

Legal, tax and business differences in company establishment in Denmark

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COMPANY LAW

- The Danish Commerce and Companies Agency (DCCA):
 - The Danish Commerce and Companies Agency (DCCA) is an agency under the Danish Ministry of Economic and Business Affairs. The DCCA is the single entry point for registration and information for all Danish companies regardless of their legal form.
 - The incorporation of Danish companies - as well as most later changes - can be registered online (webreg-portal.dk) from day to day.
 - The DCCA has made certain relevant information (e.g. summary extracts of the full list of members of the board of directors, members of the board of management, auditors) regarding the registered companies, available on-line at the Central Business Register (CVR.dk).

COMPANY LAW

- Public Limited Companies ("Aktieselskaber", abbreviated "A/S"):
 - The A/S is a limited liability company governed by the Danish Act on Public Limited Companies.
 - The minimum share capital of a Danish A/S is DKK 500,000 (or the equivalent amount in Euro), which must be contributed in either cash or assets.
 - Since 1 March 2011 the Companies Act has allowed for partial payment of a company's share capital in connection with the establishment of a company. Consequently, shareholders may choose to limit the paid-up share capital to an amount equal to 25 per cent of the total share capital, but not less than DKK 80,000.

COMPANY LAW

- Public Limited Companies ("Aktieselskaber", abbreviated "A/S"):
 - However, the company's central governing body may call up share capital that has not been paid up. Unpaid share capital is payable on demand. Further, where a shareholder transfers a share that has not been fully paid up, he will be jointly and severally liable with the transferee and any subsequent transferees for payment of the outstanding amount on the share.

COMPANY LAW

- Public Limited Companies ("Aktieselskaber", abbreviated "A/S"):
 - Under the Companies Act, public and private limited companies may choose between the following alternative governance structures:
 - the traditional Danish governance structure, where an executive board performs the day-to-day management of the company and a board of directors (of at least three members for public limited companies) exercises overall and strategic management functions as well as certain supervisory functions (the so-called "one-and-a-half-tier" governance structure); or
 - a two-tier (German-inspired) governance structure, where all management functions lie with an executive board, and a supervisory board (of at least three members for public limited companies) performs only supervisory functions. Is rarely used.

COMPANY LAW

- Private Limited Companies “Anpartsselskaber”, abbreviated as “ApS”:
 - The ApS is a limited liability company governed by the Danish Act on Private Limited Companies. The provisions governing the ApS and the A/S are to a wide extent similar. But compared to the A/S the shareholders of an ApS are thus less restricted when deciding how to organise the affairs of the company.
 - An ApS must have a paid up share capital of at least DKK 80,000 or the equivalent in EUR.
 - From 1st of January 2014: DKK 50.000.

COMPANY LAW

- Private Limited Companies “Iværksætterselskaber”, abbreviated as “IVS”:
 - Possible from 1st of January 2014.
 - The IVS is a limited liability company governed by the Danish Act on Private Limited Companies. The provisions governing the IVS is almost the same of an ApS.
 - An IVS must have a paid up share capital of at least DKK 1 (or the equivalent in EUR).
 - Minimum 25% of the IVS' yearly profit is a statutory reserve.
 - Dividend payments is not possible before the share capital and the statutory reserves is at least DKK 50.000.
 - When the share capital and the statutory reserves is DKK 50.000 the IVS can be registered as an ApS.

COMPANY LAW

- Partnerships (“Interessentskaber”, abbreviated as “I/S”):
 - Partnerships are established through a partnership agreement. The content of such an agreement is not regulated by legislation, but the Danish Act on Commercial Undertakings governs certain general aspect of the partnerships.
 - The partners in a partnership are jointly and severally liable for the obligations of the partnership.
 - Except for in relation to tax matters, the partnership is regarded a separate legal entity. The partnership must be registered with the DCCA, if all of the partners are subject to limited liability.

COMPANY LAW

- Limited Partnerships (“Kommanditselskaber”, abbreviated as “K/S”):
 - Limited partnerships must have one or more “general partners”, who are fully personally liable for the obligations of the partnership, as well as some “limited partners”, whose liability is maximised to the capital they have contributed to the partnership when entering. The general partners can be limited liability companies.
 - The Danish Act on Certain Commercial Undertakings regulates the formation of the company, the content of the articles of association, the power to bind the company and the registration of the company. The articles of association govern the limited partnership and must be registered with the DCCA.

