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DOING BUSINESS IN DENMARK

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INTRODUCTION

1. INTRODUCTION

Doing Business in Denmark is intended as a guide for foreign investors. Its focus is to introduce some of the most important regulation and practical issues to be considered before committing to a more detailed examination of Denmark as an investment destination.

This guide concentrates on in-bound investments, mergers & acquisitions, and various issues which should be considered when making an investment in Denmark .

In preparing this outline we have endeavoured to see things from the foreign investor's point of view. The information is updated as of 1 January 2017.

This guide does not constitute legal advice. It is intended only as a guide and an outline of certain aspects of Danish law.

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INVESTMENT CLIMATE AND OPPORTUNITIES

DOING BUSINESS IN DENMARK

1. INVESTMENT CLIMATE AND OPPORTUNITIES

Heavily dependent on foreign trade and international cooperation, Denmark pursues liberal trade and investment policies and encourages increased foreign investment.

Denmark joined the then EEC on 1 January 1973 and currently exports some two thirds of its total exports to EU Member States.

While Denmark meets the criteria for joining the Euro, it has elected not to join the common currency. However, the Danish Krone (DKK) has traditionally been linked closely to the Euro with a view to continue the fixed exchange rate policy pursued by the Danish government and the Central bank of Denmark, Danmarks Nationalbank.

Many foreign investors have noted that Denmark benefits from a highly developed infrastructure, an advanced telecommunications system, and a highly educated, flexible and stable work force. On an international scale, Denmark maintains high standards of environmental protection and product safety and the Danish market has always shown a preference for high quality in production, finish and design. Often, Denmark serves as a test market for products which are introduced on the international market at a later stage.

A high proportion of the workforce - and the population in general - has English as their primary foreign language. In most cases all relevant levels of the workforce will have a good command of both written and spoken English. As a result, many trademarks and advertisements in English are not translated on the Danish market.

Denmark's geographical location, with easy access to the other Scandinavian countries, Northern Germany, the Baltic States and other parts of Eastern Europe, means the country is well situated as a centre for activities in these areas. Many European firms have realised substantial benefits from locating their Northern European distribution centres in Denmark.

Denmark treats foreign investors on a non-discriminatory basis. Foreign firms may participate in government-financed and/or subsidised research and development programs on a national treatment basis. As a general rule, foreign direct investment in Denmark may take place without restrictions and screening. Ownership restrictions apply to a few sectors only, primarily in relation to defence/national security interests.

Although generally considered a high-wage country, Denmark is in many areas highly ranked in terms of economic competitiveness. International surveys rate Denmark near the top with regard to transport (land, sea and air), energy, telecommunications and distribution systems. In terms of management, surveys emphasise a consistently high quality of organisation, product quality, customer relations, credibility and social responsibility.

Denmark also offers political stability, a low corporate tax rate (22 %) as well as flexible and easily manageable corporate formalities.

Lobbying of the Government is not as common or as organised as in some other countries, and professional lobbyists are few. Usually, professional lobbyists and trade organisations will make their views known to the Government on behalf of their members, whereas lobbying by individual companies on specific matters is rare. Companies may express their views to the Government but will be well advised to consider carefully the form and level of approach.

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COMPANY LAW

DOING BUSINESS IN DENMARK

2. COMPANY LAW

2.1 Introduction

Kromann Reumert assists a multitude of public and private companies, many among them owned or controlled from abroad. We advise on all aspects of corporate governance, capital structures, and corporate financing, assist in the drafting of corporate documentation, and handle necessary notifications to the Danish Business Authority (DBA) and other public authorities.

With online access to the DBA, we are able to obtain information on public records for our clients on short notice.

The most commonly used forms of companies in Denmark are public limited companies and private limited companies.

Other possible corporate forms include the European Company (SE), entrepreneur companies, limited partnerships, limited partnership companies and partnerships.

Foreign investors are most likely to deal with public and private limited companies, and the outline below therefore concentrates on these types of companies, followed by a brief summary of relevant information on European Companies, limited partnerships, limited partnership companies and partnerships.

2.2 Incorporating a company

Both public and private limited companies may be incorporated by any number of founders/promoters.

The formation of a new company can take anything from a few days up to eight weeks or more. The DBA has introduced a web-based service called "Virk.dk", which allows registered persons or entities, such as Kromann Reumert, to incorporate companies online, thereby significantly reducing the registration time.

Until registration is complete, the persons acting on behalf of the company will be personally liable for all obligations undertaken by the company. Upon registration, all obligations will be assumed by the company, i.e. the holders of shares in public and private

limited companies (the shareholders) are not personally liable for the obligations of the limited liability company, but are liable only to the extent of their contributions.

Incorporated dormant companies may be bought "off the shelf" for a reasonable fee from a formation agent, e.g. Kromann Reumert.

Limited partnerships, limited partnership companies and partnerships may be established by two or more natural persons or legal entities.

2.3 The Danish Companies Act

The Danish Companies Act regulates public and private limited companies.

2.4 Public and private limited companies

A public limited company ("aktieselskab", abbreviated "A/S") or a private limited company ("anpartsselskab", abbreviated "ApS") is governed by the Companies Act. The current Companies Act conforms to EU legislation in this area implementing the First, Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh Twelfth and Thirteenth Company Directives. Many foreign investors and their advisers will therefore be familiar with a number of the corporate requirements.

The Companies Act generally provides for a more flexible regulation of private limited companies compared to that of public limited companies.

Private limited companies are used for all types of businesses; for smaller businesses particularly as a way to incorporate personally owned businesses, and by large international entities because they are treated differently from public limited companies for tax purposes in some foreign jurisdictions (the United States in particular). Private limited companies are not eligible for listing.

Private limited companies are subject to fewer restrictions and formal requirements than public limited companies, but the most important features of both types of companies (i.e. separate legal personality, a limitation of liability for shareholders and tax treatment) are generally the same.

The Companies Act sets out the following minimum standards and compulsory requirements, which must be satisfied by all public and private limited companies:

2.4.1 Capital

Public limited companies must have a minimum share capital of DKK 500,000 (or the equivalent amount in Euro). Private limited companies benefit from a lower requirement for share capital, minimum DKK 50,000 (or the equivalent amount in Euro).

Shares may be issued in Euro and the DBA may, by executive order, allow the share capital to be stated in other currencies. However, the DBA has for the time being not issued such executive order.

2.4.2 Shares

The articles of association must contain information on the rights attached to the shares. These choices will affect the measures to be taken by shareholders in order to protect their rights against third parties, and will also determine whether or not share certificates must be issued.

The central governing body in an unlisted company may decide to issue formal share certificates (paper certificates) provided that the articles of association allow for it, but is not obliged to do so unless the shares are negotiable instruments or bearer shares. As of 1 July 2015, new bearer shares ("ihændehaveraktier")may no longer be issued save for conversion of debt instruments issued before 1 July 2015 convertible into bearer shares, which may still be converted into bearer shares. For practical reasons formal share certificates are rarely issued.

An acquirer of bearer shares in an unlisted limited company must notify the public register of shareholders within two weeks of the acquisition.

Share certificates may not be issued until the subscription of the shares has been registered by the DBA. Shares made out to a named holder may be issued only to shareholders recorded in the company's register of shareholders.

Listed companies, the shares of which are admitted to trading on a stock exchange or an authorised or alternative marketplace, are required by law to issue their shares as

"dematerialised securities" through a securities centre and therefore cannot issue share certificates. There is currently only one securities centre (VP Securities A/S) in Denmark.

2.4.3 Payment for shares

Shares may not be issued below par value but may be issued at a premium, and such premium is considered a distributable reserve.

Payment for shares can be made either in cash or by contribution in kind. In-kind contributions must have a value which can be expressed in monetary terms and cannot consist of an undertaking to perform work or render services. Claims of promoters or subscribers cannot be contributed, irrespective of whether collateral security is provided for such claims.

As a main rule, an auditor must prepare a valuation report regarding the in-kind contribution. Similarly, a valuation report will normally be required if the company is to acquire assets from promoters, shareholders or others in connection with its formation.

Unless the shareholders have decided on partial payment of the share capital (as described below) the company cannot be registered until the subscribed capital (together with any premium) is paid up in full.

Since 1 March 2011 the Companies Act has allowed for partial payment of a company's share capital in connection with the formation of a company or a capital increase in an existing company. Consequently, shareholders may choose to limit the paid-up share capital to an amount equal to 25 per cent of the total share capital, but not less than DKK 50,000. For public limited companies, fixed premiums must be fully paid up, notwithstanding that part of the share capital is not paid up. For private limited companies, such a premium is not required to be fully paid up, but may be paid up in part in the same proportion as the share capital. Further, partial payment of share capital is only possible in connection with cash contributions.

Unpaid share capital is payable on demand by the company's central governing body. Further, where a shareholder transfers a share that has not been fully paid up, he will be jointly and severally liable with the transferee and any subsequent transferees for payment of the outstanding amount on the share. Due to these conditions partial payment of share capital is rarely used and must be considered carefully.

2.4.4 Register of shareholders

The central governing body must keep a register of all shares in the company, in which any transfer or pledge of shares is recorded. For companies that have not issued share certificates, or whose shares have not been issued through a securities centre, the register of shareholders must also contain information on all holders of shares and charges, the date of acquisition, disposal of or charge over the shares and the voting rights attached to the shares.

The register of shareholders is not available to the public, but must be available for inspection by public authorities. In private limited companies the register of shareholders must also be available for inspection by all shareholders.

However, public and private limited companies (as well as European Companies (SE), entrepreneur companies, limited partnerships (where the general partner is a limited company) and limited partnership companies (where the general partner is a limited company) are required to register with the Danish Business Authority information of owners of 5 per cent or more of the capital or voting rights. This information is available to the public through the public register of shareholders. During the course of 2017, legislation will be enacted extending the registration requirement to include registration of beneficial owners, i.e. the natural person(s) who ultimately owns or controls the company through direct or indirect ownership of the company.

2.4.5 Transfer of shares

As a general rule, shares of public or private limited companies are freely transferable. However, the articles of association may contain transfer restrictions. The most common restriction in privately held companies is that a transfer requires the consent of the board of directors. The articles of association can also contain a provision according to which a right of first refusal in favour of the other shareholders applies when transferring shares. Further, the articles of association may prescribe that no shareholder can hold shares exceeding a certain amount of the share capital.

Restrictions on the transfer of shares will often be introduced in a shareholders' agreement. The main reason for this is that shareholders' agreements need not be filed with the DBA. See Section 2.4.6 and 2.4.14 regarding shareholders' agreements.

2.4.6 Articles of Association

In connection with the incorporation of public and private limited companies, articles of association must be adopted and filed with the DBA.

The Companies Act sets out a number of minimum requirements. Danish company law is largely based on a principle of freedom of contract, which allows shareholders to organise their company as they see fit. Consequently, shareholders are free to include provisions relating to other issues than those listed in the Companies Act in the articles of association, subject always to compliance with the provisions of the Companies Act.

It should be noted that a company's articles of association will be disclosed to the public due to the filing with the DBA. Thus, it is fairly common to apply standard terms in the articles of association and leave the detailed provisions governing the relationship between the shareholders to a more elaborate, tailor-made shareholders' agreement, for which there is no requirement for public disclosure. However, as described in further detail below in Section 2.4.14, shareholders' agreements have no binding effect on the company or on resolutions passed by the shareholders in a general meeting and, consequently, shareholders who are parties to such agreements should consider carefully how to ensure that the agreement can be implemented with the full effect intended.

Most types of businesses will be well served by adopting a standard set of articles, and the adoption of new articles is a simple process which may be handled by local legal advisers, who can also assist with the preparation of minutes electing new members of the company's management, new auditor, changing of the company's name, etc.

2.4.7 Governance structure

Under the Companies Act, public and private limited companies may choose between the following alternative governance structures:

- the traditional Danish governance structure, where an executive board performs the day-to-day management of the company and a board of directors (of at least three members for public limited companies) exercises overall and strategic management functions as well as certain supervisory functions (the so-called "one-and-a-half-tier" governance structure); or

- a two-tier (German-inspired) governance structure, where all management functions lie with an executive board, and a supervisory board (of at least three members for public limited companies) performs only supervisory functions. The two-tier governance structure entails an extended registration time for some registrations with the DBA.

A private limited company can also choose a one-tier (Anglo-Saxon-inspired) governance structure, where the company is managed only by an executive board. A public limited company may adopt a governance structure somewhat similar to a one-tier governance structure by allowing all members of the executive board to also be members of the board of directors; however, a majority of the directors must be non-executive (meaning that they may not be members of the executive board).

The term "central governing body" refers to:

- the board of directors where the one-and-a-half tier governance structure is used, or
- the executive board where the one-tier or the two-tier governance structure is used.

The term "supreme governing body" refers to:

- the board of directors where the one-and-a-half tier governance structure is used,
- the executive board where the one-tier governance structure is used, or
- the supervisory board where the two-tier governance structure is used.

In public limited companies, the chairman or vice-chairman of the board of directors or the supervisory board shall not be involved in specific day-to-day management and the combined position of chairman and chief executive (as known in the UK) is therefore not possible.

In public limited companies, the majority of the directors or supervisory board members must be elected by the general meeting.

The term of the directors or supervisory board members elected by the general meeting is determined in the articles of association. For directors or supervisory board members in a public limited company, however, the term cannot exceed four years. Directors and supervisory board members may be re-elected.

Directors or supervisory board members may resign at any time and can be removed at any time by those who elected them (typically the general meeting).

Managing directors and executive officers are appointed by the board of directors or the supervisory board, and shareholders therefore only have an indirect say in the appointment or dismissal of the person(s) charged with day-to-day management of the company, unless a one-tier governance structure is adopted.

There are no requirements regarding the nationality of the board members and the board members may reside anywhere in the world.

Listed companies and large companies are obligated to present target figures on the number of members of the underrepresented gender (below 40 per cent) in the supreme governing body. If the company has at least 50 employees, a policy on how to increase the number of the underrepresented gender must be drawn up. Companies comprised by the rules must report on the policy, and whether the target figures have been met, in connection with the presentation of the annual report.

2.4.8 Language of meetings of the board of directors or the supervisory board

Meetings of the board of directors or the supervisory board may, if so determined by the majority, be held in a language other than Danish if all participants are at the same time offered simultaneous interpretation to and from Danish. Any decision to hold meetings in a language other than Danish without simultaneous interpretation must be unanimously agreed by the members of the board of directors or the supervisory board.

However, if a company's articles of association stipulate Swedish, Norwegian or English as the group's official language, meetings of the board of directors or the supervisory board may be conducted in such language, no simultaneous interpreting into Danish required, and directors or supervisory board members will not have the right to require documents in the official group language to be translated into Danish.

2.4.9 Employee representation

Danish companies are required to allow their employees to elect representatives to the company's supreme governing body if the company, over a three-year period, has employed at least 35 employees. If this condition is met, the employees can demand a vote to decide whether employees' representatives shall join the board (a so-called yes/no-vote). A simple majority among the employees entitled to vote is sufficient. If there is no majority in favour for the time being, a new vote may be held six months later at the earliest. The company's management must assist in organising the voting procedures.

Employees are entitled to elect representatives and alternate representatives to the company's supreme governing body, corresponding to half the number of the other members of the supreme governing body (rounded up if not a whole number). However, the employees always have the right to elect at least two representatives with alternate members.

Employees elected under this procedure will join the company's supreme governing body immediately after the next annual general meeting (where new members elected or re-elected by the shareholders will also be appointed).

Companies with employee representation have a statutory duty to provide "proper and efficient" information to all employees. This should not be considered a heavy, time-consuming task as companies are left to decide how best to meet this requirement, which, of course, must depend on the nature and size of the company. Larger companies (with, say, 200 employees) will often have co-operation committees, which can (also) provide the employees with the relevant information.

Similar rules apply for a parent company if such company, together with its subsidiaries, meets the 35-employee requirement. However, in parent companies, there shall be at least three employee-elected members of the company's supreme governing body.

Employee representatives in a company's supreme governing body are subject to the same duties and obligations as are its other members. Employee representatives may therefore not disclose any confidential information to their colleagues and are also subject to the general management liability, which is described below, although their level of experience and knowledge may be taken into account. Employee representatives are entitled to the same remuneration as is paid to other members of the company's supreme governing body.

2.4.10 Management liability

Foreign companies, which have Danish subsidiaries, often appoint foreign personnel to the supreme governing body of the Danish subsidiary. In some cases, day-to-day management is entrusted to foreign personnel posted in Denmark. All board members and executive officers must be registered with the DBA and must know the duties imposed on them by legislation and they must seek proper advice.

The issue of management liability is increasingly in the public eye and a number of major company failures in recent years have brought increased emphasis on corporate governance compliance. Given the increasing willingness of creditors and shareholders to hold management liable for failures, it is more important than ever to be aware of the extent of this liability and how to ensure that corporate decisions cannot be criticised.

In general, the basis in Danish law for management liability is the general rule of liability for negligence. Board members and executive officers must therefore exercise their duties loyally and always with due care and attention.

The typical situations where liability may arise can roughly be categorised as follows:

- Neglect of specific, clearly defined duties imposed by the Companies Act, the Financial Statements Act, the company's articles of association, or fundamental legal principles. Typical examples would be the granting of prohibited shareholders' loans or the engaging in business clearly outside the company's objects as set out in the articles of association. Members of management should familiarise themselves with their duties in this respect, and obtaining legal advice from the outset will help to steer clear of pitfalls.

- The pursuit by management of their own interests, or, at least, interests not related to those of the company. Typical examples would be transactions between members of management and the company not made on arm's-length terms or in other ways bestowing unfair benefits on members of management at the expense of the company or any of its shareholders.

- Failure to perform duties in a proper and business-like manner. This category is probably the most likely to arise as the typical examples would be creditors seeking compensation from management in cases where creditors have suffered a loss either because management failed to take action to ward off financial difficulties or, where such action was taken, failed in that attempt.

These claims often arise where management has failed to monitor the cash flow and financial status of the company, but the question of whether a particular course of action was appropriate will feature prominently in the subsequent dispute.

To date, Danish courts have been reluctant to impose liability unless clear specific duties have been neglected. A summary of the duties of management can never be exhaustive, as much will depend on the company's circumstances, but the key responsibilities are listed below.

The board of directors must, in addition to performing overall management and strategic management duties and ensuring proper organisation of the company's business, ensure that:

- the bookkeeping and financial reporting procedures are satisfactory, having regard to the circumstances of the company,
- adequate risk management and internal control procedures have been established,
- the board of directors receives on-going information as necessary about the company's financial position,
- the executive board performs its duties properly and as directed by the board of directors, and that
- the financial resources of the company are adequate at all times, and that the company has sufficient liquidity to meet its current and future liabilities as they fall due.

In public limited companies, the supreme governing body must adopt specific rules of procedure relating to the exercise of its powers. These will typically include the frequency of board meetings, voting procedures and constitution.

Some of the statutory demands on the board of directors may well be dealt with more easily by the day-to-day management, but board members should consider carefully how best to ensure that they comply with their duties as such compliance will be of great - if not decisive - importance if problems arise. Well-drafted rules of procedure are important tools in this respect and the importance of obtaining proper legal advice cannot be overstated.

The executive board must, in addition to performing the day-to-day management:

- follow the guidelines and directions issued by the board of directors,
- ensure that the company's bookkeeping complies with the applicable statutory rules, and that its assets are properly managed, and
- ensure that the financial resources of the company are adequate at all times, and that the company has sufficient liquidity to meet its current and future liabilities as they fall due.

If a company uses the one-tier or two-tier governance structure described above the responsibilities of the executive board change accordingly.

Over the last few years it has become more common that insurance cover (D&O liability insurance) is taken out, and a number of insurers offer this type of cover.

2.4.11 General meetings

Annual general meetings must be held in time for the company to comply with the deadline for filing the annual report. The approved (and audited) report must be received by the DBA no later than five months after the end of the financial year for non-listed companies or four months after the end of the financial year for listed companies. Extraordinary general meetings can be convened at any time giving the notice prescribed by the articles of association.

The Companies Act provides flexible rules on the convening and holding of general meetings by permitting the use of written resolutions rather than physical or virtual general meetings. By unanimous decision, the shareholders of a company may agree to waive the formal requirements of the Companies Act and the company's articles of association applicable to general meetings. Such waiver may either be given in respect of a specific general meeting or in general. A general waiver must be incorporated into the company's articles of association. In any event, shareholders representing more than 10 per cent of the company's share capital may always require a physical general meeting.

If a physical general meeting is to be convened, the minimum notice for convening the meeting as well as for making available certain documents for inspection at the company's office is two weeks (three weeks for listed companies).

Notices convening general meetings must be sent to all registered shareholders having so requested.

In an effort to promote active ownership in Danish companies, current restrictions on the term and scope of proxy instruments are maintained for instruments issued to the management of a company, but relaxed for instruments issued to others. Accordingly, members of the management can be appointed as proxy for terms no longer than 12 months and only for the purpose of a specific general meeting for which the agenda is known at the time the instrument is issued. A proxy instrument issued to anyone other than a member of the management may be indefinite and general (so-called "blank proxies").

The notice requirement for a specific annual or extraordinary general meeting may be waived by unanimous agreement and, also by unanimous agreement, general meetings may be held "by proxy". In such cases, the shareholders will authorise a board member or, in most cases, the company's legal adviser to exercise the voting rights and record the decisions in the minutes. In this way, wholly owned subsidiaries may easily fulfil required corporate formalities. In addition, where all of the shareholders in a non-listed company consent, decisions by the shareholders may be made in other ways than by a general meeting.

General meetings may be held virtually, either as completely virtual meetings (where everybody participates electronically, e.g. by phone, the Internet or another medium with a similar function) or partially virtual meetings (where some participate electronically while others attend in person).

A company may also elect to introduce electronic communication between the company and its shareholders, e.g. by convening the general meeting by e-mail.

As a main rule, all business transacted at general meetings must be decided by a simple majority of votes, unless otherwise provided by the articles of association or the Companies Act. However, some proposals, including proposed amendments to the articles of association, capital increases, capital decreases and mergers, require a majority of at least two thirds of the votes cast and of the voting share capital represented at the general meeting. For a limited number of more radical amendments to the articles of association the fraction is raised to nine-tenths. Finally, any proposed resolution to amend the articles of association which increase shareholder obligations to the company requires the unanimous agreement of all shareholders.

