



The Legal 500 Country Comparative Guides

Denmark

DOING BUSINESS IN

Contributor

Lund Elmer Sandager



Jacob Roesen

Partner, attorney-at-law | jro@les.dk

Sebastian Rungby

Partner, attorney-at-law | sru@les.dk

Jonas Bøndergaard

Attorney-at-law | jbo@les.dk

Torsten Hylleberg

Partner, attorney-at-law | thy@les.dk

This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Denmark.

For a full list of jurisdictional Q&As visit legal500.com/guides

DENMARK

DOING BUSINESS IN



1. Is the system of law in your jurisdiction based on civil law, common law or something else?

Danish law is a civil law system based on statutory law as the main legal source.

Denmark's legal system is heavily influenced by European Law as a significant proportion of Danish statutes and regulations is a of obligations to the European Union.

A general main principle in the Danish court system is the two-tier principle, according to which means a party to a ruling in a court case has the right to appeal such ruling to a higher court.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

In general there is a free choice of vehicle when incorporating a legal entity in Denmark.

As most common main groups of vehicles are (i) companies with non-limited liability and (ii) companies with limited liability. In addition, there are (iii) companies in between with inspiration from both main groups.

The most common types of vehicles are (non-exhaustive):

1. Sole proprietorships (enkeltmandsvirksomhed)
2. Partnership (I/S)
3. Private limited liability companies (ApS)
4. Public limited liability companies (A/S)
5. Limited partnership companies (P/S)
6. Limited partnerships (K/S).

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e.,

without having to incorporate or register an entity?

Yes. All subject to Danish law.

4. Are there are any capital requirements to consider when establishing different entity types?

As a main rule the following minimum capital requirements apply:

1. Sole proprietorships (enkeltmandsvirksomhed): None
2. Partnership (I/S): None
3. Private limited liability companies (ApS): DKK 40,000
4. Public limited liability companies (A/S): DKK 400,000
5. Limited partnership companies (P/S): DKK 400,000
6. Limited partnerships (K/S): None

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

All vehicles have a company registration no. (CVR no.) registered with the Danish Business Authority. Registration is not required for corporate validity for representative office. Registration for other purposes may be required such as Tax and VAT.

Incorporating limited liability companies requires filing of a Memorandum of Association and the company's Articles of Association. Registration is usually swift and can be carried out electronically.

6. How is the entity operated and

managed, i.e., directors, officers or others? And how do they make decisions?

A public limited liability company is subject to a mandatory two-tier management, comprising a board of directors, with a minimum of three members, and an executive board.

A private limited liability company may decide a one-tier or two-tier system. If a one-tier system is chosen, the company is managed by an executive board.

A branch is managed by one or more branch managers and representative office has none management.

Depending on the nature of the decisions, these are made in the relevant corporate body. As a main rule, strategic overall decision are made by a board of directors (in a two-tier system) and the day-to-day decision by the executive board.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

There are no general requirements regarding the residency or nationality of the board of directors or the executive board. All members may be non-Danish and non-EU residents and nationals. Although a few specific regulatory require a specific permission, for example, board members in a financial institution must be fit and proper and permit granted by the Danish Financial Supervisory Authority.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

As a main rule, an entity or establishment is entitled to expand business operations in Denmark through commercial agents and or resellers. All subject to Danish law. Joint venture agreements are also popular.

9. Are there any corporate governance codes or equivalent for privately owned

companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

The Danish Corporate Governance recommendations applies to publicly listed companies entities. The recommendation e.g. regards focus on sustainability, social responsibility, overall purpose of the company, tax and diversity policies as well as board and management evaluations.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

The entity has several options to provide working capital. Popular options are:

1. cast contribution (in kind) by existing or internal investors subscribing for shares,
2. loans (potentially convertible),
3. group cash contributions.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

There are important restrictions to attend to when transferring funds from legal entities.

Regarding public and private limited liability companies, funds may be distributed as follows:

1. as dividends based on the latest approved financial statement,
2. as extraordinary dividends,
3. in connection with nominal share capital reductions or
4. in connection with the dissolution of the company. Hence, a company may distribute funds to shareholders as ongoing extraordinary dividends after the end of the first financial year.

There are management obligation regarding companies' financial resources on a continuous basis. E.g. the limited liability companies must have sufficient liquidity to meet its current and future liabilities as they fall due, and the management is therefore required to continuously assess the financial position and ensure that the existing capital resources are adequate.

12. Are specific voting requirements /

percentages required for specific decisions?

Unless otherwise stipulated by the Danish Companies Act or the statutes of the limited company, all matters addressed at general meetings must be decided by a simple majority of votes on a general meeting.

There are several exceptions to this main rule a certain decisions may require qualified majorities of e.g. 2/3, 9/10 or approved by all shareholders whose position is changed in a negative way in comparison to others.

