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Denmark

Mergers & Acquisitions

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Denmark.

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Denmark: Mergers & Acquisitions

1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

There is no act specifically governing M&A transactions in Denmark, but the following key rules/laws are relevant to M&A activities conducted in Denmark:

- The Companies Act ("Selskabsloven")
  - This act applies to all public limited companies ("A/S") and private limited companies ("ApS") domiciled in Denmark, and it includes regulation on formation, incorporation, share capital (the minimum share capital for an ApS has been reduced to DKK 20,000 in February 2025), shareholder involvement and management.
- The Contract Act ("Aftaleloven") and the Sale of Goods Act ("Købeloven")
  - These acts form the legal framework for the formation of contracts respectively the purchase of goods which are often pivotal elements of a Danish M&A process.
- The Annual Accounts Act ("Årsregnskabsloven")
  - The act provides detailed rules on the financial reporting by Danish companies and enterprises.
- Danish Act on Transfers of Undertakings ("Virksomhedsoverdragelsesloven")
  - The act regards the rights of employees in an asset-based business transfer.

Danish M&A transaction agreements have traditionally been more simple and brief than those found in the Anglo contractual tradition. This relates to Danish law providing complementary legal rules and principles for equitable interpretation which in the perspective of a Danish lawyers renders less need for explicit regulation of all eventualities. However, over the years a custom of more extensive contract bodies custom has developed in Danish M&A, undoubtfully driven by the participance of international parties in the Danish transactions, and today Danish M&A documentation is much aligned with custom.

Listed companies are regulated by the Capital Markets Act, the Danish Takeover Order (both implementing the Takeover Directive) and the Danish Recommendations for Corporate Governance as well as the stock exchange regulations issued by Nasdaq (Copenhagen and First North Growth Market).

Further, the listed companies are regulated by other EU regulation and applicable Danish incorporation hereof, including:

- The Prospectus Regulation
- The Transparency Directive
- MiFID II
- Regulation on markets in financial instruments (MiFIR)
- The Market Abuse Regulation (the "MAR")

Other special legislation may apply depending on the transaction, including:

- The Competition Act ("Konkurrenceloven")
- The Investment Screening Act – FDI ("Investeringsscreeningsloven")
- The Danish Merger Tax Act and the Danish Act on Capital Gains on Shares ("Fusionsskatteloven" og Aktieavancebeskatningsloven")

The key regulatory and supervisory authorities are the Danish Business Authority ("Erhvervsstyrelsen") and the Danish Financial Supervisory Authority ("Finanstilsynet"); the latter supervising the securities markets in Denmark.

The Danish Competition and Consumer Authority ("Konkurrence- og Forbrugerstyrelsen) is responsible for the supervision of the Competition Act, including merger control and antitrust.

2. What is the current state of the market?

In the fourth quarter of 2024 the Danish mergers and acquisitions (M&A) market experienced a notable surge with 232 transactions announced – an 8% increase from the previous quarter – and an impressive 86% rise compared to the same period in 2023. This growth was predominantly driven by domestic deals, while cross-border transactions remained stable.

The key drivers behind such surge was the sustained robustness of the Danish economy, which has provided a solid foundation for deal-making activities. Furthermore, we have seen a five-year peak of deals in the real estate, hospitality and construction sector with 33 deals in Q4 2024, up from 11 in the previous quarter. This surge may also be attributed to continued low interest rates through most of the year, enhancing investment appeal in these

industries.

Notable Transactions of 2024 were:

- Novo Holdings A/S's Acquisition of Catalent Inc.: In a landmark deal, Novo Holdings A/S acquired Catalent Inc for €16.1 billion, marking one of the largest transactions of the year.
- DSV A/S's Purchase of Schenker AG: DSV A/S expanded its logistics footprint by acquiring Schenker AG for €14.3 billion.
- Novo Nordisk A/S's Acquisition of Catalent's Fill-Finish Sites: Novo Nordisk A/S further strengthened its production capabilities by purchasing three fill-finish sites from Catalent Inc. for €10.2 billion.

