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Advokatpartnerselskab

**A-Z GUIDE  
THE NEW DANISH COMPANIES  
ACT**

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## A

### Amendments to the Articles of Association

- Any proposed resolution to amend the articles of association must be passed by at least two-thirds of the votes cast as well as at least two-thirds of the share capital represented at the general meeting, or by a 9/10 majority both of the cast votes as well as the voting share capital represented at the general meeting, depending on which amendments to the articles of association the decision concerns.
- Non-voting shares are not to be included when calculating the represented capital, unless a representation right has been allocated to such shares.

### Articles of Association

- Every company must have articles of association that meet the requirements of the Danish Companies Act.
- The Danish Business Authority has templates for articles which may be used and supplemented with specific information regarding the individual company.

## B

### Board of Directors

- Public limited companies may either be managed by a board of directors along with an executive board or by a supervisory board along with an executive board. Private limited companies must have an executive board and may in addition choose to have a board of directors or a supervisory board.
- The board of directors in a public limited company must consist of at least three members. The majority of the board members in a public limited company may not be executive directors. The chairman or the deputy chairman in a public limited company may not be part of the management. In public limited companies, the majority of the members must be elected by the general meeting.

### Bonus Shares

- The company may issue bonus shares by transferring amounts to the share capital that have been recorded in the company's latest annual report as retained earnings.

## C

### Capital Increase

- The decision to increase capital must be passed by at least two-thirds of the votes cast as well as at least two-thirds of the share capital represented at the general meeting.
- Payment for a capital increase may be made by cash or non-cash contribution or conversion of debt.
- The board of directors of a public limited company must submit a report containing information about events of major importance to the company's position which have occurred after presentation of the annual report. However, shareholders may deviate from this requirement by unanimous agreement.

### Capital Loss

- A company's management is obliged to ensure that a general meeting is held whenever the company's equity represents less than half of the share capital. In the event that a company's equity amounts to less than DKK 62,500, a general meeting must be convened irrespective of the size of the share capital.
- At the general meeting, the central governing body must report the financial position of the company and, if necessary, submit a proposal for measures that should be taken, including a proposal for dissolution of the limited liability company.
- If any shares are not paid in full, the non-paid part is an outstanding amount and is therefore an asset. Thus, in the event that a company is established with a nominal capital of DKK 500,000, and DKK 125,000 has been paid, it does not indicate that the company is in a capital loss situation.

### Capital Reduction

- Any resolution reducing the share capital must be passed by the general meeting by at least two-thirds of the votes cast as well as at least two-thirds of the share capital represented at the general meeting. The general meeting may only pass a resolution to use the capital reduction amount for distribution to the shareholders if the central governing body approves the resolution.
- In connection with capital reductions, notice must be given to creditors of the company requesting them to file their claims against the company within four weeks if the reduction is to be used for distribution to the shareholders or transfer to a special reserve fund.
- Capital reductions are deemed to be finally implemented four weeks after the expiry of the time limit for the filing of claims against the company.

## Controlling Interest in Groups

- Controlling interest means the power to exercise decisive influence over a subsidiary's financial and operating decisions.

## Conversion

- Shareholders may, with the same majority required to amend the articles of association, resolve to convert a private limited company into a public limited company. The conversion may be implemented without the consent of the creditors.
- The general meeting may, with the same majority required to amend the articles of association, resolve to convert a public limited company into a private limited company. The conversion may be implemented without the consent of the creditors.

## Conversion of debt

- New shares may be paid for by conversion of debt.
- If new shares are to be paid for by conversion of debt, this must be specified in the general meeting's resolution on the increase. The central governing body must explain the reason for and the point in time at which the debt was incurred, as well as the reasons for the proposed conversion.
- In public limited companies, the board of directors' explanation as well as any additional documents must be made available to the shareholders and must be submitted to the general meeting. This may be departed from by agreement between shareholders.

## Corporate Governance

- The general principles regarding corporate governance regulating the interaction between the company, the shareholders and third parties.

## Cross-border Mergers and Divisions

- Companies may participate in cross-border mergers and divisions in which the other participating companies are also limited liability companies governed by the laws of the EU or EEA Member States.

# D

## Division

- The general meeting of a company may pass a resolution to divide the company. In connection with the division, the assets and liabilities are transferred as a whole to two or more existing or

newly established public or private limited companies in exchange for consideration to the shareholders in the transferor company. The general meeting may resolve, with the same majority of votes, to implement a division, whereby the company transfers a part of its assets and liabilities to one or more existing or newly established companies.

