

# **Doing Business Guide**

## **Denmark**

“LUND-LARSEN, Statsautoriserede revisorer”, Danish member of Integra International has prepared this Doing Business Guide.

All information in this booklet is as of June 2000. Although the information has been compiled with utmost care, no responsibility is taken for the content of this booklet and any liability is declined.

Furthermore, we must inform the reader that this booklet only serves as an introduction to the different subjects. It is not our intention to cover every subject exhaustively. However, should any further information be needed or should any question occur, please contact our office – telephone no +45 33 43 64 00, telefax no +45 33 43 64 01 or e-mail [ll@lund-larsen.dk](mailto:ll@lund-larsen.dk).

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## 1. Facts & Figures about Denmark

Denmark is located in Scandinavia in the northern part of Europe. It consists of the peninsula Jutland, which projects from the northern part of Germany, and several islands of which the largest are Zeeland and Funen.

The total area is 43,000 square kilometres (16,600 square miles); furthermore the kingdom of Denmark also includes Greenland and the Faroe Islands. - However this guide applies to neither Greenland nor the Faroe Islands.

The population of Denmark is approximately 5,3 million. The most densely populated area is Zeeland, where the capital Copenhagen is situated.

The infrastructure is highly developed with an extensive network of road and rail transport. The peninsula Jutland is connected with Funen and Zeeland by bridges, and in June 2000 the bridge to Sweden was opened. Furthermore, telephone, fax and mail services are all very efficient throughout the country.

The language spoken in Denmark is Danish, which is closely related to the other Scandinavian languages. However, most of the Danish population speak English and to some extent German and French.

The educational system in Denmark is free of charge, and a minimum of nine years of education is compulsory. Approximately 15 % of the Danish population have either a university degree or an education similar to a university degree.

The Danish living standard is among the highest in the world and social welfare is given high priority. Thus medical care etc. is generally free of charge. Furthermore, unemployment benefits and other social benefits are at a rather high level.

Denmark is a constitutional monarchy and it is known for its political and social stability. The Danish parliament, "Folketinget", consists of 179 members (of which 2 members are elected in Greenland and 2 in the Faroe Islands). In accordance with the Constitution, elections are proportional in order to achieve a representative section of the Danish population.

In 1972 Denmark joined the EU (the European Community) which is the country's main trading partner.

Since Denmark has very few natural sources (apart from its fertile soil and its share of the North Sea petrol and gas resources) the high standard of living is due to the population's adaptability and creativity. Thus the Danish economy, once dependant on agriculture, is now based on industry and different service trades. Today agriculture only provides 25% of the Danish export, whereas industry provides 75%. During the last decades private enterprise has been strongly encouraged by the Government. The Government is in the

process of privatising some of its activities, and furthermore, various incentives – regional incentives, incentives for research & development, incentives for small & medium sized companies, export incentives, incentives for cleaner technology etc. – have been offered during the last few years.

## 2. Company Law

Choice of business entity:

Foreign investors are free to choose their preferred form of entity. However, the public limited company (A/S) and the private limited company (ApS) are the forms most commonly used by foreign investors - although some investors choose to establish a branch rather than a subsidiary because of the absence of withholding taxes of branch profit remittances.

Generally it is easier to set up a company than a branch, as non-EU residents need permission to set up branch operations.

A foreign company may establish an unregistered representative office in Denmark without any formalities.

When setting up a business in Denmark it is important to realise that according to Danish legislation there is a clear distinction between partnerships and corporations:

### 2.1. Partnerships:

A partnership is an association of two or more individuals or corporate bodies (or both).

Foreign investors (non-EU residents) must apply to the Minister of Business and Industry for permission to participate in a partnership.

The Danish legislation distinguishes between three different partnerships: General partnership, limited partnership and silent partnership. All of them are dealt with subsequently.

#### 2.1.1. General partnership: (Interessentskab – I/S)

General partnership is generally used in Denmark though rarely by foreign investors. The expenses of founding a partnership are minimal as no capital investment tax is imposed. Only legal and audit fees may be applicable.

The name must indicate that it is a partnership (I/S).

The partners have joint and separate liability for all obligations of the partnership.

Partnerships between companies with limited liability must be registered with the Danish Commerce and Companies Agency and according to the Danish Company Accounts Act of 1981 they must present their official annual accounts to the Agency.

Apart from the above-mentioned regulations no specific legislation governs the operation of a partnership. Therefore a partnership agreement is often drawn up in order to regulate the relationship between the partners.

In the absence of a comprehensive partnership agreement, any disputes are usually settled by the common practice of the particular trade or profession. Furthermore, the death of a partner does not automatically dissolve the partnership.

