

SECURITIES LAW

The Danish regulation on securities law is highly influenced by the EU directives governing securities law. Therefore, the activities in the Danish securities market have an international aspect, thus challenging the advisors of public listed companies to keep themselves informed of the most recent international trends in both national and international securities law on an on-going basis.

What legal frameworks govern securities law in Denmark?

The most important regulation governing Danish securities law consists of the Danish Securities Trading Act (Værdipapirhandelsloven), the Danish Financial Businesses Act (Lov om Finansiell Virksomhed) and the Rules Governing Securities Listing on the Nasdaq OMX Copenhagen.

These acts and rules are supplemented by derivative regulation issued through a number of executive orders setting forth detailed provisions on particular subjects. Among these executive orders are: (i) the two Executive Orders on Prospectus Requirements (Executive Orders no. 222 and 223 of 10 March 2010); (ii) the Executive Order on Takeover Bids (Executive Order no. 221 of 10 March 2010); (iii) the Executive Order on Major Shareholdings (Executive Order no. 1118 of 24 September 2010); (iv) the Executive Order on Market Abuse (Executive Order no. 1179 of 11 October 2007); (v) the Executive Order on Issuers' Disclosure Duties (Executive Order no. 220 of 10 March 2010); and (vi) the Executive Order on the Conditions for Admission of Securities to Listing (Executive Order no. 1069 of 4 September 2007). In addition to these executive orders, the Danish Financial Supervisory Authority ("the DFSA") has issued a number of guidelines on the interpretation of the aforementioned executive orders.

Are public listed companies offering securities on the Danish securities market subject to any corporate governance standards?

In addition to the Rules Governing Securities Listing on the Nasdaq OMX Copenhagen, a special committee (the "Scheibye Committee") has issued a set of guidelines establishing good corporate governance standards for companies listed on the Nasdaq OMX Copenhagen. These guidelines are based on a comply-or-explain approach. They are available in English on <http://www.corporategovernance.dk/sw58113.asp>.

The Transparency Directive and the MiFID Directive in Danish law

The aim of the Transparency Directive (2004/109/EC) is to enhance transparency on the EU capital markets by establishing rules for the disclosure of periodic financial reports and of major shareholdings for companies whose securities are admitted to

trading on a regulated market in the EU. The Transparency Directive is implemented in Danish law.

The MiFID Directive (2004/39/EC) is implemented in Danish law, and it provides a harmonised regulatory regime for investment services across the EU. The main objectives of the Directive are to increase competition and consumer protection in investment services.

How are securities traded in Denmark?

Most trading of listed securities such as stock, bonds, notes, derivatives and money market instruments is done on the regulated market Nasdaq OMX Copenhagen. Shares traded on Nasdaq OMX Copenhagen are issued electronically through VP Securities Services ("Værdipapircentralen"), which also carries out book-entering of ownership and rights, clearing and settlement of transactions as well as other related services.

In addition to Nasdaq OMX Copenhagen, there is an alternative marketplace called First North. First North is an alternative marketplace for small growth companies seeking to raise capital on the Nordic and global financial markets. Since it has its own set of rules, it has the advantage of providing such companies with the benefits of being on-market but with less administrative burdens due to a more simple and flexible regulation than what applies to regulated markets. First North is a part of Nasdaq OMX Nordic. This implies that companies having securities admitted to trading at First North are given the same possibilities as large companies, whereas the applicable regulation is less burdensome.

Which companies have access to trading securities on Nasdaq OMX Copenhagen?

Both Danish and foreign companies which are authorised to perform securities trading have access to trade securities on Nasdaq OMX Copenhagen. Furthermore, banks and other credit institutions including the National Bank of Denmark, mortgage-credit institutions, stockbroker companies, investment companies etc. have access to trade securities on Nasdaq OMX Copenhagen. A prerequisite for such access to the market is that Danish and non-EU/EEA entities must obtain such authorisation from the Nasdaq OMX Copenhagen. If an entity established in another EU/EEA country contemplates trading securities on Nasdaq OMX Copenhagen, it must obtain the authorisation from the relevant financial supervisory authority of its own domicile country and subsequently trade securities in another EU/EEA country.

Natural or legal persons who wish to trade securities on Nasdaq OMX Copenhagen and are not themselves authorised to do so, can trade securities through an authorised entity, such as a bank or other securities trader, as described above.

What are the requirements for admission to listing on the Nasdaq OMX Copenhagen?