E.g. a resolution to amend the Articles of Association, subscribe for new shares or liquidate the company requires a qualified majority of 2/3. There are also several decisions requiring 9/10.

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

In principle, shareholders are not authorized to issue binding instructions to the management. However, the Articles of Association may stipulate the managing board must act in accordance with the instructions of the general meeting.

The managing board shall be obliged to follow such instructions unless these instructions are contrary to the interests of the company and its affiliated enterprise or forbidden by the law.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

The main sources of employment law are legislation, collective bargaining agreements, individual contracts and case law. Regulation of such law is influenced by the implementation of European Union Directives to the national law.

Some of the core employment law legislation is:

- i. The Salaried Employees Act contains mandatory rules on length of notice periods, compensation in case of unfair dismissal, severance pay, sick pay and maternity leave entitlements.
- ii. Additionally, restrictive covenants are

regulated in the Danish Act on Restrictive Covenants.

- iii. All employees are also protected by the Danish Holiday Act which grants 2.08 days of paid holiday per month of employment and the entitlement to take 25 holidays per holiday year.
- iv. Furthermore, working time regulation sets a maximum average working week of 48 hours based on a consecutive four-month period.

Most of the equal treatment regulation in Denmark is based on EU Directives prohibiting discrimination:

- i. The Differential Treatment Act contains provisions prohibiting employers from direct or indirect differential treatment of employees or job applicants on the grounds of a person's age, disability, race, colour of skin, religious belief, political orientation, or national, social or ethnic origin.
- ii. According to the Equal Treatment Act, any employer is prohibited from discriminating on the grounds of a person's gender in relation to working conditions including termination of employment.

According to the Equal Pay Act, the employer is prohibited from discriminating on the grounds of an employee's gender in relation to pay. In cases on pay discrimination, the employee is entitled to the pay gap that originates from the discrimination retroactively from when such discrimination occurred, as well as compensation.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Unless no notice period applies – which is typically due to short seniority or special regulation in individual employment contract – employees are entitled to be provided with a notice of termination.

The notice period would either follow from:

- i. the Salaried Employees Act;
- ii. a collective bargaining agreement; or
- iii. the individual employment contract.

Employees subject to the Salaried Employees Act are protected against unfair dismissal after 12 consecutive months of employment.

The seniority requirement under collective bargaining agreements is typically nine months, but may vary. An employee is treated as dismissed if the employer gives notice of termination or invokes misconduct by the employee as a reason for considering the employment relationship as terminated. No third-party consent is required.

Generally, in order to ensure that a termination is deemed fair when the reasons relate to the employee, a warning is often required, in particular if the reason for termination is lack of performance or cooperation. The employee must be given the opportunity to adapt to the workplace requirements, including improving performance or cooperation vis-à-vis colleagues and management before dismissal is enacted. No formal process applies, but generally a warning must be given in writing to be considered a warning.

As a general rule, employees protected by the Salaried Employees Act may claim compensation of an amount equal to the length of the notice period in the case of unfair dismissal. Typically, ½ and 2/3 of the maximum amounts is awarded. Furthermore, before the Industrial Tribunals, reinstatement into employment is possible. Employees may bring their claim before the ordinary courts, or if protected by collective bargaining agreements, ad hoc Industrial Tribunals.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

In Denmark, we do not have general regulations on the recognition of trade unions. Outside of the area of collective bargaining agreements, trade union representatives are generally recognized as lay representatives and only through industrial action may the employer be forced to recognize collective bargaining.

Danish employers are not required to establish local works councils. Such obligation is only imposed on employers subject to collective bargaining agreements which include rules for the establishment of works councils.

In companies of a certain size (in terms of number of employees), the employees may request representation at board level.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

In Denmark, active bribery of public servants is punishable by up to six years in prison according to Section 122 of the Penal Code. Passive bribery is punishable under Section 144 by up to six years in prison. Bribery of foreign public service servants is also subject to these terms. Included is bribery of public servants in other EU member states and bribery of public servants in countries that are not part of the EU. This concerns, among other things, persons who exercise a public function for another country, including for a public agency or a public company, cf. the OECD Bribery Convention, Article 1, (4)(a). The criminal code also includes service and duties at the EU and can therefore e.g., be applied in relation to Community officials. The provision can also be applied to bribery of members of the EU Commission, the European Parliament, the EC Court of Justice, and the Court of Auditors of the European Communities. The provision can also be used for bribery of other international public service servants, e.g., in the Council of Europe, NATO, OECD and the UN. As it must be a matter of "public" service, etc., bribery of employees of private international organizations is therefore not covered.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

The State Attorney for Serious Economic and International Crime (Money Laundering Secretariat) must be notified if a suspicion of money laundering or terrorist financing regarding a customer cannot be disproved.

