

Establishing a Business in Denmark

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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 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's and 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.

1. Business activities in Denmark and the choice of corporate forms

The choice of corporate form is highly dependent on the type of business activities to be performed in Denmark. Certain corporate forms are evident for business activities that require an extensive level of public presence and appearance whereas other forms are better suited for e.g. investment activities. Incorporation of a company (A/S or ApS) is simple and can be done online from day to day. Accordingly, a company is often chosen.

1.1 Corporate forms

The choice between these options generally depends on the expected activity level in Denmark. The corporate form most often selected is the ApS, but other options – such as the A/S, branch office and representation office – also exist. Start-ups with limited financial resources may use the new IVS company.

It is worth noting that the activity in a representative office may only be of limited preparatory nature such as general marketing etc. Accordingly, the use of a representative office is very limited.

The various corporate forms will be described in greater detail in the following chapters.

1.2 Denmark as European or Nordic headquarter

In many cases, Denmark is chosen as the centre for European, Nordic or other regional activities. In such cases, the investor may establish a Danish company (A/S or ApS) which can then establish a branch in other regional countries.

Such a structure adds the benefit that income deriving from the foreign branch is generally not taxable in Denmark, according to a unique Danish tax rule. Since the other Nordic countries do not offer similar benefits it may be more cost and tax efficient to establish the headquarters in Denmark compared to any of the other Nordic countries.

Furthermore, a Danish company may serve as Nordic headquarter or holding company for other European activities. Such a Danish company may generally be exempted from tax on inbound or outbound dividends. Dividends are distributable on an interim basis.

1.3 Corporate forms – Overview

	A/S	ApS	Branch	Representative Office
Application	Middle-sized and large companies. Only an A/S may be listed on the Copenhagen Stock Exchange.	Small and middle-sized companies. Often used as fully owned subsidiary by international enterprises due to less formalities.	Used for carrying out business activities in Denmark, which are included in the objectives of the head office.	Often used in the initial stages of establishing a more permanent business in Denmark.
Registration	Must be registered at the Danish Commerce and Companies Agency.	Must be registered at the Danish Commerce and Companies Agency.	Must be registered at the Danish Commerce and Companies Agency.	No requirement for corporate registration at the Danish Commerce and Companies Agency. Registrations for other purposes may be required.
Capital requirement	Min. DKK 500,000. It is optional to choose not to fully pay in the share capital. The paid in share capital shall then be at least 25 % of the registered share capital.	Min. DKK 50,000. It is optional to choose not to fully pay in the share capital. The paid in share capital shall then be at least 25 % of the registered share capital/minimum DKK 50,000.	No minimum capital requirements.	None.
Liability	Limited to the value of shares subscribed.	Limited to the value of shares subscribed.	The head office of the branch is fully liable.	The foreign entity is fully liable.
Management	Mandatory two-tier system. A Board of Directors of minimum 3 persons, and an Executive Board of at least 1 member (CEO). (The Board of Directors may be substituted by a Supervisory Board).	Optional one- or two tier system. Minimum one member of the Executive Board (CEO). In addition a Board of Directors or a Supervisory Board may be appointed.	At least one branch manager must be registered.	No requirements.
Place of management	No requirements apply as to the residency of the members of the	No requirements apply as to the residency of the members of the Executive Board, the	No requirements apply as to the residency of the branch manager.	No requirements.

	Executive Board, the Board of Directors and the Supervisory Board.	Board of Directors and the Supervisory Board.		
Accounting	Annual financial statements audited by an accountant. (Audit may be optional).	Annual financial statements audited by an accountant. (Audit may be optional).	Not required to prepare financial statements for the branch. A copy of the financial statements of the head office must be filed.	No requirements to prepare annual financial statements.
Tax	Corporate income tax rate of 24.5% (reduced to 23.5% in 2015 and to 22% in 2016).	Corporate income tax rate of 24.5% (reduced to 23.5% in 2015 and to 22% in 2016).	Income from permanent establishment in Denmark is subject to a corporate tax rate of 24.5% (reduced to 23.5% in 2015 and to 22% in 2016).	For tax purposes a representative office is not considered a permanent establishment, provided the business is generally of preparatory or auxiliary nature.
Incorporation	Must be registered at the Danish Commerce and Companies Agency.	Must be registered at the Danish Commerce and Companies Agency.	Must be registered at the Danish Commerce and Companies Agency.	No requirements.
Corporate law	The Danish Companies Act.	The Danish Companies Act.	The Danish Companies Act.	No corporate regulation of representative offices.

