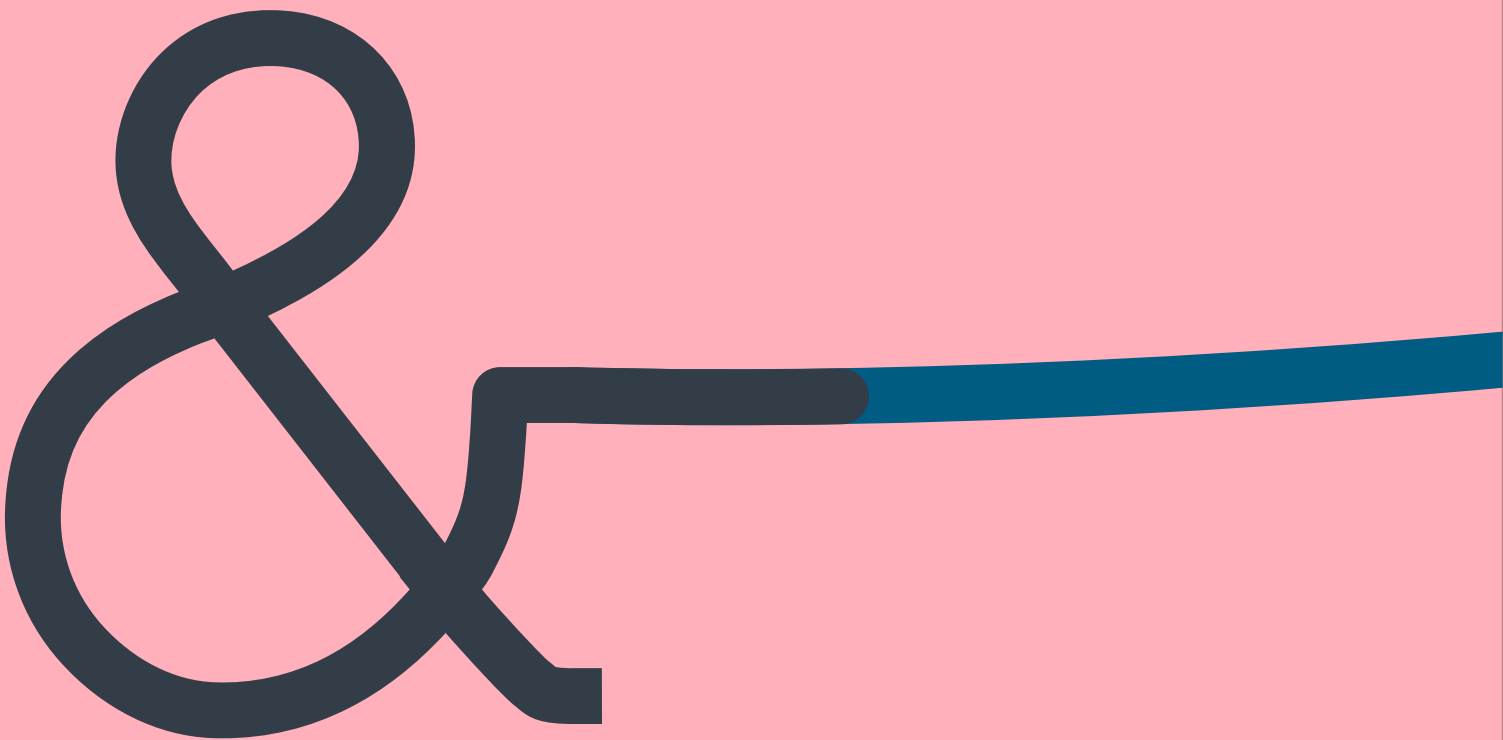


Bird & Bird

Setting up a business in Denmark

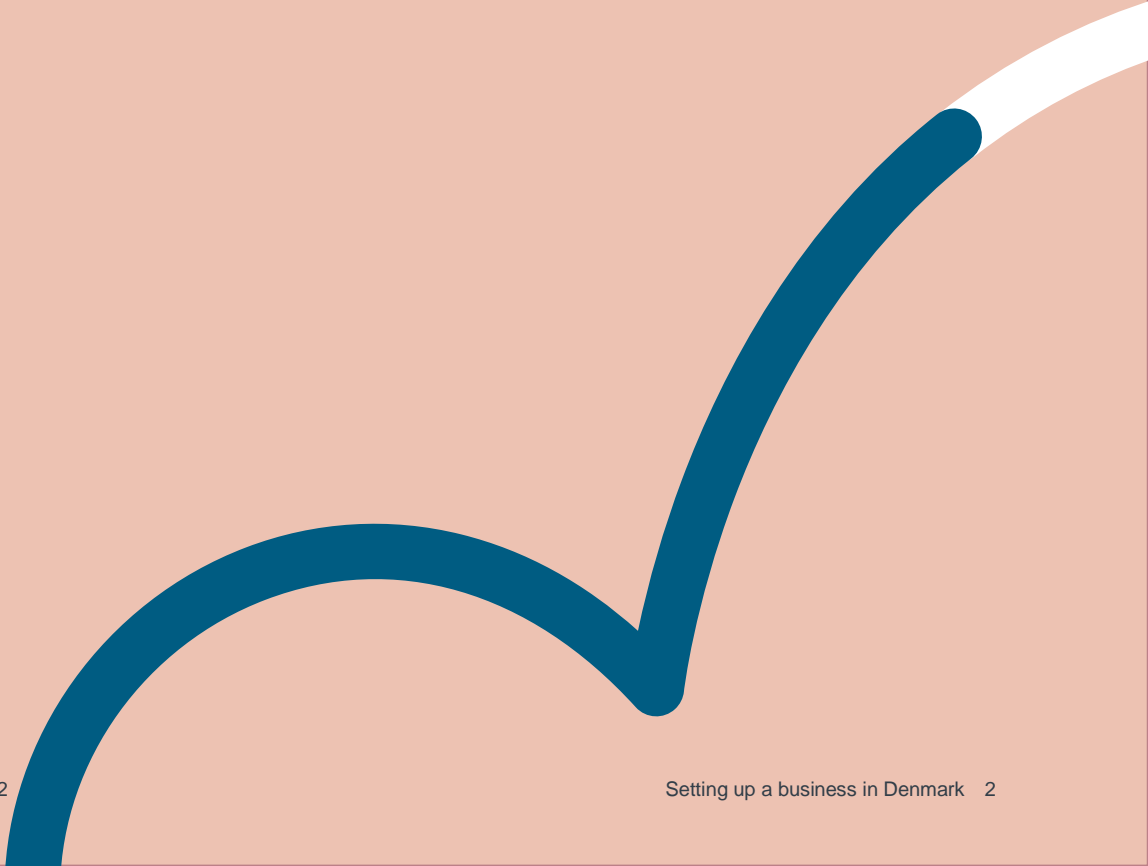
2022





“Bird & Bird have a high level of service, which I appreciate a lot. They make you feel that you are their most important client.”