All economic crimes can be reported to the local police. Economic crime is primarily regulated by the criminal code and the AML Act. The penalty for fraud is basically the same as for theft, embezzlement, mandate fraud, extortion, usury, and debt fraud, namely imprisonment of up to 1 year and 6 months, cf. section 285 of the Criminal Code.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

Money laundering and terrorist financing is in Denmark regulated by the Act on Preventive Measures Against

Money Laundering and the Financing of Terrorism (Money Laundering Act). The Money Laundering Act is based on the applicable EU directives hereon.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

Article 4 of the ECHR contains a prohibition against slavery, servitude and forced or compulsory labor. The ECHR is ratified by Denmark and implemented in Danish law in 1992 by Act No. 285 of 29 April 1992 on the European Convention on Human Rights.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Audit of annual accounts is required for a company if such company during the latest two fiscal years exceeds two of the following three thresholds: (i) a balance sum (sum of assets) of minimum DKK 4,000,000, (ii) a revenue of minimum DKK 8,000,000 and (iii) a minimum average amount of full-time employees of 12.

22. Please detail any corporate / company secretarial annual compliance requirements?

There are several compliance requirements to attend to on a continuous basis. Main examples are filing of the annual report to the Danish Business Authority approved at the annual ordinary general meeting, tax and VAT related filings, ensuring updating of shareholders' register and ownership registrations with the Danish Business Authority, and maintenance of bookkeeping.

Furthermore, depending on the relevant line of business specific compliance requirements may apply, e.g. for companies under the supervision of the Danish Financial Supervisory Authority (in Danish: Finanstilsynet).

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder

meeting?

The annual meeting must be held every year. During this meeting the annual accounts will be discussed and approved by the shareholders.

Extraordinary general meetings must be held upon request from the central governing body, the supervisory board or the auditor elected by the general meeting. For private limited liability companies, any shareholder can request an extraordinary general meeting. Extraordinary general meetings to consider specific issue must be convened within two weeks of receipt of a request to such effect.

For public limited liability companies, the statutes may provide that shareholders that hold 5 % of the share capital, or any smaller fraction of the capital as prescribed by the statutes, or shareholders that are so authorized under the statutes, may request in writing that an extraordinary general meeting be held.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

The limited liability company must obtain information on the beneficial owners of the company, including the details of the beneficial interests held. A beneficial owner is a natural person who ultimately owns or controls, directly or indirectly, a sufficient proportion of the ownership interest or voting rights, or who exercises control of companies whose ownership interest are traded on a regulated market or an equivalent marked subject to disclosure requirements in accordance with EU law or equivalent international standards.

The limited liability company must register information concerning the company's beneficial owners, including information about the rights of the beneficial owners, in the IT system at the Danish Business Authority as soon as possible after the company becomes aware that a person has become a beneficial owner.

The limited liability company must review at least once a year whether there are changes to the information registered about the company's beneficial owners. The result of the annual review must be presented at the meeting at which the central governing body approves at the annual report.

The limited liability company must hold documentation of the information on the company's beneficial owners

for a period of five years after the beneficial ownership ceases to exist.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

The limited liability companies are subject to corporate income tax rate of 22 % (2024)..

Denmark has concluded tax treaties with a large number of countries to avoid double income tax for international corporates. A tax treaty is an agreement between two countries laying down which of them may tax which income. One country will levy taxes and the other will provide a tax reduction or exemption.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

N/A

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

In general, a Danish company must withhold tax at a rate of 27 percent when it declares dividends to non-resident shareholders. The withholding obligation applies to the declaration of dividends to all types of shareholders, whether individuals or companies, resident in Denmark or abroad. If the withholding tax rate exceeds the final tax rate applicable to the foreign company shareholder, the shareholder is entitled to claim a refund of the tax withheld in excess of the final rate. The statute of limitations on such claims for refund of dividend withholding tax is three years.

However, Dividends paid to a parent company in another EU member state or a state with which Denmark has entered a double taxation treaty are exempt from withholding tax if the shares qualify as subsidiary shares. The same applies to dividends paid on group shares (that are not subsidiary shares, i.e. holdings below 10%) provided that the recipient company is resident within the EU/EEA. Dividends paid on portfolio shares to a

foreign shareholder are normally levied a withholding of 27%.

Interest is generally not subject to withholding tax unless if it is paid to a foreign group member company that is tax resident outside the EU and outside any of the states with which Denmark has entered a taxation treaty. In this situation, interest withholding tax is levied at 22%. Certain other exemptions apply, mainly relating to CFC taxation.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

N/A

29. Are there any public takeover rules?

The primary legal regime for public takeovers in Denmark is Chapter 8 of the Danish Capital Markets Act and the Danish Takeover Order, both implementing the Takeover Directive.

