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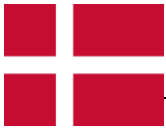


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DAHL LAW FIRM
ESTABLISHING A BUSINESS ENTITY IN DENMARK

ILN CORPORATE GROUP



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ESTABLISHING A BUSINESS ENTITY IN DENMARK



“Establishing a Business Entity in Denmark”

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1 TYPES OF BUSINESS ENTITIES

There are several forms of business entities in Denmark and there are a wide range of possibilities for establishing a business entity in Denmark. The most suitable entity depends on a variety of factors, such as nature of the business, the expected activity level, the extent of liability and tax matters. The following will review different possibilities of establishing business entities in Denmark.

1.1 Limited Companies

The limited companies are characterised by the shareholders liability is limited to the capital invested in the company. The shareholders will not be liable for the obligations of the limited company. The shares in the Public Limited Company (Aktieselskab – A/S) may be offered to the public. It is only the Public Limited Company which can be listed on a regular or alternative market. The Public Limited Company is also the most regulated entity in Denmark. The nominally share capital in the Public Limited Company must be at least 400,000 DKK and the nominally share capital in the Private Limited Company (Anpartsselskab - ApS) must be at least 40,000 DKK. The Private Limited Company is quite similar to the Public Limited Company, but the Private Limited Company is less regulated, and the company cannot be listed on a regular or alternative market. The limited companies are the most common entities for foreign investors.

1.2 Sole Proprietorship

A Sole Proprietorship (Enkeltmandsvirksomhed) can only be owned by one physical person. The entity is suitable for smaller business. The person who owns the entity is personally liable for the business, which implies, that the person is liable for all debt and obligations of the business. The person who owns the entity has the full control over all business decisions. There are no capital requirements for establishing an entity as a Sole Proprietorship and there are only a few legal requirements.

1.3 Partnerships

The partnerships can be organised with limited liability for the participants and with unlimited liability for the participants. Partnerships require more than one participant. The structure is more flexible than the limited companies. The different partnerships are tax transparent.

The Partnership (Interessentskab – I/S) is a partnership of minimum two participants. The persons' who own the partnership are personally liable for the business, which means the persons are joint and severally liable for all debt and obligations of the business. There are no capital or other requirements for the establishment of the partnership besides the partners having an agreement.

The Limited Partnership (Kommanditselskab – K/S) requires two types of participants, the “Komplementar” which is the participant who is personally liable for the debt and obligations of the partnership and the “Kommanditist” which are the participant(s) who are limited liable and only liable for the contributed share capital. There are no capital requirements for the establishment of the Limited Partnership.

The Partnership Limited by Shares (Partnerselskab – P/S) requires two participants, the “Komplementar” which is the participant

who is personally liable for the debt and obligations of the partnership. The Komplementar will often be a limited company, which makes the liability illusory. The “Kommanditistaktionær” are participant(s) who are organised as shareholders in a Public Limited Company (A/S). The Partnership Limited by Shares is governed by the Danish Company Act and the regulations which applies to the Public Limited Company also applies, to the Partnership Limited by Shares with modifications. The nominally share capital in the Partnership Limited by Shares must be at least 400,000 DKK.

1.4 Branch office

It is possible to establish a branch office, to carry out foreign entities business in Denmark. Companies which can operate through a branch office in Denmark must be a foreign:

- a) public limited company,
- b) limited partnership company,
- c) private limited company or
- d) a foreign company with a similar corporate form based in an EU/EEA country or a country, which has an international agreement with Denmark.

The branch office must be managed by a branch manager, which has the power to bind the branch office, by its signature. The foreign entity is liable for the obligations of the Danish branch office. The branch office must be registered with the Danish Business Authorities. The Danish Business Authorities requires certain information about the foreign entity. It can take up to weeks to establish a branch office in Denmark. The entity “Branch offices” will not be covered or elaborated any further.

It is also possible to establish other entities in Denmark besides the above mentioned such as Cooperative Societies (A.m.b.A), European

Company Societas Europea (SCE-selskaber), European Cooperative Society (SE-selskaber) and Commerical Foundations (Erhvervsdrivende fonde) etc. which will not be covered any further.