The general partnership's annual accounts are submitted to the tax authorities, but they do not have to be audited or made public. The annual accounts and accounting records must comply only with the minor requirements of the Bookkeeping Act of June 1999.

### **2.1.2. Limited partnerships: (Kommanditselskab – K/S)**

The limited partnership consists of one (or more) general or unlimited partners (komplementarer) and one (or more) limited partners (kommanditister). The partners may be individuals or corporate entities, foreign or Danish.

The name of the partnership must include the letters K/S to indicate it is a limited partnership and according to the Act on Trade & Industry the names of the general partners as well as the amount for which the limited partners are liable must normally be recorded.

If all the participants in the partnership constitute companies with limited liability, the audit and publication of the company's annual accounts are required in accordance with the Danish Company Accounts Act of 1981.

### **2.1.3. Silent partnership:**

A silent partnership is sometimes used when one of the participants, without taking any part in the management, is making a loan to the other participants in return for a share of the profit (or loss).

## **2.2. Corporations:**

### **2.2.1 Public limited companies: (Aktieselskaber – A/S)**

A Danish public limited company is defined and regulated by the Danish Companies Act of 1973 with subsequent amendments. The latest act is dated 23 December 1998.

A PLC (A/S) can be formed by one or more founders, but at least one of the founders must be either a resident in Denmark, a national resident in another EU-member state or a resident in one of the countries included in the EU agreement with EFTA establishing the European Economic Area (EEA).

When forming a PLC, a memorandum of association which includes the draft articles of association must be drawn up and signed by the founders. The articles must state the terms on which the shares are offered for subscription, the time and procedure for the first general meeting, the company's name and address, the number of directors and auditors and their term of office, the company's financial year-end, etc.

These articles can be amended subsequently; however, the shareholders must always authorise such amendments at a general meeting.

At the first general meeting the shareholders approve the company's formation and articles of association and a board of directors and one or more auditors are elected. After the company's subscribed capital has been fully paid in the board of directors may apply to have the company registered by the Danish Commerce and Companies Agency.

The Agency does not charge any fee for the registration of a new company or any subsequent changes, but legal fees in connection with the formation of a company may vary from about DKK 5,000 to DKK 25,000.

The whole procedure may take some time, and if a proposed company commences business before it is registered, the founders and directors are jointly and personally liable for any contracts entered into. Some investors therefore prefer to buy a ready made company and simply alter the constitution and name according to the company's objectives.

The minimum capital of a PLC in Denmark is DKK 500,000 and the capital must be fully paid in at the time of the company's incorporation. Subscriptions for shares may be in cash or in other assets. An obligation to perform work or render any service is not a valid form of subscription, nor is a founder's promise to pay.

All of a PLC's shares may be held by one shareholder, but the PLC may only hold up to 10% of its own shares. Bearer shares may be issued provided it is stated in the articles; conversely the articles may state that shares are not negotiable. Furthermore, according to the articles some shares may be permitted to carry priority rights to dividends.

Dividends can only be paid out of retained profits and the shareholders must approve proposed dividends at an ordinary general meeting. Thus interim dividends are not permitted.

If authorised at a general meeting a company may increase or decrease its share capital.

Any PLC must have a board of directors consisting of at least three members. The board of directors is responsible for the managers, the general policy and for making decisions on unusual transactions. Furthermore, it is also the responsibility of the board of directors that the capital reserves are adequate to the company's activities.

The board of directors appoints the board of managers, who are responsible for the day to day activities.

In any company with an average of 35 or more employees, the salaried employees and workers are entitled to appoint at least two directors to the board of directors. Thus companies of this size have a board of directors of minimum five directors.

No corporate body can be appointed director or manager and no manager may act as chair of the board of directors though he may be a member of the board of directors.

Any director or manager may be held personally liable for their wrongful acts or negligence.

The shareholders may according to the articles be entitled to elect a board of representatives to supervise the directors and managers. Apart from a very few listed international groups, banks etc. this rarely happens.

No PLC is allowed to grant loans or give security for shareholders, directors or managers of the company.

General meetings must be held as stated in the articles of association. All shares must carry voting rights though some shares may have greater voting power than other shares. A simple majority normally passes resolutions unless otherwise required by the law or the articles.

When applying for registration with the Danish Commerce and Companies Agency any PLC must file its memorandum and articles of association as well as the names of the directors, managers and auditors. Furthermore, the full annual accounts must be filed every year. Information filed with the Agency is public and certain information e.g. merger plans and appointments of directors, managers and auditors etc. also have to be published in the Danish Official Gazette.