Source: Rønne & Lundgren, Law Firm

1.4 Advantages of having a company compared with a branch office

When operating abroad one of the first issues to consider is whether the level and nature of the business to be performed constitute tax liability and/or obligation to register a legal entity.

In case the business activity constitutes tax liability, it is normally advisable in Denmark that foreign companies establish a company instead of registering a branch.

It is much simpler, faster and more cost-efficient to establish a company rather than a branch. A new company can be incorporated and ready to do business within a few hours. The registration process of a branch may take several weeks and be more costly.

A branch is considered part of a foreign entity. Therefore, all basic corporate documents of the foreign entity must be translated and registered with the Danish Commerce and Companies Agency. All of these formalities are not necessary when incorporating a company.

Further, if the foreign company later plans to use the Danish operation as e.g. a Nordic head office, a company is required since it will not be possible to link branches in other countries under a Danish branch. Alternatively, all Nordic branches must be linked under the foreign company. If a Danish company is established, such a company is allowed to establish branches in each of the Nordic countries. Accordingly a simple legal structure for the Nordic market counts in favour of establishing a Danish company.

Another advantage of establishing a company in Denmark is that according to a unique Danish tax rule a foreign branch of a Danish company is generally not subject to tax in Denmark. Administration costs for handling double tax issues may be avoided, by having the Nordic headquarter in Denmark compared to the other Nordic countries.

In general an advantage of having a limited company is that all risks are limited to the Danish entity.

1.5 A Danish company, A/S or ApS can be established in three different ways

1.5.1. On-line 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 Commerce and Companies Agency. Only certain service providers such as law firms or others holding a digital signature/NemID may undertake on-line registration.

1.5.2. Paper registration

A traditional paper registration of the founding of a limited liability company may still be used. The registration by the Danish Commerce and Companies Agency will usually take two to three weeks. Until the company is registered, the founders may incur liability for activities carried out by the company.

1.5.3. 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 on-line registration is the most commonly used procedure.

2. Accounting

As a main rule, it is mandatory for the company to elect 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 during the first accounting year, the company does not exceed two of the following limits:

1. A balance sheet amount of DKK 4,000,000
2. A net turnover of DKK 8,000,000 and
3. 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.

3. Lines of business – examples

3.1. 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 existing producers of similar products in Denmark. 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.

3.2. 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.

4. Alternative business forms

4.1. 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 Commerce and Companies Agency 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.

4.2. 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 Commerce and Companies Agency 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.

4.3. 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 IVS.

4.4. Joint venture

A joint venture is a special business vehicle often used by companies of different nationality 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.

4.5. 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 partnerships are often used for businesses doing 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. There are no requirements to prepare and file financial statements, but adequate books and records must be kept in conformity with Danish bookkeeping law. The participating parties are taxed individually.

We Speak Business

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 guaranteed full confidentiality.

We look forward to hearing from you

Headquarters

Ministry of Foreign Affairs, Invest in Denmark, Copenhagen, + 45 33 92 11 16,

Asia-Pacific

Shanghai +86 21 6085 2000

Beijing +86 10 8532 9900

Tokyo +81 3 3496 3001

Bangalore +91 80 4248 9500

Seoul +82 0 2 795 4187

Taipei +886 2 2718 2101

Europe

Paris +33 1 4431 2193

München +49 89 5458 54 0

London +44 207 333 0200

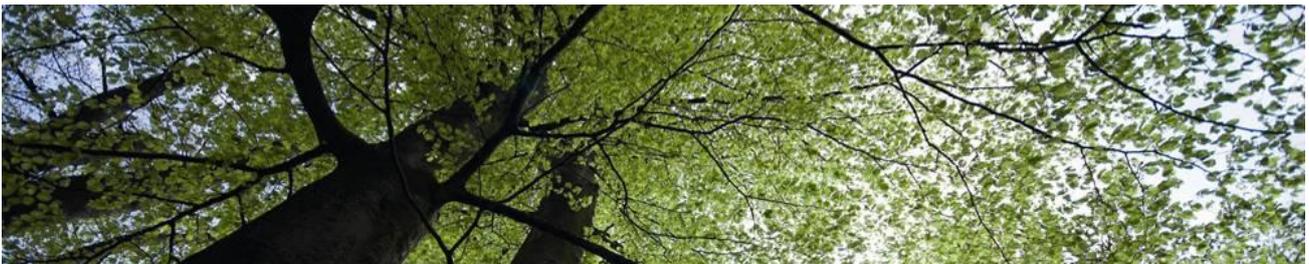
Istanbul +90 212 359 19 00

North America

New York +1 212 223 4545

Silicon Valley +1 650 543 3180

Toronto +1 416 962 5661



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indk@um.dk

www.investindk.com