2 STEPS AND TIMING TO ESTABLISH

2.1 Limited Company (A/S, ApS)

Limited Companies are commonly used business entities in Denmark. The entities are governed by the Danish Company Act which among other things regulates the requirements for the establishment of the companies.

The founders of a limited company must initially sign a memorandum of association and articles of association. There is no requirement for notarial certificates. The documents must be submitted to the Danish Business Authorities with the request for registration of the company, within two (2) weeks after the formation of the company. The formation of a limited company will be effective from the day of signing the memorandum of association and the articles of association or from any later date specified in the memorandum of association.

The share capital can be paid with cash, assets or both. The limited company cannot be registered if the shareholders have not paid at least 25 % of the share capital (not less than 40,000 DKK) if the contribution is cash. This possibility is therefore mostly relevant for the Public Limited Company. The possibility of not paying the whole share capital implies restrictions.

There must be an evidence that the share capital has been paid before the time of the registration.

The company will hereafter be registered by the Danish Business Authorities and the company receives the Company Register Number (CVR-no.) often within one (1) weekday from uploading the request, if the registration is selected to manually review by the Danish Business Register which often occurs by random

sampling, the CVR-no. may take approximately one (1) week to receive. It is possible to buy an “of the shelf” company, which is already registered but taking the quick online registration into consideration, this possibility is very rarely used.

2.2 Sole Proprietorship (Enkeltmandsvirksomhed)

When establishing a Sole Proprietorship there are no formal requirements for the establishment. The entity can be notified to the Danish Business Authority in order to receive a CVR-no. but the notification itself does not have any legal effect. After notifying the Danish Business Authority the Sole Proprietorship will receive its registration number (CVR-no.). The owner of the Sole Proprietorship is the tax subject of the entity and the income, and the deductions shall be registered in the owner’s income tax return. The Sole Proprietorship must register for paying Danish VAT, if selling goods or services.

2.3 Partnerships (I/S, K/S, P/S)

The Partnership (I/S) is established by an agreement of establishing a business between the partners. There are no formal regulation concerning the agreement. The partnership is *not* regulated by the Danish Company Act, which means it is highly recommended, to have a partnership agreement which regulates the terms of the partnership. The partnership can be notified to the Danish Business Authority in order to receive a CVR-no. but the notification itself does not have any legal effect. If the Partnership is owned by two legal entities the partnership will be registered in the business register with legal effect. The Partnership will receive its registration number (CVR-no.) hereafter. The owners of the partnership are the tax subjects of the Partnership and the income, and the deductions shall be registered by the owner in the owner’s income tax return.

The Limited Partnership (Kommanditselskab – K/S) is established by a Limited Partnership Agreement. The capital contribution from the Kommanditist can be cash or assets. It is not a requirement that the company capital has been contributed before the formation of the Limited Partnership. The Komplementar must have some administrative powers such as signing for the company, veto rights and economic rights such as receiving payment or dividend due to the liability. The partnership must be notified to the Danish Business Authority but the notification itself does not have any legal effect. The partnership will receive its registration number (CVR-no.) hereafter. If the Partnership is owned by legal entities the Limited Partnership will be registered in the business register with legal effect.

The Partnership Limited by Shares (Partnerselskab – P/S) is established by establishing a new or a converted existing Public Limited Company to a Partnership Limited by Shares. The Kommanditistaktionær must at least contribute at least 400,000 DKK to the share capital in cash or assets. It is possible if the contribution is in cash, to only contribute with 25 % of the share capital, just as the Limited Companies. The Komplementar does not have to contribute with cash or assets. The founders of the Partnership Limited by Share must sign a memorandum of association that states who the Komplementar is and articles of association. The Komplementar must also have some administrative powers which could be appointing a member of the board and economic rights such as receiving payment or dividend due to the liability. The documents must be submitted to the Danish Business Authorities with the application for registration of the company within two (2) weeks after the formation of the company. The formation of the Partnership Limited by Shares will be effective from the day of signing or from any later date

specified in the memorandum of association. The Partnership Limited by Shares will hereafter be registered by the Danish Business Authorities and receives the Company Register Number (CVR-no.) often within one (1) weekday from uploading the application. If registration is selected to manually review by the Danish Business Register which often occurs by random sampling, the CVR-no. may take approximately one (1) weekday to receive.

