

42705 Ph.D 2013. 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*
- **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

Why is an SMBA a good idea?

EBST

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!!*

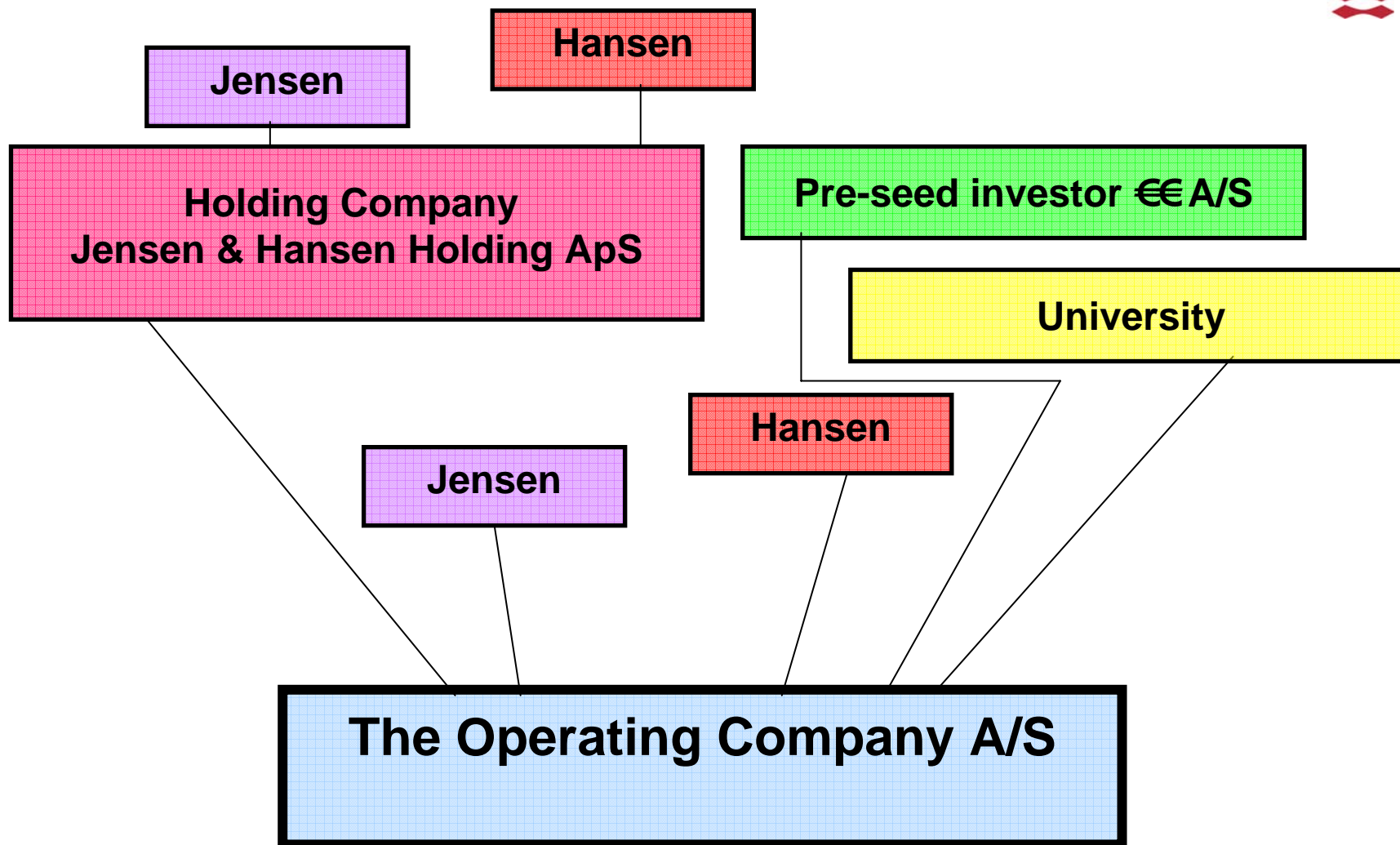
The Holding Company

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