### **2.2.2. Private limited companies: (Anpartsselskaber – ApS)**

This entity is usually chosen for businesses that have only a few proprietors and which do not seek to raise capital from different investors, as they are not allowed to have their shares listed on the Stock Exchange.

Private limited companies are governed by the Danish Private Companies Act of 1973, which was updated in May 1996. This act is very similar to the Danish Companies Act, though it differs in its formal requirements. It distinguishes from the Danish Companies Act as follows:

- The minimum share (or part) capital is DKK 125,000.

- Founders and managers need not be residents in Denmark.
- The company is allowed more contractual freedom as well as a simplified management and decision procedure. – The company may be managed either by a board of directors or by a management board and there is no requirement as to general meetings, as the decision procedure can be agreed upon by the shareholders.
- The shares are not to be looked upon as a negotiable instrument.
- The company cannot hold any of its own shares.
- If the company loses more than 40 per cent of its capital it must implement certain actions in order to re-establish the capital. Otherwise the Danish Commerce and Companies Agency will take actions to dissolve the company.
- There are no voting rights regulations.
- The procedure for liquidation is simplified.

Finally the requirements for auditing, accounting and publications are the same as those for a PLC.

### **2.3. Other forms:**

#### **2.3.1 Joint venture:**

A joint venture is not a legal entity unless incorporated as a PLC or a private limited company, in which case the relevant legislation applies.

The conduct is regulated by a contract between the participants.

However, joint ventures are seldom formed in Denmark.

#### **2.3.2. Sole proprietorship:**

Is characterised by the fact that the sole owner has unlimited liability for all debts and business obligations.

A sole proprietorship does not have to be recorded anywhere, and it is possible for any EU resident to establish such an entity without prior permission apart from a residence permit. Nationals of other Scandinavian countries do not require a residence or work permit, whereas nationals from non-EU countries need both residence and work permits.

### **2.3.3. Foundations:**

An operating foundation is a foundation that holds goods or intangible rights, carries out business of selling or leasing real estate or performs various services. According to the Act on Operating Foundations it must be registered, have articles of association, and its initial capital must be at least DKK 300,000. The audited annual accounts must be filed with the Danish Commerce and Companies Agency and they must follow the principles laid down in the Danish Company Accounts Act.

### **3. Accounting & Auditing**

#### **3.1. Accounting**

Annual accounts have to be prepared at the end of each financial year in accordance with the Danish Company Accounts Act of 1981. This act was last updated in 1996.

According to the Act of 1981 the annual accounts must be drawn up on a consistent basis and show a true and fair view of the company's assets and liabilities, financial position and result. The annual accounts consist of a profit and loss account, a balance sheet, a cash flow statement and notes; furthermore, a director's report as well as an auditor's report must be included. Finally, the adopted accounting policies must be described in a separate section of the annual accounts.

The management of the company is responsible for the annual accounts, which must be prepared within 5 months after the end of the financial year.

Small companies are for reasons of competition allowed to show only their gross profit or loss, arrived at by a combination of net turnover and productions costs.

Regarding the balance sheet a wide range of information must be shown. These details are often included in the notes that accompany the annual accounts.

The director's report must comment on the company's activities and results, and give additional information required by the Act of 1981. Unless only one of the members receives payment, the total remuneration payable to the boards of directors and managers must be shown. Information concerning turnover must also be provided.

Provided that certain limits of total assets, total sales and total number of staff are exceeded consolidated accounts and consolidated reports must be prepared for a group of companies.

#### **3.2. Auditing**

Any PLC or private limited company must appoint one or more auditors. The auditors must be state authorised public accountants or registered accountants. They must be resident in Denmark and be licensed to practice by the Commerce and Companies Agency. Listed companies, banks and insurance companies must appoint at least two auditors of whom one must be a state authorised public accountant.

The auditors are appointed and dismissed at the general meetings. No management can dismiss auditors.

The auditors report to the shareholders through the audit report in the annual accounts and - unlike the practice in many other countries - to the board of directors through the audit minute book. In this the general terms, the audit work, and any irregularities, are

described. The audit minute book must be presented at every meeting of the board and signed by each of the directors. Only the board of directors and the management have access to the audit minute book, however, the tax and customs authorities can demand access to it.

## 4. Tax System

Almost 60 per cent of the Danish national revenue derive from direct income taxes. (Personal income tax, corporate tax and hydrocarbon tax – a special tax paid by the oil and gas companies.) The remaining 40 per cent derive from indirect taxes and different excise duties, of which the VAT is the most important, as almost any goods and services are levied with 25 per cent VAT.