3 GOVERNANCE, REGULATION AND ONGOING MAINTENANCE

The companies and partnerships are obligated to inform the Danish Business Authorities of the legal- and beneficial owner of the company or partnership if the legal owner owns more than 5 % of the shares or voting rights and the beneficial owner that holds more than 25 % of the indirect shares, voting rights or has other decisive influence over the entity. There are no specific restriction concerning local shareholders or directors in the companies and partnerships in Denmark.

3.1 Limited companies (A/S, ApS)

The limited companies in Denmark are governed by the Danish Company Act. The limited companies are obligated to report changes decided at the companies' general meetings, such as changes in; the management, name, accountant, nominal capital, entity address, new articles of association etc. to the Danish Business Authorities.

The Danish Company Act requires a "Two-tier system" for the Public Limited Company, which means the shareholders can choose between;

a) board of directors which has the responsibility for superior management and the board must appoint one or more executive manager(s), who is responsible for the daily management. The board of directors must consist of at least three (3) members and the chairman must not be the

executive manager and the executive managers may not constitute the majority of the board or

b) one or more executive manager(s) who is responsible for the management, the management is appointed by a supervisory committee who supervises the management. A member of the supervisory committee cannot be a member of the management.

The Private Limited Company can choose between the "two-tier system" and a "one-tier system". The one-tier system consists of one or more executive manager(s).

The Danish Company Act contains several minority rights. The most common will be reviewed as follows. The minority of at least 33,33 % of the share capital or of the voting rights can oppose changes in the articles of association, share capital increase, reduction of share capital, liquidation of the company, merger and fission ect. The minority that is at least 10 % of the representatives at the general meeting, can abstain from losing "inalienable rights". A minority of at least 5 % can require notice of an extraordinary general meeting. There are also individual rights such as having a question debated, to talk or to ask questions to the management at the general meeting.

3.2 Partnerships (I/S, K/S, P/S)

The Partnership Limited by Share (P/S)s is regulated by the Danish Company Act and the same regulations as the Public Limited Company apply.

There are no company legislation regulating the Partnership (I/S) and the Limited Partnership (K/S) besides minor articles in the Danish Act on Commercial Undertakings (in Danish: lov om visse erhvervsdrivende virksomheder) concerning the name of the partnership and powers of procuration. There are some facultative provisions set out by case law and principles of general company law regulating the

Partnership and the Limited Partnership. Concerning the Partnership, the executive power is partly at a) the Partnership meeting and b) partly by the owners. All questions on the partnership meeting must be agreed upon jointly since the owners has the right of veto. The minority protection is extensive due to the unlimited liability. The management in the Limited Partnership is mostly the Komplementar due to the unlimited liability. Decisions which do not comprise the Limited Partnership Agreement or the purpose of the Limited Partnership must also be accepted by the Kommanditister.

It is recommended to have a comprehensive partnership agreement due to the absent legislation concerning the Partnership and the Limited Partnership. On the other hand, the great freedom of the structure and regulation of the entities can be an advantage for some businesses.

3.3 Safekeeping of company documents

The management of the companies (ApS, A/S and P/S) are obligated to safekeep all company documents for five (5) years after the financial year which the documents concerns. Company documents could be a memorandum of association, articles of association, minutes of meeting of the general meeting etc.

The management is likewise obligated to safekeep the entity's accounting records for five (5) years after the financial year, which the accounting records concerns.

4 FOREIGN INVESTMENT, RESIDENCY AND MATERIAL VISA RESTRICTIONS

4.1 Significant barriers to entry for an offshore party

There are no specific restrictions or barriers concerning foreign investors establishing Danish entities which does not apply to Danish investors, beside entities engaged in taxable activities

registered outside the EU must be registered though a liable representative in Denmark, if the entity is established in third countries which Denmark has not entered an agreement with concerning mutual assistance based on EU legislation. There will apply some restrictions, permits, licenses and authorisations for some businesses.