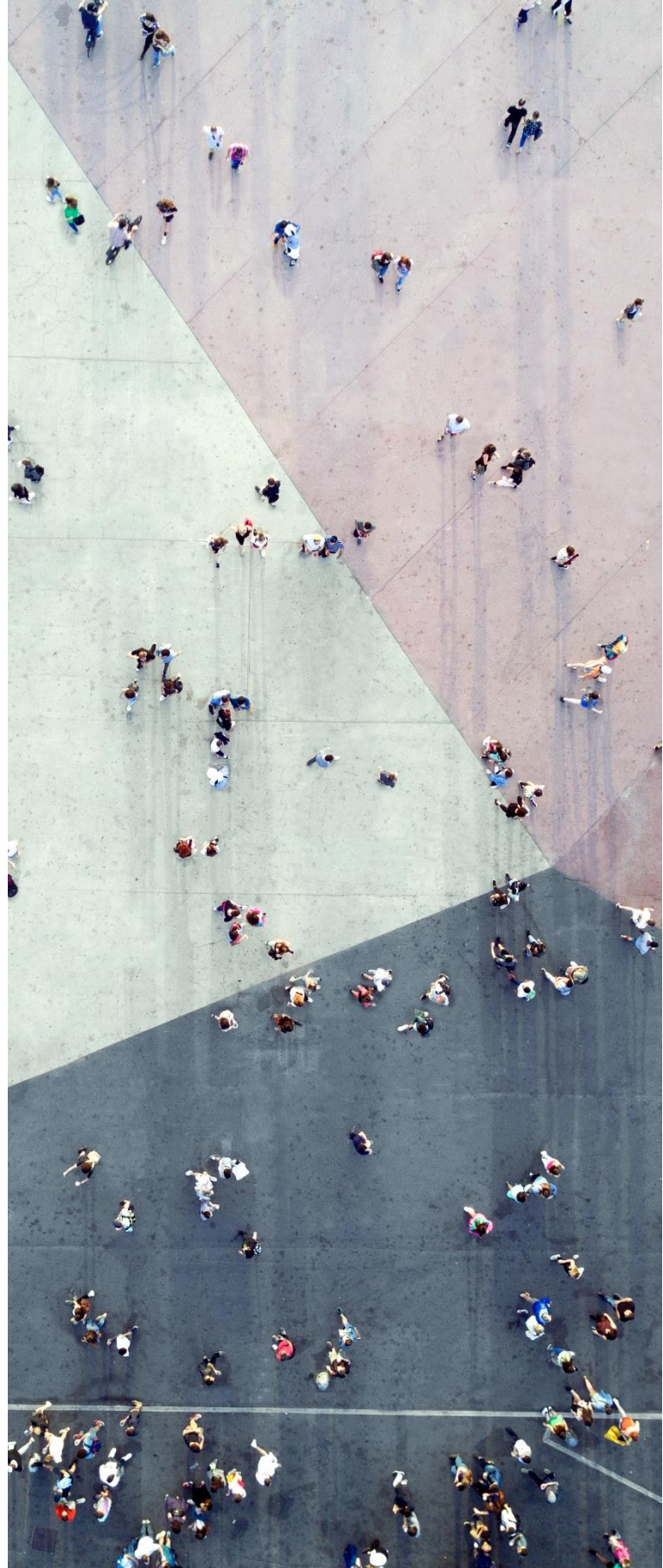
Chambers FinTech 2020, Denmark



Setting up a business in Denmark

Denmark is home to some of the world's most pioneering companies and brands. As seasoned advisors to businesses being changed by technology and the digital world, we're a natural fit for companies that think differently.

From Denmark's largest multinationals, to lean start-ups; our flexibility and agility mean we work with some of the world's fastest-growing companies, both big and small.





We have had some issues with international corporations so it's very good that Bird & Bird bring that international reach. We really like that aspect about them. They provide fantastic advice quickly; Bird & Bird are top of the league. They are very good with following up on relevant legislation and giving inputs even when there is not a case ongoing.

Chambers FinTech, 2021, Denmark

Choice of legal entity

A foreign company can set up a business in Denmark either by incorporating a Danish registered subsidiary company or by registering a branch which – in most cases - is considered an extension and permanent establishment of the foreign company.

Subsidiary	Branch
Limited liability at subsidiary level.	Head office retains direct unlimited liability.
Separate legal entity to contract.	Accounts of head office show revenue of branch etc.
Same-day incorporation.	Longer registration process due to extensive documentation requirements.
Approximate cost to incorporate €1,500.	Approximate cost to register €4,000.
No restrictions as to nationality or place of residence of the directors and managers apply.	No restrictions as to nationality or place of residence of the directors and managers apply.
Meetings are not required to be held in Denmark, but this must be given consideration tax-wise.	No requirement for meetings.
Financial statements must be filed with the Danish Business Authority. Statutory audit obligation is only applicable if certain financial thresholds are exceeded. Financial statements can be submitted in English.	A copy of the financial statements of the head office must be filed with the Danish Business Authority within 5 months after the end of the financial year.
Additional formal and operational requirements, e.g., capital requirements, changes in capital, winding-down processes.	Lower operational costs and easier to close down.
Corporation tax is 22%.	Corporation tax on branches is 22%.
Can benefit from double tax treaties. Danish subsidiaries are often used to establish foreign branches. Due to a unique Danish tax rule, Danish limited liability companies are generally not subject to tax of income from foreign branches.	Double tax treaties are normally applicable if the branch is deemed a permanent establishment.
Intra-group transactions generally require arm's length terms.	Intra-group transactions generally require arm's length terms.
Subject to registration for Danish VAT.	

Employment

Danish contract law is based upon contractual freedom, and verbal and written agreements are equally binding between the parties under Danish law, with a few limited exceptions.

However, a number of statutes are mandatory in favour of “weaker” parties such as consumers and employees. A contract or clause may be adjusted or nullified by a court ruling due to unfairness for weaker parties.