The terms and conditions for admission for listing on the Nasdaq OMX Copenhagen are set forth in the Danish Securities Trading Act and supplemented by the Rules Governing Securities Listing on Nasdaq OMX Copenhagen. This contains additional rules and requirements on admission for listing, prospectuses and disclosure requirements for shares, unit trust certificates and bonds.

To have securities admitted for listing on Nasdaq OMX Copenhagen, the issuer of the relevant securities must submit an application to the DFSA. In order for the DFSA to grant an authorisation to the issuer, the statutory requirements relating to the offer of securities must be met. The main statutory requirements are: (i) trading and listing of the relevant securities must be of interest to the investors; (ii) the securities must be negotiable without any limitations and must have a market value of an amount equal to at least EUR 1 million (provided that the market value of the securities of EUR 1 million cannot be reasonably assessed, an alternative option is that the equity capital of the company, including the result from the most recent financial year, must amount to no less than EUR 1 million); (iii) in general, at least 25% of the shares within a listed class of shares must be offered to the public; and (iv) the market value of each issuance of shares must be no less than EUR 1 million.

Foreign companies must meet the abovementioned terms and conditions to the same extent as Danish companies and must undertake their business activities in compliance with national law.

What are the prospectus requirements under Danish law?

An issuer offering securities in Denmark may under certain circumstances become subject to a duty to prepare a prospectus. Whether the issuer is subject to such duty depends on the nature and value of the securities offered by the issuer.

The EU Prospectus Directive (2003/71/EC) provides uniform rules for prospectuses regarding public offers of securities exceeding EUR 2.5 million and for prospectuses admitting securities for trading on regulated markets. When calculating the thresholds, the market price is the determining factor. An offer to the public of securities with a total consideration of less than EUR 2.5 million is not comprised by the obligation to publish a prospectus under the EU Prospectus Directive.

However, member states may issue national legislation on the obligation to publish a prospectus as regards to public offers between EUR 100,000 and 2.5 million. Denmark

has utilised this option by issuing a separate executive order targeting public offerings between EUR 100,000 and 2.5 million.

An initial public offering exceeding EUR 2.5 million must be accompanied by a complete prospectus. In general, initial offerings between EUR 100,000 and 2.5 million must also be accompanied by a prospectus under Danish law. However, the prospectus requirements which apply to initial offerings between EUR 100,000 and 2.5 million are subject to less extensive and less rigid requirements.

Are there any exemptions to the prospectus requirements?

The prospectus requirements may be waived in connection with: (i) the first public offering in Denmark of securities below the threshold, which are not listed in Denmark, (ii) the first public offering in Denmark to a limited number of investors, or (iii) offerings directed to professional investors.

Which rules govern mandatory and voluntary takeover bids?

If any natural or legal person acquires a shareholding in a company with one or several share classes admitted to trading on a regulated or an alternative market place and the acquirer after the transfer of the shareholding (i) holds a majority of voting rights in the company, (ii) becomes entitled to appoint or dismiss a majority of the company's members of the board of directors, (iii) obtains the right to exercise a controlling influence over the company on the basis of the articles of association or any agreement with the company in general, (iv) by agreement with other shareholders will control the majority of voting rights in the company, or (v) will be able to exercise a controlling influence over the company and will hold more than one-third of the voting rights (collectively "Controlling Influence"), said acquirer shall enable all the shareholders of the company to dispose of their shares on the same terms as the acquirer acquired the initial shares.

Immediately after gaining Controlling Influence, the acquirer must publish an announcement stating that the acquirer has obtained Controlling Influence and will put forward a mandatory public tender offer for the entire share capital of the target company within four weeks.

When an offer to acquire shares is put forward in accordance with the above, the offeror shall publish an offer document containing information on the financial and other terms of the offer. The document shall include the deadline for acceptance of the offer and any other information considered necessary for the shareholders to reach an informed decision regarding the offer. The deadline for accepting the offer must initially be no less than four weeks and no more than ten weeks. This deadline may be extended in case of amendments to terms, a competing offer or if an antitrust filing is required. The

Executive Order on Takeover Bids regulates the requirements to the offer document in detail.

The potential acquirer may issue a voluntary public tender offer which, unlike the mandatory public tender offer, may have certain conditions attached to it, such as the offeror obtaining the acceptances of a given portion of the share capital. If the offeror gains a Controlling Influence over the target company but not 100 % ownership as a result of a voluntary takeover offer, this does not trigger a subsequent mandatory takeover offer.