Overall, the Danish M&A landscape in 2024 has demonstrated resilience and has, with significant contributions from various sectors and supportive regulatory developments, created a fertile environment for continued growth.

3. Which market sectors have been particularly active recently?

In Denmark with its tradition within life science and pharma, the activity in this sector has not surprisingly been high in 2024 with more than 10 % of all M&A transactions in falling within this sector. Additionally, three of the largest deals in Denmark in 2024 were conducted by Novo Nordisk A/S/Novo Holdings A/S, H Lundbeck A/S and Genmab A/S.

However, the largest sectors throughout 2024 in deal volume were technology, media & telecommunications and engineering & industrial products.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

In 2024 the Danish economy experienced solid growth, with inflation under control, record high employment and a balance of payments surplus. This provides a solid foundation for the coming years, and it is expected that the strong purchasing power of Danes will lead to increased growth for Danish companies.

However, there is a risk that geopolitical uncertainty at a global or regional level may affect M&A activity over the coming years. In particular, Russia's war against Ukraine and the increased attention in Greenland means that there is a strong focus on the security issues in Denmark. Defense spending is expected to increase by 1.5% of GDP and it is not yet clear how those investments will be financed. In addition, a possible trade war between the EU and the US is likely to hit the Danish economy with noticeable effect.

We expect the tech-sector will continue to play a larger role in future M&A activities as digital transformation trend will drive consolidation in software, AI, and cybersecurity.

5. What are the key means of effecting the acquisition of a publicly traded company?

The key means of effecting the acquisition of a publicly traded company in Denmark is either by:

- A voluntary takeover bid
  - Occurs when a buyer willingly makes an offer to acquire all or up to 33 % of the voting securities issued by the target company. It is uncommon for a bid to be made for less than all the shares; or
- A mandatory takeover bid
  - Is required when a buyer gains controlling interest in a company, typically by acquiring more than 33 % of the voting rights in the target company.

Voluntary public takeover bid

The buyer has the possibility to make a takeover bid containing certain conditions. Three conditions must however be beyond the buyer's control. Hence, they may include merger control clearance, a minimum acceptance threshold (typically 90%), a recommendation from the board of directors, shareholder approval for amendments to the target company's articles of association (such as removing defensive measures or voting restrictions) and a material adverse change condition. Conditions relating to financing are typically not accepted.

The consideration may be paid in cash, securities in kind, or a combination of these. All shareholders must receive equal treatment regarding the offered consideration, except in cases where exemptions are granted by the Danish FSA.

Mandatory public takeover bid

A mandatory takeover bid is triggered as soon as a person or group of persons acting in concert (or persons acting for their account) as a result of an acquisition of voting securities, directly or indirectly, holds more than 33 % of the (actual outstanding) voting securities of the target company. The mandatory takeover bid must be unconditional. However, instead of making a mandatory

bid, the buyer may make a voluntary bid. The Danish FSA has prior granted exceptions from the mandatory public takeover bid obligation (e.g. in case of no change of real control, or a third party exercises control over the target company in which the party holds more than 33 % etc.).

In Denmark public takeovers are governed by the Danish Capital Markets Act and the Danish Takeover Order for targets listed in a regulated market. The rules on takeover bids do not apply to companies that have shares admitted to trading on a multilateral trading facility "MTF" (in Denmark: Nasdaq First North Growth Market), cf. section 1(6) of the Capital Markets Act.

6. What information relating to a target company is publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

Every Danish company must be incorporated through the central Danish business registration system at Virk.dk and is thereby registered in The Central Business Register (CVR) managed by the Danish Business Authority. In CVR basic information about the company is registered, including name, address, commercial purpose, financial year, registered capital, signing authority rules, management and auditor. Previous registrations are stored in a registration history, including changes to articles of association, capital and former management members. In addition, anyone can access annual accounts and other documents, including articles of association, against payment of an insignificant fee.

Information about ownership of Danish companies is also available in CVR. See further under question no. 15 below.

All companies (including listed companies) are obligated to publish their annual reports through CVR.

CVR is publicly available for everyone at cvr.dk.