COMPANY LAW

- Partnership Limited by Shares (“Partnerselskaber”, abbreviated as “P/S”):
 - What characterises a partnership limited by shares is that one or more of the limited partners in the partnership are public limited companies, whose liability is limited to the entire share capital or specific amounts divided on shares. Thus, this kind of partnership is a variety of the Limited Partnership.
 - The Companies Act governs certain aspects of the limited partnership company relating to formation, power to sign for the company, the contents of the articles of association, and registration.
 - A P/S combines the best from the A/S (limited liability) and the K/S (transparent – taxation on the individual partners in proportion to their shares in the partnership)
 - P/S’ are getting increasingly popular in Denmark – especially among law firms.

COMMERCIAL LAW

- Little bureaucracy and no corruption (!?)
- Focus on easing the administrative burdens imposed on businesses.
- Freedom of contract:
 - Few mandatory rules applying to business-to-business relations in relation to contracts.
- The Sale of Goods Act:
 - Applies to all contracts other than contracts for the sale of immovable property where the two parties have their place of business in Denmark.
 - Consumer sales are also covered by the Act (mandatory rules). Consumer sales are also covered by the Danish Consumer Contracts Act. Mandatory minimum rights.

COMMERCIAL LAW

- The UN Convention on Contracts for the International Sale of Goods (CISG)
 - Denmark has signed the CISG:
 - Applies to contracts on the sale of goods between parties whose place of business are in different states.
- Standard terms and conditions:
 - Both wholesale and retail businesses often uses standard terms and conditions.

COMMERCIAL LAW

- Marketing practices:
 - The Marketing Practices Act prohibits measures which are not in accordance with “good marketing practices”.
 - The Act also prohibits unfair trading practices as e.c. free-riding, product imitations, misleading price information and misleading information such as to country of origin or commercial origin.
 - An independent Consumer “Ombudsmand” is monitoring compliance with the Marketing Practices Act.

EMPLOYMENT AND LABOUR LAW

- Danish employment and labour law is based on three main foundations:
 - 1. Collective agreements between the employers' organizations and the employees unions.
 - 2. Individual agreements between employers and employees and
 - 3. Danish legislation.
- Collective agreements:
 - The terms of employment of a substantial part of Danish employees are based on collective agreements entered into between the two sides of industry – the unions of workers and the organizations of employers.
 - Compared to other countries, the percentage of both employers and employees who are members of an association or union is very high.

EMPLOYMENT AND LABOUR LAW

- Individual agreements
 - The employer and the employee are entitled to agree on the terms of employment, e.g. salary, termination notices etc. Obviously, mandatory Danish law in general must be respected. There is no statutory minimum wage level, but collective agreements will invariably include a minimum wage level for the employees covered by that agreement.
- Danish legislation
 - Salaried employees are subject to the Danish Salaried Employees Act and in many instances also a collective agreement, whereas manual workers (blue-collar workers) are usually covered by collective agreements, most of them negotiated with the relevant trade union(s).

EMPLOYMENT AND LABOUR LAW

- Danish legislation
 - The Salaried Employees Act regulates most of the matters relevant to the relationship between employer and employee. It is important to note that the Act cannot be derogated from to the detriment of the employee. The Act therefore serves as a “minimum standard” for this category of employees.

EMPLOYMENT AND LABOUR LAW

- Secondment of employees
 - When a foreign company stations employees in Denmark, certain mandatory provisions in Danish law will apply on the secondment. These provisions are stated in the Danish Act of Secondment, and will apply on all employees on secondment in Denmark.
 - The mandatory provisions include e.g.:
 - Maximal working hours (48 hours per week) and minimum resting time
 - Right to minimum 5 weeks of holiday
 - Equal pay between men and women
 - Work environment including safety, health and hygiene.

EMPLOYMENT AND LABOUR LAW

- Secondment of employees
- According to the Danish Act of Secondment, a foreign company is obliged to report certain information to the Danish Commerce and Company's Agency when the company stations an employee in Denmark in connection with the Company's performance of a service:
 - Name of the foreign company and its business address.
 - The start date and end date of the service in question.
 - The place for the performance of the service.
 - The stationing company's contact person in Denmark.
 - The code for the company's type of business.
 - The identity of the stationed employee and the duration of the secondment.

CONSTRUCTION LAW

- Danish construction contracts are characterised by being based on agreed documents rather than legislation.
- Most agreements between employers and contractors regarding the performance of construction work are based on a set of general conditions for the provision of works and supplies within building and engineering (AB 92) or turnkey contracts (ABT 93). These provisions are considered very suitable for the purpose of entering into construction contracts, regardless of the concerned party's position as either contractor or developer.

