



LASSEN RICARD



LEGAL RESOURCES GUIDE

- ENTREPRENEURS

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About Lassen Ricard

Lassen Ricard is a mid-sized Danish law firm based in Copenhagen. We are well-known for our professionalism, expertise and integrity – our client list speaks for itself. We represent companies from around the world and enjoy close, non-exclusive working partnerships with leading international law firms.

The personal relationship between client and attorney – or group of attorneys – is paramount to us. Our clients' strong enduring trust in our firm, and our knowledge of their business and culture enable us to assist them in their endeavors in an efficient partnership with the clients' legal department and management.

We handle a wide range of assignments, and providing quality is our ultimate mission. Lassen Ricard is a full-service law firm with strong expertise in entrepreneurship.

Our start-up approach

Lassen Ricard is committed to innovation and entrepreneurship. We believe that it is the single best way for Denmark to remain competitive and to create development throughout the world. We further believe that innovation and entrepreneurship is something that can be learned and that the right start is essential for a start-up to succeed.

As such, Lassen Ricard is involved with several entrepreneurial organisations, including Startdust-DTU and the Foundation for Entrepreneurship. In that capacity we both mentor and provide legal services to a number of exciting entrepreneurs.

At Lassen Ricard, we are always happy and willing to sit down for an initial meeting with exciting entrepreneurs and go over their needs and plans, free of charge of course.



Our start-up team

Our start-up team is experienced in handling a full range of start-up issues, including: founding, protection of intellectual property, employment, angel- or VC-funding, and exits.

The industries in which our team has specialised experience include high-tech, construction, media and entertainment, and IT.

The team also has specialised expertise in a number of relevant legal areas aside from traditional start-up issues, such as EU law, litigation, public law, antitrust, capital markets and corporate governance.

Our first meeting

Lassen Ricard recommends that management or founders seek legal counsel at the stage where the start-up is



Jørgen Bek Weiss Hansen, Attorney

Thomas Riise, Partner

Our team is headed by Thomas Riise and Jørgen Bek Weiss Hansen.

about to take on real risks or obligations or deems that it has established real value, e.g. has a novel invention that has potential in the market.

There are many issues to be considered when committing to a start-up, and having legal counsel involved at an early stage will greatly help the process and optimise the result.

One of our experienced lawyers will gladly sit down for a preliminary meeting.

We find that it is generally helpful for our clients to see an example of a typical agenda for the first meeting with legal counsel. The agenda for our first meeting will normally include the following:

- I. Introductions
- II. Client information
 - History



- Ownership structure
- Product
- Market size
- Strategy & operations, position on the market
- Management
- Key assets and liabilities
- Objectives
- Key risks
- Financial position and future expectations

III. Start-up needs

- Corporate structure
- Organisational considerations
- Intellectual property
- Commercial considerations
- Strategic partnerships
- Economic and financial considerations
- Funding

Legal matters to be consider when starting a business

Corporate structure

You need to decide what type of legal structure to use. The structure is important because it has an impact on legal responsibilities such as taxation, financial reporting, minimum share capital and personal liability.

Sole proprietorships, partnerships and private limited companies are the most common structures for start-ups.

We generally recommend using a private limited company (i.e. an "ApS" or an "IVS") as this company type provides

limited liability for the owners and will generally be expected by future investors.

An entrepreneur company ("Iværksætterselskab" or "IVS") is a special corporate entity intended for entrepreneurs. The entrepreneur company differs from the ApS in only a few ways, namely (i) with regard to minimum share capital, and (ii) with regard to dividend payments and the use of profits prior to establishment of DKK 50,000 in share capital by way of earnings.

The owners do not have limited liability in sole proprietorships ("enkeltmandsvirksomheder") and partnerships ("I/S"), and they are thus directly liable without limitation. However, these two entities require no minimum share capital and may have certain tax benefits (depending on the owners' situation).

Founding a private limited company

When you establish a private limited company you need to have a statutory general meeting where the articles of association ("vedtægter") are adopted and the shares are subscribed for, ensuring the necessary minimum share capital.^{1 2}

¹ At present the minimum share capital is DKK 50,000 for an "ApS" and DKK 1.00 for an "IVS".

² The minimum share capital can be paid in cash or, for an ApS or A/S, also in assets (with appropriate confirmation by an auditor of the value).



