

BUSINESS ENTITIES

Introduction

It is possible to be operational in Denmark within a few days and with limited administrative costs. The financial requirements and the level of administration required to operate the company depend on the selected corporate structure.

Information is provided with regard to the most common corporate structures used for establishing a company in Denmark:

- A limited company (public and private - A/S and ApS)
- A branch office
- A representative office

The table on the following page provides an overview of the main differences between a public limited company, a private limited company and a branch office.

REGULATIONS FOR DIFFERENT COMPANY STRUCTURES

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	Public limited company	Private limited company	Branch Office
Legal characteristics			
Is the owner liable for the company's engagements?	No	No	Yes
Incorporation and registration			
Min. requirement to no. of founders	1	1	N/A
Min. requirement to no. of owners	1	1	N/A
Registration requirements with the authorities	Yes	Yes	Yes
Capital and dividends			
Min. capital requirements	DKK 500,000	DKK 80,000	None
Cost of forming a company including initial structuring advice.	Approx. DKK 27,750	Approx. DKK 20,250	N/A
Financial loss limit	50%	50%, however, minimum DKK 62,500	N/A
Dividends may be paid	Annually	Annually	N/A
Interim dividends allowed	Yes	Yes	N/A
Management			
No. of members on the Executive Board (CEO)	Min. 1	Min. 1	Min. 1
No. of members on the Supervisory Board	Min. 3 (The Supervisory Board may be substituted by a Supervisory Council)	It is optional to have a Supervisory Board. If chosen min. 1 member (The Supervisory Board may be substituted by a Supervisory Council)	N/A
No. of members on the Supervisory Council (For wholly owned subsidiaries of foreign companies a Supervisory Council is not relevant. Accordingly we will not comment further on Supervisory Councils)	It is optional to have a Supervisory Council. If chosen min. 3 members (The Supervisory Council may be substituted by a Supervisory Board)	It is optional to have a Supervisory Council. If chosen min. 1 member Optional (min. 1) (The Supervisory Council may be substituted by a Supervisory Board)	
Annual reports and audit			
Requirements for presenting the annual report	Yes	Yes	The parent company's annual report must be filed
Requirements for audit of the annual report	Depending on size	Depending on size	No annual report has to be prepared
Requirements of public access to the annual report	Yes, if applicable	Yes, if applicable	Yes (from parent)
Source: Ronne & Lundgren			

PUBLIC AND PRIVATE LIMITED COMPANIES (A/S and ApS)

The A/S and ApS are the most commonly applied company structures in Denmark when establishing a company. However, other corporate forms may be suitable depending on the circumstances. We will of course be pleased to provide further information on these if needed.

Previously, shelf companies were often used in order to speed up the registration process, but today companies may be registered online with the Danish Commerce and Companies Agency and fully operational upon registration. Consequently, a company can be formed and fully operational from day to day.

Foreign companies establishing a subsidiary in Denmark often choose the ApS structure. The ApS only requires a managing director, who does not need to reside in Denmark.

Public Limited Company - Aktieselskab (A/S)

A public limited company must have a minimum share capital of DKK 500,000 (approx. EUR 66,700). The share capital may be stated in the Danish currency, Kroner (DKK), or in EUR. The capital must be fully paid at the time of the company's incorporation. Subscriptions for shares can be in cash or in other assets; in the latter case, independent experts such as a registered or a state-authorized public accountant must assess and report on the value of the assets. When assets are acquired from a founder within the company's first two years, the assets must be assessed likewise, provided that the consideration amounts to 10 % of the share capital or more. Furthermore, the Supervisory Board shall prepare a statement regarding the specific circumstances connected to the transaction. A public limited company can hold a part of its own shares, provided certain conditions are fulfilled.

Establishment of a public limited company does not require the founder(s) to be Danish residents or EU nationals. There is no requirement stating that the founders must subscribe to the share capital. A founder can be a legal entity, must not be under bankruptcy or insolvency proceedings, and natural persons must be of age.

The formation agreement, which is signed by the founder(s), must, among other information, contain the articles in draft, the subscription price for share issuing, name and location of the company.

The filing with the Danish Commerce and Companies Agency must take place within a period of two weeks from the date of the memorandum of association. Normally, the filing and registration is done online and is thus completed immediately. Furthermore, the company must apply for registration for VAT and/or withholding tax and levies regarding employees, if applicable.

The management of a public limited company requires a Supervisory Board of a minimum of three members.

The Supervisory Board must appoint the Executive Board consisting of one member. A member of the Executive Board can be a member of the Supervisory Board, but in such case he is not allowed to be the chairman.

There are no requirements for the nationality of the members of the Supervisory Board or members of the Executive Board, who can be of any nationality and can reside anywhere within or outside the EU.

The salaried employees and workers of any company, which has employed an average of at least 35 people for three consecutive years are entitled to, if they so wish, to elect to the Supervisory Board at least two additional members or if larger, half the number of members elected by the shareholders are appointed by third parties (if any). The Supervisory Board and the Executive Board will be jointly responsible for the company's administration.