4.1.1 VAT

A foreign entity established in Denmark is subjected to the VAT regulation in Denmark after the same regulations as other Danish entities. The entity must register for paying Danish VAT and the entity must declare VAT for each VAT period.

4.2.2 Tax

A Danish company must, by default pay tax to the Danish Tax Authority for profit generated by the company. The company tax rate in Denmark is 22 %. The taxation of the company depends on potential double taxation agreements in case 2 (two) or more countries has the right to tax the profit.

A Danish limited company owned by a foreign investor, or a foreign entity can also be obligated to pay tax to the Danish Tax Authority of profit generated by the entity in Denmark due to being permanent established in Denmark.

Entities which are employer(s) must withhold Danish Tax and labour market contribution to the Danish Tax Authorities from the salary of services carried out in Denmark – this also covers foreign entities who have employees who have been working in Denmark. The entity must as the employer, withhold Danish Tax and labour market contribution to the Danish Tax Authorities from the salary that the entity pays from the services carried out in Denmark.

4.3 Special business or investment visa issues

It is not necessary for investors to have a visa to invest in Denmark. If the owner would like to work or live in Denmark, a residence/- or work permit might be necessary. Visas are issued for the purpose of stays less than three (3) months and employment is not permitted during the stay. For residence/- or work stays which is longer than three (3) months, a residence-/ or work permit is required. Special rules apply to citizens from Nordic Countries, the EU members States, Switzerland and Liechtenstein. It is advised to seek specific guidance concerning visa, residence/- or work permit issues.

4.4 Restrictions on remitting funds out of the jurisdictions

Danish entities distributing dividends must report information about the recipients of dividends to the Danish Tax Authorities. There are no specific restrictions on remitting funds out of Denmark, but the funds may be applicable to taxation. The taxation of the distributed funds depends on whether Denmark has entered an agreement with the foreign country concerning the avoidance of double taxation. This section concerns the situations where Denmark has the right to tax the distributed funds.

The entities are obligated to withhold the tax of the distributed dividends to individual persons and to companies.

4.4.1 Partnerships distributing funds

In partnerships the profits and losses are distributed equal between the partners. The different partnerships are taxational transparent and the individuals will be subjected to paying tax if receiving funds from the partnership. Denmark has the right of taxation if the activity is qualified as a permanent establishment in Denmark (such as a branch office). If the activity is not qualified as a permanent establishment, the taxation depends

on the regulation in the country the participant is domiciled in.

4.4.2 Limited Companies distributing dividend

The taxation of the distributed dividend depends on a variety of factors and to some extent it depends on the percentage of ownership in the company distributing the dividend.

If the shareholder is an individual person, the person will be subjected to paying tax of the distributed dividend. The taxation rate is 27 % of the amount of 57,200 DKK (2022) and the taxation rate is 42 % for the dividend which exceeds 57,200 DKK.

The limited companies: Shareholders that are limited companies and owns less than 10 % of the shares in the company distributing shares, will always be subjected to taxation of the distributed shares. It is only 70 % of the distributed shares which will be taxed with 22 %, if the company is not professional investing in shares.

For shareholders that are limited companies (in accordance with Danish law) and owns more than 10 % of the shares in the company distributing shares, the company can to some extent receive the dividend without the dividend being taxed. There are following requirements:

- a) the foreign company owns more than 10 % or more of the share capital of the Danish company or more than 50 % of the voting rights,
- b) the company receiving the dividend is the beneficial owner,
- c) the company is Danish, or the company is foreign, and the EU Parent-Subsidiary Directive applies, or the subsidiary is resident in a country which has entered a double taxation agreement with Denmark.

The limited companies that do not fulfil the above-mentioned conditions must withhold 22 % to the Danish Tax Authorities when distributing dividends, unless Denmark has entered a double taxation agreement, where it is stated that the taxation of divided should be 15 % or a percentage less than 22 %. The company receiving the dividend may in that situation apply for a refund of the overpaid tax from the Danish Tax Authorities.

This guide is provided for informal purposes and must not be perceived as legal advice.

If you have any questions concerning the Establishment of a Business Entity in Denmark, please do not hesitate to contact our office.

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