You then send in the minutes of the statutory general meeting (“generalfor-samlingsprotokol”) with the articles of association to the Danish Business Authority (“Erhvervsstyrelsen”), and your attorney signs off on the minimum share capital having been contributed. A special online submission process can be used, and the company can generally be registered within a few hours.³

Once the private limited company has been registered, it is good to go.

Shareholders' agreement

We generally recommend that owners also draw up a shareholders' agreement (“ejerftale”) regulating such issues as entries and exits from the company, sale of shares, voting rights, work obligations, intellectual property rights, and any other issues among the owners.

If the company's articles of association are seen as its constitution (“grundlov”), the shareholders' agreement could be seen as the company's special rules.

Professional investors will expect a shareholders' agreement and will definitely ask for a revised version taking into consideration their wishes, e.g.

³ At present, it may however take up to eight weeks to register an IVS as the Danish Business Authority's IT system is not yet quite ready for the IVS.

special voting rights and a place on the board of directors.

Governance

We generally recommend that a start-up operating as a private limited company have both a daily management (the CEO) and a board of directors.

The CEO handles the daily issues, such as hiring and firing, making deals, etc. The board of directors is in charge of the company's strategy and oversees the CEO's work.

The board of directors only meets a few (usually four) times a year. But a start-up can benefit greatly from having a board of directors if it can attract people with strong relevant experience who can open doors, advise the CEO and give the start-up legitimacy. Also, investors will generally ask for a seat on the board of directors.

Control over the board of directors is a sensitive subject. The board of directors decides on the focus of the company and can fire the CEO. Thus founders should have a respectful approach to this subject.

As an alternative, the start-up might consider a board of advisors with limited rights in the company. However, in general this will not satisfy investors.

IP protection

Protection of your intellectual property rights will help you in competition and



make you more attractive to investors. Generally speaking, intellectual property rights will give you a more or less useful monopoly.

In general, you can protect your brand, name, logo, design, work of art, work of literature, computer codes and novel inventions. The procedure, requirements and costs of such protection differ. It can be very costly and time consuming to obtain a patent or utility model protecting your novel invention, while it is generally cost-free to secure your copyright in computer codes.

Obtaining a patent or utility model is a specialist area, and Lassen Ricard can refer you to a good patent agent of which we know several. In regard to all other intellectual property rights, Lassen Ricard has expert knowledge and can be of strong assistance.

Another great way to protect your product or other valuable information is to simply keep it secret for as long as possible. Lassen Ricard can also help you set up a system to protect your trade secrets.

For entrepreneurs it is especially important to secure all IP rights as soon as possible through IP assignment agreements and non-disclosure agreements. This matter is something that can cause a lot of problems later on, and professional investors will be very alert to the issue.

Trademark protection

In Denmark, trademark protection can be acquired through use or through registration followed by use.

Registration is made with the Danish Patent and Trademark Office for a fairly low fee. Registration can also be obtained internationally, which involves different registration procedures.

To obtain trademark protection, you must show that the mark is visible and distinctive from other marks.

Copyright protection

Works of art, works of literature and computer codes are in general all protected as copyright.

Copyright does not require any form of registration. It is obtained when the "work" is created and will in general belong to the creator.

Patents and utility models

Novel inventions that can be applied in industry can generally be patented via a patent application sent to the relevant authorities. A patent grants 20 years of monopoly on the invention.

In Denmark, an invention can also be protected as a utility model. This is not the case internationally. A utility model only grants 10 years of monopoly, but it is cheaper and easier to obtain.

The patenting process is complex. It requires a well thought-out patent



strategy (e.g. a strategy for what countries to apply in, and when). It can also be very costly. Entrepreneurs looking to obtain a patent should therefore be very mindful of choosing a competent patent agent.

Employees

A wide range of legislation is concerned with employment law issues.

As an employer you must, among other considerations, be aware of rules regarding a safe working environment, insurance, vacation rights, maternity leave, taxes, and more.

In most cases, employers are legally obliged to provide an employment contract addressing specific topics.

With regard to key employees, Lassen Ricard generally advises to also include clauses on confidentiality, IP assignment and non-competition.



Consultants

Start-ups often find that their owners are able to handle any initial work and that assistance is only required with regard to specific topics and for a short duration. In such case the start-up might consider hiring persons on a consultancy basis and thus avoid a certain degree of bureaucracy in the initial phases.

