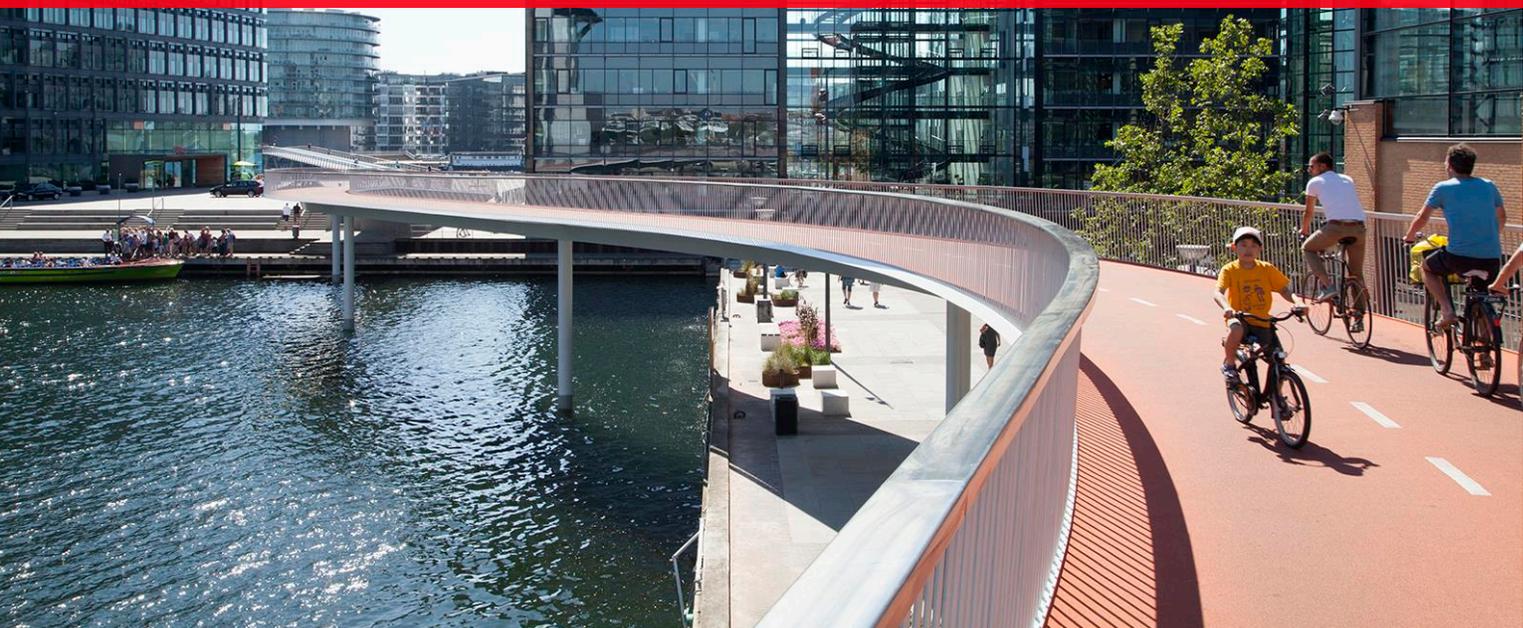




Guide to Establishing a Business in Denmark



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Introduction: Establishing a Business in Denmark

Denmark offers foreign investors a wide range of possibilities for establishing a business, enabling you to tailor your investment plans to suit your business needs. The information relevant to establishing a business is organised in two sections: (i) business activities and the corresponding corporate forms often used; (ii) special conditions relating to the European corporate forms of a SE company and European Economic Interest Grouping, including joint ventures.