A public limited company must file its full annual report with the agency every year, no later than five months after the end of the financial year. If the company does not file its annual report within 5 months, the board members may personally be fined.

The annual report must generally be audited. However, it can be decided not to audit a company's annual report, if the company does not cross two of the following three thresholds for at least two consecutive financial years:

- 1) a balance sheet total of DKK 1,500,000;
- 2) a turnover of DKK 3,000,000; or
- 3) an average of 12 full time employees during the accounting year.

In the formation agreement, it may be decided not to audit the company's annual report if the company fulfils the above-mentioned conditions and the non-auditing demand appears from the articles of association.

When appropriate for reasons of competition, small and medium-sized companies may in the layout of the profit and loss account, adopt an item called “gross profit or loss”, which is registered by combining various items, notably the net turnover and production costs.

Danish legislation contains rules regarding appropriate bookkeeping for the recording of financial transactions in connection with a company's business.

Dividends can be paid out of retained profits and free reserves only. Shareholders must approve proposed dividends at an ordinary general meeting. In addition, if certain requirements are met, the Supervisory Board or the Executive Board - if only an Executive Board has been formed- may allot interim dividends in between the ordinary general meetings.

Information filed with the Danish Commerce and Companies Agency is in general available to any member of the public.

A simplified procedure is available for liquidation of the company.

Legal fees can vary from approx. DKK 5,000 (approx. EUR 670) to approx. DKK 25,000 (approx. EUR 3,350 excl.VAT) or more related to liquidation of a company. In addition, there may be other professional fees.

The Danish Commerce and Companies Agency allows companies to present and publish certain company information in any official EU language besides Danish.

Public or Private Limited Company – online registration

Previously many investors preferred to buy a shelf company, which has never carried out any business activities before in order to start up the business as soon as possible. However, it is now possible to register companies online and thus a newly registered company may be ready to do business within a few hours. Therefore, the normal procedure would be that the new company is formed and registered online when needed.

Private Limited Company - Anpartsselskab (ApS)

The ApS is very easy to operate and requires a minimum amount of administration. A private limited company must have a share capital of a minimum of DKK 80,000 (approx. EUR 10,800). The number of founders need not be more than one and no requirements exist concerning the founders' place of residence or registered address. The members of the Supervisory Board, or the Executive Board if any, are not subject to any residential requirements and can be of any nationality.

The Danish private limited company is useful for businesses that have only a few proprietors and that do not seek to raise their capital from a wide circle of shareholders; indeed, such companies are prohibited from having their shares listed on a stock exchange.

Private limited companies are also governed by the Danish Companies Act in the same way as the Danish Public Limited Companies are. The most important features of a private limited company that distinguish it from a public limited company are:

- A private limited company is allowed more contractual freedom and a simplified management and decision procedure. Only one managing director is needed. It is optional to elect either a Supervisory Board and an Executive Board, or an Executive Board only, to manage the company. However, if a company has employed an average of 35 people or more for the past three consecutive years, a Supervisory Board is statutory, provided that the employees decide to elect such members, whereas the employees will be entitled to elect to the Supervisory Board at least two additional members or if larger, half the number of members elected by the shareholders and appointed by third parties (if any).
- There are no provisions concerning voting rights per share. Some shares may be issued without any voting rights at all or at the other extreme, one share may carry all the voting rights in the company.

The Supervisory Board and/or the Executive Board registered with the Danish Commerce and Companies Agency will have joint responsibility for the administration of the company.

The company must apply for registration for VAT and/or withholding tax and levies regarding employees, if applicable.

Like a public limited company, the private limited company is covered by legislation regarding appropriate bookkeeping requiring the preparation of an annual report.

Accounting, auditing and publication requirements are the same as those for public limited companies.

The tax status of a private limited company and a public limited company is also the same. In fact, changing a private limited company into a public limited company and vice versa has no Danish tax consequences.

Dividends can be paid out of retained profits and free reserves only. Shareholders must approve proposed dividends at the ordinary general meeting. In addition, if certain requirements are met, the Supervisory Boards (respectively the Executive Board as the case may be) may allot payment of interim dividends between the ordinary general meetings.

The simplified procedure available for liquidation of public limited companies is also available for private limited companies.

Private Limited Company – online registration

The same principles as for public limited companies apply.

A BRANCH OFFICE

A company lawfully registered in its home country can establish a registered branch office in Denmark if a Danish company has the same opportunity in the foreign country. Foreign companies registered in the EU/EEA and among others the US and Australia, can register a branch office in Denmark without any further notice. Foreign companies of other countries will have to present a declaration of reciprocity.

There are no specific capital requirements, but the foreign company is fully liable for the branch's debts and obligations. Moreover, a formal branch manager must be appointed.

The specific legal requirements of a branch are laid down in the Danish Companies Act.

A branch office must be registered with the Danish Commerce and Companies Agency and the operation of the branch can only start once the registration form has been filed with the Danish Commerce and Companies Agency. Every company that plans to open a branch office in Denmark must fill out an application form. This must be signed by the branch manager and submitted to the Commerce and Companies Agency, together with various documents including a letter of acknowledgement by the foreign company stating that it is subject to Danish law regarding activities in Denmark.

