



NEW PROPOSED LEGISLATION ON CONVERSION OF DANISH ENTPRENEURIAL LIMITED COMPANIES TO ORDINARY DANISH PRIVATE LIMITED COMPANIES

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While the minimum capital requirement in a Danish private limited liability company (in Danish “Anpartsselskab or “ApS, herein abbreviated “PLC”) is DKK 40,000, it has until recently been possible to incorporate an entrepreneurial limited company (in Danish “Iværksætterselskab or “IVS”, herein abbreviated “ELC”) with a capital requirement of only DKK 1.

The main difference between the Danish PLC and the Danish ELC is the lower capital requirement, while the provisions of the Danish Companies Act applicable to PLCs generally apply. However, due to changes in legislation, it is no longer possible to incorporate new ELCs, just as existing ELCs must be converted into PLCs.

This has so far not only required an increase of the nominal share capital to a minimum of DKK 40,000, but has also required a positive equity of DKK 40,000. Due to the fact that the ELCs in a start-up period often are operating at a loss, compliance with the equity-requirement has made the conversion difficult for many ELCs. Solutions so far have comprised capital increases at a premium or conversion of debt into new share capital/equity, but even when it is possible to reach a commercial agreement on such transactions, substantial costs are usually incurred that were not expected upon incorporation.

In addition, the equity must be certified by an auditor in connection with the conversion, further increasing costs. Also, the requirements hardly match the facts that the ELCs were intended to encourage entrepreneurs to start new businesses in an easy and uncomplicated way, but still within the scope of the appropriate company legislation.

Therefore, it has been proposed to make it easier to convert existing ELCs into PLCs, by introducing the following measures:

- Conversion from ELC to PLC does not need to take place until 15 October 2021 (as opposed to the current deadline 15 April 2021)
- The share capital must still be increased to a minimum of DKK 40,000 in connection with the conversion, but the positive equity-requirement ceases to apply
- The requirement for certification by an auditor is abandoned, however, the auditor will still need to be involved in case of non-cash contributions

Accordingly, it will be possible for existing ELCs to increase their share capital from, for example, DKK 1 to DKK 40,000, by contribution of DKK 39,999 in cash (or the equivalent in EURO). Any negative equity will not affect this possibility. This will result in the ELC,

following conversion to a PLC, being put in the same position as if it had initially been incorporated as a PLC. It should be kept in mind, however, that the management is still responsible for ensuring the sufficient operating capital and appropriate operations of the company.

It will still be necessary to pass a formal resolution, approved by shareholders holding at least 2/3 of the shares and votes, just as the articles of association must be updated to reflect the conversion, including the new share capital. Once such resolution has been passed, the conversion must be filed and registered with the Danish Business Authority, which can be done electronically.

If passed, the legislation is expected to take effect from 1 January 2021, as it will be necessary to update the IT-systems of the Danish Business Authority to handle the new requirements.

We expect that many Danish ELCs will make use of the proposed amendments to complete the conversion by 15 October 2021. However, it is also to be expected that some ELCs will be dissolved as a consequence of non-compliance, e.g. due to the shareholders not wishing to contribute additional share capital.

**If you have any questions or require further information regarding any of the above,
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