



42435 Knowledge based entrepreneurship. 5. lecture
Business Law
 for High Tech Entrepreneurs

- **Company: types – with pros and cons**
- **Contract Law**
- **Important agreements**
 - Trade
 - Employers and Employees
 - Management
 - Agents
- **Capital contribution**
- **Tax Law Issues**
- **DK University law with impacts**

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The Common Type of Business

- **The Personally Owned Company (v./-)**
 - No capital contribution. Full liability
- **The Partnership Company (I/S)**
 - No capital contribution, joint and several liability
- **The Private Limited Company (ApS)**
 - DKK 80.000 in capital contribution. Limited liability
- **The Limited Company (A/S)**
 - DKK 500.000 in capital contribution. Limited liability
- **Other types (K/S, Amba, SMBA, etc.)**
 - Don't do it.


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Criteria for Choosing Corporate Type

- **Risc: high => limited company** (A/S or ApS)
 - Creditors
 - Customers
 - Banks
 - Product liability
- **Tax**
 - Deficit at start. Later: profit and exit I/S => limited
 - Deficit at start. Later: deficit and bankruptcy => limited
- **Funding rounds => limited**
- **Image => limited** (A/S = large equity)
- **Administration: avoid complicated designs**

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Criteria for Choosing Corporate Type

BOTTOM LINE:

The appropriate corporate type is case sensitive – depending on:

- Risk
- Tax
- Financing
- Market


Relevant links:

www.virk.dk
[SMBA](#)
[EBST](#)

www.webreg.dk

[Why not SMBA?](#)
[SKAT:](#)

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Changing Corporate Type

- **From partner- to private limited company:**
 - You may build up values and change – tax-free
 - The auditor legalizes the values
 - Timing: when cashflow changes sign
- **From private limited to limited company:**
 - Can be done tax-free. Auditor legalizes
 - Timing: at capital increase/funding round
- **Complex stuff: keep the auditor and the lawyer in the loop**

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Important agreements - 1

- **Trade**
 - Agreement = offer + accept
 - Accept must be matching and due
 - Oral agreements are enforceable, but in reality not.
 - Complex stuff: seek professional assistance.
- **Management:**
 - Board-company: regulated by law in DK
 - Director (CXO): individual contract.
 Notice: the Salaried Employees Act does not apply to CXOs
 Competition clause + warrant program are typical components in a director's agreement

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Important agreements - 2



• Employees

- Salaried Employees Act sets the limit in DK
- Flexicurity: short grace period on dismissal + unemployment insurance
Start: 1 month. Next 32 month: 3 months.
Then increasing 1 month per yr. Max 6 months.
- Summary dismissal: it takes a lot: theft, abuse, fraud
- Resignation: 1 month, always, unless dismissal grace period is equally extended.
- It takes very little for a blue collar or a consultant to turn into a salaried employee (a white collar)

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Important agreements - 3 Between owners and shareholders



• Partnership Company (I/S)

- Partner Agreement **VERY** important
In particular: get the decision-making authority cloused in

• Limited company (incl. private -)

- Shareholders' Agreement is essential
 - Decision-making authority defined
 - Sets rules for capital contribution (investing in new shares)
 - Sets rules for selling and buying shares
 - Protects in case of conflicts of interest (disloyalty)
 - Consolidates the investor's exit (to some extend)
 - Protects investor against dilution as well as early loss of cash

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Product liability




2 different situations:

- Liability within contract
Regulated by agreement
- Liability vs. 3. person
 - Regulated by national law
 - Special attention in North America

Protective means

- Insurance
- Corporate form
- Do not make yourself a target
 - Produce safe products!
 - Give sound advice
 - Don't stock-pile values in the company

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Capital Contribution Law


Founding by cash contribution

- Capital must be registered as being available on the company's bank account
- Capital can not be paid back to the founders without paying income-tax first. (40 – 68% in DK)

Founding by non-cash contribution

- Auditor's statement on the presence and value of contribution is a precondition
- Values that are created as a consequence of the formation of the company – and hence contributed - are subject to tax - f.x. a patent being contributed by the inventor

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Tax Issues


Taxation of shares sold

- Capital gains are taxed as capital income (Complicated but typical 28 - 43%)
- Taxation is instantaneous at exit-time
- Exception: the Holding Company after 3 yrs ownership

The Holding Company (ApS or A/S)

- Purpose: to safeguard assets set aside for reinvestment => *the serial entrepreneur!!*

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The Holding Company

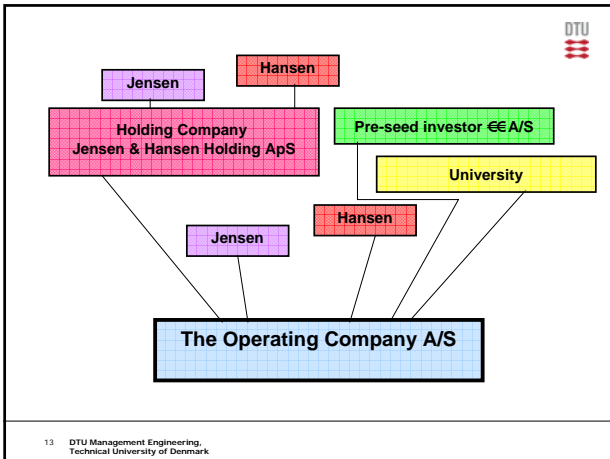
Found it just before the operating company

- Injects capital in the operating company
- Owns the shares on behalf of the founder(s)
- The extra costs are moderate (app. DKK 10.000)
- May sell shares tax-free if co-owner > 10% (!)
- May take up dividends tax-free if > 10% owner (!)

The ideal solution for

- Exits: Low/no tax on founders' cash revenue
- Succession: excess cash is transferred to the holding company
- Retirement: price on operating company lower, when excess cash is transferred to holding company before selling.

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Miscellaneous

The University Law

- University owns the right to exploit ideas and inventions made by employees and PhD-students - unless special agreements are made
- Students: take care if the teacher is co-inventor
- Revenues from IPR are split in 3 equal shares for university, institute and inventors

Incentive programs

- Options and warrants make VIPs run faster (right?)
- Complicated stuff, but the investor likes it
- Go for simple solutions until your company is big enough to pay a lawyer

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