The Danish Financial Supervisory Authority (FSA) is the supervisory authority in respect of takeovers in Denmark.

The Takeover Order applies to takeovers of Danish and non-Danish target companies with shares admitted to trading on a regulated market (Nasdaq Copenhagen Main Market). Transactions on other types of marketplaces (Nasdaq First North) in Denmark are not subject to the rules.

Certain rules may also be important in relation to a transaction with a Danish public company, for example, shareholders approval is required for certain significant transactions. EU regulations may also be relevant, in particular Market Abuse Regulation and Merger Regulation.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

There is a mandatory merger control regime in Denmark. The National Merger control regulation was introduced in the Danish Competition Act in 2000.

According to the Danish Competition Act a merger subject to merger control is defined as a transaction whereby:

1. two or more previously independent undertakings amalgamate into one

- undertaking, or
- 2. one or more persons who already control at least one undertaking, or one or more undertakings – by an agreement to purchase shares or assets or by any other means – acquire direct or indirect control of the entirety of, or parts of, one or more other undertakings, or
- 3. a joint venture that will perform all the functions of an independent business entity on a lasting basis.

Merger filing is mandatory if the applicable thresholds are met.

On 28 February 2024 an amendment to the Danish Competition Act was presented to the Danish parliament. If adopted in its present form, the changes will enter into force on 1 July 2024 and include a call-in procedure for mergers involving parties with a combined turnover in Denmark as low as 50 MDKK. The proposal also foresees an investigative tool allowing the Danish Competition and Consumer Authority to carry out investigations and to regulate markets even though no infringement of the Competition Act has occurred. An increase of the levels of fines is also foreseen.

A merger notification must be filed if:

- 1. the combined total annual turnover in Denmark of all undertakings concerned is at least DKK 900 million and the total annual turnover in Denmark of each of at least two of the undertakings concerned is at least DKK 100 million; or
- 2. the total annual turnover in Denmark of at least one of the undertakings concerned is at least DKK 3.8 billion and the total annual worldwide turnover of at least one of the other undertakings concerned is at least DKK 3.8 billion.

According to the proposed amendments to the Danish Competition Act, a merger notification must also be filed upon request (call-in) by the Danish Competition and Consumer Authority if the combined turnover of the parties in Denmark exceeds 50 MDKK.

31. Is there an obligation to negotiate in good faith?

Pursuant to Danish legal principles the parties to a contract must act in good faith at the time when the contract is concluded.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

In the event of an asset deal the employees must be informed of the business transfer, to the extent possible, within a reasonable time. The employees shall be informed of the date of the business transfer, the reasons behind the transfer, financial and social consequences for the employees.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

In Denmark the Investment Screening Act covers foreign direct investments 'Foreign direct investments' are defined as gaining control or significant influence over a company or entity domiciled in Denmark by direct or indirect possession of or control over the shares or voting rights in the company or equivalent control by other means, including the purchase of assets and long-term loans. Foreign direct investments include investment in a new company being established in Denmark in a particularly sensitive sector, where similar control or significant influence is achieved.

Control or influence gained from an investment can be direct or indirect, i.e. control can be exercised through other companies and through several countries, known as 'ownership chains'.

The Investment Screening Act covers not only the acquisition of shareholdings or voting rights in a company or entity, but also if similar control is achieved by other means. I.e. if, in other ways than by acquiring voting rights, similar control or significant influence is achieved, e.g. by agreement-based control and influence, by purchasing assets in the Danish company or by long-term loans.

34. Does your jurisdiction have any

exchange control requirements?

There are no Danish exchange controls except for a notification for statistical purposes.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

A legal entity may be liquidated solvently either voluntarily or by mandatory court order (if certain requirements are not complied with). If the entity is dissolved being insolvent, such proceedings will be

initiated. If voluntarily, such decision shall be resolved on a general meeting. There are two ways to dissolve a solvent company voluntarily, either (i) by way of a payment statement (in Danish: betalingserklæring), in which the shareholder declare that there are no outstanding payment obligations. If a claim is rightfully made after dissolving the company, the shareholders may be personally liable for such claim. A statement from the Danish Taxation Authority stating that there are no obligations to any public authority is required. Alternatively, (ii) the company will enter into liquidation by way of appointing a liquidator to handle the dissolution process which includes informing all creditors and enduring a three month term for the creditors to make their claim before continuing the dissolution.

Contributors

Jacob Roesen
Partner, attorney-at-law

jro@les.dk



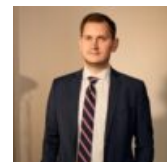
Sebastian Rungby
Partner, attorney-at-law

sru@les.dk



Jonas Bøndergaard
Attorney-at-law

jbo@les.dk



Torsten Hylleberg
Partner, attorney-at-law

thy@les.dk