2.4.12 Language at general meetings

The Companies Act permits general meetings to be held in a language other than Danish. Thus, the general meeting may resolve by a simple majority of votes to conduct general meetings in Swedish, Norwegian or English without providing simultaneous interpreting into Danish to all participating shareholders.

If the proposed language is a foreign language other than Swedish, Norwegian or English, and no simultaneous interpreting into Danish is provided, such resolution will require approval by nine-tenths of the votes cast and of the share capital represented at the general meeting.

2.4.13 Voting rights

Unless otherwise stated in a company's articles of association, each share carries one vote. Some companies maintain two (or more) classes of shares (usually called A-shares and B-shares) with the articles of association stating that one class of shares carries increased voting rights.

A company's articles of association may provide that shareholders' right to attend a general meeting and to vote on their shares must be determined on the basis of the shares held by the respective shareholders at the date of registration. The date of registration is one week before the date of the general meeting. The articles of association of a public limited company may provide that shareholders are required to notify the company that they will attend a general meeting no later than three days before the date of the meeting.

The shareholding of each individual shareholder must be determined at the date of registration, based on the number of shares held by that shareholder as registered in the register of shareholders and on any notice of ownership received by the company for the purpose of registration in the register of shareholders, but not yet registered.

Depending on the circumstances, the voting rights provisions mentioned above can be used as a defensive measure against hostile takeovers, making it difficult for a purchaser to obtain control of the company.

2.4.14 Shareholders' agreements

The Companies Act provides that shareholders' agreements have no binding effect on the company or on the decisions passed by the shareholders in a general meeting.

Consequently, many typical shareholders' agreement provisions may be difficult to enforce. Consideration should be given to include certain shareholders' agreement provisions in the articles of association, bearing in mind, however, that articles of association will be publicly available through the DBA website.

In light of the limitation on the enforceability of shareholders' agreements described above, shareholders who are parties to such agreements should carefully consider how to ensure that the agreement can be implemented with the full effect intended, and it will be important to consider the consequences of a breach of shareholders' agreements.

2.4.15 Pre-emption rights

All shareholders have pre-emption rights entitling them to subscribe for new shares in the company in an amount proportionate to their existing shareholdings. Shareholders may agree, subject to certain majority requirements, to waive this right. Pre-emption rights apply only in cases where the capital increase is to be issued for cash.

2.4.16 Dividends

Distribution of ordinary dividend can be made once a year at the annual general meeting.

The general meeting may not resolve to distribute dividend exceeding the amount proposed or accepted by the company's central governing body. Dividends may only be distributed out of distributable reserves. The general meeting may resolve to distribute interim dividend when the company has presented at least one ordinary annual report.

The shareholders may authorise the central governing body to resolve to distribute interim dividend. The authorisation can be made as a standing authorisation without any time limitation, but shareholders may also choose to set temporal, monetary or other limitations on the authorisation, providing, for instance, that the authorisation will cease after a certain period of time or that the amount of dividend to be distributed cannot exceed a certain threshold. Interim dividend may only be distributed out of distributable

reserves and profit for the current financial year up to the date of the resolution on distribution if such profit has not been distributed, appropriated, or tied up.

A resolution to distribute interim dividends passed more than six months after the balance sheet date in the company's latest adopted annual report must always be accompanied by an interim balance sheet showing that there are sufficient funds available for distribution. Where a resolution is passed less than six months after the balance sheet date in the company's latest adopted annual report, it will be for the central governing body to decide whether the balance sheet from the latest annual report is adequate, or whether an interim balance sheet must be prepared.

Some reserves may not be available for distribution according to the Companies Act or the company's articles of association.

2.4.17 Loans to shareholders and members of the management

Traditionally, the Companies Act has prohibited limited companies from granting loans or providing security to its shareholders or members of the management of the company or management members in other companies, which exert a decisive influence in the company and persons closely related to members of the management. However, as of 1 January 2017, new legislation has been enacted allowing limited companies to directly or indirectly, advance funds, grant loans or provide security for the persons listed above under certain conditions including that,

- the loan or security does not exceed the company's distributable reserves;
- arm's length terms are satisfied;
- the general meeting has resolve to or authorised the central governing body to grant the loan or security;
- the loan or security must not exceed what is accepted by the central governing body; and
- the company must have presented its first annual report.

If the loan or security is regarded self-financing, the loan or security must meet further conditions as described below.

If the shareholder is a parent company incorporated in Denmark, in another EU or EEA member state, in Switzerland, Australia, Canada, Hong Kong, Japan, South Korea, New Zealand, Singapore, Taiwan or in the US, the company may, notwithstanding that the conditions above are not met, directly or indirectly, advance funds, grant loans or provide security for the liabilities of the parent company.
Furthermore, a company may, where the conditions set out above are not met, directly or indirectly, advance funds, grant loans or provide security for the persons specified above for the purpose of usual business transactions.
These rules may give rise to considerable uncertainty in specific cases and it is therefore advisable to consult legal advisers prior to implementation of any transaction involving a company and its shareholders or members of the management, respectively.

2.4.18 Self-financing

Prior to 1 March 2011 the Companies Act prohibited all use of a company's assets for the purpose of acquiring shares in the company or its parent (so-called "self-financing"). The ban still applies, but following mentioned date, an exception has come into force (so-called "legitimate self-financing").

In general, legitimate self-financing requires that

- a report is prepared by the central governing body,
- the resolution is reasonable seen from the perspective of the company,
- arm's length terms are satisfied,
- the general meeting approve the self-finance with a qualified majority, and that
- any third party receiving financial assistance is credit rated.

The total financial assistance granted by the company may at no time exceed what is reasonable having regard to the company's (or the group's) financial position, and the company may only use funds that can be distributed as dividends for this purpose.

2.4.19 Treasury shares

Public and private limited companies are allowed to purchase shares issued by the company itself (treasury shares), provided that the company's central governing body has obtained authorisation from the general meeting and provided such purchase of treasury shares can be covered by the company's distributable reserves. The company cannot exercise voting rights attached to treasury shares, and its holding of treasury shares must be disregarded when assessing whether the company satisfies the capital requirements as specified above.

2.4.20 Annual report and audit

Danish companies are required to prepare an annual report in accordance with the Financial Statements Act. The annual report must give a true and fair view of the company's (or group's) assets and liabilities, financial position and profit or loss.
As of 1 January 2014, the general meeting may resolve by a simple majority of votes that the annual report must be prepared and presented in English. The resolution must be included in the articles of association of the company. Inclusion of such resolution in the articles of association is not subject to a separate resolution.
The annual report must be audited by an independent auditor and approved by a general meeting. The financial year must in general cover a 12-month period.

Small private and public limited companies can decide that the annual report is not to be audited. Limited companies that do not exceed two of the three following limits on the balance sheet date in two successive financial years qualify for the audit exemption:

1. A balance sheet amount of DKK 4 mill.

2. A net turnover of DKK 8 mill.

3. An average number of full-time employees during the financial year of 12.

Holding companies are also allowed to use the audit exemption, provided that the holding company and the companies controlled by the holding company in the aggregate do not exceed two of the three above mentioned limits.

Most small private and public limited companies (including holding companies in small groups) are allowed to use a certain standard for the auditor's statement in the annual

report. The standard is tailored to the size and complexity of small companies and will generally entail reduced expenses.

2.4.21 Reporting requirements and continuing obligations

Corporate reporting requirements are not substantially different from those commonly found elsewhere. Any change in the company's address, in company management or of the company's auditor must be notified to the DBA within 14 days from the date of the decision.

The annual report must be filed with the DBA without undue delay after the general meeting's approval of the annual report, subject to the overriding general time limit stated above requiring receipt of the annual report by the DBA no later than five months after the end of the financial year for non-listed companies or four months after the end of the financial year for listed companies.

Other changes, including amendments to the articles of association, must be notified to the DBA within two weeks from the date of the decision.

Listed companies are required to notify the stock exchange (Nasdaq Copenhagen) immediately of any change in management and of any significant matters which may influence the market price of their shares. In addition, Nasdaq Copenhagen requires that listed companies specify in their annual reports the position taken by the board of directors on the recommendations contained in the Recommendations on Corporate Governance issued by the Committee on Corporate Governance.

2.4.22 Public records - access

The company registration system is fully computerised and a fair amount of information is, upon payment of fees, available online to any interested party. This information includes summary extracts of the full list of board members, managers, auditors, rules of signature, financial year, and the filing date of the latest annual report. Copies of annual reports are also available online whereas copies of articles of associations, minutes of general meetings etc. may be available by ordinary mail within a few days (or by fax the same day on payment of an additional fee).

2.5 Branch office

Foreign limited companies may register a branch in Denmark, in which case copies of the articles of association, among other things, of the foreign company must be filed with the DBA. Any subsequent change in the articles of association etc. must also be notified.

Branches may be established by companies domiciled in other EU or EEA member states, in the US, Switzerland, Georgia, South Korea or in any other country that allows a similar facility for Danish companies. In the latter case, a certificate from the home state's authorities will have to be provided confirming that the establishment of a branch is open to Danish companies.

A branch manager must be appointed by a power of attorney and will be responsible for all the obligations of the branch vis-à-vis the Danish authorities, in particular with regard to tax, VAT, etc. It is a statutory requirement that the branch manager is able to bind the company (i.e. the foreign company must be fully bound by all actions taken by the branch manager on behalf of the branch); the rule of signature may only limit the power to bind the company to any number of branch managers having to sign jointly.

The audited annual report of the foreign company must be filed with the DBA without undue delay after the annual report has been approved by the annual general meeting, and in no event later than five months after the end of the financial year.

2.6 European Company ("SE")

Companies also have the option of forming a European Company - known formally by its Latin name "Societas Europaea" ("SE"). An SE will be able to operate on a European-wide basis and be governed by Community law directly applicable in all member states. So far only very few European Companies have been formed in Denmark.

2.7 European Cooperative Society ("SCE")

Following the implementation of the European Company (SE), the EU has been anxious to ensure equal terms of competition and to contribute economic development for the cooperatives, which are a form of organisation generally recognised in all member states. The object is to provide cooperatives with adequate legal instruments to facilitate the development of their cross-border activities.

Since 2006 this has been possible and natural persons resident in - or legal entities established under the laws of - different member states may establish an SCE. It is also possible to establish an SCE by the merger of two existing cooperatives or by the conversion of a national cooperative into the new form without first having to be wound up, where such national cooperative has its registered office and head office in one member state and an establishment or subsidiary in another.

With regard to taxation, competition, intellectual property, and insolvency, the provisions of national law (and Community law) are applicable with respect to the SCE.

2.8 Limited partnership ("Kommanditselskab", abbreviated "K/S")

Some types of business may choose to establish a limited partnership, i.e. an entity with a general partner having unlimited liability and any number of limited partners having their liability limited to a certain amount.

A limited partnership is governed by a set of articles of association which will generally have to be filed with the DBA. An annual report must be prepared and filed (if all limited partners are public limited companies, private limited companies, or limited partnership companies) without undue delay after approval by the general meeting in order for the DBA to receive the annual report within five months after the end of the financial year.

2.9 Limited partnership company ("kommanditaktieselskab" or "partnerselskab", the latter abbreviated "P/S")

The limited partnership company is a variety of the limited partnership, regulated by the Companies Act with the necessary changes, in which the limited partners have contributed a certain capital, which is divided into shares. It is a requirement that the general partner has managerial and financial powers in the limited partnership company.

The Companies Act governs certain aspects of the limited partnership company relating to formation, power to sign for the company, the content of the articles of association, and registration. The annual report must be prepared and filed without undue delay after approval by the general meeting in order for the DBA to receive the annual report within five months after the end of the financial year.

2.10 Partnership ("interessentskab", abbreviated "I/S")

Partnerships are established based on a partnership agreement, and there are no statutory requirements on the contents of such an agreement. Each partner has unlimited joint and several liability for the obligations of the partnership.

In every respect other than for tax purposes, the partnership is considered a separate legal entity.

If all partners are subject to limited liability, e.g. if all partners are corporate entities, the partnership must file a notification to the DBA (including the partnership's articles of association) and is also subject to the Financial Statements Act. The annual report must therefore be prepared and filed without undue delay after approval by the general meeting in order for the DBA to receive it within five months after the end of the financial year.

2.11 Entrepreneur Company ("Iværksætterselskab", abbreviated "IVS")

In 2013, another corporate form was introduced in Denmark, the so-called Entrepreneur Company. The entrepreneurial company is a limited liability company, which needs only a minimum share capital of DKK 1.

There is no personal liability for the owner of the company, thus, any personal loss is limited to the amount, which the owner has contributed to the company. The corporate form is regulated in the Companies Act.

An entrepreneur company must transfer at least 25% of the company's profit every year to a non-distributable reserve to build up the company's capital base until such reserve and the company's share capital total at least DKK 50,000. The general meeting may pass a resolution to convert an entrepreneur company into a private limited company if the company's share capital and the reserve for the building up of the company's capital base total at least DKK 50,000 at the date on which the resolution is passed.

An entrepreneur company cannot resolve to distribute dividends, including extraordinary dividends, until the reserve for the building up of the company's capital base and the company's share capital total at least DKK 50,000.

2.12 European Economic Interest Groupings ("EEIG")

With effect from 1 July 1989, Denmark has implemented the EC Directive on European Economic Interest Groupings (EEIG) and any such entity may therefore choose to have its registered domicile in Denmark.

2.13 Representation office

The establishment of a representation office is not subject to any specific restraints, except in case of representation offices of foreign banks, investment companies, insurance companies and other financial undertakings, in which case special notification must be made to the relevant authority.

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ACCOUNTING

DOING BUSINESS IN DENMARK

3. ACCOUNTING

The Danish Financial Statements Act ("Årsregnskabsloven") regulates all business enterprises except financial businesses.

The Financial Statements Act requires that most companies, i.e. public limited companies, private limited companies, limited partnerships, commercial foundations, SCE companies, cooperatives, other companies with limited liability and partnerships and limited partnerships in which all partners or general partners are public limited companies, private limited companies or limited partnerships, shall prepare an annual report, giving a true and fair view of the company's (or the group's) assets and liabilities, financial position and profit or loss.

Except for certain small business enterprises and certain small limited companies, the annual report must be audited by an external and independent chartered auditor. Limited partnerships and partnerships in which all general partners or partners are not public limited companies, private limited companies, or limited partnership companies are not required under the Financial Statements Act to prepare annual reports.

The Danish Business Authority's (DBA) unofficial translation of the Danish Financial Statements Act into English is available on the DBA website. Please note that the current translation may not be fully updated with the latest amendments of the Act.

The Financial Statements Act is based on a value-oriented accounting concept, which implies that generally the accounting shall be based on the present market value of assets and liabilities as opposed to historic cost. Furthermore, the principles applied from year to year shall be consistent. Danish legislation and accounting standards are constantly approximating IAS and IFRS and are in general very close to these standards.

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MERGERS & ACQUISITIONS

DOING BUSINESS IN DENMARK

4. MERGERS & ACQUISITIONS

4.1 Introduction

Mergers and acquisitions can be structured in various different ways, e.g. by way of a purchase of shares, an acquisition of assets combined with the assumption of liabilities, by a merger or by combinations of the aforesaid. Also the spin-off of an internal division into separate corporate vehicles or a demerger is often seen as part of an acquisition.

Mergers and acquistions are usually preceded by a due diligence investigation, examining the target company and its assets in order to obtain comfort on the price and other material terms on which the buyer offers to acquire the shares or assets of the target company (e.g. purchase price adjustments, conditions precedent, specific indemnifications and representations and warranties).

Danish antitrust rules will apply in conjunction with EU antitrust rules in connection with a market concentration such as a merger or a takeover. See Section 11 on Competition Law.

4.2 Acquisition of shares

The majority of acquisitions of Danish companies are made by a transfer of all or a majority of the shares of the target company. The advantages of an acquisition of shares rather than of assets and liabilities are primarily the relative ease in defining the business being acquired, the absence of automatic termination rights of the contracting parties of the selling company, and tax. See Section 5 on Tax.

The purchase price for shares may be all cash, or combinations of shares, cash, convertible bonds, and/or warrants.

Shares are freely transferable unless otherwise agreed between the shareholders or other stakeholders of the company (e.g. a bank or other (secured) creditor). Restrictions on transfers of shares will usually be provided for in the articles of association or a shareholders' agreement and will, depending on the restriction, also be registered in the shareholders' register. There may, however, be other obstacles to the takeover of a Danish company, including the following:

- Articles of association and/or shareholders' agreements may, particularly for non-listed companies, grant (often mutual) rights of first refusal before a sale of shares to any third party, or the transfer of shares may be subject to approval by the board of directors or other shareholders/stakeholders.

- A company may have different classes of shares with different voting rights, making access to a majority holding very difficult. In most cases, shares carrying increased voting rights will be held by only one or a few shareholders (and are often not listed on Nasdaq Copenhagen A/S) whereas shares with decreased voting rights are likely to be held by a large number of shareholders and may be listed on Nasdaq Copenhagen A/S (or other regulated or alternative market).

- Articles of association may limit the voting rights to be exercised by any one shareholder, and it is even possible that no one shareholder may exercise voting rights exceeding, say, 1% of the total voting rights in a company. Limitations on voting rights often appear in the articles of association of banks, savings banks, and similar companies.

The Danish Companies Act generally prohibits a Danish company from extending any loan, providing any security or otherwise providing funds aiding in the acquisition of its shares (financial assistance), which should be taken into consideration when planning the financing of the acquisition. Alternative ways of securing the financing of an acquisition of shares may include a pledge of the shares in the target company coupled with appropriate financial and restrictive covenants and potentially a subsequent debt push-down through distribution of dividends from the target company.

The holding of a controlling block of shares does not mean that the majority shareholder can compel the minority shareholders to sell their shares. Compulsory redemption (squeeze-out) of shares of the minority shareholders is only possible if more than 90% of the shares and of the voting rights are held by one majority shareholder. In the same way, when this threshold is reached, the minority shareholders may demand that their shares be purchased by the majority shareholder.

In an acquisition of shares the buyer will take over the target company with all its existing assets and liabilities. There is no legal requirement to obtain consent to the transaction from the target company's contracting parties, unless otherwise specifically agreed

(e.g. by way of change of control provisions). If such third-party consent is contractually agreed, the lack of such consent will not render the acquisition of the target company's shares legally void, instead the consequence will usually be the termination of the affected contracts.

There is no stamp duty payable on the transfer of shares in Denmark. Further, there is no legal requirement to have share transfers notarised.

Any shareholder holding more than 5 % of the total votes or share capital of a Danish company shall be registered in the Danish Business Authority's public shareholder register.

4.3 Mergers

The Danish rules on mergers conform to the Third Company Directive. A merger may be effected either by transferring the assets and liabilities of one or more companies to another existing company or by transferring the assets and liabilities of one or more companies to a new company. The provisions include safeguards to protect each company's creditors and minority shareholders.

In addition, Denmark has implemented the EU directive on cross-border mergers of limited liability companies (2005/56/EC) and allows and recognises mergers between public limited companies and private limited companies (and certain other limited liability companies subject to the Danish Act on Undertakings Carrying on Business for Profit) subject to the laws of two or more different EU or EEA member states. The basic rule on cross-border mergers is that the Danish rules on domestic mergers apply with some exemptions, including a right for objecting minority shareholders of the discontinuing company(ies) to have their shares redeemed by the company at market price.

The main reason for structuring an acquisition as a merger is the principle of universal succession, allowing for the transfer of assets and liabilities from the discontinuing company to the continuing company without the consent of the contracting party, unless otherwise specifically agreed. The principle of universal succession also applies in connection with demergers.

4.4 Companies with shares listed on a regulated market

The acquisition of shares in a Danish company with shares listed on a regulated or alternative market in Denmark is subject to the rules of the Danish Securities Trading Act and the Danish Executive Order on Takeovers, which among other things implement most of the EU Takeovers Directive. There is one regulated market in Denmark, Nasdaq Copenhagen A/S, whereas First North is an alternative market.

A decision to launch a takeover bid regarding a Danish company listed on a regulated or alternative market must be made public immediately. The bidder must prepare an offer document, which must include information on, inter alia:

- bidder's identity and address;
- tender price;
- terms of payment;
- acceptance period for the offer; and
- statement of bidder's future plans for the company.

The Danish Executive Order on Takeovers includes rules on the contents of the offer and the procedure to be applied.

In respect of listed companies, the purchaser of a substantial portion of shares will be obliged, in certain situations, to offer to purchase also the shares of the remaining (minority) shareholders. This will be the case where there is a direct or indirect transfer of shares in a listed company, by which transfer the investor (or investors):

- will hold, directly or indirectly, more than half of the voting rights in the company unless, in specificl cases, it can be clearly established that such holding does not constitute a controlling interest;
- will be entitled to appoint or dismiss a majority of the members of the company's board of directors or any equivalent management body, provided the board of directors or such equivalent management body is able to exercise a controlling influence over the company;

- will have the right to control the financial and operational affairs of the company pursuant to the articles of association or by agreement;

- will have the right to control a majority of the voting rights in the company according to agreement with other shareholders; or

- will hold more than one third (1/3) of the voting rights and the actual majority of votes at the general meeting or in any other management body, thereby having an actual controlling influence over the company.

As a general rule, the purchase price must be the highest price paid for shares in the company by the investor (or investors) within the last six months prior to the offer, but there may be circumstances (e.g. corporate restructuring) in which an exemption from this requirement will be possible.

The investor will be required to prepare an offer document, which must include much of the same information as required in a voluntary tender offer.

Under the rules of the Securities Trading Act and the Danish Executive Order on Major Shareholders, transactions involving shares of a company listed on a regulated or alternative market whereby the acquirer achieves a certain percentage of share capital or voting rights must be notified to the target company and to the Danish Financial Supervisory Authority. Notification shall be made as soon as possible, usually taken to mean on the same trading day as the transaction takes place.

Notification about shareholdings must be submitted when:

- the votes attaching to the transferred shares represent at least 5% of the total votes or the nominal value of the transferred shares represents at least 5% of the share capital, or

- as a result of a change in a holding already notified (i) the limits of 5, 10, 15, 20, 25, 50 or 90 percent and (ii) limits of 1/3 or 2/3 of the total votes or share capital are reached, or if they are no longer reached.

