

## COMPANY LAW

Danish company law is characterised by a wide freedom of organisation.

The Public Limited Company (in Danish: "*Aktieselskab*") and the Private Limited Company (in Danish: "*Anpartsselskab*") are the most commonly used forms of business organisation which makes them the primary focus of this article. Both forms offer limited liability and both forms are governed by the Danish Companies Act (in Danish: "*Selskabsloven*").

Some parts of the Danish Companies Act have not yet taken effect. The remaining provisions which have still not come into force relate to the public register of shareholders. These provisions are pending the introduction of a new IT system to be managed by the Danish Commerce and Companies Agency (hereinafter "DCCA") (in Danish: "*Erhvervs- og Selskabsstyrelsen*").

Other possible forms of business association include Partnerships, Limited Partnerships, Partnerships Limited by Shares, Co-operative Limited Companies, Commercial Foundations and The European Company. These types of companies will only be briefly described.

### **Is it necessary to register a company in Denmark?**

All limited liability companies – regardless of choice of organisation – must be registered with the DCCA.

### **Public Companies (hereinafter "A/S") (in Danish: "*Aktieselskaber*")**

The A/S is a limited liability company governed by the Danish Companies Act which conforms to EU legislation by implementing the relevant directives within this area. An A/S must have a minimum share capital of DKK 500,000 or the equivalent in EUR.

### **How is an A/S incorporated?**

Initially, the founders who wish to incorporate an A/S have to sign a memorandum of association and articles of association. The founders must apply for registration of the A/S with the DCCA within two weeks, and the registration will then apply from the date at which the memorandum of association was signed.

The share capital may be paid in the form of cash, assets or a combination of the two. If it only consists of cash, it is sufficient to pay 25% of the share capital, but at least DKK 125.000, prior to registration with the DCCA. However, if a premium is set, the premium must be paid in full. The founders are personally liable for any and all of the com-

pany's debt prior to the registration of the company. When the company is registered, the company receives a registration number (CVR no.) from the DCCA.

**Who may act as founders of an A/S?**

The founders of a Danish company may be natural persons as well as legal entities, and there are no requirements with regard to nationality or address. Thus, a natural person or legal entity from any country may act as founder of an A/S.

**How do I register an A/S with the DCCA?**

Registration of a company may be made online through the DCCA's IT system, Webreg, making it possible to incorporate companies instantly.

Certain relevant information about the registered companies (for example members of the board of directors, name of managers, name of auditors, provisions regulating the powers to sign for the company, filing time of the last annual report and the financial year) is available online to the public through the CVR system.

However, registration online is not available to a founder who is not of Danish nationality or a Danish company.

**How may the articles of association be amended?**

The articles of association may be amended at a general meeting by a "double" qualified majority representing at least two thirds of the total votes cast at the general meeting and at least two thirds of the share capital represented at the general meeting, unless stricter requirements follow from the articles of association.

**How are changes in the share capital handled?**

The share capital may be increased or decreased at a general meeting by a qualified majority representing at least two thirds of the total votes cast at the general meeting and at least two thirds of the share capital represented at the general meeting, unless stricter requirements follow from the articles of association. However, the share capital may not be decreased below the minimum share capital of DKK 500,000.

**Do existing shareholders have a pre-emption right?**

Existing shareholders have a pre-emptive right to subscribe for new shares. Shareholders may choose to waive the right.

**Do all shares carry voting rights?**

It is possible to have shares with no voting rights. This limitation must be stated in the articles of association.

**Is it possible to construct different share classes with different rights etc.?**

Different classes of shares with different rights may be issued.

Other rights may be attached to the different share classes, such as preferential rights to dividend and/or liquidation proceeds.

All differences among the shares must be stated in the articles of association.

**Is it possible to regulate the inter-shareholder relationship, e.g. with regards to share rights?**

Shareholders may enter into shareholders' agreements. Shareholders' agreements may, for example, contain provisions on voting rights or transfer restrictions. Such restrictions may be used as a defence against unsolicited offers for the share capital of the company. A shareholders' agreement does not bind the company and therefore has no effect on the decisions made by the general meeting. However, the agreement is still valid amongst the contracting parties.

