



# LATEST UPDATE ON THE DANISH STOCK OPTIONS ACT

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# INCENTIVE SCHEMES – STOCK OPTIONS AND WARRANTS

## The scope of the Danish Stock Options Act ("the Act")

Scheme	Subject to the Act	Not subject to the Act	Remarks
Generally	Schemes that provide the employees with a right to achieve shares at a later point in time	Schemes where the ownership of the shares is achieved immediately	
Stock options and warrants	X		
Employee stock option plan	Subject to the Act if the ownership of shares is achieved at a later point in time	Not subject to the Act if the ownership of the shares is achieved immediately	
Shares acquired by exercising stock options/warrants		X	
Phantom share scheme		X	
Cash bonus scheme		X	
Convertible bonds	X		If the employee is granted a right to achieve shares at a later time
Restricted stock	Subject to the Act, if the right to the shares depend on the expiry of a vesting period (RSU)	Not subject to the Act, if the ownership is achieved immediately, but the shares must be sold back in case of termination.	
Shared performance stock awards (shares are awarded after a period, number of shares depends on targets)	X		If the employee is granted a right to achieve shares at a later time
Employee stock purchase plans (employee saves up to buy shares with part of their salary, e.g. 6 months)	X		If the employee is granted a right to achieve shares at a later time

# INCENTIVE SCHEMES – STOCK OPTIONS AND WARRANTS

## The scope of the Act

Current regulation (until 1 January 2019)

	Good leaver	Bad leaver	Pro rated share of future awards
Termination by the employer	Termination without the employee having breached the employment, cf. § 5, 1	Termination due to the employee's breach or justified summary dismissal, cf. § 5, 2	Right to a pro rated share of the future awards, if good leaver, cf. § 5, 1
Termination by the employee	Termination due to the company's material breach, cf. § 4, 3 cf. § 5, 1	Termination without the company's material breach, cf. § 4, 1	Only right to pro rated share of future awards, if good leaver, cf. § 4, 3, cf. § 5, 1
Pension	Termination due to compulsory retirement age, state pension or retirement pension, cf. § 4, 2, cf. § 5, 1		Right to a pro rated share of the future awards, cf. § 4, 2, cf. § 5, 1
Death		As a starting point; bad leaver, cf. § 5, 2, however often agreed as a good leaver scenario.	No right to pro rated share unless specifically agreed, cf. § 5, 2
Sickness	If the employee is terminated by the employer without breach, the employee is considered good leaver, cf. § 5, 1	If the employee resigns due to the sickness, the employee is considered bad leaver, cf. § 4, 1	Right to a pro rated share of the future awards, if good leaver, cf. § 5, 1

A good leaver maintains the right to granted stock options, regardless whether vested or not.

A bad leaver loses the right to unexercised stock options, if this is stipulated in the stock option agreement.

# AMENDMENT TO THE DANISH STOCK OPTIONS ACT

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- On 6 December 2018 the Danish Parliament passed the proposed amendment to the Danish Stock Options Act ("the Act"). The amendment comes into force on 1 January 2019.
- The amendment removes the limitations to the freedom of agreement in stock option schemes, which are currently set out in the the Act sections 4 and 5, regarding good leaver and bad leaver scenarios.
- This means that it will now be possible to agree, e.g. that non-vested options will lapse by termination of the employment regardless of the reason for the termination.
- It will also be possible to agree to shorter exercise periods for vested options after the termination.
- Furthermore, the amendment establishes the possibility to agree that good leavers will not receive pro rated shares of future awards at the time of termination.
- The Act comes into force on 1 January 2019 and applies to schemes being established after this date.
- New provision in the Act:

*"The employee and the employer cannot agree that the employer in case of the termination of the employee can buy back shares or shares that have been acquired in accordance with an agreement subject to section 1, at a lower price than the market price."*

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*Vi tager din forretning personligt*

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