The duty to disclose shareholdings applies not only to shares owned by the actual holder of shares, but also to natural or legal persons who are entitled to acquire, dispose of or exercise voting rights under certain specific circumstances.

The duty to disclose also applies with respect to certain types of derivatives.

4.5 Acquisition of assets

In the event of an acquisition of assets and liabilities, it will often be preferable to incorporate a Danish company to acquire the assets and liabilities and employ any employees.

The main reason for structuring the acquisition as a purchase of assets and liabilities is the possibility it provides to exclude certain actual or contingent liabilities and tax legacy. The extent of due diligence investigations and seller's representations, warranties and covenants are, however, often substantially the same whether shares or assets are acquired. For the buyer, an asset purchase will have the advantage that the book value of the assets, on incorporation into the buyer's balance sheet, may be increased to fair market value, thereby increasing the basis for obtaining the necessary loan financing and also increasing the basis for depreciation for tax purposes. Acquired goodwill is permitted to be included in the basis of depreciation. Further, as no shares are transferred, the general prohibition against the target company providing loans or other security for the purchase of its own shares (financial assistance) and the rules on mandatory offers do not apply.

As a result of the tax liabilities incurred by the seller in an asset purchase, the purchase price is, however, likely to be higher relative to what it might have been in a share transfer scenario.

Also, a transfer of assets and liabilities will require the obtaining of approval from contracting parties of the acquired business, who will have to accept the acquisition vehicle as their new contracting party.

In a purchase of assets and liabilities, the buyer will automatically assume the rights and obligations of the seller vis-à-vis the employees.

Transfer of real estate is subject to payment of a stamp duty of DKK 1,660 (approx. EUR 225) plus 0.6% of the transfer price of the property (see section 9 on Real Property). There is no stamp duty payable on the transfer of other assets, nor is there any legal requirement to have the transfer of Danish assets notarised.

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TAX

DOING BUSINESS IN DENMARK

5. TAX

Denmark has a reputation as a high-taxation country. However, from a business/company/employer's perspective, a comparison with other European jurisdictions will show a more balanced picture in respect of combined corporate tax and labour costs.

To a great extent, the Danish tax regime relies on direct rather than indirect taxes. Even if direct labour costs in terms of wage levels are comparatively high, there are relatively few indirect costs and duties in the form of social security and contributions from employers, which in other jurisdictions serve to push combined tax and labour costs to a high level.

Danish tax law is a quite complicated area, which undergoes frequent changes and amendments by the Parliament. The extensive and detailed legislation (supplemented by derivative legislation, guidance notes, etc.) is supplemented by extensive case law and administrative practice.

Any transaction will therefore have to be structured carefully in order to benefit from the most favourable tax treatment.

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THE FINANCIAL SECTOR

DOING BUSINESS IN DENMARK

6. THE FINANCIAL SECTOR

6.1 Introduction

The financial sector in Denmark is mainly regulated by the Financial Business Act, which in general applies to investment companies (securities dealers), insurance companies, pension funds, credit institutions, mortgage credit institutions, investment advisers, and investment management companies (regulated funds' management companies). Other statutory rules relating to the financial sector include the Securities Trading Act, the Act on Investment Associations etc., the Alternative Investment Funds Managers etc. Act, the Company Pension Funds Act, and the Mortgage Credit Loans and Mortgage Credit Bonds Act.

The Financial Business Act sets forth rules regarding (among other things) authorisation requirements, conduct of business, banking security, investment, solvency and liquidity, ownership, management, accounting and supervision in connection with the above institutions. Supplementing the Financial Business Act is a large number of executive orders and guidelines setting out more detailed regulation. Due to the complexity of the regulatory framework applicable to the financial sector, we generally recommend detailed advice.

Kromann Reumert is involved in all aspects of legal advice related to the financial sector, including advice in relation to securities admitted to trading on a regulated market, official listing, offering of securities and financial services, establishment and acquisition of credit institutions, investment companies and funds, domestic and international project financing, acquisition and asset financing, loan transactions (both syndicated and non-syndicated), security documentation, derivative transactions, and insurance business. We act for a large number of domestic and international banks, investment companies, mortgage credit institutions, pension funds, funds, and insurance companies, as well as government and semi-governmental agencies in a variety of matters.

6.2 Securities admitted to trading on a regulated market

The most important regulated market in Denmark is the Nasdaq Copenhagen stock exchange.

Licensed as a regulated market pursuant to the Securities Trading Act, Nasdaq Copenhagen is under supervision of the Danish Financial Supervisory Authority (FSA) and is responsible for ensuring adequate and appropriate operation of the market.

An operator of a regulated market shall publish on a continuous basis the current prices, and the market depth of these prices, of shares admitted to trading on the regulated market and offered in its system. Furthermore, an operator shall publish price, volume and time of transactions carried out with shares and other securities admitted to trading on the regulated market. Publication of such trade information shall be available as close to real time as possible (and always within three minutes of the transaction).

Securities dealers which systematically internalise in certain shares admitted to trading on a regulated market in the EU/EEA (meaning that the dealer on an organised, frequent and systematic basis deals on its own account or by executing client orders outside a regulated market or multilateral trading facility) shall publish on a continuous basis binding prices of such shares.

Securities dealers executing client orders or trading on their own account in shares and other securities admitted to trading on a regulated market in the EU/EEA outside a regulated market or multilateral trading facility must also publish information about price, volume and date of completion of the transaction. Publication of such trade information shall be available as close to real time as possible (and always within three minutes of the transaction).

In general, only Danish and foreign investment companies, banks and other credit institutions, mortgage credit institutions, and the Danish Central Bank (Nationalbanken) are allowed to trade on Nasdaq Copenhagen. Such entities (except for the Danish Central Bank) must be authorised to carry out securities trading (Danish and non-EU/EEA entities must be Danish FSA-authorised, while EU/EEA entities, subject to such entities holding an EU financial passport to carry out investment services in Denmark cross-border or through a branch, must be authorised by the supervisory authorities of their respective home countries).

Most of the members of Nasdaq Copenhagen offer to their customers automatic order routing, allowing customers to trade directly on Nasdaq Copenhagen via the member.

Trading on Nasdaq Copenhagen is fully computerised (operated within Nasdaq Nordic, grouping together the Nasdaq exchanges in Copenhagen, Stockholm, Helsinki, Iceland,

Tallinn, Riga and Vilnius to all share the same trading system). No share certificates or other paper securities are issued, and securities are evidenced by electronic entries in a securities depository (the Danish central securities depository VP Securities A/S ("VP") is currently the only authorised securities depository in Denmark). VP keeps individual accounts for holders of securities as well as a share register for each listed company.

All securities trading on Nasdaq Copenhagen has to be notified to VP through authorised account controllers. However, certain "major customers" may communicate directly with VP in respect of their own accounts. It is possible for a holder of securities to operate multiple accounts and to deal through several account controllers.

Registration with VP constitutes conclusive evidence of title to dematerialised securities. Any other rights attached to a dematerialised security (securities will not be admitted to trading on a regulated market unless dematerialised), including any form of charge or pledge, also have to be registered in order to be enforceable against third parties.

An operator of a regulated market shall have clear and transparent regulations governing the admission of securities for trading and must ensure that an approved and published prospectus has been presented by the issuer. An operator may admit a security for trading on the regulated market without the consent of the issuer if the security has been admitted, with the consent of the issuer, for trading on another regulated market in the EU/EEA.

The Securities Trading Act and executive orders issued thereunder implement the EU Prospectus Directive (2003/71 as amended by directive 2010/73/EC). In general, (i) an application for admission of securities for trading on a regulated market and (ii) the first public offering of securities (if at a value of more than EUR 5,000,000) must be accompanied by a complete prospectus satisfying the requirements in chapter 6 of the Securities Trading Act. For securities at a value between EUR 1,000,000 and EUR 5,000,000, the first public offering is subject to the less restrictive prospectus requirements in chapter 12 of the Securities Trading Act. However, Danish rules allow for several exemptions from the general prospectus requirements, for example in respect of the first public offering of securities not admitted to trading in Denmark to qualified investors and to a limited number of investors. Prospectuses prepared pursuant to Danish law must have Danish FSA approval.

Companies will be eligible for listing on Nasdaq Copenhagen if they have a sufficient operating history, including three annual accounts. Furthermore, companies must have

documented earnings capacity at group level or, alternatively, sufficient working capital available for planned activities for at least twelve months after the first day of trading. In respect of liquidity, normally a minimum of 25% of the shares must be in public hands and the expected market value of the shares must be at least EUR 1 million. In addition, the companies must fulfil certain administration and corporate governance requirements. Lastly, companies will have to satisfy relatively strict disclosure requirements, including on price sensitive information, financial reports, forecasts, and changes in management.

Nasdaq Copenhagen is authorised by the Danish FSA to make, upon request from an issuer of shares, share certificates or bonds, a decision about official listing of the relevant security if such security has been or will be admitted to trading on Nasdaq Copenhagen.

On 3 July 2016, the regulation laid down in the Danish Securities Trading Act regarding publication of inside information, insider lists, managers' reporting obligation the prohibition against market abuse (insider trading, market manipulation and unlawful disclosure of inside information) was replaced by the Market Abuse Regulation (596/2014), which has direct effect in all EU member states.

Pursuant to the Securities Trading Act, companies with securities admitted to trading on a regulated market shall also disclose information regarding annual reports and interim financial statements. Such information also has to be published in a manner in which it is quickly available throughout the EU/EEA, for example through Nasdaq Copenhagen, and at the same time such information must be submitted to the Danish FSA.

The EU Takeover Directive (2004/25) is implemented with the Securities Trading Act and the Executive Order on Takeovers. The regulation applies to mandatory and voluntary takeover bids alike, but regulation of mandatory takeover bids is by far the most extensive. A natural or legal person is required to make a mandatory takeover bid if acquiring, by direct or indirect transfer of shares in a company whose shares are admitted to trading at a regulated or alternative market, control of such company. The offer document must contain information on the financial terms and other terms of the bid, including other information which is deemed necessary for the assessment of the takeover bid. For mandatory bids, the price offered must equal or exceed the highest price paid by such person for the shares already acquired. Any takeover bid must be authorised by the Danish FSA before publication. The Executive Order on Takeovers also sets out requirements in respect of agreements on bonuses and payment out of company funds, publication, reports from the board of directors of the company, changes in the bid, and competing bids.

Nasdaq also operates an alternative market called Nasdaq First North, which appeals to small or growth companies interested in obtaining financing from the capital market at a lower cost than companies admitted to trading on Nasdaq Copenhagen. Nasdaq First North is a multilateral trading facility and does not have the legal status of a regulated market.

As a multilateral trading facility, Nasdaq First North is subject to the prospectus regulation in connection with initial public offerings of securities, the Market Abuse Regulation (596/2014) and certain of the rules in the Securities Trading Act, including rules on takeover bids. Other than this, Nasdaq First North is primarily subject to the First North Rulebook and the regulation on multilateral trading facilities.

To be eligible for admission to Nasdaq First North, a company must, among other things, provide Nasdaq First North with a company description, sign an agreement with a certified adviser, and have the necessary organisation and staff to comply with the requirements for disclosure of information to the market. In respect of liquidity, the shares of the company must meet the conditions for sufficient supply and demand, which requirement will be considered satisfied if at least 10% of the share class to be traded is held by the general public (a sufficient number of shareholders).

The domestic market, of course, is only one source of external financing for major Danish companies, many of which have tapped into the Euro-loan market, and some companies have obtained admittance and listings on exchanges abroad, for example London, New York, Nasdaq in the US, and Zurich.

6.3 Investment companies

In the Danish market for investment services, there are many foreign investment companies represented, being marketed in Denmark on a cross-border basis or via a branch or subsidiary.

With the implementation of the EU MiFID Directive (2004/39), foreign investment companies from the EU or EEA areas may conduct investment service activities with the type of instruments set out in the MiFID Directive (as implemented in Danish law) in Denmark by way of cross-border activity on the basis of the EU financial passport, subject only to the Danish FSA having received a notification and statement from the supervisory authority of the investment company's home country confirming that the intended activities are comprised by the home country licence. Alternatively, such investment service

activities can be carried out via a branch two months after the Danish FSA has received sufficient information from the foreign supervisory authority, including information on guarantee schemes, the activities of the branch, and the home country licence.

In respect of non-EU/EEA investment companies, such companies must obtain Danish FSA approval in order to offer services in relation to securities in Denmark. To obtain a Danish licence, the foreign investment company has to proceed along a formal procedure not unlike the one applicable to EU/EEA investment companies' notification, but the documentation to be delivered by non-EU/EEA applicants may prove more difficult to obtain in practice.

Danish rules on investor protection will apply in respect of foreign investment companies' activities in Denmark via a branch and also, for non-EU/EEA investment companies, for their cross-border activities. However, under the MiFID Directive, an EU/EEA investment company is subject to its home country's investor protection regulations for security trading activities in Denmark performed on a cross-border basis.

If a foreign investment company wishes to establish a Danish subsidiary, such subsidiary will be required to obtain a Danish licence as an investment company from the Danish FSA, and for that, it must be a public limited company ("A/S") and it must have a paid-up share capital of at least the equivalent of EUR 125,000 or EUR 750,000, depending on the type of investment services in which it intends to engage.

However, the coverage for investment companies that are not authorised to hold client money or securities and only carry out one or more of the investment services set out in Annex I, Section A, no. 1, 2, 4 or 5, of the MiFID Directive may take one of the following forms:

a) paid-up share capital of at least the equivalent of EUR 50,000;

b) professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 million applying to each claim and in aggregate EUR 1.5 million per annum for all claims; or

c) a combination of the share capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points a) or b).

Danish investment companies are comprised by a statutory guarantee scheme, under the terms of which certain investors' deposits are guaranteed up to a maximum of EUR 100,000. Certain investors' securities are guaranteed up to a maximum of EUR 20,000 in case the investment company undergoes restructuring proceedings or is declared bankrupt.

6.4 Investment adviser

A company may obtain a licence as an investment adviser (a procedure less extensive than that for obtaining a licence as an investment company) if the company is only carrying out investment advisory activities (i.e. providing personal recommendations to a client, either on request or at the initiative of the investment adviser, in respect of one or more transactions related to financial instruments). In accordance with the MiFID Directive, a foreign EU/EEA investment adviser may provide investment advisory activities in Denmark on a cross-border basis or through a branch on the basis of the EU financial passport, subject to a procedure similar to that for investment companies.

6.5 Banking

Foreign EU/EEA credit institutions may operate in Denmark on a cross-border basis or through a branch on the basis of the EU financial passport, subject to the formalities required by EU legislation. In respect of cross-border activities, the home country's banking authorities must notify the Danish FSA of the intended cross-border activities and confirm that such activities are comprised by the bank's home country licence. The cross-border activities may be commenced upon the Danish FSA's receipt of this information. As for activities through a Danish branch, the home country's banking authorities must provide confirmation regarding the banking licence in the home country, capital and solvency figures, and miscellaneous other information. The branch may start operating two months after receipt of this information.

Foreign non-EU/EEA banks may operate in Denmark through a branch subject to Danish FSA approval. The branch must have a minimum capital of EUR 8 million and must be managed by two or more branch managers. In general, the branch will have to comply with the same regulation in the Financial Business Act as Danish banks.

Danish rules on good business practice for credit institutions will apply in respect of foreign credit institutions' activities in Denmark, whether on a cross-border basis or via a branch.

If a banking subsidiary is to be established, a minimum capital requirement of EUR 8 million will apply. A banking licence will also need to be obtained and this will require, among other things, information on ownership.

A statutory deposit guarantee scheme ensures that depositors generally will receive repayment of up to a maximum of EUR 100,000 of any deposits lost in case the bank undergoes restructuring proceedings or is declared bankrupt.

6.6 Insurance companies

Foreign insurance companies domiciled in another EU or EEA country may conduct insurance business in Denmark through a branch or as cross-border activity.

In order to conduct cross-border activities, the home country's insurance authorities must notify the Danish FSA of the intended cross-border activities and confirm that such activities are comprised by the insurance company's home country licence. Further, the Danish FSA must receive a solvency certificate, a list of classes of insurance, groups of insurance, subsidiary risks which the insurance company intends to cover in Denmark, and certain other information depending on the type of cross-border activities. The cross-border activities may be commenced upon the Danish FSA's receipt of this information.

As for activities through a Danish branch, the home country's insurance authorities must provide confirmation regarding the insurance licence in the home country and miscellaneous other information. The branch may start operating two months after receipt of this information. The foreign insurance company must appoint a general agent authorised to represent the foreign insurance company vis-à-vis all public authorities and third parties.

Insurance companies from outside the EU or EEA areas may conduct insurance business in Denmark through a branch subject to Danish FSA approval and a number of requirements on the investment of funds sufficient to meet the obligations of direct business in Denmark.

Foreign insurance companies will be regarded as having a branch in Denmark if they have an office in Denmark managed by their own personnel or if they are represented in Denmark by a third party authorised to act on their behalf in a way similar to a branch.

Danish rules on good business practice for insurance companies will apply in respect of foreign insurance companies' activities in Denmark on a cross-border basis or via a branch.

6.7 Mortgage credit institutions

The large majority of property acquisitions in Denmark, whether commercial or private, are financed by loans obtained from mortgage credit institutions. These mortgage credit institutions, governed by the Financial Business Act and the Mortgage Credit Loans and Mortgage Credit Bonds Act, are subject to supervision by the Danish FSA. With very few exceptions, mortgage credit institutions may only provide loans against mortgages registered on the property. Such institutions fund themselves through the issue of mortgage credit bonds or (mortgage) covered bonds. These bonds are typically admitted to trading on Nasdaq Copenhagen, and the importance of this sector is reflected in the fact that the Danish bond market is among the biggest in the world.

According to the Mortgage Credit Loans and Mortgage Credit Bonds Act, a mortgage may only be granted within certain limits, for example loans provided for commercial property, whether industrial or office, may be given for a maximum of 60% of the cash value of the property. The cash value is estimated by the mortgage credit institution itself, following certain statutory and administrative guidelines.

Foreign EU/EEA credit institutions may conduct business in Denmark as mortgage credit institutions through branches or as cross-border activity subject to certain requirements (for example compliance with the Mortgage Credit Loans and Mortgage Credit Bonds Act, main part of the institution's business must be limited to providing loans against registered mortgages, and loans and funding must be guided by a principle of balance, etc.). A foreign EU/EEA mortgage credit institution may conduct business through a branch within two months of the Danish FSA having received sufficient notification in this regard from the competent home country authority. No time limit applies if an EU/EEA foreign mortgage credit institution's home country authority confirms that business will be conducted as cross-border activity.

Danish rules on good business practice for mortgage credit institutions will apply also in respect of foreign mortgage credit institutions' activities as mortgage credit institutions in Denmark on a cross-border basis or via a branch.

6.8 Funds

The Danish regulation of funds and fund managers is set out in (i) the Act on Investment Associations etc., which transposes the UCITS IV-Directive (2009/65/EU) and the UCITS V-Directive (2014/91//EU) into Danish law and applies, inter alia, to the offering and marketing in Denmark of units in funds which qualifies as a UCITS; and (ii) the Alternative Investment Fund Managers etc. Act, which transposes the Alternative Investment Fund Managers Directive (2011/61/EU, as amended) ("AIFMD") into Danish law and applies, inter alia, to the offering and marketing in Denmark of interests or shares in funds which qualify as alternative investment funds (AIFs).

UCITS

The direct or indirect marketing in Denmark of units in a foreign UCITS falls within the scope of the Act on Investment Associations etc. and requires prior notification to the Danish FSA.

A UCITS authorised by the competent authorities of its home member state, which intends to market its units directly or indirectly in Denmark must submit a notification letter to the competent authorities in its home member state, which must include its fund rules or instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-year report together with the key investor information for the fund. Further, a UCITS, the units of which are marketed to retail investors in Denmark, shall have a representative with an office in Denmark. Information on the Danish representative must be disclosed in the prospectus or in a supplement to the prospectus.

No later than 10 working days upon having received the notification letter and the documents enclosed therewith, the competent authorities of the UCITS' home member state transmit the complete documentation to the Danish FSA accompanied by an attestation that the UCITS fulfils the conditions imposed by the UCITS Directives. The cross-border activities may be commenced upon the Danish FSA's receipt of this information.

Danish rules on good business practice for investment associations will apply in respect of foreign UCITS' activities in Denmark.

Alternative investment funds (AIFs)

The Alternative Investment Fund Managers etc. Act mainly includes indirect regulation of AIFs by way of regulation of the managers of AIFs. However, if the legal form of an AIF allows it to be internally managed and the AIF's governing body chooses not to

appoint an external AIFM, the AIF itself is subject to the rules set out in the Alternative Investment Fund Managers etc. Act (as a "self-managed AIF"), subject to any necessary modifications.

Generally, the Alternative Investment Fund Managers etc. Act implements the AIFMD without gold-plating. However, the Alternative Investment Fund Managers etc. Act does include Danish private placement rules contemplated by but not set out directly in the AIFMD, including (i) rules on marketing of units or shares in an AIF to retail investors in Denmark, (ii) rules on marketing of shares or units in non-EU/EEA AIFs to investors in Denmark, and (iii) rules on non- EU/EEA AIFMs' marketing of shares or units in EU/EEA AIFs to investors in Denmark.

Currently, the notification and/or approval requirements applicable to EU/EEA AIFMs and non-EU/EEA AIFMs wishing to market units or shares of AIFs to professional investors in Denmark can be summarised as follows:

	EU/EEA AIF	**Non-EU/EEA AIF**
EU/EEA AIFM	EU/EEA AIFMs wishing to market units or shares of EU/EEA AIFs to professional investors in Denmark may do so when the competent authority of the home member state of the EU/EEA AIFM has notified the EU/EEA AIFM that a notification has been sent to the Danish FSA.	EU/EEA AIFMs wishing to market units or shares of non-EU/EEA AIFs to professional investors may, subject to certain requirements, do so with the approval of the Danish FSA.
Non-EU/EEA AIFM	Non-EU/EEA AIFMs wishing to market units or shares of EU/EEA AIFs to professional investors may, subject to certain requirements, do so with the approval of the Danish FSA.	Non-EU/EEA AIFMs wishing to market units or shares of non-EU/EEA AIFs to professional investors may, subject to certain requirements, do so with the approval of the Danish FSA.

