Global Public M&A Guide - Denmark

General Legal Framework

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# 2. General Legal Framework

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**2.1 Main legal framework**

Denmark's regulatory regime aims to protect the shareholders of a target company, safeguard the rights of minority shareholders, secure equal treatment of shareholders belonging to the same share class and establish the basis for a well-adjusted and efficient capital market. The main rules and principles of Danish law relating to public takeover bids can be found in:

the Capital Markets Act, Consolidated Act no. 198 of 26 February 2024, as amended (replacing the Danish Securities Trading Act) implementing the Takeover Directive (2004/25/EC) and Regulation (EU) No. 596/2014 on Market Abuse (the "**MAR**")

the Takeover Order, Executive Order no. 636 of 15 May 2020 supplementing the regulation in the Capital Markets Act

the guidelines to the Takeover Order, Executive Order no. 1171 of 31 October 2017, issued by the Danish Financial Supervisory Authority ("**DFSA**")

the Danish Companies Act, Consolidated Act no. 1168 of 1 September 2023, as amended, regulating both private and public limited companies, containing, for example, the regulation of squeeze-out procedures

the MAR, consolidated Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, which contains rules regarding insider information, insider dealing and market manipulation

The main body of the Danish takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the "**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids of the different Member States of the European Economic Area (EEA). Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid, for example, the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors. Accordingly, there are still certain differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

**2.2 Other rules and principles**

While the aforementioned legislation contains the main legal framework for public takeover bids in Denmark, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

The Prospectus Regulation, consolidated Regulation (EU) 2017/1129, as amended, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC.

Stock exchange regulations issued by Nasdaq Copenhagen, including the recommendations on corporate governance.

Further rules may apply to bids on companies in certain sectors, such as companies operating under the supervision of the DFSA (*Finanstilsynet*), for example companies with license to conduct banking, insurance or finance business operations.

The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

**2.3 Supervision and enforcement**

Public takeover bids are subject to the supervision and control of the DFSA. The DFSA is the principal securities regulator in Denmark.

The DFSA has a number of legal tools available to supervise and enforce compliance with the public takeover bid rules, including administrative fines.

The DFSA may in certain cases grant exemptions from the rules that would otherwise apply to a public takeover bid.

**2.4 General principles**

The following general principles apply to public takeovers in Denmark. The below principles are based on the Takeover Directive and the Capital Markets Act:

all holders of the securities of a target company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. The board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the target company's places of business;

the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

false conditions for trading must not be created in the securities of the target company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

an offeror must announce a bid only after ensuring that it has certain funds and after taking all reasonable measures to secure the implementation of any other type of consideration; and

a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

It should be noted that Danish law has a strong focus on the rights of shareholders in relation to takeover bids. However, it is not only the short term interests of the current shareholders that will be in focus or that will be the decisive factor, as the long term interests of the company subjected to the bid may also influence the final decision.

**2.5 Foreign investment restrictions**

Foreign investments in Denmark are governed by the Danish Investment Screening Act and customary anti-trust approvals.

'Foreign direct investments' are defined as gaining control or significant influence over a company or entity domiciled in Denmark by direct or indirect possession of or control over the shares or voting rights in the company or equivalent control by other means, including the purchase of assets and long-term loans. Foreign direct investments include investment in a new company being established in Denmark in a particularly sensitive sector, where similar control or significant influence is achieved.

Control or influence gained from an investment can be direct or indirect, i.e. control can be exercised through other companies and through several countries, known as 'ownership chains'.

The Act covers not only the acquisition of shareholdings or voting rights in a company or entity, but also if similar control is achieved by other means. i.e. if, in other ways than by acquiring voting rights, similar control or significant influence is achieved, e.g. by agreement-based control and influence, by purchasing assets in the Danish company or by long-term loans.

Foreign investors must apply for authorization from the Danish Business Authority if they intend to directly or indirectly acquire at least 10% of the shareholdings or voting rights in a company or entity domiciled in Denmark, and the Danish company or entity belongs to particularly sensitive sectors in relation to national security or public order.

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