The start-up should then enter into a consultancy agreement that describes the assignment in detail and ensures that the start-up obtains all IP rights.

Investors

Most entrepreneurs are interested in finding investors to fund the start-up. Investor money can help bring the product to market and help scale the business. It can also help in providing much needed liquidity in an initial phase where most start-ups do not generate sufficient cashflow to make necessary payments.

After spending the founders' own money and perhaps money from 3xF ("friends, family and fools"), a start-up will generally first look for "angel funding", i.e. early-stage funding.⁴ Angel funding is generally amounts ranging from DKK 50,000 to DKK 1 million. The advantage of angel investors is that

⁴ Today, crowdfunding is also an alternative, e.g. through kickstarter.com. In a Danish context it may, however, involve certain tax, securities and consumer-protection issues.



they can also give great advice and help open doors to markets and other investors.

VC funding is generally only available to start-ups that have already obtained positive cashflow, strong IP rights, strong partnerships and/or a strong customer base. Thus VC funding is later-stage funding for mature start-ups. VC funding is generally amounts ranging from DKK 1 million to DKK 50 million – all depending on the industry of the start-up. Just like angel investors, venture capitalists can, in addition to money, give great advice and open doors.

Both angel investors and venture capitalists will generally ask for a place on the board of directors and a percentage of the equity (“ejerskab”) along with certain preferential rights in the company.

A start-up may go through several rounds of funding from angel investors and venture capitalists. These are generally referred to as series A, series B etc. Due to anti-dilution mechanisms it can be very damaging to the founders if the company valuation decreases during the different rounds of funding.

In general the investments will be made by a subscription for new shares (“nytegning af aktier”) in the company and/or through a convertible loan (“konvertibelt lån”). In many cases the investment will be made based on

milestones, e.g. 20% of the investment is given to the company immediately and the last 80% is dependent on sales, customer base, clicks on the webpage, etc.

Term sheet

If a professional investor likes a company, he will give the entrepreneurs his term sheet.

The term sheet is used by both angel investors and venture capitalists. It is a document that in very few words outlines the terms of an intended investment, and it will typically use complicated terminology, such as “full-ratchet anti-dilution”.

Although the term sheet will generally not be legally binding or conclusive, it is a very important document since the investment negotiations, due diligence, timing and later investment agreement will be based on the term sheet.

It is strongly recommended to make use of an experienced attorney when faced with a term sheet.

Due diligence

Due diligence just means an investigation of your start-up. Before investing, most professional investors will want to do a due diligence.

This can be a technical, legal, financial and/or even environmental investigation, depending on your business.



A due diligence will generally involve interviews with management and key employees. It also involves a review of several documents, e.g. the articles of association, shareholders' agreement, patent applications, employment contracts, IP assignment agreements etc.

If a professional investor finds anything lacking or any negative issues, he will either bargain hard for a larger/cheaper piece of the company or simply walk away from the investment. This is why it is so important to have all essential documents secured.

If a company has trade secrets that it wants to keep out of the market, it is generally advisable to have investors and their agents sign non-disclosure agreements. In any case, a term sheet should be in place prior to any material due diligence process.

Stock options

Incentives such as stock options can be a good instrument to inspire employees and founders to work diligently. They can also be used as payment in lieu of cash and thus bring liquidity to a start-up.

With regard to employees, there are certain legal formalities that have to be observed. Further, there may be tax issues involved.

Especially the definition of milestones can be tricky. Milestones trigger the vesting of stock options, and badly

worded milestones can lead to dangerous incentives.

Generally, Lassen Ricard does not advise start-ups to use stock options for their founders. In our view, it is a practice that gives little incentive, and it risks complicating things later on. A start-up should not implement incentives for founders until a professional investor requests it. At that point, it will usually make sense.



Exit

“Exit” is slang used by entrepreneurs and investors. It basically sums up the fact that most investors and entrepreneurs will at some point want to withdraw some or all of their investment in the company, i.e. sell their shares.

There are three basic ways of exiting: (1) sell the whole company in an M&A transaction, (2) sell the individual



shares to other investors, or (3) list the company on the stock exchange in an IPO ("børsintroduktion").

In theory, an IPO is the most lucrative way of exiting, and it can allow the founders to better keep control of the company, but it is not available to all companies as it requires a certain form of maturity

Professional investors have a strong focus on exit strategy. It is advisable for entrepreneurs to consider this at an early stage.

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