In the Executive Order on Takeover Bids, the DFSA has laid down regulations governing mandatory offers, voluntary offers, notifications of decisions to put forward an offer, the contents of the offer document which are to include the offeror's duty to disclose any intended payment of the target company's resources after completion of a takeover bid, prohibition against entering into agreements about bonuses or similar benefits, the bid price and approval and publication etc.

Is short-selling allowed under Danish law?

According to the Danish Executive Order on Short-Selling, an agreement which leads to a short position, or an increase of an existing short position, may not be entered into regarding shares which are admitted to trading on a regulated market and issued by banks, as this constitutes short-selling. A position is considered short if the person who is supposed to deliver a fixed amount of listed shares (i) does not own the amount of listed shares which he is supposed to deliver; or (ii) has not made arrangements to ensure that he owns the amount of listed shares which he is supposed to deliver. Borrowed shares do not count towards shares owned.

The prohibition also concerns other products which will result in capital gain if the listed price drops. This is to prevent circumvention of the prohibition. However, the Danish Executive Order on Short-Selling specifically allows for reasonable hedging of investments in shares.

Which rules govern inside information and disclosure duties?

The rules pertaining to inside information and the accompanying disclosure duties are set forth in Part 7 of the Danish Securities Trading Act. The rules in the Danish Securities Trading Act are supplemented by the Executive Order on Issuers' Disclosure Duties, which regulates specific areas such as the form of disclosure and the relevant media, disclosure of major shareholdings periodic reporting etc.

What constitutes inside information?

The Danish Securities Trading Act defines inside information as specific non-public information regarding issuers, securities, or market conditions with respect to such securities, which are expected to have a significant impact on the price if published, cf. Section 34(2). In other words, the information must be material. The term "material" is understood as any information not readily available to the general public which a prudent investor would reasonably take into consideration as part of such investor's decision to invest in the underlying securities.

When is an issuer obligated to disclose inside information?

Pursuant to Section 27 of the Danish Securities Trading Act, an issuer of securities which are traded on a regulated market must as quickly as possible disclose inside information relating to the business of the issuer. The issuer is obligated to disclose such information immediately after the relevant issue has occurred, or the relevant event has taken place, even though the relevant issue or event has not yet been formalised. Furthermore, any material changes to information that has already been made publicly available must be disclosed immediately after the occurrence of such changes and through the same medium which was utilised when the information was originally disclosed.

Is it possible to delay the disclosure of inside information?

Provided that certain conditions are met, an issuer may delay the public disclosure of inside information. Such delay is made at the issuer's own responsibility and aims to avoid harm being done on the issuer's legitimate interests, e.g. during on-going negotiations in which the outcome may be affected by public disclosure. Furthermore, the delay must not involve a risk of misleading the public. Finally, the issuer must be able to fully secure the confidentiality of the inside information during the whole period of delay.

As of 1 January 2011, a new rule entered into force, stating that if an issuer of securities becomes aware of a leak of inside information concerning the issuer, said issuer is required to disclose such information to the public promptly after the issuer becomes aware of the leak of inside information. The disclosure should be made regardless of whether if the leak of inside information could be ascribed to the issuer. The obligation to disclose the inside information, when the inside information has been leaked, cannot be delayed or in any other way postponed by the issuer.

Are major shareholders subject to disclosure requirements under Danish law?

Subject to the Executive Order on Major Shareholdings, a shareholder in a company having its securities traded on Nasdaq OMX Copenhagen must notify the DFSA and the issuer if the portfolio of shares amounts to at least 5% of the company's voting rights or

outstanding share capital (major shareholder announcement). The DFSA will immediately publish the major shareholder announcement. The notification must be given by the major shareholder at the day of trading.

Notification must also be given when the shareholding passes the thresholds of 10%, 15%, 20%, 25%, 50% and 90%, as well as 1/3 and 2/3 of the total outstanding share capital at the day of trading. In certain events, notification may be postponed up to two trading days after the purchase or sale of the relevant shares.

If the shareholder holds voting rights pertaining to any shares held by a third party by way of agreement or pledge and the total shareholding exceeds the threshold(s), the shareholder is also obligated to give notice.

Are issuers subject to a duty to prepare and maintain insider lists?

Issuers of shares admitted to trading on the Nasdaq OMX Copenhagen must prepare a set of internal rules in order to facilitate and ensure compliance with the disclosure duties and to prevent that inside information is selectively disclosed to third parties by intent or mistake.