- The transfer is not subject to the consent of the creditors. However, if any claim made by a creditor of a company participating in the division is not satisfied, each of the other participating companies are jointly and severally liable for obligations that existed at the date of publication of the division plan subject to the maximum amount of the net value contributed or remaining in the individual company at that time.
- The valuation experts must make a declaration as to whether the creditors of each company may be considered to be sufficiently protected after the division. However, shareholders may decide, by unanimous agreement, not to obtain a declaration by a valuation expert on the creditors' position.
- If the valuation experts conclude that the creditors will not be sufficiently protected after the division, or if no declaration has been made by a valuation expert on the creditors' position, creditors may file their claims up to four weeks after the date on which all of the existing companies participating in the division passed the resolution on the division.
- However, no claims for which adequate security has been provided may be filed.

## Dividends

- The general meeting may decide to distribute ordinary or extraordinary dividends.
- If non-cash assets are distributed as dividends, a valuation report must be prepared by an auditor if the central governing body does not file a declaration on the value of the non-cash assets.
- The general meeting may not decide to distribute dividends of a higher amount than that proposed or accepted by the company's central governing body.

## E

### Employee and Group Representation

- In companies that have employed an average of at least 35 employees for the preceding three years, employees are entitled to elect representatives and alternate representatives to the company's central governing body (however, not if the governing body consists of an executive board), corresponding to half the number of the other members of the body. This also applies to the employees of a Danish parent and its subsidiaries registered in Denmark as well as branches of foreign subsidiaries.

## Entrepreneurial Companies

- In the spring of 2013, the Danish parliament passed a bill which makes it possible to establish Entrepreneurial Companies with an initial share capital of as little as DKK 1.
- An entrepreneurial company may only be incorporated by cash contribution of the share capital.
- It is a requirement that Entrepreneurial Companies transfer 25% of their annual profit into a tied reserve which may not be used for dividends or for covering losses. The requirement of depositing a percentage of the annual profit into a tied reserve only applies until the share capital with addition of the tied reserve amounts to DKK 50,000.
- When an entrepreneurial company is sufficiently consolidated, i.e. when it has a share capital and an equity capital of a minimum of DKK 50,000, the company may be re-registered as an ordinary Private Limited Company.

## Equal-rights Principle

- In limited liability companies, all shares carry equal rights. However, the articles of association of a company may provide that the company must have different share classes, in which case the articles must specify the different characteristics and size of each class. Furthermore, it is possible to regulate this issue through a shareholders' agreement, but such an agreement does not bind the company, see Shareholders' Agreements.

## Executive Board

- The executive board is part of the management of a company.
- With regards to public limited companies, the company may be run by an executive board governed by a board of directors, or the executive board may be the central governing body of the company. In the latter case, a supervisory board must be established, cf. Section 111(1)(2). The supervisory board is part of the company's management. However, it has not been conferred any managerial powers. Its primary object is to supervise the executive board.
- Private limited companies may have the same management structure as public limited companies. Furthermore, private limited companies may also only have an executive board.
- A member of the executive board may not be a member of the supervisory board.

## F

### Financial assistance using the company's own funds

- As a general rule, a limited liability company may not, directly or indirectly, advance funds, make loans or provide security for a third party's acquisition of the company's shares or shares in its parent company.

- However, if certain requirements on approval by the general meeting, reasonableness of the resolution, report by the central governing body and arm's length terms are satisfied, a company may, directly or indirectly, advance funds, make loans or provide security with a view to a third party's acquisition of the company's shares or shares in its parent company.

## Fund

- An independent institution with no owners.

## G

### General Meeting

- The shareholders' right to pass resolutions is exercised at the general meetings of the company.
- All shareholders are entitled to attend and speak at general meetings. Shareholders may appoint a proxy.
- General meetings must be held at the registered office of the company unless the articles of association specify another place at which the meetings must or may be held.
- General meetings must be held in Danish, but a simple majority of the votes may decide to use another language.
- General meetings may be held physically or electronically.

### Group of Companies

- A group (of companies) consists of a parent company and its subsidiaries.

## I

### Incorporation

- Incorporation takes place by preparation of a memorandum of association.
- The deadline for registration with the Danish Business Authority is two weeks from the date where the memorandum of association was signed.
- Registration of the incorporation may only take place if 25% of the share capital, however always a minimum of DKK 80,000 (50,000), has been paid. Premiums must always be paid in full.
- Until the effective date for the incorporation, the company cannot undertake any obligations.

