

42705 Ph.D 2012. 4. Lecture B.

## 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**

## 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.

## Criteria for Choosing Corporate Type

- **Risc:** high => *limited company* (A/S or ApS)
  - Creditors
  - Customers
  - 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*

## 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](http://www.virk.dk)

[SMBA](#)

[EBST](#)

[www.webreg.dk](http://www.webreg.dk)

[Why not SMBA?](#)

[SKAT:](#)

## 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 cash flow 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**

## 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

## 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)

## Important agreements - 3

### **Between owners and shareholders**

- **Partnership Company (I/S)**
  - Partner Agreement **VERY** important  
In particular: get the decision-making process precisely specified
- **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 extent)
    - Protects investor against dilution as well as early loss of cash

## 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

## 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

## 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!!*

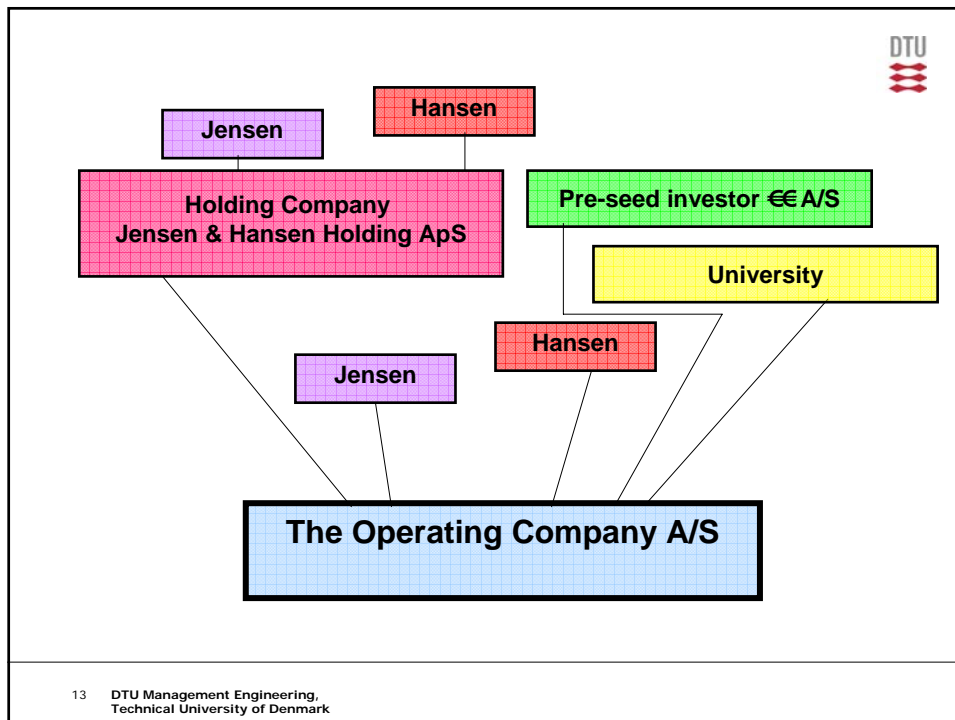
## The Holding Company

### 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.



## 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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