Denmark has opted for the "depositary-lite" regime, which means that EU/EEA AIFMs and non-EU/EEA AIFMs that wishes to market units or shares of non-EU/EEA AIFs in Denmark must ensure that one or more entities other than the AIFM itself has been appointed to carry out the depositary-lite responsibilities listed in Sections 50, 51(1) and 52 of the Alternative Investment Fund Managers etc. Act (implementing Articles 21(7)-(9) of the AIFMD).

Marketing of units or shares in AIFs to retail investors in Denmark is only permitted by Danish AIFMs, EU/EEA AIFMs or non-EU/EEA AIFMs, which have been separately authorised by the Danish FSA to market units or shares in the specific AIF to retail investors in Denmark. Listing of shares or units in an AIF on a regulated market in Denmark will automatically be deemed marketing of such shares or units to retail investors in Denmark and thus require the AIFM to obtain separate authorisation from the Danish FSA to market units or shares in the relevant AIF to retail investors in Denmark.

The Danish Alternative Investment Fund Managers etc. Act sets out good practice rules that apply to EU/EEA AIFMs conducting business in Denmark through a Danish branch or on a cross-border basis as well as certain on-going reporting and disclosure obligations to investors and the Danish FSA.

Marketing of UCITS and AIFs by investment companies and credit institutions
Marketing/selling of units or shares of a UCITS or an AIF in Denmark may be carried out by an investment companies or credit institution that is authorised to carry out activities in Denmark assuming it holds the appropriate licence to market such funds in Denmark, see section 6.3 and 6.5. However, a UCITS or an AIF may not be actively marketed/sold in Denmark by a securities dealer, investment company or credit institution, unless the relevant UCITS has been notified for marketing in Denmark in accordance with the notification procedure described above or the AIFM itself could market the AIF in Denmark pursuant to, and in compliance with, the Alternative Investment Fund Manager etc. Act.

6.9 Interests in Danish financial institutions

If Danish or foreign investors wish to acquire or sell interests in a Danish financial institution (banks, investment companies, insurance companies, mortgage credit institutions or investment management companies), the Danish FSA must be notified of and approve acquisitions of and certain increases in qualifying interests in such financial institutions or financial holding companies to such institutions.

A qualifying interest is defined as direct or indirect ownership of at least 10% of the capital or the votes in a financial institution or financial holding company or any interest that allows a significant influence on the management of the financial institution or financial holding company.

The Danish FSA may only approve acquisitions of qualifying interests and increases in existing qualifying interests if they do not prevent appropriate operation of the financial institution or financial holding company. Further, the Danish FSA must be informed beforehand of certain decreases in qualifying interests. Sanctions such as termination of voting rights attached to the capital in the financial institution or financial holding company may be imposed by the Danish FSA if holders of qualifying interests impede the safe and proper conduct of business.

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AGENTS AND DISTRIBUTORS

DOING BUSINESS IN DENMARK

7. AGENTS AND DISTRIBUTORS

7.1 Agents

Implementing the EU Directive on Commercial Agents, the Danish Act on Commercial Agents closely reflects the provisions of the Directive. With respect to the issue of indemnity or compensation payable to the agent upon termination of the agency agreement, Denmark has opted for the indemnity model. A substantial number of the provisions of the Act on Commercial Agents are mandatory and will therefore supersede any deviating provisions in an agency agreement.

The Act stipulates a right for the agent to receive a reasonable commission and certain limitations on non-competition (restraint of trade) clauses, which inter alia cannot exceed two years in duration and cannot extend to geographical areas, groups of customers or kinds of goods not covered by the agency agreement.

If an agency agreement has been entered into for an indefinite period of time, the principal and the agent will both have to comply with a minimum notice period. The notice period is required to be at least 1 month in the first year of the contract and is increased by 1 month for each subsequent year until reaching the maximum notice period of 6 months. It may be agreed, however, that the agent is entitled to terminate the agency with 3 months' notice. Agency agreements may be expressly limited in time, in which case they will expire on the agreed date. However, if an agency agreement entered into for a fixed period of time is renewed or continued upon expiry, either by express or tacit agreement, the agency will be considered an agency formed for an indefinite period of time and the above-mentioned minimum notice periods will apply.

In most cases, agents will be entitled to indemnity upon termination. Indemnity must be paid if and to the extent the agent has brought new customers to the principal or has significantly increased business with existing customers from which the principal continues to derive substantial benefits, and if and to the extent payment of indemnity is equitable, having regard to all circumstances of the case. The amount of indemnity cannot exceed a figure equivalent to the remuneration for one year calculated on the basis of the agent's average annual remuneration over the preceding five years.

7.2 Distributors

Whereas a commercial agent is an independent partner who works for sale of goods in the name of another person/company (the principal) and at the principal's expense an independent distributor, acts in his own name, at his own expense and determines his own prices.

There is no statutory law on distribution agreements (save for the relevant national and EU competition rules, including the relevant group exemptions). The parties are therefore to a large extent free to agree the terms of the distribution agreement.

Most suppliers and distributors include specific termination notice provisions in their agreements but, in the absence of a specific agreement, the courts will look to the length of the relationship and determine the notice period on this basis. In most cases the required notice period will not extend beyond 6 months.

Danish case law on distribution agreements does not in general provide for payment of indemnity or compensation to the distributor in cases where the supplier terminates the agreement in accordance with the provisions set out therein. If the distribution agreement is lawfully terminated, compensation to the distributor will only be awarded under special circumstances.

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FOREIGN EXCHANGE REGULATIONS

8. FOREIGN EXCHANGE REGULATIONS

Since 1 October 1988 there has been no requirement for authorisation or permission in order to make investments in or payments into Denmark, nor is any authorisation or permission required in relation to the expatriation of funds.

Danish companies are therefore free to obtain financing on the international markets without being subject to limitations on repayment periods etc.

As a measure to prevent money laundering and financing of terrorist activities, the Danish Customs Act provides that anyone entering or leaving the Danish customs area carrying money etc. exceeding EUR 10,000 in value must report, on their own initiative, for a customs check and declare all money etc. to the customs and tax authorities.

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REAL PROPERTY AND CONSTRUCTION

DOING BUSINESS IN DENMARK

9. REAL PROPERTY AND CONSTRUCTION

9.1 Introduction

Kromann Reumert advises on all aspects of real property transactions, including negotiations and completion of national and international transactions involving the sale and purchase of property, project developments, real estate financing, residential and commercial leases, construction, environmental matters and public issues, management of real estate in case of insolvency, as well as related litigation or arbitration.

We assist and represent public, semi-public and private investors in Denmark and abroad, including major property contractors, property investment companies, banks and pension funds, project developers, property managers, and corporate clients.

9.2 Purchase of real property

In Denmark, real property (land and/or buildings) is typically conveyed by a sale and purchase agreement, followed by a deed of conveyance, which is registered in the Danish land register. The deed of conveyance is a digital document and all registrations are made digitally.

Whereas in some countries extensive and time-consuming pre-contract inquiries and reviews are necessary before an acquisition, the Danish Land Registration Court serves to remove most concerns and uncertainties when dealing with Danish properties.

All Danish properties are registered in the land register, kept by the Land Registration Court in Hobro, and all properties are identified by a property number. The register is now fully computerised, and we have online access to its information.

The land register provides information about owner's identity, all registered mortgage deeds and other rights such as rights of first refusal, owner's bankruptcy, etc. In most cases, all easements and encumbrances such as rights of way, local restrictions on construction etc. will also be recorded.

Consequently, it is easy to obtain information on the rights and obligations, as well as the liabilities, attaching to any particular property, and copies of relevant documents (mortgages, easements, etc.) can be downloaded immediately.

Another important function of the land register is in terms of securing the purchaser's title to the property. Once the deed of conveyance is formally recorded in the land register, all third parties – be it a lender, a creditor or a contracting party – will be bound to observe the purchaser's prior right.

The land register also serves as an easily accessible and trustworthy source providing security to lenders as the priority ranking of mortgage deeds will appear on the title register. As is the case for transfer documents, the registration of a mortgage deed will protect the lender against subsequent purchasers and against the borrower's other creditors.

The purchase of real property is typically financed by a mortgage credit institution; alternatively, the property can be purchased against cash payment or financed by a loan from a bank.

Registration of deeds of conveyance for single or multi-family houses and holiday houses is, when sold at arm's length, subject to a registration fee of DKK 1,660 (approx. EUR 225) with the addition of 0.6 % of the purchase sum. Registration of deeds of conveyance for other types of real estate will be subject to a registration fee of DKK 1,660 with the addition of 0.6 % of the purchase sum or the official property valuation, whichever is higher.
Registration of a mortgage deed amounts to 1.5% of the principal of the secured amount plus the fixed fee of DKK 1,660.

Non-Danish citizens who have not previously been domiciled in Denmark for an aggregate period of at least five years can only purchase real property in Denmark with the permission of the Danish Ministry of Justice. The same goes for companies, associations, etc. which are not domiciled in Denmark.

EU citizens, citizens of EEA countries, and EU companies, however, may purchase real property in Denmark without permission from the Ministry when certain requirements are met, but only if the property is intended to serve as a necessary permanent residence for the purchaser, or when the purchase is a prerequisite for operating the purchaser's own business or for supplying services. Holiday residences may only be purchased by non-Danish residents with the permission of the Ministry, which is rarely granted. Purchase of land for agriculture has been liberalized over the last years to the point where there are very few restrictions.

9.3 Buildings, fixtures and fittings

The real estate sale and purchase agreement will include the land with buildings and all fixtures and fittings, e.g. heating system, supply lines, air-conditioning, lifts, etc. If a property is used for commercial purposes, the operating equipment and machinery will also be considered as part of the property. However, fixtures and fittings as well as equipment and machinery will only be included as part of the property if the owner of the property has paid the costs of materials and installation.

Fixtures, fittings or equipment paid for by a lessee will not be considered part of the property.

9.4 Leases

Historically, Danish legislation on leases has been very protective of lessees. Statutory provisions and court practice have laid down a number of provisions protecting the lessee in various situations, e.g. with respect to the size of the rent, adjustment of rent, payments in addition to the rent, termination of the lease, maintenance of the premises, obligations in connection with vacating the premises, etc.

The Danish Rent Act as well as the Danish Business Lease Act still lay down a number of mandatory provisions which cannot be deviated from to the detriment of the lessee. For example, regardless of any agreement to the contrary, a lessor may only terminate a lease if the case falls within the listed grounds for termination in the relevant of the two Acts, e.g. when the lessor himself wishes to make use of the property, in which case twelve months' notice of termination must be given. Unless otherwise stipulated in the lease agreement, a lessee can always terminate a lease.

Rent paid for residential premises may – as a main rule – never exceed what is deemed to be "the value of the premises".

9.5 Commercial leases

The Danish Business Lease Act, effective as of 1 January 2000, introduced a high degree of contractual freedom. The Act governs leases entered into before and after 1 January 2000, but does stipulate a somewhat different legal position for leases entered into prior to 1 January 2000.

Almost all terms and conditions of commercial leases are subject to negotiation between the parties, including terms and conditions regarding rent, adjustment of rent, maintenance obligations, right of assignment, subletting, etc. However, with respect to the lessor's termination and payment of damages/compensation, the Business Lease Act still provides extensive protection of the lessees.

The parties are free to agree how the rent is to be adjusted and paid. Usually, the rent is paid monthly or quarterly in advance. It is also commonly agreed that the annual rent shall be adjusted (sometimes only increased) every year in accordance with the changes in the official Danish "Net Price Index", a certain percentage, or a combination of the two.

According to the Business Lease Act, the rent may be adjusted (increased or decreased) on the basis of the "market rent". Such adjustment cannot take place until 4 years after commencement of the lease. These provisions in the Act can be set aside by express and unambiguous agreement in respect of both parties' access to demand rent adjustments, or it can be agreed that only the lessor (or the lessee) is entitled to demand adjustment to the market rent.

In commercial leases a distinction is made between "business-protected leases" and "non-business-protected leases". A "business-protected lease" is defined as a lease where it is of significant importance to the business that it stays in the property. With respect to the so-called "non-business-protected leases" the parties can agree that the lessor may require a change in the terms and conditions of the lease and to allow the lessor to terminate the lease if the parties fail to negotiate an agreement on future lease terms. The lessee, however, is protected from such a demand for changes in the terms – and thus the consequent potential termination - for eight years following the commencement of the lease.

The lessee's statutory rights are protected against the lessor's creditors and a purchaser of the property. Consequently, a purchaser of the property and the creditors (including the bankrupt estate) are obligated to respect the lessee's rights under the law. However, if rights granted to the lessee extend beyond the rights provided by law, extracts of the lease agreement, in particular provisions regarding deposits of more than six months' rent, fixed terms of the lease, non-terminability period, right to sublease, right of first refusal, etc., such rights must be registered in the land register in order to obtain protection.

Registration of the agreed terms will ensure that a subsequent purchaser or a creditor will be bound to observe the lessee's rights under the lease agreement. In case of a forced sale by auction, the order of priorities and the secured purchase sum may determine whether the new owner will be bound by the terms of the lease agreement.

9.6 Land leases/ground rent

Though uncommon, it is possible to lease land and at the lessee's expense build one or more buildings on the leased area. Generally, this is the case for leased areas situated near airports and harbours. Although not a formal requirement, registration of the lease agreement in the land register will be necessary in order to obtain protection against the landowner's creditors and bona fide purchasers of the land.

Normally, if the lessee constructs a building on the leased area, the land as well as the building will be registered in the land register as separate properties. The lessee may register mortgages on the real property consisting of the building on leased land.

9.7 Construction

In Denmark, most agreements between employers and contractors regarding the performance of construction work are based on a set of general conditions for the provision of works and supplies within building and engineering (AB 92) or turnkey contracts (ABT 93).

Agreements between the employer, alternatively the contractor, and architects, engineers and professional advisors are normally based on the General Conditions for Consulting Services (ABR89).

In respect of all three sets of general conditions, the parties must expressly decide on their application if they wish to rely on them. However, even if the rules are not mentioned in the contractual documents between the parties – and thereby actually not agreed - the Courts or a tribunal will often use the principles from the rules to rule on the issues at hand.

The general conditions may be supplemented by additional terms and conditions negotiated between the parties.

As a main rule, all disputes arising out of or in connection with the contracts are settled by arbitration before an institutional tribunal specialised in the settlement of disputes relating to works and supplies within building and engineering.

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ENVIRONMENTAL LAW

DOING BUSINESS IN DENMARK

10. ENVIRONMENTAL LAW

10.1 Introduction

Danish environmental law has developed since the beginning of the 1970s as part of public law, private law and European Community Law. The Danish rules are mainly made up of framework and delegation statutes, supplemented by the administrative authorities through binding and guiding rules and actual, specific, physical plans. The most essential environmental acts are described below. The Treaty on European Union seeks to promote harmonisation of the environmental laws and the free movement of goods within the internal market. As previously noted Denmark has a high degree of compliance with EU law. At the same time, national traditions are very important. The obligations of natural persons and legal entities follow from the requirements of national environmental law. There are a number of different administrative authorities with competence in the area of environmental law.

The basic expert and administrative work of the Ministry of Environment and Food of Denmark is carried out by the Danish Environmental Protection Agency, the Danish Nature Agency, the Danish Coastal Authority, the Danish AgriFish Agency and the Danish Veterinary and Food Administration. Publicly elected local councils and the Ministry of Environment and Food are responsible for environmental and planning procedures. The Environmental and Food Board of Appeal and The Planning Board of Appeal are independent appeal boards. They normally have the power to undertake a complete review of appealed decisions. Within the sphere of environmental law, the delimitation of the right of complaint does not only pertain to individuals who have suffered an injury, but also to other interests which require protection. The environmental organisations can act as advocates for those interests, e.g. by appealing a decision to a higher administrative authority. The Danish Constitution allows for decisions made by public authorities to be brought before a court of law for judicial review.

The national traditions and the Constitution include requirements regarding the protection of property rights. Such requirements provide that no one can be deprived of his private property rights, except in accordance with the law and provided that full compensation is paid. Regulation of and interference with property rights have to be based on a perceived need for general protection of common interests (e.g. environmental protection), and the interference has to be general and necessary.

10.2 Neighbour law

The neighbour law (comparable to private nuisance) fulfils the function of strict liability with regard to real property. Trespassing is defined as the wrongful invasion of the use and enjoyment of property.

The courts have several possibilities in cases of dispute between neighbours. Sanctions can be divided into the following categories: 1) prohibition of the enterprise or other activities - in full or in part; 2) an order for remedial action; and/or 3) economic compensation.

A judgment involves determining whether the interference can be said to be unreasonable in the sense that the harm to the plaintiff as landowner is greater than what will have to be tolerated with due consideration of the general nature of the area.

10.3 Green taxes

Denmark usesseveral kinds of green fees and green taxes. Consequently, it is important to take those costs into account in the decision-making process and to be aware of the possibilities for reducing them by implementation of cleaner technologies, resource management, and/or environmental audit and management schemes (e.g. EMAS registration).

10.4 Planning

The Danish Planning Act is one of the most important Danish environmental acts. Planning is carried out at two levels: nationally and locally (as national/governmental directives, municipal plans and local plans, respectively) for each of the 98 municipalities. Planning at any level must be in agreement with the framework established at the level above. The national and municipal planning are only binding on the local authorities and requires implementation into local plans to be binding on landowners and users. The most important plans, however, are the municipal plans, since the local councils must strive to implement the guidelines contained in these plans when using their legal authority. The planning and development activity of the local councils must not conflict with national planning for these matters. Local plans are legally binding on landowners and users and contain limits and framework provisions for the use of specific areas.

The Danish environmental impact assessment (EIA) provisions as implemented from the EU Environmental Impact Assessment Directive are integrated directly into the municipal plans, into a national development plan directive, or as part of a specific provision. The duties as well as the procedure are based on the EIA Directive. An EIA is consequently required for substantial and potentially polluting projects included in the lists of the Directive. Plans and programmes, as opposed to specific projects, are submitted to a strategic environmental assessment.

Plans and programmes are also subject to a Strategic Environmental Assessment (SEA) in accordance with the Act on the Environmental Assessment of Plans and Programmes in some case. It is mandatory to perform a SEA prior to the implementation of any plans and programmes if these plans and programmes is deemed to have a substantial impact on the environment. This act is implemented into Danish law in accordance with the requirements of the SEA Directive (2001/42/EC).

In addition to the EIA and SEA, an assessment of the consequences of any plans or project needs to be performed if these plans or project may have significant impact on a Natura 2000 area. If this assessment concludes that the plan or project harms the area and the plan or project is not of overriding public interest, the rules regarding the protection of Natura 2000 areas prohibits the completion of the plans and projects. The Danish rules on the protection of Natura 2000 areas stems from the Habitats Directive.

Zoning regulation is part of the Planning Act. The entire country is divided into urban zones, summer cottage areas, and rural zones. In rural zones, it is, primarily, the uses associated with fishery, forestry and farming which are permitted. Unless permitted by the local council, it is prohibited in rural zones to divide land into smaller lots, except where the land being divided has been added to an existing farm. Moreover, it is not permitted to construct new buildings without permission unless these buildings are necessary for the cultivation of the property concerned, such as farm or forestry land, or for carrying out fishery.

10.5 Environmental protection

In 1974, the first Danish Environmental Protection Act came into force. During that period, focus was placed upon the big industrial polluting companies and the pollution from real estate. It was a system of regulation which recognised that the three elements susceptible to pollution by dangerous activities – water, air and land (the three "receiving media") – are not self-contained, but interrelated.

A new Environmental Protection Act came into force on 1 January 1992. Several new EC Directives – e.g. the Directive on Integrated Pollution Prevention and Control (the IPPC Directive) - have been implemented by amendments to this Act. The Act is nowadays characterised by a more modern attitude towards environmental protection as it is based on the important international environmental principles, focusing on ecological interests. Such principles, e.g. the principle of source, the substitution principle, the principle of best available techniques (BAT), the integrated pollution control principle, the principle of integrating environmental considerations into other policies, the polluter-pays principle and the precautionary principle, are normally important parts of the decision-making basis.

With respect to individual types of discharges, polluting liquids (waste water) may not be discharged on or into the ground – or into the surface water - unless a permit has been given (based on chapter 3 and chapter 4 of the Act). Environmental approval ("chapter 5 approvals") must be obtained before an enterprise included in "the list of heavily polluting enterprises, plants and activities" can begin to operate or be extended or modified (regarding buildings or operations) in a way likely to cause increased pollution. The Minister for the Environment and Food draws up in a statutory order the list of such heavily polluting enterprises, plants and activities for which approval is a prerequisite. Some operators may – as part of the assessment – take part in an EIA process. Applications for approval must be very elaborate and contain information on production process, the composition and volume of waste, method and place of waste disposal, and proposals concerning BAT and technical installations to reduce the environmental impact of the activities.

In the approvals, the authorities will lay down specific provisions, i.a. regarding the acceptable levels of emissions and immissions. The provisions are based on standards and guidelines and on an assessment of the location of the enterprise and the sensitivity of the surroundings. When an approval has been obtained, there can be no new requirements introduced and no tightening of provisions imposed until 8 years after the approval, except in specific and strict circumstances, for example if the activities of the enterprise prove to cause significant pollution or significantly more pollution than would have been the case with a less polluting technology or better cleaning measures, and where such measures can be implemented without excessive costs. After the expiry of this 8-year protection period, the authorities must change the terms of the approval – if the activity causes significant pollution, due to amendments in BAT, due to new information on the damaging effect of the pollution, etc. - in order to reduce environmental impact of the polluting activity. Where anti-pollution measures cannot be taken, the

supervising authority may prohibit the continued operation of the activity and, where required, demand its removal.

Chapter 5 approvals are attached to the activity as such and it is not necessary to obtain a new approval in connection with a transfer of the relevant business, unless the business is moved to another location.

10.6 Waste

Danish legislation on waste, based mainly on the Basel Convention and the EC Waste Directives and Regulations, is also primarily found in the Environmental Protection Act.

The discharge of wastewater and other polluting liquids to surface water or to a public wastewater treatment plant requires a specific license. The discharge of wastewater from a listed activity to surface water, however, is regulated in the chapter 5 approval.