## L

### Language at the Board of Directors' Meetings

- The default language is Danish.
- It is possible for a majority to decide on a language other than Danish, provided that simultaneous interpretation is made available to all participants. If a language other than Danish is chosen without simultaneous translation for all participants, this must be decided unanimously by the board of directors.
- Meetings of the board of directors may be held in Swedish, Norwegian or English without simultaneous interpretation if that language is also the official group language as provided by the articles of association.
- Any board member may demand that documents prepared in other languages than Danish are translated. This does not apply to documents prepared in Swedish, Norwegian or English insofar as the relevant language is provided by the articles of association as the group language.
- For the purpose of clarification, any board member is entitled to speak Danish, Norwegian or Swedish regardless of whether the meeting takes place in Danish, Norwegian or Swedish.

### Language at the General Meeting

- The language at the general meeting is Danish. The general meeting may, however, resolve, by a simple majority of votes, to hold the meeting in a language other than Danish, offering all participants simultaneous interpretation to and from Danish. The resolution may be included in the articles of association without a separate resolution being passed by the general meeting to such effect.
- The general meeting may resolve by a simple majority of votes to hold the meeting in Swedish, Norwegian or English without offering all participants simultaneous interpretation to and from Danish. The resolution may be included in the articles of association without a separate resolution being passed by the general meeting.
- Documents prepared for use by the general meeting must be prepared in Danish. With a simple majority, the general meeting may decide that the documents may be prepared in Swedish, Norwegian or English.
- If it is decided that the documents are to be prepared in any language other than Danish, Swedish, Norwegian or English, the passing of 9/10 of the votes together with the represented capital is necessary.

## Language in Documents to the Danish Business Authority

- Information registered in the Danish Business Authority's IT system must be in Danish.
- Almost all documents described in the Danish Companies Act may be submitted in Danish, Norwegian or Swedish.
- As regards branches of foreign limited liability companies, the documents, which must be submitted to the Danish Business Authority, may be in Danish, Norwegian, Swedish or English. However, the company's purpose and provisions regulating the power to bind the company must be in Danish.

## Liability of shareholders

- Shareholders are not personally liable for the obligations of the company, but are liable only to the extent of their contributions.
- When a shareholder transfers a share that has not been fully paid up, he will be jointly and severally liable with the transferee and any subsequent transferees for payment of the outstanding amount on the share.

## Liability of the board of directors

- Members of management, who, in the performance of their duties, have intentionally or negligently caused damage to the company, are liable to pay damages. The same applies when the damage is caused to shareholders or any third party.

## Limited Liability Company

- The general term for a public limited company (including limited liability partnership) or a private limited company, cf. Section 5(17).

## Limited Partnership Company

- The rules for public limited companies also apply to limited partnership companies, with certain exceptions.

## Loss Coverage

- A reduction of the share capital may be completed to cover a loss. The board of directors is responsible for the size of the reduction not exceeding the covering of the loss.

## M

### Majority Requirement

- The general meeting adopts decisions by a simple majority of votes, while decisions entailing amendments to the articles of association are made with 2/3 of the votes and 2/3 of the capital represented at the general meeting.
- It is possible to state in the articles of association that certain types of proposals must be adopted by a greater majority than prescribed by law
- Few decisions, such as compulsory redemption of minority shareholders, may only be decided with 9/10 of the votes and 9/10 of the capital represented at the general meeting.

### Management Structure

- As regards public limited companies, it is possible to choose to have a (i) board of directors and an executive board or (ii) to choose to have a supervisory board and an executive board.
- As regards private limited companies, the rules are even more flexible. Companies are allowed to have (i) an executive board only, (ii) an executive board and a board of directors or (iii) an executive board and a supervisory board.

### Mergers

- A company may be dissolved without liquidation by transferring its assets and liabilities as a whole to another company in return for consideration provided to the shareholders of the non-surviving company, a "merger by absorption". The same applies where two or more limited liability companies merge into a new company, a "merger by formation of a new company".
- The central governing bodies for each of the existing companies participating in the merger must draw up a written statement that provides explanations and reasons for the merger plan. The statement must include information about how any consideration offered for shares in the non-surviving companies has been determined, including any particular difficulties in connection with such determination. In private limited companies, the shareholders may agree that no merger statement should be drawn up.
- For each of the companies participating in the merger, one or more independent valuation experts must make a written statement regarding the merger plan, including the consideration.

