

MERGERS AND ACQUISITIONS

How are mergers and acquisitions regulated in Denmark?

Mergers and acquisitions in Denmark are generally regulated by the Danish Companies Act (in Danish: "*Selskabsloven*") along with special regulation on areas such as competition law, provisions on the rights of employees, intellectual property and tax etc.

However, the provisions of the Danish Companies Act from 2009 have become effective in different stages. As of 1 March 2011, almost all provisions of the Danish Companies Act have become effective. The only provisions that have not yet become effective are those prescribing the regulation of the shareholder register.

Are there any special requirements for listed companies?

The Danish Securities Trading Act (in Danish: "*Værdipapirhandelsloven*") stipulates a number of requirements that only apply when one or more of the companies in question are publicly traded.

Furthermore, Nasdaq OMX Copenhagen A/S, Dansk AMP A/S and First North have issued a number of different rules which apply to companies with securities listed on the relevant stock exchange or market, along with the general legislation concerning such companies.

Do the Danish regulations conform to the EU-regulations?

The Danish regulations conform to EU-regulations. Thus, mergers and acquisitions may be affected in a number of ways, including, but not limited to, the sale of a company's assets, by merging the company with a new or existing company or by acquiring the company's branches or divisions.

Which precautions may a company take in order to avoid a takeover?

The Danish Companies Acts allow a company to take a number of precautions in order to avoid a takeover including the following:

Limits to ownership and voting rights

A company's articles of association may limit the maximum number of shares a shareholder may own or the maximum number of votes a shareholder may exercise. Thus, a potential buyer is prevented from acquiring a majority of the outstanding shares or otherwise acquiring control of a company by exercising a majority of the votes at the company's general meetings or by assuming control of the company following such acquisition.

Right of first refusal:

A company's articles of association and/or shareholders' agreements entered into between shareholders may entitle existing shareholders to purchase shares offered for sale by other shareholders, before they may sell their shares to a third party.

Approval by the board of directors:

A company's articles of association may stipulate that any share transfer must be approved by the company's board of directors.

Share classes:

Different classes of shares with different rights attached may be issued. These rights count among others preferential rights to dividend and/or liquidation proceeds, votes, etc.

Notification to the company as requirement for exercising votes:

In order for a shareholder to be entitled to exercise the voting rights carried by the company's shares, the articles of association may require that the shareholder applies for registration of his acquisition of shares in the company's register of shareholders.

Is a shareholder required to notify the company or the Danish Commerce and Companies Agency of his or her shareholding?

Shareholders, whose shareholdings represent 5% or more of either (i) the voting rights or (ii) the nominal value of the share capital, must give notice to the company and the company must keep a register hereof.

Shareholders are also obligated to give notice to the company when reaching, or when no longer holding, a minimum of 5%, 10%, 15%, 20%, 25%, 50%, 90%, or 100% or reaching any limit of 1/3 or 2/3 of the voting rights or the share capital. Likewise, the company must keep a register hereof.

The register must be available at the company's registered office for inspection by public authorities and members of the board of directors.

When remaining provisions of the Danish companies Act become effective, the company is continually required to report to the Danish Commerce and Companies Agency (hereinafter "DCCA") in Danish: "Erhvervs- og Selskabsstyrelsen") about every shareholder who provides information as described above. The DCCA maintains a register of this information, which is made public.

If the shares are listed on a stock exchange/market, notice must generally be given to the relevant regulated market as well as to the company. The acquirer may be required to issue a takeover bid for the remaining outstanding shares.

May a majority shareholder redeem the shares of minority shareholders?

If a shareholder holds more than 90% of the shares and voting rights in a company, the shareholder may demand that the company's remaining shareholders sell their shares to him.

May a minority shareholder demand to have his or her shares redeemed by the majority shareholder?

If a shareholder acquires more than 90% of the shares and voting rights in a company, the remaining minority shareholders may demand that the majority shareholder acquires the minority shareholders' shares.

How is a merger or an acquisition financed?

Payment may be in the form of cash, assets, shares, etc. and is generally not regulated under Danish law.

However, companies are prohibited from granting loans to finance the acquisition of shares issued by the company or shares in a parent company. In addition, companies are not allowed to make assets available or provide assets as security in connection with the acquisition of the shares of the company.

Accordingly, "bridge loans" requiring the company to pledge its assets to an institution financing the acquisition are generally not possible in the event of an acquisition of shares.

The acquisition of assets is not covered by the abovementioned prohibitions.

Now that almost all of the provisions of the companies Act have come into force, it is possible for a limited liability company to grant loans for acquisitions of shares in the company or its parent company. The general meeting must approve this with the majority prescribed in the articles of association and then the resolution must be reasonably related to the company's financial position. The primary governing body, the board of directors or Executive Board as applicable, must prepare a statement, and the loan must be granted on an arm's length basis. The loan may only be granted with the company's revenue reserves.

Furthermore, it is generally possible to grant loans to companies, unrelated to the acquisition of capital shares in the subsidiary.

What is the difference between acquisition of assets and acquisition of shares?

An acquisition of shares usually means that liabilities and assets remain with the company. Thus, it is generally not necessary to obtain consent from suppliers, customers etc., unless specific "change of control provisions" exist in the relevant contracts or are otherwise provided for.

An acquisition of assets usually means that only the rights and liabilities agreed upon between the parties are transferred. Thus, it is generally necessary to obtain consent from customers and suppliers, etc.

A number of exceptions apply to these general principles, particularly regarding employees that enjoy certain rights in connection with a takeover, whether this occurs as an acquisition of assets, shares or otherwise. For instance, an acquirer of assets succeeds in the liabilities towards employees.

Notice that tax and accounting in relation to an acquisition of assets differ from an acquisition of shares in a number of ways.

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