For household waste, industrial waste and construction waste, local councils will have laid down local rules (local council waste by-laws) governing the local waste schemes, including schemes for the collection of different waste categories and different disposal methods. The local councils must also prepare long-term and short-term plans for the disposal of waste within their respective local areas. Compliance with those schemes is mandatory.

10.7 Soil contamination

The Danish Act on Soil Contamination is used to ensure protection of human health and the drinking water resources. The purpose of this act, which came into force on 1 January 2000 (and partly on 1 January 2001), is to support initiatives to combat soil pollution, partly by mapping and designating contaminated areas in Denmark and partly by giving the environmental authorities in Denmark broader authority to order polluters to take investigative and remedial action with regard to soil and groundwater pollution.

The Danish regions in collaboration with the municipalities must map all contaminated areas in Denmark. There are two levels of mapping: knowledge level 1 (suspicion of soil contamination) or knowledge level 2 (knowledge of soil contamination). A mapping does not imply any restrictions on the current use of the area. However, a change in the use of a mapped area to a sensitive use (e.g. housing, childcare centre or playground) requires a special permission from the municipal council.

A special permission is also required for the commencement of building and construction work on a mapped area, which is used for sensitive purposes or which is a target area with regard to drinking water resources. Such permissions can contain conditions relating to investigative or remedial action in order to minimize any risk regarding human health or the drinking water reserve.

Under the Act, the authorities may, on a strict-liability basis, order the polluter to investigate the extent of the pollution, irrespective of when the pollution occurred, unless the pollution occurred prior to 1 January 1992. The polluter can also be ordered to clean up the contaminated site. With regard to contamination occurring on 1 January 2001 or later, such order may be issued to the polluter on a strict-liability basis, i.e. regardless of culpa (negligence). According to present case law and the general legal opinion, clean-up orders regarding pollution having occurred prior to this date usually require that the pollution was caused by actionable (negligent) conduct.

Administrative orders requiring investigative or remedial action can be issued, regardless of whether the polluter owns or currently uses the contaminated property. Clean-up orders with regard to contamination having occurred before 1 January 2001, however, can only be issued to a polluter with no current use of the property if the polluter has had use of the property on or after 10 February 1999. Moreover, under certain conditions, enforcement notices are binding also on subsequent operators of the polluting enterprise and/or acquirers of the contaminated property if such operator/acquirer, at the time of acquisition, was or should have been aware of the enforcement notice. Thus, the polluter cannot simply transfer contaminated property to avoid such notices.

As per 7 January 2013 new rules were introduced to implement the IE Directive in the Danish Act on Soil Contamination. The new rules state that enterprises listed in Appendix I to the new executive order on environmental approvals (in Danish godkendelsesbekendtgørelsen), must prepare a baseline report if the activity involves the use, production or release of relevant hazardous substances with regard to soil and groundwater contamination. The baseline report must contain the necessary information to determine the state of soil and groundwater contamination at that time. At definitive cessation of the activities, a quantified comparison of the soil and groundwater contamination, specified in the baseline report, must be carried out. Where the activity has caused significant pollution of soil or groundwater compared to the state established in the baseline report, the operator must take the necessary measures to address that pollution so as to return the site to the state established in the baseline report.

10.8 Environmental liability

Passed in July 1994, the Danish Environmental Liability Act - a private liability act - stipulates a specific liability scheme for environmental damage caused by particularly polluting enterprises, introducing a regime of strict liability in respect of certain listed activities. The list is a part of the Act and nearly the same as the one connected to the Environmental Protection Act.

The Act only applies to environmental damage caused after its effective date of 1 July 1994. It is rarely used in practice. It should be noted, however, that expenses of the environmental authorities incurred in relation to the restoration of the environment are covered by the Act.

The basic principle of Danish liability law is that without a specific statutory rule on strict liability (as e.g. laid down in the Environmental Liability Act), no such liability can be claimed except in cases of culpable conduct on the part of the polluter. Thus, innocent owners of polluted properties are not automatically liable.

The Danish Parliament has also passed rules on environmental liability implementing the EC Directive on Environmental Liability (Directive 2004/35/CE).

The purpose of this Act, which came into force on 1 July 2008, is to protect specified endangered species, international areas of protection, nature conservation, the aquatic environment, and soil against environmental damage. The Act regulates the investigation, prevention, control and remedying of environmental damage.

A person or company responsible for an industrial or commercial activity causing damage to the threatened species etc. will be liable to pay any expense incurred in repairing the damage. The regulation therefore imposes strict liability on the polluter.

10.9 Genetic engineering

The Danish Act on Environment and Genetic Engineering was introduced in 1986 as one of the first of its kind in the world. In its current form, it is based first and foremost on two important EC directives – the Directive on the Contained Use of Genetically Modified Micro Organisms and the Directive on the Deliberate Release into the Environment of Genetically Modified Organisms. In some respects, the Directives enable the competent Danish authority to act on behalf of the Community, i.a. in respect of the placing on

the internal market of products containing GMOs etc. The Act establishes appropriate procedures for case-by-case notification of specific operations involving regulated issues.

10.10 Chemical substances

The Danish Act on Chemical Substances and Products regulates the admission and use of pesticides and other chemicals. The Act is based on all relevant EC Directives.

10.11 Water resources

The Danish Water Supply Act concerns the volume of water in the watercourses as well as groundwater resources.

According to the Act, water may not be extracted without a licence. Furthermore, local councils may draw up plans for water extraction and water supply. Those plans are used to determine the location, size and quality of water resources as well as the planning of future water use. This water resources planning has involved the designation of areas crucial to the future supply of water and, indirectly, the designation of areas of no interest in this respect. These designations are an important part of the municipal plans mentioned above.

The Danish Watercourse Act also contains rules on the use of watercourses, which generally prohibits the alteration of watercourses.

The most important function of this Act, however, is to solve conflicts between landowners (agriculture) over the utilisation and maintenance of watercourses as well as to ensure the draining capacity of the watercourses, and to safeguard the shape of the watercourses to ensure smooth water flows. The Act contains provisions to safeguard and restore good physical conditions in the watercourses. It places a ban on a strip of "protected" land along natural watercourses or lakes, either natural ones or those given high priority in a municipal plan.

10.12 Protection of marine environment

Danish legislation on the protection of sea areas is based – as in other countries - on international conventions. The Danish Act on the Protection of the Marine Environment applies to all of our national territorial waters. It relates to the disposal of substances and

materials by dumping, emptying or sinking them into the sea from ships, aircrafts and platforms, whether fixed or floating. It also includes rules on waste and oil treatment in harbours and rules on the disposal of dredge material from harbours.

10.13 Nature protection

The Danish Nature Protection Act include rules on the protection of wetlands as well as the protection of beaches, lakes, watercourses and forests. According to the Act, it is possible to make specific conservation decisions. The designation of land as a wildlife reserve can also be made by statutory order.

The objectives of the Act are not only to safeguard nature and the environment to improve human conditions, but also to improve, restore and provide areas of importance to flora and fauna, as well as to the essential interests of the landscape and the future of mankind. Danish territorial waters and fishing territories are included within the scope of nature protection legislation in order to ensure the implementation of the EC Wildfowl Protection Directive and the EC Directive on Habitat as well as international conventions. The Minister may also adopt conservation orders with regard to territorial waters.

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COMPETITION LAW

DOING BUSINESS IN DENMARK

11. COMPETITION LAW

11.1 Introduction

The Danish competition law regime consists primarily of the Danish Competition Act (the "**Competition Act**") and the act on actions for damages for competition law infringements (the "**Damages Act**"), the latter recently introduced. A range of transactions and commercial arrangements potentially invoke competition law issues under both the Danish Competition Act and EU competition law. In cases with an EU cross border dimension, the EU regime is applied directly.

The Competition Act aligns Danish competition law with EU competition law and is enforced in accordance with the case law of the European Courts. Accordingly, the Competition Act prohibits anti-competitive agreements and the abuse of a dominant position and also provides a merger control regime based on the same principles as the EU Merger Regulation.

The Danish Competition Council is the primary enforcer of the Competition Act; however, its day-to-day tasks are carried out by its secretariat, the Danish Competition and Consumer Authority. Decisions made by the Competition Council can be appealed to the Danish Competition Appeals Tribunal and are, following the Tribunal's decision, subject only to the Court's review. Certain severe infringements are handled in cooperation with the Danish Public Prosecutor for Serious Economic and International Crime. This is especially the case in respect of cartel infringements which, in principle, can be sanctioned with imprisonment.

While documents concerning individual cases notified to the Competition Council are not available to the public, the decisions of the Competition Council and the Competition Appeals Tribunal are published in Danish on the Competition and Consumer Authority's website, www.kfst.dk.

11.2 Bilateral and multilateral arrangements

Resonating Article 101(1) of the Treaty on the Functioning of the European Union ("**TFEU**"), section 6 of the Competition Act prohibits agreements, concerted practices and decisions having as their direct or indirect object or effect the prevention, restriction or distortion of competition.

The term "agreement" is broad and includes informal understandings, "gentlemen's agreements" as well as standard terms and conditions of sale. A "concerted practice" may exist if two undertakings, without entering into an agreement, undertake co-ordinated behaviour that restricts or distorts competition in the market.

The Competition Act provides a non-exhaustive list of examples of prohibited behaviour:

- direct or indirect fixing of prices;
- limitation or control of production, markets, technical development or investment;
- sharing of markets or sources of supply;
- application of dissimilar conditions to equivalent transactions;
- tying the sale of one product or service to the sale of an unrelated product or service;
- co-ordination of competitive practices by two or more undertakings through the establishment of a joint venture; and
- resale price maintenance.

Other agreements or practices which are likely to be prohibited include collective boycotts, the exchange of sensitive market and business information between competitors, certain selective distribution networks, excessive non-compete clauses and exclusivity clauses in licensing, purchase and distribution agreements.

The prohibition against anti-competitive agreements is subject to a de minimis rule (set out in section 7 of the Competition Act) and does thus not apply if:

- the parties concerned (including the groups to which they belong) have an aggregate annual turnover on a worldwide basis of less than DKK 1 billion and a combined market share of less than 10%; or
- the parties (regardless of their market shares) have an aggregate annual turnover of less than DKK 150 million.

The exemption is contingent on the further requirement that competition is not affected by similar agreements between other undertakings in the relevant market. The benefit of the de minimis exemption will also be lost if the agreement between the parties provides for hard core restrictions, such as price fixing, market/customer allocation, bid rigging and resale price maintenance.

In addition to the de minimis exemption, there is, in section 8(1), a general exemption from the section 6(1) prohibition: In line with Article 101(3) TFEU, restrictive agreements are not prohibited if they involve efficiencies or technical advancements that are passed on to consumers and if the restrictions are limited to those necessary for the progress and do not allow the elimination of competition of a substantial part of the products or services. Under section 8(2) the parties can notify an agreement and the Danish Competition and Consumer Authority can exempt the agreement from section 6(1) with reference to efficiencies or other benefits that follow from it.

Somewhat similarly, section 9 states that in certain cases, and upon notification from the parties, the Authority may grant 'negative clearance', issuing a declaration that an agreement, decision or concerted practice is outside the scope of section 6.

In practice, notifications under section 8(2) and section 9 are rarely submitted, since the Authority can refrain from considering a notification if the agreement concerned may appreciably affect trade between EU Member States.

In line with the EU system, any agreement that meets the requirements under a "block exemption" for certain categories of agreements is automatically exempted from the prohibition in section 6.

The Competition Council may issue orders directing undertakings to bring prohibited agreements or behaviour to an end or, at the Council's discretion, negotiate binding commitments to resolve the issue. Fines for infringement of the Competition Act or the provision of incorrect or misleading information to the Competition Council can be imposed where behaviour is negligent or intentional. Fines are calculated on the basis of the gravity and duration of the infringement and the turnover of the undertaking in question. Fines of more than DKK 20 million may be imposed for the most severe infringements. Prohibited agreements are null and void and cannot be enforced.

Denmark introduced a leniency programme for cartel infringements in 2007. Based on the EU Notice on Immunity from fines and reduction of fines in cartel cases and the ECN Model Leniency Programme, key principles of the Danish legislation mirror the EU rules. There are some differences – including the division of competences between the enforcing authorities and the lack of a marker system for leniency applicants (all relevant information must be submitted at the time of the application for leniency) – but, importantly, co-operation with the authorities in a cartel investigation may lead to a reduction in any fine of up to 100% (for the first applicant), up to 50% (for the second applicant), up to 30% (for the third applicant) or up to 20% (for later applicants). The amount of the reduction is left to the discretion of the authorities. For other types of competition law infringements, general provisions in the Danish criminal code may provide some incentive to cooperate with the authorities, but the practical scope of these provisions is limited.

11.3 Abuse of a dominant position

Corresponding to Article 102 TFEU, section 11 of the Competition Act prohibits the abuse of a dominant position. In order to determine whether an undertaking holds a dominant position in any given market, it is necessary to define the "relevant market" in terms of products and/or services and the relevant geographical area.

If an undertaking has a market share of more than 40%, there is a rebuttable presumption that it holds a dominant position. Other relevant aspects may be barriers to entry, sunk costs, vertical integration, economies of scale, etc.

Collective dominance may exist where separate undertakings adopt the same conduct in the market (non-coordinated effects). Such behaviour can constitute abuse of this collective dominance, even if none of the undertakings can be said to hold dominant positions individually.

The abuse of a dominant position may be evidenced by a variety of activities, including the imposition of unreasonable purchase and/or sales prices on other parties, the use of discriminatory terms and conditions towards trading partners, and a refusal to supply.

11.4 Damages for infringements of the competition law

The Damages Act serves as implementation of the EC Damages Directive, and entered into force 27 December 2016. The Damages Act applies to all competition law infringements, and thus not only those with an EU dimension.

Under section 3 of the act, any natural or legal person (including both direct and indirect purchasers), is entitled to full compensation for the harm they have suffered from competition law infringements - irrespective of the existence of a contractual relationship between the infringer and the injured party.

11.5 Merger control

Merger control was introduced into Danish law in 2000 and is set out in section 12 of the Competition Act. There is an obligation to notify the Competition and Consumer Authority of mergers and takeovers which meet the jurisdictional thresholds. A concentration within the scope of the merger control rules may not be put into effect until approved by the Competition Council. In line with current EU merger control, there is no time limit for notification.

The jurisdictional thresholds triggering the obligation to notify are as follows:

- the combined aggregate turnover in Denmark of the undertakings concerned is more than DKK 900 million, provided the turnover in Denmark of each of at least two of the undertakings concerned is more than DKK 100 million; or

- the aggregate turnover in Denmark of at least one of the undertakings concerned is more than DKK 3.8 billion, and the aggregate worldwide turnover of at least one of the other undertakings concerned is more than DKK 3.8 billion.

If a concentration involves a public electronic telecommunication network, the concentration is notifiable if the combined aggregate turnover in Denmark of the undertakings concerned exceeds DKK 900 million. The individual turnover threshold of DKK 100 million is not applicable in this kind of concentrations.

The Competition Act applies to concentrations whereby two or more previously independent undertakings merge, or whereby one or more persons who already control one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of all or parts of one or more other undertakings. For the purpose of the merger control rules, the establishment of a joint venture to perform all the functions of an autonomous economic entity on a lasting basis will also constitute a concentration. By contrast, a non-full-function joint venture will be assessed under section 6 of the Competition Act.

Mergers and concentrations will be approved unless considered likely to significantly impede effective competition in the market, particularly by the creation or strengthening of a dominant position. If necessary, conditions or "remedies", such as a requirement for the parties to divest certain assets, may be attached to the approval.

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INTELLECTUAL PROPERTY

DOING BUSINESS IN DENMARK

12. INTELLECTUAL PROPERTY

12.1 Introduction

The protection and enforcement of intellectual property rights, including patents, know-how, trademarks, copyright and designs, have proved increasingly important for businesses. Kromann Reumert represents clients in disputes over patents, utility models, trademarks, designs and copyright as well as unfair competition, trade secrets, and passing off. Frequently advising on licence agreements and other transfers of intellectual property rights, we also offer advice on IP risk management.

12.2 Patents

Denmark is a party to the 1970 Patent Co-operation Treaty (PCT), the European Patent Convention (EPC), and the London Protocol.

As a result of Denmark's adherence to the above-mentioned international conventions, an application for the grant of a European Patent may designate Denmark, and national Danish patents may be obtained either through designation of Denmark in a PCT application or by means of a national application submitted to the Danish Patent and Trademark Office (PTO). Foreigners hold a substantial number of the patents currently in force on Danish territory.

Patents may be obtained for all inventions that are susceptible of industrial application, provided that the subject matter is not expressly excluded from patent protection. To this end, the provisions of the EU Directive on the Legal Protection of Biotechnological Inventions have been implemented in the Danish Patents Act. In addition to the matters barred from patent protection under the Directive, the Patents Act excludes also, inter alia, discoveries, scientific theories, methods of doing business, and computer programs as such. Plant species may be granted protection either under the Danish Act on Plant Variety Protection or under the EU Council Regulation on Community Plant Variety Rights.

Patents will be granted if the invention possesses novelty and involves an inventive step. As a main rule, these requirements are similar to those applied in other European countries, and the Danish PTO has expressly stated that it intends to rely on the precedents of the European Patent Organisation in its examination of patent applications.

The protection period is 20 years from the date of the submission of the original application.

12.3 Utility models

This form of protection supplements patent protection, as the conditions for obtaining protection of utility models are more relaxed than the conditions for obtaining a patent.

Utility model protection may be obtained for technical creations such as instruments, various forms of apparatuses, tools, electrical circuits, chemical compounds, foodstuffs, etc. Plants, animals and processes are specifically excluded from protection.

It is a requirement for utility model protection that the creation possesses novelty and is distinctly different from prior art, although the latter requirement is less rigorous than the inventive step requirement in the Patents Act.

The examination of utility model applications by the Danish PTO is limited to an examination of whether the subject-matter of the creation is protectable. There will be no examination of novelty and distinction from prior art unless requested by the applicant.

Utility model protection can be extended to a maximum duration of 10 years from the filing of the application.

Patent and utility model protection may be granted cumulatively if the invention/creation fulfils the requirements of both the Patents Act and the Utility Models Act. If a first attempt to obtain patent protection meets difficulties in the fulfilment of the inventive step requirement in the Patents Act, it will be possible to "cross over" to a utility model application without loss of priority.

12.4 Trademarks and service marks

Denmark has implemented the EC Trademarks Directive, and the Danish Trademarks Act is almost identical to the Directive.

Trademarks can be any symbol distinguishing one undertaking's products or services from another's. They can be words or a phrase, letters, figures, depictions of shape, get-up, packaging, or even sounds, provided they can be reproduced graphically.

In Denmark, trademarks may be obtained either by registration or through the use of a particular mark in the course of trade. Alternatively, one may register a Community trademark that will have effect on Danish territory as well as in other EU member countries.

The protection period for a registered trademark is 10 years from the registration date, and the registration is renewable. However, a trademark owner must utilise a registered trademark in order to retain his exclusive right. If the mark has not been used for five years, the registration (and protection) may lapse, rendering the trademark unenforceable against third parties.

Trademarks established through use will remain in force until no longer used.

12.5 Copyright

Denmark is party to most of the international conventions related to copyright and neighbouring rights, and Denmark has implemented all of the EU copyright-related directives currently in force.

Copyright protection is not contingent on any form of registration, and there is no copyright register available. Copyright exists as soon as a particular work is created, provided that the work is the result of the author's own intellectual creative contribution.

Copyright protects traditional works of literature and artistic works as well as maps, drawings, manuals, certain types of catalogues and databases, applied art (designs) and computer programs. Copyright protection of computer programs covers the specific program (but not the idea or algorithm) and reverse engineering is allowed when necessary to ensure compatibility between programs. Special rules regulate the transfer of copyright to computer programs between an employee and his employer, cf. below on employees' inventions etc.

Protection is given for the lifetime of the author plus 70 years.

The Danish Copyright Act also protects performers, producers of sound recordings and motion pictures, manufacturers of catalogues and databases, and various other neighbouring rights. The neighbouring right protection is more limited in scope and duration than the copyright protection of literary and artistic works.

12.6 Designs

Denmark has implemented EU Directive 98/71 on the Protection of Designs, and the most recent Danish Designs Act is almost identical to the Directive. Furthermore, EU Regulation No. 6/2002 on Community Designs applies in Denmark and provides protection for registered and unregistered designs. Registered design rights obtained prior to 1 October 2001 are still regulated by the previous Designs Act.

The appearance of a product or a part of a product may obtain protection under the Designs Act or under the EU Regulation. In both cases, it is a prerequisite for protection that the design is novel and has an individual character.

Protection of a registered design may be obtained for a total period of up to 25 years. Without registration, a Community design will be protected against mere copying for a period of 3 years. A design that possesses a certain degree of originality may also be protected by copyright.

12.7 Know-how

The concept of know-how is acknowledged by Danish law, but not defined by statute. While the nature of know-how is such that it will have to be protected first and foremost by adequate safeguards within a business organisation, including necessary contractual sanctions in agreements with trading partners, the rules of the Danish Marketing Practices Act also provide some degree of protection. Not only does it include a provision to protect trade secrets and technical drawings, it also includes a general standard that prohibits any act that is not in accordance with "good marketing practices". Both of these provisions may be useful when dealing with the unauthorised dissemination of business know-how.

12.8 Passing off

The general Danish standard of "good marketing practices" may also be applied in the countering of passing off. This standard has been successfully employed by businesses to prevent the marketing not only of products that are more or less exact copies of original products, but also of products that bear a fairly close resemblance to original products.

12.9 Employees' inventions etc.

While according to the Danish Act on Employee's Inventions (i.e. inventions and creations covered by the Patents Act and the Utility Models Act), an employee is the owner of his inventions made in the course of his normal duties, employers are entitled under the same Act to demand transfer of such ownership to the employer. The Act requires the employee to notify the employer of new inventions without undue delay, and the employer should then notify his request for transfer of ownership to the invention within 4 months. If the employer fails to do so, the employee may freely dispose of the invention. A transfer of ownership may entitle the employee to "reasonable compensation". Case law is limited, but indicates that such compensation tends to be modest.