CONSTRUCTION LAW

- Agreements between the employer, alternatively the contractor, and architects, engineers and professional advisors are normally based on the General Conditions for Consulting Services (ABR89).
- As a main rule, all disputes arising out of or in connection with the contracts are settled by arbitration before an institutional tribunal specialised in the settlement of disputes relating to works and supplies within building and engineering.

REAL ESTATE LAW

- Real property (land and buildings) is typically conveyed by a sale and purchase agreement, followed by a deed of conveyance, which is registered in the Danish land register. The deed of conveyance is a digital document and all registrations are only made digitally.
- All Danish properties are registered in the land register, kept by the Land Registration Court in Hobro. The register is now fully computerised.
- Consequently, it is easy to obtain information on the rights and obligations, as well as the liabilities, attaching to any particular property, and copies of relevant documents (mortgages, easements, etc.) are available at a low cost within a short time.
- The purchase of real property is typically financed by a mortgage credit institution; alternatively, the property can be purchased against cash payment or financed by a loan from a bank.

REAL ESTATE LAW

- Registration of deeds of conveyance is subject to a registration fee of DKK 1,400 with the addition of 0.6 % of the purchase sum or the official property valuation, whichever is higher. Registration of a mortgage deed amounts to 1.5% of the principal of the secured amount plus the fixed fee of DKK 1,400.
- Non-Danish citizens who have not previously been domiciled in Denmark for an aggregate period of at least five years can only purchase real property in Denmark with the permission of the Danish Ministry of Justice. The same goes for companies, associations, etc. which are not domiciled in Denmark.
- EU citizens, citizens of EEA countries, and EU companies, however, may purchase real property in Denmark without permission from the Ministry when certain requirements are met, but only if the property is intended to serve as a necessary permanent residence for the purchaser, or when the purchase of it is a prerequisite for operating the purchaser's own business or for supplying services. Holiday residences may only be purchased by non-Danish residents with the permission of the Ministry, which is rarely granted.

TAX LAW

- The Danish tax system comprises of direct and indirect taxes. Direct taxes include income tax and property tax, while the principal indirect taxes are value added tax (VAT), customs, green taxes and excise duties.
- The Danish income tax for companies is a flat rate corporation tax of 25 percent. The rate will be lowered gradually so the rate will be 22 percent in 2016.
- The income taxes for individuals are state tax, municipal tax, health tax and church tax. The state tax is a progressive tax divided into bottom-bracket and top-bracket tax rates. The marginal tax rate is 56.5 percent including social contributions.

TAX LAW

- The Danish system comprises a set of rules that give taxpayers an opportunity to obtain a “binding ruling“ from the Tax Administration.
 - The request must be made in writing and contain all of the information available that is of importance to the reply. A fee of DKK 300 (2010) applies.
 - A binding ruling is binding on the tax authorities for a period of five years.

TAX LAW

- International hiring-out of labour
 - International hiring-out of labour is the term used if the employees of a foreign enterprise are made available to a Danish enterprise, and the employees perform work which forms an “integral part” of the Danish enterprise.
 - It is insignificant whether the contract is referred to as a hiring-out of labour contract or a project contract. If the work forms an integral part of the activities of the Danish enterprise, it is considered international hiring-out of labour.
 - The employee is liable to pay tax according to the rules on international hiring-out of labour. This means that the employee is liable to pay 8% labour market contributions and 30% hiring-out of labour tax.
 - Danish enterprises hiring labour from abroad have to ensure and is liable that the tax is paid.

TAX LAW

- International hiring-out of labour
 - Examples of international hiring-out of labour:
 - A Danish nursery garden hires labour from a foreign enterprise to perform nursery work. Nursery work is considered an integral part of the nursery garden business.
 - A Danish shipyard buys ship paint from a foreign enterprise whose own foreign employees perform the painting in the dock. Painting ships is an integral part of the shipyard's business.
 - A Danish bricklaying company A receives a contract to build a house. A hires a foreign bricklayer/subcontractor B to perform all the work. B is not paid until the owner has approved the work. A's employees have the capabilities and could have built the house themselves if they had the time. Therefore it is an integral part of the bricklaying company's business.

Our Sister Office in Denmark

- Hulgaard Advokater P/S
- Offices in Kolding and Aarhus
- www.hulgaardadvokater.dk
- Many years' experience in Polish matters and cooperation with Poland

Thank you for your attention

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