**Do all shareholders have the right to attend and vote at general meetings?**

Every shareholder has the right to attend general meetings, as well as the right to vote in accordance with the voting rights attached to their share(s). The company itself is an exception to this rule, as it may not exercise voting rights carried by any shares it holds as treasury shares. Shareholders may vote by proxy, although certain limitations apply. Companies may hold general meetings partially or completely electronically depending on the articles of association. The company must hold a general meeting at least once every year in order to approve the annual report (annual general meeting). Additional extraordinary general meetings may be held when needed or required.

Any shareholder holding shares which are not paid in full and for which the company has demanded full payment of the share capital will forfeit the right to vote if the shares are not paid in full in compliance with the company's demand.

**Is the ownership of shares in an A/S public?**

Each company is required to keep a non-public register of shareholders. This will, for example, enable the company to give timely notice to the shareholders of when general meetings are to be held and to otherwise correspond with the shareholders.

Shareholders, whose shareholdings represent 5% or more of either (i) the voting rights or (ii) the nominal value of the share capital, must give notice to the company and the company must keep a register hereof.

Shareholders are also obligated to give notice to the company when they hold or no longer hold a minimum of 5%, 10%, 15%, 20%, 25%, 50%, 90% or 100% or reaching any limit of 1/3 or 2/3 of the voting rights or of the share capital. Additionally, the company must keep a register hereof.

The register must be available at the company's registered office for inspection by public authorities and members of the board of directors.

When the remaining provisions of the Danish Companies Act becomes effective, the company is required, on a continuing basis, to report to the DCCA about every shareholder, who provides information as described above. The DCCA maintains a public register of this information.

#### **When may an A/S distribute dividends?**

The decision to pay out dividends is decided at the annual general meeting in connection with the approval of the annual report. The shareholders may also decide to pay out dividends at an extraordinary general meeting.

The board of directors is entitled to decide how much dividends should be paid, if any, and the shareholders are not entitled to demand such payment. The board of directors may not distribute interim dividends that exceed what is reasonable in relation to the financial situation of the company.

The shareholders may also authorise the board of directors to decide whether or not to distribute interim dividends.

#### **Do statutory requirements for the composition of the management apply?**

The shareholders have a freedom of choice between two management systems.

The first possibility is a system with a board of directors having the overall responsibility of managing the company and an executive manager or a managing board in case of multiple managing directors – appointed and dismissed by the board of directors and responsible for the day-to-day management of the company's affairs. The board of directors must consist of at least three members of which the majority must be elected by the shareholders. The chairman of the board of directors may not be a manager and members of the management board may only represent a minority of the board of directors. No members of the management are required to be of Danish nationality.

The second possibility is to have a supervisory board to secure internal control and an executive manager or a managing board, appointed and dismissed by the supervisory board, responsible for the day-to-day management of the company's affairs. The super-

visory board must consist of at least three members of which the majority must be elected by the shareholders. No member of the supervisory board may be the executive manager or a member of the managing board. Despite the supervisory board being part of the management system, it does not manage the company's affairs, but supervises the executive manager or the managing board.

**Are employees entitled to representation on the board of directors?**

In the event that a company employs an average of at least 35 employees during the most recent three-year period, the employees are entitled to elect amongst themselves two or more members for the board of directors.

**May the management be held liable?**

The management may be held liable for negligence or violation of the duty of loyalty and duty of care. Obtaining adequate insurance against management liability should therefore always be considered.

**May an A/S own its own shares?**

The board of directors may be authorised by the general meeting to purchase treasury shares, provided that the total share capital held by third parties is not lower than DKK 500,000. No treasury shares may be acquired by subscribing for shares, and any treasury share must be paid in full prior to its acquisition.

The company may not exercise the voting rights attached to such shares.

