Bird & Bird &
Setting up a business in Denmark
Bird & Bird LLP are praised for being “extremely well prepared, with the capability to discuss complete agreements in different languages, providing always the best cost-efficient advice.”

Chambers, Global 2018
Setting up a business in Denmark

Denmark is home to some of the world’s most pioneering companies and brands. And 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 startups; our flexibility and agility mean we work with some of the world’s fastest-growing companies, both big and small.

“Bird & Bird LLP’s commercially-oriented approach is noted as a key strength, with one source explaining: “They have exactly the abilities we need. They are flexible and reasonable with billing, and they understand how to give both legal and commercial advice.”

Denmark, Chambers Europe 2018
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Branch

- Approximate cost to register EUR 4,000.
- Accounts of head office show revenue of branch etc.
- Head office retains direct unlimited liability.
- Corporation tax on branches is 22%.
- Longer registration process due to extensive documentation requirements.
- Approximate cost to incorporate EUR 1,500.
- Separate legal entity to contract.
- Subject to registration for Danish VAT.
- 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 has to be given consideration tax-wise.
- Financial statements must be filed with the Danish Business Authority. Statutory audit obligation only applicable if certain financial thresholds are exceeded. Financial statements can be submitted in English.
- Additional formal and operational requirements, e.g. capital requirements, changes in capital, winding down process.
- Corporation tax 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.
- Intra-group transactions generally require arm’s length terms.

Subsidiary

- Limited liability at subsidiary level.
- Separate legal entity to contract.
- Same-day incorporation.
- Approximate cost to incorporate EUR 1,500.
- 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 has to be given consideration tax-wise.
- Financial statements must be filed with the Danish Business Authority. Statutory audit obligation only applicable if certain financial thresholds are exceeded. Financial statements can be submitted in English.
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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 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 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 general rule, varies between 1 and 6 months depending on the aggregate period of employment.
- Danish law protects salaried employees 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 be e.g. 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.
- 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, age, part-time working, fixed-term working or parental leave. The compensation will, as a general 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 parental leave.
- The rules on restrictive covenants are evident from the Danish Act on Restrictive Covenants covering as 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 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 requirements must be fulfilled to bind 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 in order to work in Denmark. Please see more at: https://www.nyidanmark.dk/en-us/frontpage.htm.
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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 is a cost that the tenant is paying, 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 equaling 6 months’ rent.

Intellectual Property
A Danish trade mark may be obtained in two ways; (i) by registration with the Danish Patent and Trade Mark Office (the “DKPTO”) or (ii) through consistent use of the mark for the relevant goods and services in Denmark.

A registered Danish trade mark 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 Trade Mark 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. Applications for Danish 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.

Copyright is extended to literary and artistic works provided that they comply with the threshold requirement of originality. Copyright protection may include software and works of applied art, and, subject to particular conditions, databases.

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

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 the use of utility models. Applications for utility models are filed with the DKPTO. Applications may further be filed via the PCT system. The maximum duration of a utility model is 10 years.

Bird & Bird are valued by clients for 'top-notch quality and business understanding'.

Denmark, Legal 500 EMEA, 2018
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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 Legislation”). It is the Danish Data Protection Agency’s responsibility to ensure that companies comply with the legislation.

Some fundamental principles must be followed in order to process personal data. Basically, data must 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 above, a legal basis must be identified before 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 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.

In general, it is not permitted to transfer personal data to a third country, i.e. countries outside the European Economic Area. However, a range of legal bases may permit the transfer of personal data to a third country, including the use of certain standard contractual clauses defined by the European Commission.

Also, the GDPR contains a new requirement that companies must assign a Data Protection Officer (DPO) if the core activities of the company consist of processing operations which 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.

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 Baseline can help you answer these question 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 at May 2018 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.