

Considering acting as a director of a Danish company?

The following is simply a few notes of relevance to the position of director of a Danish company, especially of a Danish ApS. The kind of company we have in mind is the foreign-owned Danish holding company but the following is true of all Danish companies.

In particular, the following relates mainly to Danish legal restrictions on the financial dispositions of a Private Limited Company (*Anpartselskab* - ApS). This is therefore a very limited description and does not pretend to be a summary of a director's fiduciary responsibility under Danish law.

1. Dividends

A Danish Private Limited Company may only pay dividends to its shareholders after the annual accounts have been prepared and after the dividends have been approved at the Annual General Meeting. No interim dividends are permitted.

Dividends may only be approved if there are retained earnings (after the allocation of profits for the year) sufficient to cover the full amount of the dividend.

2. Financing purchase of own shares

A Danish Private Limited Company may not finance the purchase or subscription of its own shares either by lending or securing a loan.

3. Loans to and guarantees for foreign parent company

Danish company law prohibits loans to a foreign parent company by a Danish Private Limited Company or guarantees on its behalf. The prohibition includes any form of credit except for credit regarding commercial transactions on normal terms and all forms of security or pledge. Since May 2001 such loans, etc., may be made to a parent company – but not to other shareholders – if that company is located in the EU or EFTA and it has a legal form similar to an ApS or an A/S.

4. Loans to shareholders and officers of the parent company

Loans to shareholders, members of the supervisory board and executive directors of the *parent* company or guarantees etc. on their behalf are prohibited. This prohibition includes loans to any close relatives of the aforementioned.

5. Loans to shareholders and officers

Loans to shareholders, members of the supervisory board and executive directors of *the company* or guarantees etc. on their behalf are prohibited. This prohibition includes loans to any close relatives of the aforementioned.

6. Purchase of own shares/ treasury stock

A Danish Private Limited Company may not purchase its own shares or shares in its parent company except in connection with a duly approved reduction of capital or in connection with the redemption of redeemable shares.

7. Protection of creditors

The company's shareholders and officers may not make dispositions, which endanger the company's ability to pay its creditors and in particular the Danish tax authorities.

8. Danish tax liabilities

Danish companies are subject to tax on their worldwide income. If the company engages in active trading, commercial or investment activities, the profits of these activities will be subject to Danish corporation tax.