Upon registration with the agency, the branch office must submit the following documents translated by an authorised translator if not in Danish, Swedish, Norwegian or English together with the registration form:

- Official certificate confirming that the parent company legally exists in its home country
- A copy of memorandum of association of the foreign company. Applicable only, if the main company is registered outside the EU/EEA.
- A copy of the articles of association from the foreign company. Applicable only, if the main company is registered outside the EU/EEA.
- Documentation of the persons who are authorised to sign for the foreign company
- A certified power of attorney to the branch manager.
- Declaration of reciprocity. Applicable only, if the main company is registered outside the EU/EEA.

The foreign company must appoint one or more branch managers. The branch manager(s) are not subject to any residential requirements and can be of any nationality.

In addition, the branch must apply for registration for VAT and/or withholding tax and levies regarding employees, if applicable.

The branch is subject to taxation in Denmark as a permanent establishment. Furthermore, if the branch office or the foreign company is subject to withholding tax deducted from income at source, an agent with a venue in Denmark must be registered with the Danish Commerce and Companies Agency, if the parent company resides outside the EU/EEA. The agent must be a Danish natural or legal person and must be liable for the said obligations.

The branch of a foreign company is not requested to prepare an audited annual report, but for tax and VAT purposes the branch is required to do some bookkeeping and prepare an annual tax return. The main company's annual report must, however, be filed with the Danish Commerce and Companies Agency within 5 months from the last financial year. If the parent company's deadline to prepare the annual report is longer than 5 months, the Danish Commerce and Companies Agency must be notified every year.

In general, tax returns must, with certain exemptions, be filed annually within six months from the end of the foreign company's financial year. The financial statements comprising the parent company's total activities must be filed with the Danish Commerce and Companies Agency.

In order to close down a branch office in Denmark it must be deregistered with the Danish Commerce and Companies Agency. The main company, however, continues to be liable for the debt incurred by the branch office, also after the branch may have been closed down.

REPRESENTATIVE OFFICE

The representative office will provide the foreign company with a physical presence in Denmark and is normally used in the initial stages of a company's presence in the country. Only a very limited level of activity is allowed to be performed as a representative office. Marketing and sales assistance regarding products and services offered by the foreign company to the Danish market may be the reason why some foreign companies want to be present in Denmark in this manner. This type of office will have only very few administrative requirements to fulfil.

There are no registration or tax requirements for a non-registered sales promotion office. However, the name may be registered for protection. The foreign entity is fully liable for the debts and obligations of the representative office. The office is not VAT-registered and cannot accept orders or do any invoicing. There are some exceptions in the early exploratory phase.

There are no Danish legal regulations of this type of foreign activity for tax purposes. A representative office in Denmark is generally defined in accordance with the OECD model-tax treaty.

ANNUAL REPORT

All limited liability companies must prepare an annual report. The accounting legislation is based upon the EU's Company Law Directives. The legislation is largely a framework that in all material respects makes it possible to prepare an annual report in accordance with for example IAS, US GAAP or UK GAAP. However, some companies, for example companies listed on the stock exchange are required to audit their annual report according to the IFRS.

Annual reports in Danish must be filed annually with the Danish Commerce and Companies Agency, where the annual reports are available to the public.

A parent company must generally present a consolidated annual report, including its subsidiaries' annual report. However, a parent company, which itself is a subsidiary, may abstain from presenting a consolidated annual report, if the following requirements are met:

- The annual report of the company and all of its subsidiaries are included in the consolidated annual report for a parent company, which is subject to and consistent with the legislation of an EU member state or legislation similar to an EU member state
- Nevertheless, under certain conditions the minority shareholders can demand that the parent company presents a consolidated financial statement
- The company submits its annual report together with the consolidated annual report to the Danish Commerce and Companies Agency.

Furthermore, a parent company may abstain from presenting a consolidated annual report if the consolidated companies do not exceed two of the following three thresholds:

- 1) a balance sheet total of DKK 29,000,000;
- 2) a turnover of DKK 58,000,000; or
- 3) an average of 50 full time employees.

A Danish company may prepare an annual report and a consolidated annual report denominated in EUR instead of DKK.

The accounting may be made in other currencies than DKK such as EUR, USD or any other relevant currency. If the accounting is in another currency than DKK it must be possible to convert it to DKK. However, taxable income must be calculated and filed in DKK.

The annual report and the consolidated annual report for Danish companies must be audited. However, it can be decided not to audit a company's annual report, if the company does not cross two of the following three thresholds for at least two consecutive financial years:

- 1) a balance sheet total of DKK 1,500,000;
- 2) a turnover of DKK 3,000,000; or
- 3) an average 12 full time employees.

In the formation agreement, it may also be decided not to audit the company's annual report if the company fulfils the above-mentioned conditions and the non-auditing appears from the articles of association.

Useful links

Danish Commerce and Companies Agency: www.eogs.dk

The Ministry of Business and Industry: www.oem.dk