Danish legislation is often based upon EU legislation and should be interpreted in an international context.

Despite the below rules, the Danish labour market is considered one of the most flexible in Europe and a cost-effective scale down process is possible in Denmark.

All employees hired with an intended duration for a period of more than 1 month and for more than 8 hours per week on average, must be given a written statement of their terms of employment, which fulfils the requirements in the Danish Employment Contract Act.

Danish remuneration is only subject to minor social security payments unlike in other countries where employer payments are sometimes topped-up with up to 30% social security payments.

The Danish labour market is regulated mainly by legislation for salaried employees (DA: “funktionærer”) in the Danish Salaried Employees Act and by collective bargaining agreements (by its parties). Mandatory law and/or collective bargaining agreements provide the basic terms of employment.

When terminating an employee’s contract, employers must observe the applicable minimum notice period which, as a rule, varies between 1 and 6 months depending on the aggregate period of employment and type of employment.

Danish law protects salaried employees, with more than 1 year seniority, from being unfairly dismissed by the employer. Other employee groups often have similar rights if they are covered by collective bargaining agreements.

The employer must base the dismissal on objective grounds which can include redundancy, restructuring or personal reasons. In the case of unfair dismissal, the employer may be liable to pay compensation and/or damages to the employee, normally ranging from 1 to 12 months of the employee’s salary (however, most often in the level of 1-6 months’ salary).

An employer is, however, at any time prohibited from discriminating against an employee or job applicant, directly or indirectly, on grounds of sex, ethnic, national, or social origin, disability, religion or belief, sexual orientation, gender identity/expression/characteristic, age, part-time working, fixed term working or parental leave.

The compensation will, as a rule, be determined to be 6-, 9- or 12-months’ salary.

Furthermore, the employer must comply with mandatory legislation within the areas of working hours, payment during sickness absence, holiday entitlement and maternity/parental/paternity leave.

The rules on restrictive covenants are evident from the Danish Act on Restrictive Covenants covering as its main rule non-competition clauses and non-solicitation of customer clauses (no-hire clauses are as a main rule not allowed unless in relation to a business transfer). Under the act, an employee must be compensated with 40% or 60% of his/her monthly salary, depending on the length of the covenants (6 months or a maximum of 12 months after resignation respectively). If the employee gets a new job within that period, the compensation is limited to 16% or 24% respectively. Some mandatory requirements must be fulfilled to oblige an employee by a restrictive covenant.

For restrictive covenants imposed before 1 January 2016 please note that some previous rules in the Danish Salaried Employees Act apply (50% in compensation).

The employer is obliged to withhold (and pay to the tax authorities) preliminary income tax from the employee’s gross salary.

Non-EU/EEA nationals are in general required to obtain a work/ residence permit to work in Denmark. Please see more at: <https://www.nyidanmark.dk/en-us/frontpage.htm>



“Bird & Bird have a global reach, can navigate the issues and implications of a course of action in overseas jurisdictions, and help us drive towards strategic aims in complex areas.”

Chambers Global, 2022

Setting up a business in Denmark

Real Estate

Most companies starting up a business in Denmark prefer renting premises rather than buying real estate, as this is much more expensive. There are good chances of finding serviced offices in Copenhagen and in the suburbs of Copenhagen.

These serviced offices are normally ready to move in to and can be rented for both short and long periods. If a company is looking for other premises, e.g., premises to use for a shop or a restaurant, it might take longer to find suitable premises.

Premises – either offices or other premises - can be rented for a fixed period or until terminated by one of the parties. The tenant normally has security against termination according to The Danish Business Lease Act.

Leased premises sometimes require fitting-out by the tenant for the tenant's specific use of the premises. As a rule, this cost will be paid by the tenant. If the landlord pays for the fitting of the premises, the landlord will normally increase the rent. The tenant is usually responsible for the interior maintenance of the premises and the tenant is normally required to surrender the premises in the same state as the premises were taken over.

The landlord will always request a deposit from the tenant – usually equalling 6 months' rent.

Intellectual Property

A Danish trademark may be obtained in two ways; (i) by registration with the Danish Patent and Trademark Office (the "DKPTO") or (ii) through the consistent use of the mark for the relevant goods and services in Denmark. A registered Danish trademark must be renewed every 10 years.

