Denmark. Companies that are lawfully registered in countries outside the EU may also carry on business in Denmark through a registered branch office if they are allowed to do so under an international agreement or if the Danish Minister of Trade and Industry has granted them permission. A branch name must include the company name with the addition of the word *filial* (branch) as well as a clear indication of the nationality of the company.

The Danish Commerce and Companies Agency must be notified of the establishment of a branch office.

The branch must be managed by one or more branch managers who can sign for the branch and grant authority.

Branch managers must be of legal age and may not be under guardianship or joint guardianship.

5.3 Private limited company (*anpartsselskab*)

The Danish Private Companies Act provides for the establishment of companies similar to the German *G.m.b.H.* and the French *S.A.R.L.* In view of the probable impact of EU directives on company legislation, the Danish government thought it advisable to enable small companies and companies with a small number of owners to choose a less complex structure than that of a public limited company. The Private Companies Act is similar, both in

form and in content, to the Public Companies Act, the only difference being that private limited companies do not issue share certificates, have a less complicated organisation, and generally have fewer owners.

The liability of the owners of a private limited company is the same as for a public limited company; that is, liability is limited to their capital contributions.

The minimum capital amount that the founder or founders must supply is DKK 125,000, and there is no maximum. A private company need have only one founder. Although the private limited company classification is intended to appeal to a small number of persons combining resources to set up a company, there is no maximum number of owners.

Private limited companies must use the word "Anpartsselskab" (private company) or the contraction "ApS" in their name.

Like public limited companies, private limited companies must be listed with the Danish Commerce and Companies Agency, and the tax status of these two types of enterprises is the same.

Conversion of an existing public limited company to a private limited company - which, incidentally, has no tax implications - is effected by a resolution adopted at a general meeting of shareholders by the majority required for amendments to the articles of association. The same procedure is followed for the conversion of a private limited company to a public limited company.

5.4 Partnerships and the like

Partnerships, sole proprietorships, limited partnerships, co-operative societies and other limited liability companies and societies that are not encompassed by the Danish Public Companies Act, the Danish Private Companies Act or the Danish Act on Corporate Funds are governed by the Danish Act on Certain Commercial Undertakings, provided that the aim of the enterprise is to further the economic interests of its owners through business operations. Branches of similar foreign enterprises are also encompassed by the Act.

Companies with limited liability, including companies that are covered by the Danish Act on Certain Commercial Undertakings, must be registered with the Danish Commerce and Companies Agency. Limited liability business enterprises covered by the Danish Act on Certain Commercial Undertakings must present annual accounts in compliance with the regulations set forth in the Danish Financial Statements Act. The distinguishing characteristics of the various forms of partnership are explained below.

5.4.1 Partnership (*Interessentskab*)

A partnership is a partnership in which all partners are personally liable, without limitation, as well as jointly and severally liable,

for the commitments of the partnership. A partnership agreement governing the relationship between partners is usually drawn up. In the absence of such an agreement, disputes are settled by reference to prevailing practice in the particular trade or line of business.

5.4.2 Limited partnership (*Kommanditselskab*)

A limited partnership is a partnership in which one or more partners, the general partners, are personally liable, without limitation, as well as jointly and severally liable, for the commitments of the partnership, whereas the liability of one or more other partners, the limited partners, is limited.

5.4.3 Limited partnership company (*Kommandit-aktieselskab*)

A limited partnership company is a limited partnership operating a business in which a limited liability company, with its entire share capital, is the limited partner or in which the company's limited partners have contributed a specific amount of capital that has been distributed as shares.

A limited partnership company is generally subject to the same regulations as a public limited company. A limited partnership company must indicate its status as such in its name.

5.4.4 Co-operative society (*Andelselskab*)

This type of enterprise is more common in Scandinavia than elsewhere, and formation is easy.

A co-operative society is an enterprise or organisation operated in the common interest of and for the benefit of its members in their capacity as buyers, suppliers or the like, and in which the profit, exclusive of return on contributed capital, is either distributed among its members according to their share of the sales or retained in the society.

A co-operative society is taxed as a single entity according to special rules. Its profits are normally distributed on the basis of the turnover or volume of each member's transactions.

5.4.5 Sole proprietorship (*Enkeltmandsfirma*)

Any name may be selected; the owner's name may, but need not, appear in the firm's name.

5.5 Commercial foundation (*Erhvervsdrivende fond*)

A commercial foundation is understood to be a fund which transfers goods or immaterial rights, performs services or the like, or carries on business selling or leasing real property.

5.5.1 Instrument of foundation

Corporate funds must draw up an instrument of foundation that contains the following information:

- The fund's name, which must include the word "fond"
- The fund's founder/founders
- The fund's domicile
- The fund's objective
- The amount of the base capital of the foundation and how it was paid up (in the form of cash or other assets)
- Whether the fund is to take over other assets than cash on its establishment
- Special rights or advantages allotted to the founder or to others
- The number of committee members
- The manner in which accounts are kept
- The appropriation of profits

5.5.2 Capital

The base capital must be at least DKK 300,000. The foundation may not be registered until the base capital designated in the instrument of foundation is fully paid up.

5.5.3 Management

A commercial foundation must be managed by a committee which, in addition to any representatives elected by the employees, consists of at least three members. The procedure for electing employee representatives to the committee is the same as for limited liability companies. The committee may employ one or more managers. The managers and at least half of the members of the committee must be residents of Denmark unless the fund

authorities grant an exemption from this requirement or the requirement conflicts with international obligations.

5.6 European companies

European public limited-liability companies, European Economic Interest Groupings and European Co-operative Societies (SE, EØFG and SCE).

There are a number of special European companies. The common feature of these companies is that they are based primarily on EU regulations which mean that the various types of business are identical in their structure in all the EU member states.

There are three types of European companies represented in Denmark:

European public limited-liability companies (SEs)

European Economic Interest Grouping (EEIGs)

European Co-operative Societies (SCEs)

The common feature of the three types of business is that they are subject to very special regulation on registration, which – to a certain extent – separates them from Danish organisations or enterprises. If you contemplate setting up such an enterprise or business, we recommend that you contact the Danish Commerce and Companies Agency.

5.7 Bookkeeping and annual accounts

Commercial undertakings established in Denmark are subject to the Consolidated Bookkeeping Act and must comply with the provisions therein. For each accounting year, annual accounts consisting of a balance sheet, a profit and loss account and notes must be prepared. The annual accounts must be submitted to auditors and filed with the Danish Commerce and Companies Agency.

5.8 Auditing and accounting - legal requirements

Public limited companies, branch offices, private limited companies, limited partnership companies, limited liability business enterprises and individuals engaging in business operations must file a balance sheet, a profit and loss account and their annual tax return with the tax authorities.

The annual accounts must give a true and fair view of the company's assets and liabilities, its financial position and its profits. Annual accounts consisting of a balance sheet, a profit and loss account and notes are drawn up for each financial year. These are accompanied by an annual report and, in the case of parent companies, consolidated accounts.

The company must send an attested copy of the certified accounts to the Danish Commerce and Companies Agency. Com-

pany accounts are open for public inspection at the Agency, but company tax returns are not.

5.9 Establishment costs

A foreign company setting up in Denmark must, of course, reckon on paying for local professional advice and assistance, particularly legal advice and assistance.

5.10 Registration fees and annual fees

No registration fees are required of any of the forms of business enterprises mentioned above.

Commercial foundations pay an annual fee of 1/6 per mille of the shareholders' equity, from a minimum of DKK 100 to a maximum of DKK 25,000, but pay no registration duty.