Key Facts About Setting up a Business in Denmark

- Quick, informal and cost-efficient establishment procedures
- Online incorporation of new companies ready to do business within a few hours
- No resident requirements for management, including members of the Executive Board (CEO), Board of Directors or Supervisory Board
- Shareholder as well as board meetings can be held electronically
- No notarial deeds
- Flexible language requirements – registration of corporate documents of limited liability companies (A/S and ApS) in Swedish or Norwegian language is possible as an alternative to Danish, and some documents may be registered in English
- Dividends can be distributed on an interim basis
- Danish company law in conformity with current EU legislation
- Tax efficient to establish Nordic headquarter in Denmark compared with other Nordic countries

Facts on corporate forms in Denmark

Denmark is the third easiest place in the world to do business according to the World Bank (2017). Set up a business in one day and have residence and work permits issued in only five weeks. Foreign companies will benefit from an easy plug'n'play registration when setting up a business in Denmark.

There are several ways for a foreign entity to set up its legal structure in Denmark. Thus should a foreign entity contemplating to do business in Denmark consider which type of Danish legal entity is the most suitable for the contemplated business. This depends on a variety of factors, such as the nature of the business and the expected activity level.

The purpose of this fact sheet is to outline the legal entities, which could be relevant for foreign investors and the appropriate arguments for choosing between the available company forms.

The various Legal entities

Danish company law provides a wide range of legal entities which can do business in Denmark, such as private and public limited companies (A/S and ApS), branch offices, partnerships (I/S), limited partnerships (K/S), representative offices, entrepreneur companies (IVS) and the European companies (SE and SCE). Public and private limited companies are the most commonly selected corporate forms. The Danish Companies Act (Selskabsloven), which is based on and implements EU regulation regarding companies, regulates public and private limited companies.

Furthermore, certain foreign entities may choose to operate in Denmark via a branch.

The entities, which foreign investors choose mostly, are: (i) a private limited company, (ii) a public limited company, (iii) a branch office, and (iv) a representative office. The most important characteristics of these entities can you find below and illustrated in the table enclosed as Tabel 1.

Public and private limited companies

Foreign companies and investors will often be familiar with most of the corporate regulation applicable to public and private limited companies. Thus, foreigners typically choose to do business in Denmark by forming a private or public limited company. A foreign company or investor doing business in Denmark via a private or public limited company will not be liable for the obligations of the private or public limited company.

Public and private limited companies can be used to carry out all kinds of business activities in Denmark, despite a few activities only can be performed by a public limited company (as an example does banking activities requires a specific permit). Only public limited companies can be listed on a regulated or alternative market.

A private limited company is less regulated than public limited companies and a private limited company is thus a good choice if only a limited business is considered or if only a special purpose vehicle is needed.

In case, at a later stage, it seems more appropriate to have a public limited company instead of a private limited company, it is easy to convert a private limited company into a public limited company, given fulfilled capital requirements.

The Danish Business Authority (Erhvervsstyrelsen) needs to register all public or private limited companies, and a memorandum of association (including the company's articles of association) is required to be filed. Registration is quickly done and virtually everything can be done electronically without attendance. There is no requirement for original signatures on the memorandum of association (or other corporate documents).

A public limited company has a mandatory two-tier system, due to its management by a Board of Directors (with at least three members) and an Executive Board (which may consist of one or more members). A private limited company can choose between a one-tier system and a two-tier system, and if a one-tier system is chosen, the company is managed solely by an Executive Board.

Due to no requirements to the residency or nationality of the members of the Board of Directors or the Executive Board, all members can be foreigners.

Public and private limited companies can distribute its funds to shareholders in several ways:

as dividends based on the latest approved financial statement; as extraordinary dividends; in connection with capital reductions or in connection with a dissolution of the company.

Hence, a company may distribute funds to its shareholders as extraordinary dividends on an ongoing basis during the year.

A private limited company can be established as an entrepreneur company. An entrepreneur company is a private limited company, which does not have a minimum registered share capital of DKK 50,000 (the registered share capital may be DKK 1) and which complies with certain conditions set out in part 20a of the Danish Companies Act. Entrepreneur companies are mostly established by local entrepreneurs and foreign companies and investors rarely use the legal entity.

A foreign entity will often consider between operating its business via a Danish limited company or a branch. Hence, the following sections presents some advantages and disadvantages regarding "Branch offices".

