

NEWSLETTER DENMARK

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New initiatives for control of companies



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NEW REQUIREMENTS FOR RE-REGISTRATION OF ENTREPRENEURSHIPS

The Danish parliament has recently entered into a political agreement to facilitate the required re-registration of entrepreneurial companies to private limited companies (ApS). The political agreement is intended to help entrepreneurs continue to operate their companies at a time when many entrepreneurs are under pressure on liquidity and therefore have problems providing the required capital, which is why the requirement for companies' capital through re-registration is proposed to be lowered.

The agreement contains two key elements for entrepreneurial companies: a new deadline for re-registration and changed requirements for the required capital for re-registration.

NEW DEADLINE: 15 OCTOBER 2021

The deadline for re-registration from IVS to ApS originally expires on 15 April 2021. However, the deadline for re-registration is crucial for the remaining entrepreneurial companies in Denmark, as non-compliance with this may lead to compulsory dissolution of the companies.

The proposed extension of the deadline for re-registration by half a year from 15 April 2021 to 15 October 2021 would therefore mean that the entrepreneurial companies will have more time to make use of the new rules for re-registration, and that hopefully more entrepreneurial companies will survive.

CAPITAL REQUIREMENTS

In addition, the new law contains an amendment to the required capital. The new capital requirement means that re-registration of an entrepreneurial company to a ApS can be done by simply paying the missing share capital, i.e. the difference between the company's registered share capital and the minimum requirement for limited liability companies' share capital of DKK 40,000, without also having to cover any negative equity.

This means that if an entrepreneurial company is thus established with DKK 1 in share capital, the company can be re-registered as a ApS by depositing the remaining DKK 39,999, so that the share capital corresponds to the minimum capital requirement for a ApS.

ENTER INTO FORCE

It is the parliament's plan to present a law that implements the political agreement by November.

The consultation deadline for the law expires on 6 October 2020. A final bill has still not been submitted.

At LEAD Rödl & Partner, we are ready to advise you on the re-registration from IVS to ApS, as well as other company and tax law issues that may arise for the management of companies of all types and their owners.

In addition to advising on legal matters in the corporate and tax area, the auditing company Rödl & Partner Danmark can advise you on financial aspects in the aforementioned areas.



→ New initiatives for control of companies

THE NEW LEGISLATION

The 12 May 2020 the Danish parliament adopted the proposed control package, including financing of the money laundering supervision, which entails a number of changes in the company act, the law on certain enterprises, the Danish financial statements act and the auditors act.

All initiatives must increase the authority's possibility for controlling companies and ensure that companies comply with the rules of the company act and financial statement act.

MEASURES AND FUNDS

The government sharpens the action against circumvention of the company act and tax laws by strengthening the company- and financial statements acts by expanding and intensifying the authorities' tools for controlling the companies. The control includes systematic pre-inspection of submission of financial

statements and company reporting's, and subsequent risk- and databased control of public financial statements and company registrations. The Danish Business Authority's tools are strengthened by the following:

- Increased company and financial statement control, including control of management and addresses
- Increased possibility for forced dissolutions of companies
- Information on the net revenue by the submission of the financial statement
- Public disclosure of control cases started against companies
- Strengthened supervision on accountants

NEW CONTROL MEASURES IN THE COMPANY ACT

As part of the control package, changes are made in the company act. Especially with respect to the companies'

management the change entails new obligations for the companies and those persons registered in the commercial registry (CVR-register), including new control tools for the Danish Business Authority to strengthen the effort against the use of a front man and fictional addresses.

1. Exercise of management

Management members must in fact perform those obligations that rely upon the management according to the company act, and the Danish Business Authority is authorized to control this accordingly.

2. Identity control

The Danish Business Authority can require a verification of passport or identity card for persons without an identification number (CPR-no.), including physical appearance of the registered persons. The Danish Business Authority is simultaneously granted the opportunity to decline a registration and to de-register in cases of doubt.

Moreover, the Danish Business Authority is authorized to verify the identity of persons, who makes use of digital identity in connection to a registration, if there is any doubt as to whether it is being misused. The Danish Business Authority has also been authorized to control the identity of the persons that must be registered with a company, including the ability to demand physical appearance and reject registration or to de-register a person, if there is still doubt after the control of the person's identity.

3. Control of the company's address

In addition, the Danish Business Authority can control that a company in fact is present and is reachable on the address registered in the CVR-register. Furthermore, the Danish Business Authority is authorized to check directly at the companies' addresses to ensure that the company is reachable on the address. Same authorization is granted in order to control personal addresses.

If the companies or the relevant persons do not comply with the beforementioned, the Danish Business Authority can act accordingly. The Danish Business Authority can forcibly dissolve companies, that do not comply with the authorities' injunctions to provide the

Danish Business Authority with the necessary information or documentation. So far, the Danish Business Authority has only had the opportunity to issue coercive fines, if the companies did not comply with the authorities' injunctions on correcting illegal conditions or cease to provide the demanded information.

The Danish Business Authority however, can now publish ongoing investigations on its webpage, when the authority finds it relevant (e.g. if the investigation has public interest) or when the result of an investigation is reached, moreover if it has been reported to the police.

OTHER LEGISLATIVE CHANGES

Section 138 of the Danish Financial Statements Act is amended so that all companies must report the net revenue to the Danish Business Authority when submitting their annual report. The information on net revenue is used to check whether the companies submit an annual report according to the correct accounting class, and whether they meet the criteria for opting out of auditing requirements. The information is treated confidentially and is not made available to the public.

In addition, an extension of the area of the Auditors Act is introduced, which e.g. entails that the auditor may in future be brought before the Board of Auditors and sanctioned under the Auditors Act for violation of the Money Laundering Act, as well as for advice in contravention thereof. The change in the law also entails additional control and sanction options in relation to auditors, as well as the advice provided.

ENTRY INTO FORCE


The above rules come into force at different times within the next 6 months. The amended rules in the Danish Financial Statements Act and the Auditors Act entered into force on 1 July 2020. The requirement to disclose the company's net revenue when submitting the annual report does not take effect until the annual report is submitted after 1 January 2021.


The amendments to the Act on Certain Business Enterprises as well as to the amended rules of the Companies Act shall enter into force on 1 January 2021, with the exception of section 139b, subsection 1 of the Companies Act, 3, no. 4, (description of share options in the remuneration report), which already entered into force on 1 July 2020.





→ What do the changes mean for my business?


As a business owner covered by the above legislation or a member of the management of a company covered by the above legislation, we recommend checking the following:


-  IS THE INFORMATION ENTERED IN THE DANISH TRADE REGISTER (CVR REGISTER) CORRECT?

-  CAN THE DANISH BUSINESS AUTHORITY COME INTO CONTACT WITH THE COMPANY OR MANAGEMENT EASILY AND WITHOUT OBSTACLES, IF NECESSARY?

-  ARE PASSPORT COPIES OF THE REGISTERED MANAGEMENT OR OTHER REGISTERED PERSONS AVAILABLE?

-  CAN IT BE PROVEN THAT THE MANAGEMENT OF THE COMPANY IS EXERCISED AT THE REGISTERED ADDRESS?

-  CAN THE COMPANY BE CONTACTED AT THE ADDRESS REGISTERED IN THE CVR-REGISTER?

-  ARE ALL BUSINESS DOCUMENTS STORED LEGALLY (5 YEARS FROM THE REGISTRATION DATE)?

CONTACT FOR FURTHER INFORMATION



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