**May the A/S grant loans to shareholders and members of management?**

As a starting point, a company is prohibited from granting loans or providing security to a shareholder or a member of the management in the company or its parent company. Furthermore, a company is prohibited from granting loans or providing security to a third party using company assets for the purpose of the third-party's acquisition of shares in the company itself or in its parent company. However, it is possible to grant such loans or provide such security to a third party if such financial aid is given in connection with the beneficiary's acquisition of shares in the company itself. It is generally possible under these provisions for the company to grant such loans and provide such security to anyone for this purpose when following a certain procedure, including obtaining the general meeting's acceptance.

It is made possible to grant such loans, not only to parent companies located in the EU/EEA, but also to parent companies located in certain other countries determined by the DCCA.

### **What happens if an A/S loses its share capital?**

If more than 50% of the share capital of a company is lost, or if the capital equals less than DKK 62,500, the board of directors is obligated to convene a general meeting no later than six months after the board of directors determined such a loss.

At the general meeting, the directors must state their view on how to improve the financial situation of the company, including the possible voluntary liquidation of the company or restoration of the company's share capital.

### **Private Companies (hereinafter "ApS") (in Danish: "Anpartsselskaber")**

The ApS is a limited liability company also governed by the Danish Companies Act. The ApS is similar to the A/S, but generally with fewer restrictions and formal requirements. The following focuses on the main differences between the A/S and the ApS.

### **How do you incorporate an ApS?**

An ApS is incorporated the same way an A/S is incorporated. However, it is sufficient to have a share capital of DKK 80,000, which must be paid in full prior to registration.

For an ApS, whose share capital is greater than the minimum of DKK 80,000, it is possible to only pay this minimum amount, provided that the amount equals at least 25% of the total share capital.

The shares in the ApS may not be listed on a stock exchange or regulated market, as opposed to the shares in an A/S.

### **What are the requirements for the management structure in an ApS?**

An ApS may have (i) a management board and a board of directors, (ii) a management board and a supervisory board or (iii) a management board only.

There is no requirement for a two-tier management structure in an ApS, as is the case with an A/S. The management may consist of a management board which must have at least one member. However, if the employees are entitled to representation on the board of directors - see above about employee representation in an A/S - the company must establish a board of directors. No members of the management are required to be of Danish nationality.

### **When may an ApS pay dividends?**

The regulations for payment of dividends are the same for an A/S and an ApS. This means that no decision on payment of dividends may be made without the approval of the management.

**Are there specific rules regarding loss of capital and shareholder loans?**

The rules are similar to the rules of an A/S. See above.

**Partnerships (hereinafter "I/S") (in Danish: "Interessentskaber")**

Partnerships are formed through a partnership agreement. A partnership agreement is not regulated by legislation. However, the Danish Act on Commercial Undertakings (in Danish: "Erhvervsvirksomhedsloven") along with the general principles of Danish company law govern certain general aspects of the partnership.

Each partner in a partnership is jointly and severally liable for the obligations of the partnership. The partnership is tax transparent. In all other matters, the partnership is regarded as a separate legal entity. If all of the partners in the partnership are limited liability entities, the partnership must be registered with the DCCA.

**Limited Partnerships (hereinafter "K/S") (in Danish: "Kommanditselskaber")**

The Danish Act on Commercial Undertakings regulates certain aspects of the Limited Partnerships, including provisions on formation and registration of such companies. However, such companies are generally not subject to as extensive legislation as the A/S and ApS. If all general partners are limited liability entities, the limited partnerships must be registered with the DCCA.

Limited Partnerships consist of one or more general partners, who may be limited liability companies, who are fully liable for the obligations of the limited partnership, and one or more limited partners, whose liability is limited to the contributed capital – or capital agreed to be contributed to the partnership.

The limited partnership is often used as an investment vehicle in private equity structures.

**Partnership Limited by Shares (hereinafter "P/S") (in Danish: "Partnerselskaber")**

A P/S is essentially a K/S where the limited partners are organised as shareholders in an A/S, or with only one limited partner being an A/S, which has contributed its entire share capital to the P/S.