The statutory arrangement may be varied by agreement between employer and employee, and it is advisable to have employment agreements with relevant employees provide for an automatic transfer of ownership for all inventions made by the employee. The employee's right to receive reasonable compensation, however, may not be excluded by such agreement.

Inventions made by employees of public research institutes are subject to the Act on Inventions made at Public Research Institutes.

The Designs Act does not solve the question of ownership of registered design rights created by an employee in the performance of his duties. Presumably, the mere design rights are automatically transferred to the employer. But if the design is cumulatively protected by copyright, the transfer of rights to the employer will be subject to the rules governing a transfer of copyright, see below.

The Copyright Act implies that any employment agreement (at least for creative staff) includes an implied assignment to the employer of the right to exploit the employee's copyright-protected works. Such implied assignment to the employer of any work covered by copyright is limited; an automatic assignment being implied only in so far as and to the extent that the exploitation of the work is a necessary condition for the employer's performance of his normal business activities.

The question of copyright and ownership of computer programs created by employees is specifically dealt with in the Copyright Act, which (unless otherwise agreed) provides for total assignment of the copyright in the program to the employer in all cases where the program is created by the employee as a normal integral part of his work duties.

Finally, it is generally assumed that the right to exploit protectable know-how developed by employees as part of their duties is automatically assigned to the employer. However, this does not bar an employee from using his professional and general skills after having left the employment, provided that this use does not involve trade secrets and generally complies with good marketing practices.

12.10 Enforcement of intellectual property rights

The Danish judicial system provides for efficient enforcement of intellectual property rights.

Proprietors may obtain interlocutory relief at the Enforcement Court if able to prove on a balance of probabilities that the activities infringe the proprietor's rights. Under the same conditions, proprietors can request the Enforcement Court to execute a search of the alleged infringer's premises in order to seize evidence of infringement and the extent of the infringement.

If interim relief and/or a court-ordered search is granted, the proprietor needs to initiate an action on the merits (confirmatory action). An action on the merits may also be initiated as the first move against an infringer. In an action on the merits, the proprietor may i.a. claim damages and compensation.

In accordance with Directive 2004/48/EC on the enforcement of intellectual property rights, Denmark, on 1 January 2006, adopted provisions regarding, inter alia, corrective measures with regard to goods that infringe intellectual property rights and on the payment of damages to the holder of the right.

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COMMERCIAL LAW

DOING BUSINESS IN DENMARK

13. COMMERCIAL LAW

13.1 Introduction

Doing business in Denmark necessarily involves having to employ and/or be familiar with local rules and standards for general business terms and conditions, to what extent liability may be limited or even excluded, default interest issues, any constraints on marketing practices, specific consumer protection, etc.

Each particular business will need to consider the impact of relevant rules and regulations and obtain the necessary legal advice.

The following are some of the relevant issues.

13.2 Standard terms and conditions

Both wholesale and retail businesses often rely on standard terms and conditions, but retail businesses should be aware that sales to consumers are subject to a number of statutes protecting the consumer. This protection includes mandatory minimum rights set out in the Danish Sale of Goods Act, which, as an example, entitles the consumer to demand remedying of defects. In case of a credit sale to a consumer, the Danish Credit Agreements Act requires detailed information to be provided to the consumer with regard to interest rate, other costs, total purchase sum including interest and other costs, as well as strict formal requirements to be observed concerning any enforced repossession if title has been retained by the retailer.

13.3 Limitation and exclusion of liability

In commercial contracts, a party may limit or in some cases even exclude liability. An important exception to this is product liability, where liability for personal injury cannot be excluded or limited.

An exclusion of liability may also be censored by the courts as being a grossly unfair or unreasonable provision, and most contracting partners choose to rely on specific limitation clauses stipulating a maximum limit for liability.

13.4 Default interest

Agreements and terms and conditions may include provisions fixing a certain default interest rate of, say, 2% per month in commercial contracts. Even if no such provision is included in the contract, a business may take advantage of the Danish Interest Rates Act. In case of a payment default, the claim will carry interest as from the due date, provided that a due date has been agreed in advance. If no due date has been agreed in advance, the claim will carry interest as from 30 days after a written demand for payment has been dispatched by the creditor. This statutory default interest is calculated as the Danish official discount rate (updated for this purpose every 6 months) + a margin of 8 % p.a. In consumer contracts, this statutory default interest rate must not be derogated from to the detriment of the consumer.

13.5 Sale of goods

The fundamental legislation on sales of goods under Danish law is the Sale of Goods Act of 1906, which applies to the sale of goods between parties having their places of business in Denmark or having agreed on its application.

The Sale of Goods Act is based on the principle of freedom of contract. This means that parties to a sale within the scope of the Sale of Goods Act may choose to derogate from or vary most of its provisions. Its rules, therefore, will apply only where no agreement to the contrary has been made between the parties, or where trade custom or usage does not imply otherwise.

The Sale of Goods Act does, however, also contain mandatory rules on the sale of goods to consumers, e.g. a right to remedying of defects, which cannot be derogated from. Furthermore, the Act is supplemented by other mandatory legislation, e.g. the Consumer Contracts Act and the Credit Agreements Act.

13.6 The UN Convention on Contracts for the International Sale of Goods (CISG)

Where a sale of goods involves a contract between a Danish party and a foreign party, the sale may be governed by the UN Convention on Contracts for the International Sale of Goods ("CISG"). If so, the rules of the CISG will override those of the Danish Sale of Goods Act. The CISG entered into force in Denmark on 1 March 1990.

The CISG applies to contracts for the sale of goods between parties whose principal places of business are in different states:

- when those states are contracting states (to the CISG); or
- when the rules of private international law lead to the application of the law of a contracting state.

This means that any contract for the sale of goods between a Danish party and a party located in another CISG contracting state outside Scandinavia will automatically be subject to the CISG.

Note that while the Danish Sale of Goods Act comprises also the sale of goods to consumers, the CISG does not. Note also that the contract formation rules in Part II of the CISG are not applicable in Denmark. With respect to international sales of goods between parties in Denmark, Finland, Norway and Sweden, respectively, the domestic sale of goods acts will apply, thus rendering the CISG inapplicable in relation to inter-Scandinavian sales of goods.

13.7 Credit agreements

The Danish Credit Agreements Act governs several types of credit agreements in a consumer setting, including credit sales, agreements on money loans, account contracts, etc. The Act requires creditors to provide consumers with certain information, e.g. interest rate, other costs, annual percentage rate, etc., with respect to a credit agreement before it is entered into and to inform consumers of the credit arrangement during the term of it. Furthermore, the Act requires the creditor to fulfil several formal requirements, e.g. that the credit arrangement must be made in writing. It should be noted that some rules of the Act which apply in a consumer context, most importantly a number of rules on the sale of goods subject to retention of title, will also apply in credit sales to non-consumers.

13.8 Jurisdiction rules

Denmark did not participate in the adoption of Council Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I Regulation"). On 19 October 2005, the

Community concluded an agreement with Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, extending the provisions of the regulation to Denmark. On 27 April 2006, the agreement was approved on behalf of the Community by Council Decision 2006/325/EC, and it entered into force on 1 July 2007.

In order to determine whether the Brussels I Regulation applies, the decisive factor will be whether the defendant is domiciled in a contracting state to the Brussels Convention or not.

If the defendant is domiciled in a contracting state, the Brussels I Regulation will apply. In general, a case must be decided in the country in which the defendant is domiciled. Consequently, a Danish court will in general only have jurisdiction in cases where the defendant is domiciled in Denmark. But the Brussels I Regulation contains several exemptions from the general rule, and therefore Danish courts may also have jurisdiction in other cases, if expressly provided in the Brussels I Regulation.

If the defendant is not domiciled in a contracting state, and there is no valid choice of forum/venue agreement between the parties, the jurisdiction of Danish courts will depend on Danish procedural law, i.e. the Danish Administration of Justice Act. The general rule under the Administration of Justice Act is that legal actions should be brought in the defendant's country of residence. In general, this means that a Danish court will only have jurisdiction if the defendant is domiciled in Denmark, but there are substantial exemptions to this general rule, e.g. in matters relating to a contract and in consumer matters.

It should be noted that the Brussels I Regulation does not interfere with national procedural rules on jurisdiction, which means questions of territorial jurisdiction between the various Danish courts will be determined in accordance with the Administration of Justice Act.

13.9 Governing law

Denmark is a party to the Rome Convention, which in general regulates governing law issues in Denmark with respect to contracts.

The general principle under the Rome Convention - and therefore also under Danish law - is freedom of contract. Parties to a contract are free to agree on the substantive law of the contract, and generally their choice will be respected by Danish courts. Contractual

freedom under the Rome Convention is limited to international contracts and exempts certain contracts, e.g. consumer contracts.

For contracts without an express choice-of-law clause, the laws of the country to which the subject-matter has the closest connection will usually prevail. In a non-consumer contract, this is generally assumed to be the country in which the party to carry out the performance is domiciled. Thus, a buyer will be subject to the laws of the country in which the seller was domiciled at the time the order is placed. In real estate cases, however, it is generally presumed that the contract is most closely connected to the country in which the property is located.

13.10 Recognition and enforcement of judgments and arbitral awards

The Brussels I Regulation also contains rules on recognition and enforcement of judgments originating from courts of the EU Member States. Under the Brussels I Regulation, the courts of one Member State will not review the merits of a judgment rendered by the courts of another. Therefore, a judgment from another EU Member State is likely to be recognised and enforced by Danish courts, provided the defendant had reasonable access to safeguard his interests.

Denmark is also party to the Lugano Convention, the rules of which in relation to the recognition and enforcement of judgments are substantially similar to those of the Brussels Convention. Thus, Danish courts will generally recognise and enforce judgments originating from EEA Member States also.

The Nordic countries (Denmark, Finland, Norway, and Sweden) have signed a Convention, under the terms of which decisions pronounced or made in any one of these countries shall be recognised and enforced in the other countries in accordance with the national laws of each country. The significance of this Nordic Convention is limited, as the other Nordic countries are all parties to the Lugano Convention.

Judgments from courts in countries outside the EU or EEA (and therefore not parties to the Brussels or Lugano Conventions) are generally not recognised and enforced by Danish courts. However, the Minister of Justice may set down rules whereby judgments from such foreign courts and authorities regarding claims in civil matters shall have binding effect and be enforceable in Denmark. Furthermore, special rules on enforcement of foreign decisions apply in a number of special areas, e.g. under the Maritime Act and under the rules governing international carriage contracts.

Regarding enforcement of foreign arbitral awards in commercial matters, the 1958 New York Convention applies. For an arbitral award to be enforceable under Danish law, it must have binding effect in Denmark and it must be made in a country which has acceded to the New York Convention. Awards not governed by the New York Convention will not be immediately enforceable in Denmark.

13.11 Marketing practices

The Danish Marketing Practices Act includes a number of specific provisions aimed at protecting consumers in Denmark. The Marketing Practices Act prohibits, among other things, measures which are not in accordance with "good marketing practices".

The Act also protects traders by prohibiting unfair trading practices such as free-riding and product imitations.

Some of the provisions of the Marketing Practices Act serve as a codification of general principles of law, which must be considered in connection with the relatively extensive case law and administrative practice. An independent Consumer Ombudsman, monitoring compliance with the Marketing Practices Act, and general guidelines are valuable guides as to what is considered acceptable marketing practice.

Measures prohibited or discouraged as inconsistent with good marketing practices include: misleading price information, misleading information as to country of origin or commercial origin, and misleading or incorrect terms of agreement.

Since the amendment of the Act in 2006 and 2011, the special provisions on collateral gifts, quantitative limitations on purchased items at a certain price, drawing of lots, price competitions, use of vouchers etc. have been repealed. However, the Act still contains special provisions on sales promotions, direct marketing, and other marketing efforts.

The promotional effort which was previously banned is regulated by section 9 of the Act on general information requirements for promotional marketing. A promotional action must state all conditions in a clear and comprehensible form in order to enable the consumer to assess the value of any additional benefits. Furthermore, there are provisions on price marking.

The Act also contains prohibitions on product placement.

13.12 Data protection

The Danish Act on Processing of Personal Data implements the EU Directive 95/46/EC on the protection of individuals with regard to the collection and processing of personal data.

Pursuant to the Act on Processing of Personal Data, personal data may be collected only for specified, explicit and legitimate purposes and any subsequent processing shall be compatible with such purposes. It is not permitted to collect personal data which is not strictly necessary in order to fulfil the purpose of the collection. The data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.

The Act on Processing of Personal Data contains very restrictive rules on the collection, processing and, particularly, the disclosure of data for marketing purposes, e.g. a data controller may not disclose personal data concerning a consumer to a third party for the purpose of marketing or use such data on behalf of a third party for this purpose, unless the consumer has given prior, explicit consent. There are also specific restrictions in relation to transfer of personal data to countries outside the EU/EEA.

In addition to the Act on Processing of Personal Data, Danish law contains special legislation regarding the collection and processing of specific types of data, e.g. the Danish Act on Information Databases Operated by the Mass Media and the Danish Financial Business Act.

As of 25 May 2018, the new EU General Data Protection Regulation (GDPR) will come into force. GDPR will replace the EU Directive 95/46/EC and introduce a number of more stringent requirements, such as conditions for consent, requirements in relation to information and access to personal data, data processing by a data processor, records of processing activities, etc. Under the GDPR, the supervisory authority may impose administrative fines in respect of infringements up to 4 % of the total worldwide annual turnover of an undertaking.

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PERSONNEL AND LABOUR MARKET

DOING BUSINESS IN DENMARK

14. PERSONNEL AND LABOUR MARKET

14.1 Introduction

Foreign investors - regardless of whether they set up a new or acquire an existing business - will need to be aware of the rules relating to employment of personnel in Denmark.

Some areas are subject to statutory law applicable to all categories of personnel; this is the case with respect to holiday entitlement, maternity leave, parental leave, restrictive covenants and working environment.

With regard to hiring, notice periods, salary levels, etc., the applicable rules will depend on the category of employees involved: Salaried employees are subject to the Danish Salaried Employees Act and in many instances also a collective agreement, whereas manual workers (blue-collar workers) are usually covered by collective agreements. A Danish employer is only bound by a collective bargaining agreement if the employer either is a member of an Employers' Association or has acceded to a collective bargaining agreement.

Compared to other countries, the percentage of both employers and employees who are members of an association or union is very high. Many employers are members of one of the employers' associations under the Confederation of Danish Employers or one of the special employers' associations (e.g. the Financial Sector or Agriculture). Employees are often members of the relevant trade union (Metal Workers, Commercial and Clerical Employees, etc.). Most of these unions are also members of the "umbrella" employee confederation, the Danish Confederation of Trade Unions, a service organisation that undertakes to negotiate or co-ordinate various matters common to all trade unions. The labour market is thus to a very large degree regulated by collective agreements. Setting up or acquiring a business will therefore require detailed advice and information on both Danish employment and labor law.

Usually negotiated between employers' and employees' organisations for two to four years at a time, collective agreements cover wage levels, number of working hours, and other terms.

Whatever terms any employee (white-collar or blue-collar) enjoys, such terms will have to be accepted by any acquirer of a company or business. This obligation for the acquirer

is mandatory according to the Danish Transfer of Undertakings Act (implementing EC Directive 87/1987). However, the acquirer (transferee) does not have to become a party to the collective agreement of the transferor. If the transferee does not want to adopt the transferor's collective bargaining agreements applicable to the employees being transferred, the transferee must notify the relevant trade union thereof within a certain time limit. If such notification is not given, the transferee will be deemed to have adopted the collective bargaining agreement. If the transferee decides not to adopt the collective bargaining agreement, the transferred employees will retain their individual rights under the collective bargaining agreement. Such rights may not be terminated or amended by the transferee with effect earlier than on expiry of the collective bargaining agreement.

Further, minimum requirements for the content of an employment agreement, which has to be in writing, are laid down in the Danish Act on Statements of Employment Particulars. If an employer does not fulfil such requirements, the employee may be entitled to compensation.

14.2 Notice periods

14.2.1 Salaried employees

The Salaried Employees Act regulates most of the matters relevant to the relationship between employer and employee. It is important to note that the Act cannot be derogated from to the detriment of the employee. The Act therefore serves as a "minimum standard" for this category of employees.

Where notice of termination is given by the **employer**, the required notice will depend on the length of the employee's continuous employment; the longer the employment, the longer the notice period. Statutory notice periods are:

Employment period	**Notice period**
5 months	1 month
2 years & 9 months	3 months
5 years & 8 months	4 months
8 years & 7 months	5 months
in excess of the above	6 months

The 6-month notice period is the maximum afforded by the Salaried Employees Act.

The **employee** may terminate the employment giving one month's notice to the end of a month regardless of the length of the employment.

It is possible to agree on a probationary period (max 3 months) during which each party may terminate the agreement at 14 days' notice. The 14 days' notice must expire before expiry of the 3-month probationary period.

The employer is liable to pay a severance amount if the employer dismisses salaried employees who have been continuously employed for 12 years or more - regardless of the fairness of the dismissal. The severance amount of compensation depends on the length of employment. 12 years of employment entitles the employee to compensation equal to 1 month's salary and 17 years will attract the maximum of 3 months' salary.

14.2.2 Manual (blue-collar) workers

Notice periods for manual workers vary according to the relevant collective agreement. A typical collective agreement, "Industrial Agreement 2014-2017", provides the following notice periods:

Notice by the **employer**:

Employment period	**Notice period**
less than 6 months	none required
6 months	14 days
9 months	21 days
2 years	28 days
3 years	56 days
6 years	70 days

+ in respect of employees of at least 50 years of age:

9 years	90 days
12 years	120 days

Notice by the **employee**:

Employment period	**Notice period**
less than 6 months	none required
6 months	7 days
3 years	14 days
6 years	21 days
9 years	28 days

Where no collective agreement applies, the notice period can be fixed by the employer at his own discretion, although on the one condition that the length of the notice period is "appropriate". Notice periods for unskilled workers may be very short (e.g. three days' notice).

14.3 Unfair dismissals

14.3.1 Salaried employees

According to the Salaried Employees Act, the employer may be obliged to pay compensation for unfair dismissal if the employee dismissed has been employed by the employer for at least 1 year, and if the dismissal is not deemed reasonably justified in the conduct of the employee and/or the circumstances of the company.

Any compensation as a result of unfair dismissal will be based on the employee's length of employment and an estimate of the circumstances of the case, and will generally represent a maximum amount equal to the salary paid to the salaried employee in half of the period of notice. However, the compensation may amount to up to 6 months' salary.

14.3.2 Manual (blue-collar) workers

If the employment is covered by collective agreements, special rules about compensation for unfair dismissal will normally apply. The compensation may amount to up to 52 weeks' salary.

14.3.3 Special anti-discrimination acts

Special acts protect employees against dismissal due to pregnancy, race, ethnic origin, age, disability, etc. No maximum compensation is provided. Recent Danish case law typically sets compensation at between 6 and 12 months' salary, but depending on the circumstances the compensation can be higher.

14.4 Large-scale redundancies

The Danish Act on Collective Redundancies (implementing EC Directive 75/129 as amended by Directive 92/56) provides that employers must, at the earliest possible stage, inform the Local Labour Board of contemplated large-scale redundancies and initiate negotiations with the employees or their representatives with the intention to reach an agreement so that redundancies may be either avoided or limited, or to alleviate the effects, e.g. by replacing or re-training the affected employees. Where redundancies cannot be avoided after such negotiations, they must be notified to the Local Labour Board and cannot take effect until 30 days (in some cases 8 weeks) after such notification. Planning and timing are therefore important where these provisions apply.

The Act applies where the redundancies within 30 days exceed:

10 employees in companies having between 20 and 100 employees.
10% of employees in companies having between 100 and 300 employees.
At least 30 employees in companies having more than 300 employees.

Compliance with these requirements is important as any breach of the duty to negotiate is sanctioned by payment of compensation and possible fines. Collective agreements may have special rules on collective redundancies.

14.5 Salaries and wages

There is no statutory minimum wage level, but collective agreements will invariably include a minimum wage level for the employees covered by that agreement.

In collective agreements, overtime is typically subject to a 50% premium for overtime in excess of 1 hour and a 100% premium for overtime during weekends and public holidays.

There are no mandatory profit sharing schemes in force, although some employers have voluntarily set up such schemes. Subject to certain conditions, these schemes can be set up with the advantage of certain tax benefits. According to the Salaried Employees Act, a salaried employee will be entitled, upon termination of the employment, to a pro rata share of any bonus he would normally have received for the year in which his employment was terminated.

14.6 Working hours

Denmark has implemented EC Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working hours.

The maximum average weekly working hours cannot exceed 48 hours averaged over a 4-month period.

14.7 Holiday

The holiday entitlement of Danish employees is laid down in the Danish Holiday Act. According to this Act, the holiday year runs from 1 May to 30 April. The Act applies to all employees (with very few exceptions), but not to executives.

The entitlement to paid holiday accrues during the calendar year preceding the holiday year. Thus, the entitlement to paid holiday in the holiday year from 1 May 2017 to 30 April 2018 accrues through employment in the calendar year from 1 January 2016 to 31 December 2016.

Salaried employees paid by the month (white-collar workers) are entitled to receive full salary also during holiday. Further, the employer must pay to the employee a holiday supplement of 1% of the salary, including all taxable benefits, earned in the accrual year preceeding the holiday year.

Employees paid by the hour (blue-collar workers) are not entitled to receive salary during holiday but will receive instead a holiday allowance of 12.5% of the salary, including all benefits, earned in the accrual year. This holiday allowance is paid to the Danish Labour Market Holiday Fund by the employer and paid pro rata to the employee when the holidays are taken.

Employees are entitled to take at least 3 of their 5 weeks' holiday consecutively during the period between 1 May and 30 September.

The holiday must be agreed with the employer, but the employer must, if possible, comply with the wishes of the employee.

The holiday must be planned as soon as possible. If no voluntary agreement can be reached with the employee on the planning of the holiday, the employer has to give 3 months' notice before commencement of the main holiday of 3 weeks and a notice of 1 month before commencement of any other holiday.

The entitlement to 5 weeks' holiday (paid or unpaid) is in addition to public holidays.