The shareholders may decide, by unanimous agreement, not to obtain a statement by a valuation expert on the merger plan.

- If the valuation experts, with their declaration on the position of the creditors in the company, conclude that the creditors will not be sufficiently protected after the merger, or if no declaration has been made by a valuation expert regarding the creditors' position, creditors may file their claims up to four weeks after the date on which all of the existing companies participating in the merger passed the resolution on the merger.

## Minimum Capital

- Reference is made to Private Limited Companies and Public Limited Companies.

## N

### Nominal Value

- Shares may be issued with a nominal value or as non-par value shares or any combination of such shares.

### Non-cash Contribution

- A Non-cash Contribution is a contribution of other values than cash in connection with incorporation or a capital increase.
- A Non-cash Contribution must be accompanied by a valuation report.
- The requirement for the preparation of a valuation report does not apply to contributions of (i) assets measured individually and presented in financial statements or consolidated financial statements for the previous financial year that have been prepared in accordance with the provisions of the Danish Financial Statements Act or international accounting standards or (ii) Securities or money-market instruments recorded at the average price at which they have been traded on one or more regulated markets.

### Non-par Value Shares

- In principle, all shares carry voting rights. However, non-voting shares may be issued.

### Non-voting Shares

- In principle, all shares carry voting rights. However, non-voting shares may be issued and must appear from the articles of association, cf. Section 46(1)(2)
- Non-voting shares only carry a right of representation if so provided by the articles of associa-

tion.

## O

### Own Shares

- Companies may acquire their own shares if they have been paid in full. However, companies may not subscribe for new shares.
- An acquisition of a company's own shares for consideration cannot proceed without the board of directors obtaining authority from the general meeting. However, the board of directors may acquire the company's own shares in order to avoid significant and imminent detriment to the company.
- The company's holding of its own shares must be disregarded when assessing whether the company satisfies the capital requirements, for which reason there has to be other shareholders holding a minimum of DKK 500,000 as regards public limited companies and DKK 80,000 as regards private limited companies. In the spring of 2013, the Danish parliament passed a bill lowering the minimum share capital requirement for private limited companies to DKK 50,000. The implementation date is still unknown.

## P, Q

### Parent Company

- A parent company is a limited liability company controlling one or more subsidiaries.
- A company may only have one direct parent company.

### Participation Right

- Reference is made to General Meetings.

### Payment for Shares

- Public limited companies and private limited companies must have a nominal share capital of DKK 500,000 and DKK 80,000, respectively. In the spring of 2013, the Danish parliament passed a bill lowering the minimum share capital requirement for private limited companies to DKK 50,000. The implementation date is still unknown.
- It is sufficient to pay 25% of the share capital, but not less than DKK 80,000 (50,000) must be paid up at any time.
- The rights of a shareholder subsist regardless of whether their shares are fully paid up.

- The board of directors may call up share capital that has not been paid up. Two weeks or more must be allowed for payment. The articles of association may provide a longer period for payment, but this may not exceed four weeks.
- If a premium is fixed, it must be fully paid up, notwithstanding that part of the share capital is not paid up.
- If a shareholder has failed to duly comply with the board of directors' request for payment of the amount outstanding on a share, the shareholder may not exercise the voting rights attached to any part of his shareholding in the company at general meetings, and his shares will be considered unrepresented at general meetings until the amount has been paid to and registered by the company. However, this does not apply to the right to dividends and other payments or to the right to subscribe for new shares in connection with a capital increase.
- The board of directors may set off the limited liability company's claim for payment of the share capital against distributions from the company which the shareholder is entitled to receive as a shareholder.
- In the event that a shareholder does not pay his/her remaining shares to the company on demand, this shareholder will lose his/her right to vote at the general meeting with any part of that shareholder's capital in the company, and the share capital is also deemed not to be represented at the general meeting. However, the right to dividends and the right to new shares in connection with a capital increase are retained.
- If a shareholder transfers a share that has not been fully paid up, he will be jointly and severally liable with the transferee and any subsequent transferees for payment of the outstanding amount on the share.

## **Private Limited Companies (Anpartsselskab (ApS))**

- A limited liability company, in which the shares may not be offered for public subscription, including via stock exchanges and other regulated markets. A private limited company must have a minimum share capital of DKK 80,000. In the spring of 2013, the Danish parliament passed a bill lowering the minimum share capital requirement for private limited companies to DKK 50,000. The implementation date is still unknown.
- Shareholders' liabilities are limited to the capital contribution.