Denmark is a member to the Madrid Protocol which means that Denmark may be designated in international registrations. The EU Trademark has unitary character within the EU, including Denmark.

Limited protection of a company name may be obtained through registration with the Danish Business Authority.

The appearance of a product may be protected as a registered or unregistered design in Denmark. Applications for design rights are filed with the DKPTO.

Design rights may also be obtained on an EU-wide basis through the EU IP Office (the "EUIPO"). The Registered Community Design ("RCD") has unitary character within the EU, including Denmark.

A registered design right may be renewed up to a maximum of 25 years. The Unregistered Community Design ("UCD") has equally unitary character within the EU. The UCD, however, only offers a limited scope of protection and offers a limited duration of protection of only three years.

The Danish Marketing Practices Act offers supplementary protection against imitations and unfair use of third-party rights. The Danish Courts often apply the Marketing Practices Act in conjunction with other intellectual property rights legislation.

Inventions may be protected by a patent. Patent applications are filed with the DKPTO. Patent applications designating Denmark may also be filed through the European Patent Office (the "EPO") or the Patent Cooperation Treaty (the "PCT") schemes. The maximum duration of a patent is 20 years from the application date (which in some cases may be prolonged by a Supplementary Protection Certificate (a "SPC")). The continued validity of a patent is dependent on the payment of an annual fee.

An alternative way to protect an invention is through utility models. Applications for utility models are filed with the DKPTO or through the PCT system. The maximum duration of a utility model is 10 years.

Copyright is extended to literary and artistic works if they comply with the threshold requirement of originality. There is no copyright registry in Denmark. Copyright protection may include, but is not limited to software, works of applied art and in certain instances also databases.

The copyright duration is 70 years after the year of death of the author.

Setting up a business in Denmark

Data Protection/Privacy

A Danish company processing personal data (which includes employee data and business contact data) must comply with the General Data Protection Regulation (GDPR) and the supplementary provisions in the Danish Data Protection Act (the “Data Protection Act”). It is the Danish Data Protection Authority’s responsibility to enforce both the GDPR and the Data Protection Act.

Fundamental principles found in GDPR article 5 must always be adhered to, to process personal data legally. For instance, personal data must always be processed fairly and lawfully and collected for specified, explicit and legitimate purposes and may not be further processed in an incompatible way to those purposes.

In addition to the principles found in GDPR article 5, a legal basis must be identified before any processing of personal data is carried out. This legal basis may differ depending on the purpose of the processing and the sensitivity of the data.

Further, businesses must comply with the obligation to provide information on the processing of personal data to the data subjects (privacy notice(s)) and implement appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the personal data.

Another important topic is third country transfers, i.e., transfers of personal data to a third country, outside the European Economic Area (EEA). They are only permitted if a lawful basis for such transfers has been established, in accordance with GDPR chapter V. A range of legal bases which may permit third country transfers exist, however, the most commonly used is the European Commission’s standard contractual clauses (SCCs), potentially accompanied by supplementary measures, as set out in the European Data Protection Boards (EDPBs) [recommendations 01/2020 on supplementary measure](#).

The GDPR also contains a requirement for certain companies to assign a Data Protection Officer (DPO), e.g., if the core activities of the company consist of processing operations which by virtue of their nature, require regular and systematic monitoring of data subjects on a large scale or, the core activities of the company consist of processing on a large scale of special categories of data, as well as data relating to criminal convictions and offences.

Business Model Design

Alongside legal challenges, whatever the nature of your international ambitions the planning process requires some key questions to be addressed:

- Is internationalisation a feasible option, and are you ready for it?
- What is your internationalisation strategy, and how will you prioritise which markets to target?
- What business model will be most effective for driving profitable growth?
- Will you require business partners, and how do you plan to find them?
- What will your penetration strategy be for your selected markets?
- How will you build the infrastructure and operating model required to support your move into the new markets?
- How will you execute the plan and implement the business model?

Wherever your starting point, our consultancy arm OXYGY can help you answer these questions and create a fit-for-purpose roadmap to guide your business through its internationalisation journey.

Contact us

If you would like further information on setting up business in Denmark, please e-mail our Set up Desk at new.company@twobirds.com and we will contact you within 24 hours.

This summary gives general information only as of June 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice.



Always professional and responses are fast. Quality is at a high level, and all cases we have had have been solved perfectly.

Legal 500 EMEA, 2020



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