If a salaried employee leaves the company, he is entitled to a holiday allowance calculated as 12.5% of the salary, including all taxable benefits, in the accrual year. If an employee is employed from 1 January 2016 to 30 April 2017, he will be entitled to a holiday allowance calculated as 12.5% of the salary, including all benefits, in the same period as none of the accrued paid holiday has been taken at the time when he leaves the company. The holiday allowance shall be paid to the Labour Market Holiday Fund.

When the employee takes his holiday in the holiday year 1 May 2017 to 30 April 2018, he will receive holiday allowance from the Labour Market Holiday Fund.

Collective agreements may contain alternative or supplementary holiday regulations.

Several collective agreements provide for a number of extra days off (typically 5 days) in addition to those provided for by the Holiday Act. Employment contracts based on individual negotiations not comprised by collective agreements will also often provide for a number of non-statutory additional holidays; typically also 5 days.

14.8 Restrictive covenants

For key personnel it may be necessary to include a clause preventing the employee from undertaking competing activities or contact customers, agents, distributors, etc. after termination of his employment.

The Danish Act on Restrictive Covenants ("the Act") that regulates clauses restricting competition and solicitation of customers and employees came into force on 1 January 2016. Three different types of clauses are regulated by the Act.

- Non-compete clause: Prohibits an employee from competing with the employer.

- Non-solicitation of customers clause: Prohibits an employee from having any business relationship with the employer's customers or other business associates.

- Non-solicitation of employees clause: Can be either a clause between two companies obligating the parties not to solicit or recruit each other's employees, or a clause between a company and an employee obligating the employee not to solicit or recruit any colleagues, if he/she leaves the company.

Under the Act, as of 1 January 2016 it is no longer possible to enter into non-solicitation of employees clauses. Accordingly, it is no longer possible for a company to obligate an employee not to solicit or recruit any colleagues, if he/she leaves the company. This applies to employees as well as executives.

Most of the former Danish regulation on restrictive clauses was only applicable to white-collar employees. However, under the Act both white-collar and blue-collar employees enjoy protection.

Non-compete and non-solicitation of customers' clauses, or a combination thereof, are only enforceable under the Act if the following conditions are met:

- The clause must be contained in a written agreement and such agreement must inform of the following:

    - The employee must have completed at least 6 months' continuous employment at the time of termination.
    - The term of the restrictive clause can be no more than 12 months, commencing from the termination of the employment, or 6 months if it is a combined clause (a non-compete and a non-solicitation of customers clause).
    - A non-compete or non-solicitation of customers clause is only valid if the employee is entitled to compensation during the entire term of the clause. If the term is 6 months or less, the compensation must be at least 40% of the month-

ly salary. If the term is more than 6 months, the compensation must be equal to at least 60% of the salary per month. If the employee is restricted by a combined clause, compensation must be at least 60% of the monthly salary.

- If the finds new suitable employment, the employee is entitled to a fixed, reduced compensation (at least 16% if the employee was originally entitled to at least 40% of the salary, and at least 24% if the employee was originally entitled to at least 60% of the salary). However, regardless of any new income the employee is always entitled to the high level of compensation (40% or 60%) during the first two months of the term of a non-competition clause or non-solicitation of customers clause. This compensation must be paid as a lump sum by the date of the expiry of the notice period.
- A non-compete clause may only be imposed on an employee holding a particularly trusted position and who is trusted with confidential information. The employer must inform the employee in writing why a non-compete clause is required.
- A non-solicitation of customers clause may only be enforced in relation to customers with whom the employee has been doing business himself/herself within the past 12 months before the date of giving notice to terminate the employment.

In addition, a non-competition clause cannot be enforced against an employee who has been dismissed by the employer without having given reasonable cause for such dismissal, or who resigns from his/her employment where the employer's omission to perform its obligations has given the employee reasonable cause for such resignation. The employee is, however, still entitled to receive the lump sum compensation for the first 2 months.

Executives are not subject to the requirements of the Act relating to non-competes and non-solicitation of customers clauses. Accordingly, no compensation payment is legally required for executives but compensation is often agreed contractually.

14.9 Employees' inventions etc.

Employers should take care to have clear and enforceable clauses included in the employment contracts with relevant employees regarding not only patentable inventions but also other creations of any kind which may be protectable and/or represent any commercial value. See Section 12 above on Intellectual Property.

14.10 Equal pay

Employers are required to provide employees with equal pay for the same work or work of equal value. This follows from the Danish Equal Pay (Men and Women) Act, which implements the EC Directive on equal pay.

14.11 Working environment regulations

The Danish Working Environment Act covers all work performed in the course of employment and requires most businesses to set up safety committees with employers and employees represented. These committees should monitor the safety of working procedures and ensure that the staff receives proper instructions. These committees may receive guidance and counseling from a number of Occupational Health Service (OHS) units, which offer assistance to a number of special sectors (General Industry, Transport, Building & Construction etc). The Danish Working Environment Authority also carries out inspection visits in order to ensure that standards are met.

14.12 Accidents at work

The employer is liable to pay compensation/damages to an employee for any personal injury or occupational disease resulting from work performed in the service of the employer. The employer, by statute, is required to take out insurance to ensure that any liability to pay expenses for medical care, compensation for loss of earning capacity, compensation for permanent injury, transitional allowance upon death, and compensation for loss of supporter can be met.

Further, the employer should take out special professional indemnity insurance to cover the obligation to pay compensation for pain and suffering as well as compensation for loss of earnings.

14.13 Executives

Executives reporting to the board of directors are not comprised by the Salaried Employees Act or the Holiday Act. Normally, executives will be given a service contract stipulating their rights and entitlements, in particular with regard to notice periods, severance pay, holidays, company car and other benefits, pension, etc. If an executive is posted from abroad, the compensation package will often include private accommodation, school fees, etc.

Executive service agreements are, of course, negotiated individually, although many terms will be fixed according to what is customary for the size and type of company in question.

The notice period required of the employer is normally 6-12 months, and the notice period required of the executive is normally 3-6 months.

It has become more common that an executive's salary is partly linked to the company's performance but the criteria vary. Often, 15-25% of the salary is linked to a certain percentage of the profits before tax.

Usual perquisites to executives include company car, home telephone, mobile telephone, broadband access, pension, and personal accident and health insurances.

The exact composition of the total remuneration package to an executive will often depend on the applicable tax liabilities.

14.14 Working permits and visa requirements

14.14.1 EU, EEA and Swiss citizens

EU citizens are the citizens of Austria, Belgium, Bulgaria, Cyprus (Greek-Cypriot area only), the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, the Netherlands, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

EEA citizens are the citizens of Iceland, Liechtenstein and Norway.

Citizens of Switzerland are subject to the same rules as EU and EEA citizens, and therefore all rules described below will also apply to Swiss citizens.

Nordic citizens do not need a residence permit but are free to enter, live and work in Denmark. An EU/EEA citizen can take up residence in Denmark for up to three months. If the person is seeking employment during his/her stay, he/she can stay for up to six months.

If the stay exceeds the 3 or 6-month limit, a proof of registration from the Regional State Administration will be required. Different from a residence permit, which is issued under the Danish Aliens Act, a proof of registration is simply proof of the rights the person already holds according to the EU regulations on the free movement of persons and services.

14.14.2 Citizens of other countries

In principle, all foreign citizens are required to obtain a visa to enter and stay in Denmark, although citizens of a large number of countries are exempted from that requirement. For example, citizens of the US and Japan do not need a visa to enter and stay in Denmark for an initial three-month period. Staying in Denmark for more than three months will require permission.

All foreign citizens also need to obtain a work permit before they take up employment with a Danish employer. Normally, there must be professional or labour market considerations justifying a residence and work permit, for example, if there is a shortage of persons in Denmark who can carry out a specific type of work. However, a number of schemes have been designed in order to make it easier for highly qualified professionals to get a residence and work permit in Denmark.

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SHARE BASED REMUNERATION

DOING BUSINESS IN DENMARK

15. SHARE BASED REMUNERATION

15.1 Introduction

Many multinational companies will operate various types of share plans, typically in the form of share options or similar, with a view to recruiting, motivating and retaining employees. When considering whether and how to extend such plans to employees in Denmark, a number of issues must be taken into account, primarily in the areas of tax and employment law.

In Denmark, share-based remuneration can be taxed pursuant to three different provisions.

1. The Danish Tax Assessment Act section 16 - Grant of shares, stock options and warrants are taxed at the time, when the employee acquires the legal right to the remuneration. Gains are taxed as salary income (marginal tax rate of 56 %).

2. The Danish Tax Assessment Act section 28 - Gains on stock options and warrants are taxed when the right is exercised or sold and taxed as salary income (marginal tax rate of 56 %).

3. The Danish Tax Assessment Act section 7 P - Gains on shares, stock options and warrants are taxed when the shares are sold and taxed as share income (marginal tax rate of 42 %).

This section will outline the differences in taxation between the above-mentioned provisions.

The section covers share-based incentives in the form of grant of shares, stock options and warrants, restricted stock units, restricted shares, matching shares and phantom shares. However, not all of these share-based incentives are covered by each of the three provisions.

The incentives covered by each provision are as follows:

Section 16	Section 7 P	Section 28
Shares, stock options and warrants, restricted stock units, restricted shares, matching shares and phantom shares. Phantom shares are always taxed pursuant to section 16.	Shares, stock options and warrants, restricted stock units, restricted shares and matching shares.	Stock options and warrants.

15.1.1 Taxation according to section 16

Normally, share-based incentives in employment relationships are taxed according to either section 7 P or section 28 mentioned below. However, if not covered by either of these provisions a share-based incentive is taxed according to the general rule in section 16.

Pursuant to section 16 share-based incentives are taxed as salary income (marginal tax rate of 56%). The taxable income is the market value of the share-based incentive and tax is due when the employee acquires the legal right to the incentive for tax purposes. It can be a complex exercise to determine when the legal right to a share-based incentive is acquired for Danish tax purposes.

To the extent the employee realises a gain upon a subsequent disposal of acquired shares, such gain is taxed as share income at a rate of 27% for amounts up to DKK 51,700 (2017) and at a rate of 42% for amounts in excess of DKK 51,700. The DKK 51,700 progression limit is doubled for married couples. Losses on listed shares may only be deducted against share income from other listed shares, whereas losses on unlisted shares may effectively be set off against taxes on other forms of income.

15.1.2 Taxation according to section 28

Taxation according to section 28 only covers the grant of stock options and warrants.

Any employee, management member, board member or person, who provides work personally e.g. advisors can take part in an incentive plan covered by section 28.

Conditions

If a number of conditions are met, grant of stock options or warrants are taxed according to section 28.

First of all the employee must receive the grant as salary for employment or for the performance of work provided personally. Secondly, it is a condition that either the company or the employee can demand delivery of shares.

Furthermore, the company awarding the grant must be either the employer company or a group company. Likewise, stock options or warrants must consist of a right to purchase/subscribe for shares in either the employer company or a group company.

Employee taxation

The grant of stock options or warrants does not trigger tax. The exercise will trigger tax of the gain under the options/warrants. The taxable gain is the difference between (i) the fair market value of the shares acquired and (ii) the exercise price (i.e. the price payable for the shares). This gain is taxed as ordinary income (the same way as salary) at rates of up to approximately 56%. The employee is required to report taxable amounts on their tax return and must pay any tax and employee social security contributions due themselves.

A subsequent sale of the acquired shares is taxed as share income. To the extent the employee realises a gain upon a subsequent disposal of the shares (i.e. to the extent the shares are disposed of at a value exceeding the market value of the shares at the time of exercise), such gain is taxed as share income at a rate of 27% for amounts up to DKK 51,700 (2017) and at a rate of 42% for amounts in excess of DKK 51,700. The DKK 51,700 progression limit is doubled for married couples. Losses on listed shares may only be deducted against share income from other listed shares, whereas losses on unlisted shares may effectively be set off against taxes on other forms of income.

If a stock option or warrant expires unexercised, the stock option or warrant lapses and no taxation will take place.

Employer's taxation

Generally, the employer can deduct the difference between the shares marked value and the employee's exercise price for tax purposes. The deduction will be reduced by any amount the employee has paid for the stock options or warrants.

The employer is not required to withhold tax or to pay social security contributions. The employer will, however, be required to inform the tax authorities of each employee's total income, including any discount to the market value of the shares at the time of the employee's exercise of the options.

Example of taxation covered by section 28

An employee is granted 2,000 stock options free of charge. The exercise price is 100 DKK per share.

The employee exercises all stock options after three years, at which point in time the market value of the shares are 150 DKK per share.

Taxation in year 3 is calculated as follows:

Exercise of options	
Market value of shares	300,000 DKK
Exercise price	200,000 DKK
Taxable income	100,000 DKK
Tax 56 pct. (salary income)	56,000 DKK

When exercising a stock option (or warrant) the acquisition price for the shares for tax purposes is the market value at the time of exercise with the addition of any amount the employee has paid for the stock options (or warrants). In this example, the acquisition price for the shares for tax purposes is 300,000 DKK.

15.1.3 Taxation according to section 7 P

Section 7 P is a reintroduction of a former favourable tax regime. Shares, stock options, warrants, restricted stock units, restricted shares and matching shares are all covered by section 7 P.

Employee taxation

Gains on shares, stock options and warrants are taxed when the shares are sold. The entire gain is taxed as share income and not as salary income. This means that the tax-

ation time will be postponed, because no tax will be payable at the time of grant or at the time of exercise of stock options or warrants. A gain is taxed as share income at a rate of 27% for amounts up to DKK 51,700 (2017) and at a rate of 42% for amounts in excess of DKK 51,700. The DKK 51,700 progression limit is doubled for married couples. Losses on listed shares may only be deducted against share income from other listed shares, whereas losses on unlisted shares may effectively be set off against taxes on other forms of income.

The employee is required to report taxable amounts on their tax return and must pay any tax due themselves.

If a stock option or warrant expires unexercised, the stock option or warrant lapses and no taxation will take place.

Conditions

Pursuant to section 7 P a number of conditions are to be met, the most important being the following:

1. the employee and the employer company must enter into an agreement on application of the new rules in section 7 P of the Tax Assessment Act.

   It is the employer company that must be a party to the agreement, regardless of whether the remuneration is granted by another group company. The agreement must contain various information (for example whether the remuneration consists of shares, stock options or warrants, and in which company the shares are acquired or can be acquired). There is no requirement to the form or language of the agreement;

2. the value of the remuneration may not exceed 10% of the employee's annual salary at the time of entering into the agreement.

   Annual salary means the annual salary in the year in which the parties enter into the agreement about the grant of shares, etc. As a general rule, however, the value of the remuneration is not to be calculated until the exercise price has been determined, though not later than on the date the employee acquire the legal right to the remuneration for tax purposes.

Exceeding the 10 % limit will have the consequence that the part of the granted shares, etc. that can be kept within 10 % of the employee's annual pay will be subject to the favourable rules in section 7 P of the Tax Assessment Act, while the part of the granted shares, etc. that fall outside the 10 % limit will be subject to the rules in either sections 16 or 28 of the Tax Assessment Act.

3. the remuneration must be paid by the employer company or a group company;

4. the remuneration must be shares, etc. in the employer company or a group company;

5. the shares may not belong to a particular share class;

6. granted stock options and warrants must be non-transferable;

7. granted stock options must entitle the employee or the grantor to acquire or supply shares.

If a grant is settled in cash, the rules cannot be applied.

Employer's taxation

The employer will not be entitled to deduct the value of the grants for tax purposes. The employer is not required to withhold tax or to pay social security contributions. The employer will, however, be required to inform the tax authorities when an agreement to cover a grant of options or warrants by section 7 P is entered into between the employer and employee. Also, the employer must report to the tax authorities when the employee acquire shares covered by section 7 P.

Example of taxation covered by section 7 P

An employee is granted 2,000 stock options free of charge. The exercise price is 100 DKK per share.

The employee exercises all stock options after three years, at which point in time the market value of the shares are 150 DKK per share.

Exercise of options	
Market value of shares	300,000 DKK
Exercise price	200,000 DKK
Gain	100,000 DKK
Tax	No taxation at exercise

When exercising a stock option (or warrant) pursuant to section 7 P the acquisition price for the shares for tax purposes is the exercise price with the addition of any amount the employee has paid for the stock options (or warrants). In this example, the acquisition price for the shares for tax purposes is 200,000 DKK.

If the employee sells the shares one year later, at which point in time the market value of the shares are e.g. 200 DKK per share taxation is calculated as follows:

Subsequent sale	
Market value of shares	400,000 DKK
Acquisition price	200,000 DKK
Taxable income	200,000 DKK
Tax as share income up to DKK 51,700 (27%)	13,959 DKK
Tax as share income up to DKK 51,700 (42%)	62,286 DKK
Total tax	76,245 DKK

Total tax	
Tax at exercise	0 DKK
Tax at sale of shares	76,245 DKK
Total tax	76,245 DKK

15.1.4 Closing remarks

The section above is a high-level summary of the tax treatment of share-based incentives in employment relationships. Consequently, the information is general in nature and should not be relied upon without actual legal counsel. The summary only applies to individuals who are Danish residents for tax purposes.

The section above is based on Danish tax laws in effect as of February 2017. Please note that these laws are complex and change frequently.

15.2 Employment law

The Danish Stock Options Act significantly affects the enforceability in Denmark of customary provisions in share option plans purporting to restrict employees' right to exercise share options following termination of their employment.

Most importantly, it follows from the Act that an employee who is terminated by his employer for any reason but misconduct will retain all rights to share options already granted, whether vested or unvested. The employee will also be entitled to receive a proportionate share of any future share options that the employee would have received, had he continued his employment in the full accounting year or until the time of grant. The employee's rights are mandatory and cannot be deviated from to the detriment of the employee – not even with his specific consent. If, on the other hand, an employee resigns himself or receives notice of termination for misconduct, he will automatically forfeit all his rights to share options already granted (unless they vest before expiry of the notice period). The employee will also forfeit his rights to any future share options that he would have received, had he continued his employment. The Stock Options Act does not prevent an employer from allowing an employee more extensive exercise rights in these situations.

The Stock Options Act also stipulates an obligation for the employer to give the employees certain information about share option plans, among other things, the time of grant, conditions for grants, exercise time, exercise price, the rights of employees upon termination, and the financial aspects of participating in a share option plan. This information must be given in Danish. The employees will be entitled to compensation (the level of which is left at the courts' discretion) if the employer does not comply with his obligations to provide information.

It should be noted that the Stock Options Act does not apply to executives referring directly to the board of directors (typically characterised by being registered with the DCCA). Thus, a managing director is not considered an employee under various Danish employment law statutes, including the Stock Options Act.

15.3 Other areas of Danish law

Apart from the intricacies of Danish tax and employment law, Danish law does not generally contain any serious obstacles affecting employers' ability to grant share options to Danish employees. Although offerings of share options under the Danish implementation of the EU Prospectus Directive do, in principle, require a prospectus to be published and approved, offerings to employees will generally be subject to one or more exemptions from that requirement. Moreover, no Danish exchange control rules are currently in force.

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LAW OF TORTS AND INSURANCE

DOING BUSINESS IN DENMARK

16. LAW OF TORTS AND INSURANCE

16.1 Introduction

Kromann Reumert assists several Danish and foreign insurance companies, insurance brokers and private companies. Our counselling concerns all legal aspects of tort and insurance.

16.2 Law of torts

The rules regarding non-contractual liability for wrongful acts are not generally laid down in statute, but are primarily developed through case law. The Danish Act on Liability in Damages deals with determining the compensation and damages for personal injury, the effects of insurance coverage on the liability, and rules of reduction for the tortfeasor's liability – not the liability in itself. Other laws deal with particular strict liability within certain fields, i.e. the operation of railways, aviation and nuclear plants, environmental damage, etc. Strict liability has also been established by the courts, i.e. liability for excavation works and piling on real property, leaks in supply lines, etc.

16.3 The culpa rule

The basis for imposing tort liability is laid down in the culpa rule, which is rather similar to the culpa rules found in other legal systems. The rule has not been codified by statute, but is established and developed through case law. Thus, it is an integrated part of Danish law. It applies broadly and is invoked in many connections. Where a party has suffered a loss because of a competitor's anti-competitive practice, the culpa rule is the basis of deciding whether or not the injured party should be awarded damages. Under this rule, liability will be incurred where any loss, damage or injury has been caused by an intentional or negligent act or omission attributable to the tortfeasor. Hence, the distinction between negligent and non-negligent behaviour becomes essential. The assessment of culpa is rather objective, as the determining of negligence will be an assessment of the tortfeasor's act or omission rather than his motives and intentions in the moment of action. Establishing culpa is based on whether the action or failure to act deviates from generally accepted behaviour at the time of the act or omission.

Furthermore, factors such as breach of regulations, breach of a general obligation to act (i.e. the ones laid upon parents, event organisers, employers, and owners of real property, roads and other thoroughfares), breach of judge-made law and breach of cus-

toms (i.e. within certain lines of business) may influence the assessment of negligence. Basically, there is a supposition for negligence, provided such a breach has occurred.

The standards and regulations within professions are laid down in order to maintain a certain standard, and negligence is therefore severely judged. The severe judgments apply to both crafts and the liberal professions, such as law, accounting, real estate agents, and medicine.

16.4 3-19-2 of the Danish Code (1683) – employer's liability

The general rule in Danish law is that an employer is liable for any neglicent act on the part of his employees causing injury or damage. This applies even though no negligence can be attributed to the employer. The assessment of the employee, however, is based on the culpa rule. The employer's liability applies to employees at all levels, but can only be imposed when the negligent act of the employee is carried out in the course of work.

An employee assigned for a job as an independent contractor does not constitute employment in relation to 3-19-2 of the Danish Code. Thus, the employer will not be liable for the contractor's negligent acts.

If an employer has had to pay compensation as a result of an employee's neglicence, claims for reimbursement of such compensation can only be brought against the employee to the extent reasonable, taking account of the fault shown, the employee's job and circumstances in general, cf. s. 23(1) of the Act on Liability in Damages.

16.5 Quantification of amount of damages

The overall principle is that the injured party must be awarded damages that put him in the same financial situation as before the injury. He must be compensated in full for his loss, but should not obtain any gain through the damages. Furthermore, the injured party has a duty to limit his loss.

As for damage to property, damages are paid for the replacement costs, should the object be totally lost or damaged. A reasonable deduction is made for depreciation due to age, usage, reduced utility, or other circumstances. The costs of repair constitute the damages in case of partial loss or damage. Furthermore, loss of profit and use will be compensated.