Branch offices

The use of branches is to carry out a foreign entity's business activities in Denmark, given such activities are within the scope of the foreign entity's object. A limited company is more commonly used, but branches are not uncommon.

Companies allowed to operate via a branch in Denmark must fall into one of the following categories:

Foreign public limited companies, limited partnership companies, private limited companies and companies with a similar corporate form that with a based in an EU/EEA country, the United States of America, Switzerland, Georgia or South Korea.

In addition, certain other companies may operate in Denmark via a branch if the Danish Business Authority believes that a Danish limited company enjoys a similar right in the relevant country, or if the Danish Business Authority otherwise grants a permission.

A branch must be registered with the Danish Business Authority, and certain information about the foreign entity is required to be filed with the Danish Business Authority.

A branch must be managed by one or more branch managers, and a branch (and thereby the foreign entity) is bound by the signature of a sole branch manager or the joint signature of two or more branch managers.

When deciding to establish a Danish limited company or branch, it should be considered that there are some advantages of establishing a Danish limited company instead of a branch:

- A Danish company can in principle be established in one day whereas it generally takes weeks to establish a branch
- A Danish company can be registered with the Danish Business Authority based on a memorandum of association (including the articles of association) and by providing limited additional information regarding address, directors and managers. A branch is a part of the foreign entity, and certain information about the foreign entity, such as the foreign entity's name, object, financial year and share capital as well as name and address for the persons authorized to bind the foreign entity, is required to be filed with the Danish Business Authority. Furthermore,

certain documents, such as an official document no more than 3 months old stating that the foreign entity is lawfully resident in its home country, must be filed

- If the registered information about the foreign entity is subsequently changed, such change must be registered with the Danish Business Authority
- A Danish company (but not a Danish branch) can establish branches in other EU/EEA countries, including the Nordic countries. A Danish company can therefore be used as a Nordic head office to avoid several branches all being a part of the foreign entity
- A branch must be managed by one or more branch managers and the branch (and thereby the foreign entity) is bound by the signature of a sole branch manager (or the joint signature of two or more branch managers). The management of a Danish company is only entitled to bind the Danish company (and not the foreign entity)
- The foreign entity is liable for its Danish branch's obligations but not for its Danish company's obligations

Representative offices

The Danish Companies Act provides very limited guidance on the type of activities that can be conducted via a representative office (i.e. without establishing a Danish company or branch).

However, the Danish Business Authority has issued its own guidelines stating that the following activities may be conducted without establishing a branch or a Danish company:

- Receiving orders where invoicing, etc., is managed from a foreign country;
- Performance of a construction contract or other standalone business activities for a limited period;
- Acquisition of Danish products through a resident agent; and
- Work of a purely administrative nature, such as market processing

Hence, if the contemplated activities in Denmark are of a certain limited nature, a foreign company is entitled to conduct these activities without establishing a branch or a subsidiary.

The foreign company is responsible for assessing whether its activities in Denmark can be conducted without registering a branch (or a Danish company).

A representative office is not required to be registered with the Danish Business Authority for corporate purposes. Furthermore, a representative office is generally not subject to Danish corporate taxation or required to register for corporate tax purposes. Registration for other purposes may, however, be required.

A representative office is rarely used due to the limited nature of the activities it can carry out.

A comparison of above-mentioned legal entities is illustrated at the following page:

Table 1

	Public limited company (A/S)	Private limited company (ApS)	Branch	Representative office
Main purpose	Used for carrying out all sorts of business activities	Used for carrying out all sorts of business activities (except banking, etc.), as a holding company or as a special purpose vehicle	Used for carrying out business activities in Denmark on behalf of a foreign entity	Used for activities of only limited preparatory and auxiliary nature
Incorporation	Registration with the Danish Business Authority. A small fee will be charged for registration	Registration with the Danish Business Authority. A small fee will be charged for registration	Registration with the Danish Business Authority. A small fee will be charged for registration	Registration is not required for corporate validity. Registration for other purposes may be required
Capital requirement	Minimum DKK 500,000	Minimum DKK 50,000	None	None
Liability	Limited	Limited	Unlimited	Unlimited
Management	Mandatory two-tier system. Managed by a Board of Directors (not less than three members) and an Executive Board	Optional one- or two-tier system. Managed by a Board of Directors and an Executive Board or managed by an Executive Board	Managed by one or more branch managers	None
Accounting	Annual financial statements. Audit is only mandatory if certain financial thresholds are exceeded, but it is generally recommended to have an auditor assist in the preparation of the financial statements and corporate tax return)	Annual financial statements. Audit is only mandatory if certain financial thresholds are exceeded, but it is generally recommended to have an auditor assist in the preparation of the financial statements and corporate tax return)	A copy of the financial statements of the head office must be filed with the Danish Business Authority	None
Taxation	Subject to corporate income tax rate of 22 %. Generally, dividend payments to a parent company are not subject to any withholding tax	Subject to corporate income tax rate of 22 %. Generally, dividend payments to a parent company are not subject to any withholding tax	Subject to income tax rate of 22 % on income from permanent establishment in Denmark	Generally not subject to Danish corporate taxation

Source: Kammeradvokaten / Advokatfirmaet Poul Schmith

Tax considerations

Reference is made to our fact sheet “Facts on Taxation in Denmark” that is available here <http://www.investindk.com/~media/Files/Sheets/Framework%20conditions/TaxationDenmark2017.ashx> or at our webpage www.investindk.com.

Three Different Ways of Establishing a Danish Company

Online registration

A new company can be incorporated and ready to operate within a few hours by using the on-line electronic registration system provided by the Danish Business Authority. Only certain service providers such as law firms or others holding a digital signature/NemID may undertake on-line registration.

Paper registration

A traditional paper registration of the founding of a limited liability company may still be used. The registration by the Danish Business Authority will usually take up to five weeks. Until the company is registered, the founders may incur liability for activities carried out by the company.

Acquiring a shelf company

As an alternative to the founding of a limited liability company, an “off the shelf” company can be acquired. This is an already founded and registered company without any previous operations or activities. An “off the shelf” company can be acquired from day to day. However, as online registration is fast and cost efficient this procedure is the most commonly utilized.

Accounting

As a main rule, it is mandatory for the company to select an auditor. The company must prepare annual reports, which must be audited by the company’s auditor.

However the company may decide not to have the annual report audited and thus the company does not have to elect an auditor provided that, the company does not exceed two of the three following limits:

- A balance sheet amount of DKK 4,000,000
- A net turnover of DKK 8,000,000 and
- An average of 12 full time employees of 12 persons during the accounting year.

This exception applies if not otherwise decided by the company at the annual general meeting, provided that the company consecutively for a period of 2 years does not exceed two of the above mentioned requirements.

Lines of Business – Examples

Manufacturing

Manufacturing in Denmark may be carried out in various ways. A foreign company may establish separate production facilities, either by building, acquiring or leasing such facilities, or having products manufactured by establishing contacts to Danish manufacturers. Establishing production facilities in Denmark is most often done by establishing a Danish company (A/S or ApS) and letting the company acquire or lease such facilities.

Services

Services may be performed in Denmark through e.g. a distribution centre, a regional headquarter, or a shared services centre. Services are most often carried out through a Danish company (A/S or ApS), but may also be performed via a branch or a representative office.

Alternative Business Forms

SE company – The European Company

Denmark has fully implemented the EU rules regarding the European public limited company (SE company) for corporate purposes. The legal framework of the SE company is to a large degree subject to national company law. It is possible to change the nationality and place of residence of the company without liquidation and re-founding. The SE company must be registered at the Danish Business Authority if the official address of the company is in Denmark. The minimum capital requirement is EUR 120,000. The liability of the shareholders is limited to their shareholdings. An SE company must have annual financial statements prepared by the company and audited by a State Authorized Public Accountant or a Registered Accountant (may be optional on the conditions stated above in the chapter

on accounting). An SE company registered in Denmark is subject to the same corporate tax rate as the A/S and ApS.