The P/S is, as opposed to a K/S, comprised by the Danish Companies Act (see the above rules).

Like the K/S, a P/S is considered transparent for tax purposes, and the liability of the limited partners are limited to the capital contributed by them.

**Co-operative Limited Companies (hereinafter "A.m.b.A") (in Danish: "Andels-selskaber med begrænset Ansvar")**

The co-operative limited company's objective is to promote the common interests of its members and to distribute profits or proceeds among its members in proportion to each member's share of the turnover of the business.

A typical co-operative limited company's object is to buy goods from the members of the co-operative and sell them to third parties for a profit. Some of Denmark's largest agricultural organisations are organised as co-operatives.

**Commercial Foundations (in Danish: "Erhvervsdrivende fonde")**

The charter of a commercial foundation regulates the object of the foundation, the administration of the foundation, the election of the administration and how to distribute the income or assets of the foundation to beneficiaries.

Subsequent amendments to the charter require the authorisation of the DCCA. It is often difficult to obtain such approval.

The foundation is a self-owned entity. The Commercial Foundations Act (in Danish: "Fondsloven") governs the Commercial Foundations and contains a set of provisions similar to provisions found in the Danish Companies Act.

**The European Company, Societas Europea (hereinafter "SE")**

Companies may form a European subsidiary governed by applicable Community Law. The SE is able to operate throughout Europe. Unlike domestic public companies, the SE may, without much difficulty, move its place of incorporation freely between the EU member states, without the need to liquidate and reincorporate.

**The European Cooperative Society (hereinafter "SCE")**

Natural persons residing in different member states or legal entities established under the law of different member states may establish an SCE. Under certain circumstances, existing companies may be changed into an SCE.

**Overview**

Company formation	Name in Danish	Governed by	Liability	Minimum capital	Management system	Corresponds to
Public Limited Companies	Aktieselskaber ("A/S")	The Danish Companies Act	Shareholders are not personally liable	DKK 500,000	Two possibilities of two-tier management is possible: A board of directors and an executive board, or a su-	U.K = plc GE = AG FR = S.A. ES = S.A. NL = N.V.

Company formation	Name in Danish	Governed by	Liability	Minimum capital	Management system	Corresponds to
					pervisory board and a management board.	
Private Limited Companies	Anpartsselskaber ("ApS")	The Danish Companies Act	Shareholders are not personally liable	DKK 80,000	One or two tier management system, optional (unless there is a right to employee representation in a board of directors)	U.K = Ltd. GE = GmbH FR=S.A.R.L. ES=S.A.R.L. NL = B.V.
Partnerships	Interessentskaber ("I/S")	The Danish Act on Undertakings Carrying on Business for Profit (Consolidation Act)	All partners are personally, jointly and severally liable for the obligations of the I/S	N/A	Board of directors, executive board or similar management body	N/A
Limited Partnerships	Kommandit-selskaber ("K/S")	The Danish Act on Undertakings Carrying on Business for Profit (Consolidation Act)	The general partner(s) have full personal liability. The limited partner(s) (if any) are only liable with their original capital contribution to the K/S	N/A	Board of directors, executive board or similar management body	N/A
Partnerships Limited by Shares	Partnerselskaber ("P/S")	The Danish Companies Act	The public limited company acting as limited partner is liable with its entire share capital or a certain amount divided in shares	N/A	One or two tier management system, optional (unless there is a right to employee representation in a board of directors)	N/A
Co-operative societies	Andelsselskaber med begrænset Ansvar ("A.m.b.A")	The Danish Act on Undertakings Carrying on Business for Profit (Consolidation Act)		N/A	Board of directors, executive board or similar management body	N/A
Commercial Foundations	Erhvervsdrivende fonde	The Act on Commercial Foundations		N/A		N/A
European Company, Societas Europea	SCE-selskaber	The Danish Act on the European Cooperative Society (the Danish SCE Act)			One or two tier management system, optional (unless there is a right to employee representation in a board of directors)	EU = SCE

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