Regarding personal injury, the Act on Liability in Damages distinguishes between damages (for economic loss) and compensation (for non-economic damage). Loss of earnings (s. 2), recovery costs and other losses (ss. 1(1) and 1a) resulting from the injury, loss of earning capacity (ss. 5-9) and loss of dependency (ss. 12-14) are all considered economic losses. Thus, the injured party needs to establish an actual loss. Furthermore, compensation can be awarded for pain and suffering (s. 3), for permanent injury (s. 4), for injury to a party's feelings or reputation (s. 26), or to a surviving relative (s. 26a).

The amount of damages and compensation to be paid is generally regulated by s. 15 of the Act.

16.6 Causation and foreseeability

The requirements of causation and foreseeability must be fulfilled in order to impose liability. Generally speaking, causation exists where the wrongful act was the necessary condition for the injury produced. Foreseeability refers in particular to the reasonable anticipation that harm or injury would be a likely result of any given act or omission.

16.7 Relaxation of liability

There may be circumstances calling for relaxation of imposed liability. If, for instance, the injured party has contributed to the damage or loss, the liability of the tortfeasor can be reduced depending on the extent of such contribution. Additionally, liability can be reduced pursuant to a general mitigation rule in the Act on Liability in Damages.

16.8 Product liability

Product liability in Denmark is regulated by two sets of rules. Firstly, there is the Danish Product Liability Act, implementing Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999. The Act applies to damages and compensation for personal injury, loss of dependency and property damage, if the property is usually intended for non-commercial use. Pursuant to this Act, a manufacturer must indemnify a claimant for injury or damage caused by a defective product manufactured or supplied by him. A product is defective if it is not as safe as may reasonably be expected. Thus, culpa is not a prerequisite for imposing liability on

the manufacturer. Under s. 10 of the Product Liability Act, the distributor of a product that causes a loss eligible for compensation under the Act will be liable if the loss is caused by negligence (culpa) on the part of the distributor. Furthermore, under s. 10a, the distributor will be immediately liable to the claimant and any other distributors further down the chain of distribution for an eligible loss resulting from negligence on the part of the manufacturer.

Secondly, a liability rule has been developed through case law. This liability rule applies to all physical damage to persons or property. Contrary to the Product Liability Act, culpa is a requirement for imposing liability on the manufacturer. A distributor of the product may be immediately liable for culpa on the part of the manufacturer. The assessment of the deficiency of the product is discretionary, but generally a product will be considered defective if it is unreasonably dangerous, i.e. posing an unforeseeable danger in normal use.

Both the Product Liability Act and the liability rule developed through case law exclude liability for any damage to the defective product itself. Damage to the defective product itself will be subject to the liability rules in Danish contract law. The claimant may choose to invoke either the rules of the Product Liability Act or the unwritten set of rules regarding product liability (provided both sets of rules apply in the given situation). Thus, the claimant is given the benefit of selecting whichever set of rules is more advantageous.

16.9 Law of insurance

With a population of only 5.6 million, Denmark is not among the biggest insurance markets on an international scale. However, the Danish insurance sector is diversified, with approximately 220 insurance companies offering well over 100 different standardised types of insurance coverage to business customers and more than 50 types of insurance coverage to consumers.

The Danish insurance sector is highly competitive, and the coordinated tariffs which existed previously have been phased out and replaced by keen competition, especially on premiums. Insurance conditions and premiums are not publicly regulated or supervised. Denmark has recently seen a convergence of products and markets, leading to financial business groups offering practically all financial services and products, such as banking, insurance, pensions, investment associations, and securities brokerage. The sector is under supervision by the Danish Financial Supervisory Authority ("FSA").

16.10 Provision of services - establishing an insurance company

In 2003, the Danish rules on financial businesses including insurance business were incorporated into one act, the Financial Business Act. Implementing the various EU insurance directives, the Financial Business Act contains a concession-like system requiring undertakings carrying out insurance business to be licensed as insurance companies. Certain parts of the Financial Business Act are inapplicable to mutual insurance companies. Applications for licenses are filed with the Danish FSA and must meet an eight-tier test to be approved.

The basic requirements are (i) a certain base capital; (ii) a management that is "fit & proper"; (iii) that no owners of qualified interests (more than 10% of the shares or votes resulting in a significant influence) are liable to oppose to an appropriate and reasonable management of the applicant; (iv) that no close links exist to other undertakings or persons liable to impede Danish FSA supervision; (v) that no close links to an individual or undertaking subject to the legislation of a non-EEA state are liable to impede Danish FSA supervision; (vi) that the applicant has appropriate administrative conditions and procedures in place; (vii) that the applicant has its registered office in Denmark; and (viii) that sufficient information is contained in the application to support the above.

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LEGAL SYSTEM

DOING BUSINESS IN DENMARK

17. LEGAL SYSTEM

The Danish legal system is not easily described as either a common law- or civil law system, since Denmark has historically been influenced by both civil- and common law. Danish courts render their rulings with emphasis on statutory law and secondary legislation but will take the purpose of the statute into consideration as well (save for interpretation detrimental to the citizen/tax payer in criminal law and tax law cases, respectively). However, case law plays a significant role when setting out general principles of the law, especially when applied to unregulated areas or when interpretation of statutory law is required. Thus, in legal literature, the Danish legal system is often described as belonging to a separate legal system referred to as "Nordic Law" or "Scandinavian Law.

Interpretation is also widely applied to private agreements, where the courts will try to establish the parties' common intention rather than simply applying the strict wording of the agreement. In practical terms, this means that agreements and other documents are drawn up in reliance on statute as well as general contractual principles. In many cases, the lengthy and exhaustive agreements used in Anglo-Saxon jurisdictions will not be necessary or even appropriate under Danish law.

A large part of the Danish legislation is based on EU legislation. Denmark has an excellent record of timely implementation of EU Directives as set forth in each EU Directive. In many sectors, foreign investors who are familiar with EU legislation in a particular area will find few surprises in Danish legislation. As an example, all relevant banking and insurance directives have been implemented, and Denmark has implemented a large number of the single market directives. Generally, therefore, industrial standards and a large part of corporate and commercial regulation correspond to those found elsewhere in Europe. However, when implementing the so-called minimum directives, Danish Parliament occasionally sets higher standards than required according to the EU Directives, e.g. on environmental matters.

The ordinary Danish courts are staffed by professional, legally qualified judges. Except for criminal court cases, lay judges are not used in the Danish legal system.

The Danish court system is composed of three levels: Lower courts, the High Courts (eastern and western divisions) and the Supreme Court. The lower courts are first instance for all matters. A party can request that the High Court adjudicate the dispute as first instance if the matter is fundamental in character. As a general rule, the parties can only appeal a court ruling once.

In certain commercial matters, the Maritime and Commercial High Court in Copenhagen can be chosen as venue, e.g. if the dispute requires in-depth knowledge on international business, on competition law, or on IP law. In the Maritime and Commercial High Court in Copenhagen, two expert judges with relevant experience preside together with a trial judge who is a legally qualified judge.

The parties to a dispute may agree on alternative dispute resolution in the form of arbitration. The Danish Institute of Arbitration (Copenhagen Arbitration) is a well-established permanent institute in relation to both national and international arbitration and it has its own set of procedural rules, which are comparable to for instance those of ICC Arbitration. In order to ensure business knowledge and commercial law expertise among judges, it is often set forth in important agreements, e.g. share purchase agreements, that any disputes shall be decided by an arbitrational tribunal.

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INSOLVENCY

DOING BUSINESS IN DENMARK

18. INSOLVENCY

18.1 Introduction

Kromann Reumert assists a large number of companies that experience economic difficulties and advises on all aspects of insolvency law, company restructurings, and voluntary arrangements with creditors. Kromann Reumert also represents creditors with claims against insolvent companies, advise on composition, and are frequently appointed as restructuring administrator.

Danish insolvency law currently has two different types of insolvency proceedings, restructuring or bankruptcy, both of them governed by the Danish Bankruptcy Act ("Konkursloven", consolidated act 2014-01-06 no. 11).

18.2 Restructuring

18.2.1 General observations

The rules governing in-court restructuring entered into force in the spring of 2011, replacing the former rules on suspension of payments.

The rules aim at improving the possibilities of restructuring insolvent businesses through an in-court process.

The general purpose of a formal restructuring process is to either i) enter into a compulsory composition, thus restoring the debtor's solvency, or ii) to transfer the assets or part of the assets under a business transfer to a third party, or a combination of both.

18.2.2 Commencement of in-court restructuring proceedings

Formal restructuring proceedings are commenced at the request of the debtor himself or of a creditor if the debtor is insolvent (unable to pay its debts as they fall due, except where such insolvency is merely temporary).

The petition to the bankruptcy court must include a proposal for the appointment of a restructuring administrator and a court-appointed accountant, both of whom are appointed by the court.

Once restructuring proceedings are opened, the petition cannot be withdrawn. The proceedings are discontinued only if i) the restructuring process is completed, ii) the debtor's solvency has been restored, or iii) the restructuring proceedings are replaced by bankruptcy proceedings.

18.2.3 The role of the restructuring administrator and the court-appointed accountant

The restructuring administrator will assess whether the debtor's business, viewed in isolation, can be continued as a viable entity.

It is for the restructuring administrator to provide information to the creditors, to approve any major transactions in the debtor's business in the restructuring period, to make decisions on bilateral contracts, and to draw up a restructuring plan and a restructuring proposal.

The court-appointed accountant will assist the restructuring administrator in drawing up the restructuring plan and the restructuring proposal. The accountant will estimate the value of the debtor's assets and may determine the value of any charged assets, which value will be binding on the holders of the charge.

The restructuring administrator and the court-appointed accountant must meet certain independence requirements. Their fees are payable by the debtor and rank as preferential claims in case of bankruptcy. The fee is determined by the bankruptcy court.

18.2.4 The restructuring procedure

18.2.4.1 Drafting of a restructuring plan

The restructuring administrator and the court-appointed accountant will draw up, firstly, a restructuring plan, secondly, a restructuring proposal and submit the drafts to the creditors who vote on them.

Regarding the restructuring plan, no later than one week after commencement of the restructuring proceedings, the administrator must convene all known creditors to a meeting in the bankruptcy court, at which meeting the proposed restructuring plan is to be presented. The meeting must be held no later than four weeks after commencement of the restructuring proceedings.

The draft restructuring plan must specify which type of restructuring is proposed (i.e. whether it is intended to include a compulsory composition and/or a business transfer of assets) and must include a balance sheet as at the date of commencement of the restructuring proceedings, the court-appointed accountant's opinion on the annual report, as well as other information.

18.2.4.2 Drafting of a restructuring proposal

The restructuring proposal must be considered at a meeting in the bankruptcy court to be held no later than six months after the meeting at which the restructuring plan was presented.

As mentioned, the restructuring proposal must include either a proposal for transfer of the assets or part of the assets under a business transfer to a third party, or a proposal for a compulsory composition (percentage reduction, write-off or extension of the claims filed). The debtor will be relieved of the debt obligations that are reduced/written off in connection with the compulsory composition.

The restructuring proposal may also include a proposal for a compulsory composition combined with a subsequent transfer of all or part of the assets.

18.2.4.3 The creditors' influence on the restructuring process

The restructuring plan and the restructuring proposal will be adopted unless turned down by a majority of the creditors in a vote. The voting power depends on the amount of the claim. For the purpose of the vote, only amounts that are represented and participate in the vote will be included.

All creditors likely to receive dividend are entitled to vote. Creditors who are likely to be satisfied in full or who are not likely to receive any dividend at all, regardless of the outcome of the vote, are not entitled to vote on the restructuring plan and the restructuring proposal.

18.2.5 The course of the restructuring process

The following principles will apply during the restructuring process:

i. Continuation of the debtor's business

During the restructuring process, the debtor will maintain its right of disposal of the business, which is carried on as the same legal entity. Thus, the restructuring process differs from bankruptcy proceedings where the debtor is deprived of the right to dispose of its assets and a new legal person (the bankruptcy estate) is created in its place.

Significant transactions (purchase of considerable supplies of goods, conclusion of major contracts, etc.) are subject to approval by the restructuring administrator. The debtor's right of disposal may, however, be restricted by instructions issued by the administrator and specifying the limits of the debtor's rights.

Other contracting parties' claims, which have been created with the administrator's consent, rank as preferential claims in case of bankruptcy.

The restructuring administrator may take over the management of the company in case of disagreement between the administrator and the debtor.

ii. Bilateral contracts

The Danish Bankruptcy Act includes provisions on the debtor's bilateral contracts, which have not been performed in full by the debtor before commencement of the restructuring proceedings. These agreements may be kept in full force and effect with the administrator's consent. The Danish Bankruptcy Act also allows for compulsory restoration of contracts terminated during the four-week period preceding the restructuring process.

If the contract is kept in force, the other party's claim will rank as a preferential claim in case of a subsequent bankruptcy.

iii. Debt enforcement

As a debt recovery means involving the debtor's total estate, restructuring proceedings have the same extinctive effect as bankruptcy proceedings. If a rights holder has not undertaken the necessary acts of perfection on commencement of the restructuring

proceedings, the claim will no longer be secured by the asset, ranking instead as an unsecured claim against the debtor.

18.2.6 Termination of the restructuring process

The restructuring proposal adopted by the creditors must be approved by the bankruptcy court to be valid. As a general rule, the restructuring process ends when the restructuring proposal is approved. The approval is often given on the condition that the debtor accepts the appointment of a supervisor who will ensure compliance with the restructuring proposal.

18.3 Bankruptcy

In bankruptcy proceedings, the debtor's assets are realised and the proceeds distributed among the creditors as prescribed in the Danish Bankruptcy Act. The debtor himself or any creditor who holds a valid claim against him can commence bankruptcy proceedings.

18.3.1 The trustee

If bankruptcy proceedings have been commenced against a Danish company, a trustee will be appointed to act on behalf of the estate. In practice, the trustee will be a lawyer, and will be appointed by the court or, if requested by a creditor, elected by those of the unsecured creditors who are likely to receive dividend.

Secured creditors and creditors unlikely to receive dividend are allowed to recommend a trustee.

18.3.2 No enforcement of pledges, charges and mortgages

The assets of the estate (including any charged assets) will be administered by the trustee, and creditors' right to enforce their claims – secured or unsecured - individually against the company will cease once the bankruptcy order is issued.

All powers to administer and dispose of the assets of the estate (including any charged assets) are vested in the trustee. The bankruptcy imposes a general ban on the enforcement of pledges, charges and mortgages, such as mortgages on real estate, movable property, IP rights, and floating charge.

The trustee may sell the charged assets at a compulsory sale or, subject to the approval of any chargees who are not fully covered, at a private sale.

However, if the trustee has not disposed of charged assets within six months of the issuing of the bankruptcy order, the chargee may demand that a public auction be conducted immediately by the trustee in respect of such charged assets.

The relevant chargees will be entitled to receive the net income (if any) accruing on charged assets from the date of the bankruptcy order and until a sale occurs.

Any losses accruing in respect of charged assets during the said period and any reasonable costs incurred by the trustee in connection with the administration and sale and any attempted sale of charged assets will be covered out of the proceeds and will, consequently, reduce the amount available to cover chargees' claims. Any costs incurred by the trustee which are not related to charged assets (e.g. costs incurred administering or selling other parts of the estate) will not be covered out of the proceeds.

18.3.3 Enforcement of pledges and assignments

The insolvency proceedings will not affect the rights of creditors to enforce any pledge agreements or assignment agreements, such as share pledges, account pledges, and assignments of trade receivables.

18.3.4 Sale as a going concern

In the event of insolvency proceedings against a company, a Danish trustee will in practice attempt to sell the business of the bankrupt company as a going concern.

The incentive for the trustee during such negotiations is the prospect of obtaining the best possible dividend to secured and unsecured creditors, either by obtaining an expected higher purchase price for the assets or by reducing the amount of debts in the estate.

A further incentive to a sale as a going concern is the fact that the estate will thereby avoid or limit claims from employees, who will otherwise file preferential claims in the bankruptcy estate.

As part of this process, the trustee will normally be expected to discuss the terms of a sale and the distribution of sales proceeds with the parties holding security rights over the company's assets, both in order to avoid the risk of any liability towards these secured creditors and to ensure that all assets necessary for the continued business can be transferred to a potential buyer (including any assets charged, mortgaged, pledged, or assigned).

18.3.5 Ranking of creditors (priority classes)

Once the secured claims have been dealt with in the bankruptcy proceedings, the ranking of the unsecured claims will be governed by the Danish Bankruptcy Act.

According to ss. 93-98 of the Danish Bankruptcy Act, unsecured claims in the bankruptcy proceedings will be paid in the order set out below. Creditors comprised by ss. 93-96 are generally referred to as preferential creditors, s. 97 covers the ordinary creditors, and s. 98 covers subordinated creditors.

18.3.5.1 Claims under s. 93

Prior to any other debts, the following will be paid in equal proportions:

1. costs and expenses at the commencement of bankruptcy;

2. costs and expenses in the administration of the estate, i.e. costs incurred in the course of bankruptcy proceedings; and

3. debts incurred by the estate during its administration, excluding claims in respect of income tax levied on the debtor.

18.3.5.2 Claims under s. 94 (pre-preferential claims)

Thereafter the following claims will be paid in equal proportions:

1. reasonable costs and expenses incurred in an attempt to provide a total arrangement of the debtor's financial affairs by a restructuring, dissolution process, composition or similar schemes;

2. other debts incurred by the debtor after the limitation date (the filing of the petition in bankruptcy) with the consent of the restructuring administrator appointed by the bankruptcy court;

3. reasonable costs and expenses incurred in a commencement of liquidation of the debtor; and

4. the court fee.

18.3.5.3 Claims under s. 95 (preferential claims)

Thereafter the following claims have to be paid in equal proportions:

1. claims for wages/salaries and other consideration for work performed in the debtor's service, which have fallen due within the period from six months prior to the limitation date and until pronouncement of the bankruptcy order. The same applies for claims under an interest-free savings account which become payable during the same period or which become payable only after this period, notwithstanding the fact that the claim accrued before the bankruptcy order;

2. claims for compensation resulting from the discontinuation of employment relationships, excluding, however, compensation for claims in respect of wages/salaries and other consideration which would have fallen due more than six months prior to the limitation date;

3. claims for compensation for dismissal or termination of employment relationships, provided that such dismissal or termination has occurred within the last six months prior to the limitation date;

4. claims in respect of holiday pay;

5. claims as stated in (1)-(3) above for a period earlier than the ones stated in those sub-paragraphs, provided that the creditor, in the opinion of the bankruptcy court, has endeavoured to enforce the claim without undue delay but has been unable to levy an execution capable of being upheld as against the bankruptcy estate.

Employee claims under s. 95 of the Bankruptcy Act are generally compensated by a special fund, the Employees' Guarantee Fund, and the fund will then have the priority claim against the estate.

18.3.5.4 Claims under s. 96

Thereafter, any suppliers' claims for duties on goods in respect of which duties are to be paid under the provisions of certain statutes (for instance the Tobacco Duties Act; the Consumable Ice Cream Duty Act, the Act on Duties on Chocolate and Sweets), and which have been supplied to the debtor, in duty-paid condition, for resale within a time limit of 12 months before the limitation date have to be paid.

18.3.5.5 Claims under s. 97 (ordinary claims)

Thereafter, all remaining claims (other than those referred to in s. 98 of the Danish Bankruptcy Act) will be paid. Under this section falls, for example, any unsecured part of loans, suppliers, VAT and regular tax claims.

18.3.5.6 Claims under s. 98

Some claims, namely those under s. 98 of the Danish Bankruptcy Act, have lower-ranking priority. These are, in order of priority:

1. claims for interest, accrued after the bankruptcy order is made; but not interest accrued on the claims referred to in ss. 92-94;

2. claims for fines, penalties and confiscation of cash, claims for payment of additional tax in consequence of wrongful tax returns or non-submission of such returns, and claims for agreed penalties to the extent that such penalties exceed the actual loss suffered; and

3. claims under gratuitous promises.

18.3.6 Voidable transactions

There are various rules on recovery in the Danish Bankruptcy Act which aim at rendering null and void certain transactions carried out during a particular time period leading up to the bankruptcy. The calculation of the relevant period is based on a certain limitation date, usually the date of the petition for bankruptcy.

Several recovery rules involve stricter time limits and different burdens of proof for associated persons. The recovery rules are also applicable in restructuring proceedings. The following transactions may be set aside, whether fraudulent intent or knowledge of insolvency can be established or not:

- dubious payments made within three months of the limitation date;
- security in respect of previous indebtedness;
- execution levied against the company's assets within three months before the limitation date;
- unreasonable remuneration to closely related persons within six months before the limitation date;
- gifts made within six months before the limitation date.

In addition to the "objective" invalidation provisions, the Danish Bankruptcy Act contains a general "subjective" provision. Under this provision, transactions may be declared null and void if the transactions constitute an undue preference of one creditor at the expense of others, provided the company was insolvent at the time of the transaction and that the creditor was in bad faith regarding these circumstances. No specific time limit applies to such transactions, although, as a rule of thumb, invalidation will not apply to transactions occurring more than 18-24 months prior to the limitation date.

The result of a transaction being deemed invalid or annulled is that both the debtor and creditor are placed in a position as if the transaction had never taken place.

As a main rule, the bankruptcy estate is allowed a maximum period of 12 months after the bankruptcy order to initiate legal proceedings for invalidation.

18.3.7 Disqualification of the management

Apart from voidable transactions and the possibility of raising liability claims for damages against the former management of a bankrupt company, members of the former management may be subject to disqualification.

Following a petition from the trustee, disqualification may be imposed on a person who has participated in the management of the debtor's activities less than one year before the reference date, if it must be assumed that the person in question is unfit to participate in the management of commercial activities due to grossly irresponsible business conduct.

Disqualification contemplates disqualification proceedings before the bankruptcy court, and a decision as to whether to impose disqualification is made by order of the court.

Disqualification entails that the former management member is not entitled to participate in the management of commercial activities without assuming personal and unlimited liability for the liabilities of the enterprise, i.e. cannot act as the management of a limited liability company.

As a rule, disqualification is imposed for a period of three years, unless specific reasons require disqualification for a period shorter than three years.

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