European Economic Interest Groupings – EEIG

EEIG is a cross-border general partnership to be formed by European business persons and/or business entities with the purpose of performing certain business tasks in the EU, save for the sheer accumulation of capital. The entity must be registered at the Danish Business Authority if the head office of the EEIG is in Denmark. No capital is required. One manager must be appointed and there is no requirement to prepare separate financial accounts. Each member of the EEIG is subject to individual taxation. For tax purposes an EEIG is treated as a transparent partnership.

Start-Up Companies – IVS

In 2014, the new IVS (“Iværksætterselskab”; start-up company) has been introduced. The IVS is a limited liability company generally having the same capacities as the ApS. However, the minimum share capital amounts to DKK 1 (EUR 0.13). The IVS is mainly relevant for Danish start-up businesses with limited access to financial resources. Operating capital must be provided to the IVS by way of loans if not by way of share capital. Foreign enterprises operating in Denmark often need operating capital exceeding the minimum share capital of an ApS or A/S. Accordingly, it will often be more relevant for foreign enterprises to establish a Danish company by way of an ApS or A/S rather than the IVS¹.

Joint Venture

A joint venture is a special business vehicle often used by companies of different nationalities to carry out specified business activities. If the corporate form of the joint venture is a legal entity which requires registration, such registration must be completed. A joint venture is often established in the corporate form of an A/S, an ApS or a general partnership. There is no separate legislation on joint ventures.

Personal Business Entities

Sole proprietorships are often used for small businesses run by a single entrepreneur as there are no capital requirements. General partnerships are often used in relation to joint ventures. Limited

¹ Please note that there are requirements as to accumulation of 25 % of the annual surplus until DKK 50,000 including the original share capital is reached.

partnerships are often used for businesses carrying out investments, e.g. investing in real estate, etc. If the business entity is involved in trading, industry or craftsmanship, all partners (or the sole proprietor) must register with the local business register. The sole proprietor has unlimited liability for the debts and obligations of the business. As for general partnerships the liability for the debts and obligations of the business is joint and unlimited for the partners. As for limited partnerships the liability for the debts and obligations of the business is unlimited for the general partner and limited to the contributinal stake for the limited partners. Requirements to prepare and file financial statements, may apply and adequate books and records must be kept in conformity with Danish bookkeeping law. The participating parties are taxed individually.

About Invest in Denmark

Invest in Denmark provides your company with a tailor-made solution for locating your business in Denmark. We measure our success by how well we contribute to yours. So, if your company is considering setting up a business or expanding your activities in Denmark, make us your first stop.

Our specialized staff across the globe has the corporate background, industry insight and well-connected networks to advise you on every aspect of locating in Denmark. Not just when you set up, but also as your business grows. Our tailor-made solutions include connecting companies with key local contacts, arranging fact-finding tours and providing comprehensive benchmark analyses. We make sense of local legislation and advantages of locating in Denmark – all free of charge and in full confidentiality.

We Look Forward to Hearing from You

Headquarters

Invest in Denmark, Ministry of Foreign Affairs, DK-1448 Copenhagen. + 45 33 92 11 16, indk@um.dk

Asia-Pacific

Shanghai +86 21 8025 0688
Beijing +86 10 8532 9900
Tokyo +81 3 3496 3001
Bangalore +91 80 4113 6068
Seoul +82 0 2 795 4187
Taipei +886 2 2718 2101

Europe

Paris +33 1 4431 2121
Munich +49 89 5458 540
London +44 207 333 0200
Stockholm +46 (0)8 406 7500
Oslo +47 22 54 08 00
Barcelona +34 93 487 54 86

North America

New York +1 212 223 4545
Silicon Valley +1 650 543 3180
Toronto +1 416 962 5661



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In cooperation with:

Kammeradvokaten

Advokatfirmaet Poul Schmith