## **Public Limited Companies (Aktieselskab (A/S))**

- A limited liability company, in which the shares may be offered for public subscription, including via stock exchanges and other regulated markets. A public limited company must have a minimum share capital of DKK 500,000.
- Shareholder liability is solely limited to the capital contribution.

## Public Register of Shareholders

- The company must register notifications received from the owners of more than 5% of the shares at the Danish Business Authority's homepage.

## R

### Register of Shareholders

- The register of shareholders is kept by the company.
- The company may authorise another entity to keep the register of shareholders.

### Registration Date

- In listed companies, a shareholder's right to attend a general meeting and to vote on their shares must be determined on the basis of the shares held by the shareholder at the date of registration. The date of registration is one week before the date of the general meeting.
- The shareholding of each individual shareholder must be determined at the date of registration based on the number of shares held by that shareholder as registered in the register of shareholders and on any notice of ownership received by the company for the purpose of registration in the register of shareholders, but which are not yet registered.
- Non-listed companies may voluntarily choose to use a registration date.

### Representation Rights

- Shares carrying voting rights always have representation rights.
- Non-voting shares only carry a right of representation if so provided by the articles of association.

## S

### Share

- Irrespective of a share being paid in full or not, all shares carry voting rights. However, the articles of association of a company may provide that certain shares carry no voting rights and that the voting power of certain shares differs from that of the other shares.
- Non-voting shares only carry a right of representation if so provided by the articles of association.
- Companies may issue par value shares, non-par value shares or any combination of such shares.

## Share Capital

- The contribution amount representing the extent of shareholder liability.
- The share capital must be calculated in DKK or EUR.
- The capital requirements for public limited companies and private limited companies are described under Payment for Shares.

## Share Certificates

- Evidence of ownership of a share.

## Share Classes

- A group of shares to which the same rights or obligations are attached.

## Shareholder Loan

- With certain exceptions, a company may not, directly or indirectly, advance funds to, make loans to or provide security for its shareholders or members of the management.
- A company may advance funds to, make loans to or provide security for the obligations of Danish and certain foreign parent companies and employees.

## Shareholders' Agreements

- Shareholders' agreements may be entered into, but are not binding upon the company.

## Statutory General Meeting

- The founders may choose to hold a statutory general meeting.

## Subsidiary

- A subsidiary is a company controlled by a parent company.

## Supervisory Board

- The management of companies may consist of a supervisory board along with an executive board.
- Even though the supervisory board constitutes part of the company's management, it has not been conferred any managerial powers.
- For public limited companies in particular, the supervisory board must consist of a minimum of three members.
- Members of the supervisory board have no power to bind the company.

- Contrary to the board of directors, the supervisory board is to supervise, not run, the company, with focus on internal control of the executive board. Just as with the board of directors, the supervisory board must follow the rules of procedure and must sign the annual report together with the executive board.

## T

### Transfer of Shares

- Shares may be transferred with the limitations set forth in the articles of association, for example provisions on the board of directors' consent to the transfer.
- Shares may be transferred regardless of whether they have been paid in full or not. If a shareholder transfers a share that has not been fully paid up, he will be jointly and severally liable with the transferee and any subsequent transferees for payment of the outstanding amount on the share..

### Transitional Rules

- A date has not yet been set for the implementation of the Danish Companies Act. Among other things, this phase deals with a public register of owners, which cannot be implemented before the IT platform of the Danish Business Authority has been modified. Therefore, this phase can be expected to be implemented in two to three years.
- Furthermore, the Danish parliament has passed a bill lowering the minimum share capital requirement for private limited companies to DKK 50,000. The implementation date is still unknown.

## V

### Valuation Report

- The option to contribute valuables other than cash at incorporation as well as at a capital increase at a later date entails that a valuation report must be composed in order to assess the value of the investment, cf. Section 36(1). At investment of certain assets and shares, the valuation report may be replaced by a statement from the central governing body, cf. Section 38.

### Voting Power

- It is possible to differentiate between share classes concerning the voting power of each class.

## W, X, Y, Z

### Warrants

- Warrants are documents which grant the right, but not the obligation, to subscribe for shares in a company, and therefore represent an opportunity to increase the share capital.

If you have any questions or require additional information on the new companies act, please contact attorney Dan Moalem (dmo@mwblaw.dk) or attorney Henning Hedegaard Thomsen (hht@mwblaw.dk).

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