According to the Danish self-assessment system any taxpayer is required to report his income and wealth annually. - Although the wealth tax was abolished in 1997, companies as well as persons who are running a business still have to report their capital at the end of the year.

### 4.1. Personal Income Taxes

Danish tax legislation distinguishes between full tax liability for resident and limited tax liability for non-resident individuals. In this connection, the individual's intentions of staying and making a home in Denmark will determine whether he or she is to be considered a resident. Furthermore, he or she must actually be present in Denmark for at least three month within one year before, before he or she becomes fully liable for taxation. An individual who is physically present in Denmark for over six consecutive months is regarded as resident even if he or she does not have a permanent home in Denmark. - Thus citizenship does not affect Danish tax liability in any way.

Full tax liability means taxation of income and capital gains on worldwide income as well as taxation of net interest expenses and gifts.

Limited tax liability means taxation only of income and capital gains derived from sources in Denmark.

Taxable income may be defined as follows:

Earned income + Unearned income – Deductions = Taxable Income

Earned income is employment income (incl. all kind of benefits such as free car, free housing etc.), business income, various fees, pensions, annuities, social security benefits etc.

Unearned income is income derived from rent from real estate, interests, dividends on certain foreign shares, some capital gains and the return on certain life insurance policies.

NB – Suffered losses may be set off against profit or against private income. Furthermore, capital gains can be considered either earned or unearned income and some times even free of taxation.

Deduction is items which relate to the employment (transportation, work abroad, union fees etc.), general deductions (interest expenses, alimony payments, charitable donations etc.) and personal benefits (any individual is allowed a personal yearly allowance).

The tax rate is progressive, - thus taxable income of more than DKK 270,000 is taxed with 59 percent. (Maximum tax rate for the time being).

#### **4.2. Corporate Income Tax**

Public limited and private limited companies and to some extent foundations and associations are liable to corporate income tax. Partnerships are not regarded as separate entities for income tax purposes.

Like individuals a resident company is liable for income tax on its worldwide profits, whereas a non-resident company is only liable for income tax on income received from a permanent establishment in Denmark.

Taxable income may be defined as follows:

Profit or loss (according to the annual accounts) adjusted for exemptions, disallowable expenditures and losses brought forward (up to five years).

Unlike the personal income tax the tax rate is not progressive but fixed – 32 per cent at the time being.

Due to the passing of the Danish International Taxation of Dividends and Share Gains Act it has become much more attractive for international groups to place their holding companies in Denmark. Thus tax on dividends to holding companies has been eliminated. In addition to this the rule that companies are exempt from tax on share gains after three years of ownership, and Denmark's status as an EU Country with a relatively large number of double taxation agreements, are also important factors.

A system has been introduced under which it is considered sufficient to levy tax on the income of a company. However, this does not apply to foreign low taxed finance companies.

Compared with the traditional holding company countries in Europe – the Netherlands, Belgium, Luxembourg and Spain, which have recently introduced favourable rules for international holding companies – Denmark is now an important competitor. However, this is still not the case in relation to the low taxed finance companies.

#### **4.3. Value Added Tax (Moms)**

With reference to the EU's Sixth VAT Directive almost any services or goods are levied with 25 per cent VAT. The only exemptions are public health services, hospital treatments, social services, some educational services, amateur sporting and cultural

activities, passenger transportation, travel agencies, insurance, banking and financial activities and finally sale of real estate. In addition to this VAT is also charged on a number of services received from abroad.

Any business will, depending on the annual turnover, have to file returns. Businesses with an annual turnover that exceeds DKK 10 million will have to file returns monthly. Businesses with an annual turnover between DKK 1 and 10 DKK million will have to file returns on a quarterly basis and finally businesses with an annual turnover less than DKK 1 million will have to file returns twice a year.

#### **4.4. Other taxes**

Other taxes worth mentioning are:

- Payroll Taxes
- Estate & Gift Taxes
- Real Interest Tax
- Excise Taxes
- Vehicle Taxes
- Automobile Weight Taxes
- Road Tax
- Stamp Duties
- Energy Taxes
- Taxes on Lottery & Betting and
- Local Taxes

Beside Payroll Taxes employers must make annual contributions to the ATP (the labour market supplementary pension plan) and withhold (eight plus one per cent) labour market contribution in the employees' salaries.

#### **4.5. Double Tax Relief**

Tax treaties have been drawn up with a large number of countries. Most treaties conform closely to the OECD Model Treaty and the general Danish policy is to have tax treaties with all the countries that have trading relations with Denmark.

As a solution to the Double Tax Relief most treaties between Denmark and other countries are credit treaties.