May minority shareholders be subject to compulsory redemption?

If a shareholder holds more than 9/10 of the total outstanding share capital and a proportionate share of the voting rights in a company having its securities traded on a regulated market, the shareholder may decide to redeem the remaining minority shareholders. In such an event, the minority shareholders will become subject to a duty to transfer their shares to the majority shareholder within four weeks after notice of the redemption. If one or more of the minority shareholders challenge the offered redemption price, the Danish courts will appoint independent experts to assess the accurate redemption price.

Is a minority shareholder entitled to have his shares redeemed?

If a majority shareholder holds more than 9/10 of the total outstanding share capital and voting rights of a company, the minority shareholders have the right to request such majority shareholder to redeem its minority shareholding. Usually, the articles of association of the company will contain provisions setting forth the guidelines for fixing the redemption price in such event. However, if there are no provisions in the articles of association regarding a minority shareholder's right to have his shares redeemed, the Danish courts will appoint independent experts to assess the accurate redemption price.

Which rules apply to companies having securities traded on First North?

The trading of securities on the alternative marketplace First North is governed by the Danish Securities Trading Act and the First North Nordic Rulebook. This rulebook con-

stitutes a common code of practice for all national alternative marketplaces within the OMX Nordic.

What are the requirements for having securities admitted to trade at First North?

In order to have securities admitted to trade on First North, a number of requirements must be complied with by the issuer. Firstly, the trading of the relevant securities must be of general interest to the public. To fulfil this public interest requirement, there must be a sufficient number of shareholders each owning at least at least EUR 500 worth of shares. At least 10% of such shares must be held by the general public in order to ensure a minimum spread on the shares. It is also required that the share price is at least EUR 0.50 at the time of admission and that all shares within the relevant class of shares must be admitted to trading on First North. Finally, the relevant shares admitted to trade must be fully negotiable and registered electronically with VP Securities Services.

Does a company have to prepare a prospectus in order to have its securities traded on First North?

To have securities admitted to trade on First North, the issuer must provide First North with a company description or an approved prospectus. The company description has the same function as a prospectus. However, the requirements for a company description are less comprehensive and less restrictive compared to the requirements applying to prospectuses.

Does a company having securities traded on First North have to engage a certified advisor?

All companies traded on First North must have a certified advisor with documented competence and experience within the financial industry, complying with certain requirements. Companies enlisting to serve as a certified advisor are subject to approval by Nasdaq OMX Nordic. The main responsibilities of the certified advisors are to support companies in the admission process as well as meeting the on-going requirements related to the marketplace.

Which specific rules apply to investment funds and private equity funds?

According to the new Executive Order on Risk Marking of Investment Products (Executive Order no. 345 of 15 April 2011, entered into force on 1 July 2011), investment products should be marked according to the risk they propose for a detail client.

Investment products are categorised in three categories, green, yellow and red. The categorisation is based on the general risk and transparency level of the product type in

question, not on an assessment of the specific product. This means that there might be investment products with different risks within the same category.

Investment products in the green category are not difficult to understand. This category includes investment products where the risk of losing the whole investment is considered very small.

Investments in the yellow category include products involving a potential risk of losing the amount invested wholly or partly. As with the green category, the products are not difficult to understand.

Products in the red category involve a risk of losing more than the amount invested. The product type is difficult to understand.

The rules apply to both Danish and foreign financial businesses which facilitate purchases of investment products to retail clients in Denmark and to Danish and foreign investment advisors doing business in Denmark. The rules also apply to financial businesses run through the establishment of subsidiaries.

Has the AIFM directive been implemented in Danish law?

An AIFM is an alternative investment fund manager whose function is to manage the Alternative Investment Funds (AIF). An AIF is any collective investment undertaking, including investment departments thereof, which raises capital from a number of investors with the purpose of investing said capital in accordance with the defined investment policy.

On 21 July 2011, the AIFM directive became effective. The AIFM directive is not yet implemented in Danish law and is therefore not presently a part of Danish legislation. The final transposition date is 22 July 2013.

When the AIFM directive is implemented, Danish AIFM's will require authorisations by the Danish FSA, whereas the AIFs will not be subject to such requirements.

The Scope of the AIFM directive is to lay down rules for authorisation, on-going operation, marketing and transparency of the AIFM. The AIFM directive regulates the fund managers, since it is the AIFM that is responsible for all key decisions in relation to the AIF.

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