Certain information about the company's assets may for instance be found in the Land Register (Tingbogen – tinglysning.dk), where anyone can access information about pledges and encumbrances issued by the company, at the Public Information Server (Den Offentlige Informationsserver – ois.dk) from where anyone has access to search information about properties and in the Danish Patent and Trademark Offices database (www.dkpto.org/search-databases) where information on all patents issued in Denmark are available.

For listed companies every convening notice for a general meeting and the minutes from such meetings shall be publicly available on the Company's website. The internal procedures must also be published, e.g., the rules of procedures for the board of directors, and remuneration policy as well as information on its shares. Further, a listed company must make public inside information which directly concerns the company in accordance with item 16 of the Market Abuse Regulation.

A target company in a transaction process is not required to disclose diligence related information, but often the potential acquirer will demand access to information. See further under question no. 7 below.

A relevant limitation in disclosing information is when the buyer is a competitor. In such cases clean teams will be used so that only a limited group of representatives from the buyer's team will gain access to competitively sensitive information.

7. To what level of detail is due diligence customarily undertaken?

Due diligence investigations from the buyer's side are conducted in most private M&A transactions, and in bigger transactions a due diligence review is often also conducted on the seller's side (VDD).

Due diligence procedures are now in almost all cases facilitated through third-party online service providers.

The due diligence process and its reporting is increasingly coupled with the use of W&I insurance whereby the seller aims to cuts off liability for warranties. The W&I insurances are becoming increasingly popular, even in deals with deal value down to DKK 50m and below.

Due diligence is most often conducted as both commercial, financial and legal diligence. The legal due diligence comprises all legal aspects of the target's organisation and activities with review of all material agreements and other legal documentation.

Due diligence regarding compliance with GPDR has gained focus in recent years, especially in tech deals, and now we see developments in ESG-related due diligence reviews, particularly when capital funds and financial institutions are involved in the deal deriving from the regulation upon these institutions.

8. What are the key decision-making bodies within a target company and what approval rights

do shareholders have?

Private M&A

A Danish public limited company ("A/S") must have a board of directors (or more rarely a supervisory board) and an executive daily management (CEO), in a two-tier management structure where the board of directors engages the daily management.

A Danish private limited company ("ApS") can choose between either having a board of directors and an executive board or only an executive board (CEO).

The board of directors is able to sell target's assets in a business transfer with an independent third party and in principle without approval from the target's shareholders. The board of directors is, however, subject to management liability under the rules of the Danish Companies Act, and such important decisions will always be taken by including the shareholders.

The shareholders elect the members of the board of directors, ranging most often from 3-7 members, at the ordinary annual general meeting.

The board of directors does not have any authority in connection with a share transfer between shareholders or a share capital increase except is specifically provided in the articles of association. However, often the shareholders have granted the board of directors' authority to increase the share capital within certain limitations, e.g. period, share price, minimum/maximum of the share increase etc.

The ultimate decision-making body of a target company is the general meeting where every shareholder can attend and vote (if their shares have voting rights as is normally the case), thus, determining the management, share capital increase etc.

The table below provides an overview of the different rights and competences attached to different levels of shareholdings within a Danish company:

Shareholding	Rights
One (1) share	· The right to attend and vote at a general meeting. · The right to introduce additional items on the agenda of a general shareholders' meeting and to table draft resolutions for items on the agenda, by request to the board of directors prior to the issuance of the notice of a meeting. · The right to obtain a copy of the documentation submitted to general shareholders' meetings. · The right to submit questions to the directors and statutory auditors at general shareholders' meetings (orally at the meeting). · The right to request the nullity of decisions of general shareholders' meetings for irregularities as to form, process, or other reasons (as provided for in article 109 of the Danish Companies Act).
5% of the shares	· The right to request the board of directors to convene a general shareholders' meeting in public limited companies
10% of the shares	· The right to file derivative action against the directors on behalf of the company. · The right to block certain far-reaching decisions which require more than 90% majority according to the Companies Act (e.g. reduction of the rights to vote on the shares or reduction of the transferability of the shares).
25% of the shares	· The right to request a review ("granskning") of the company, including to check the company's books, financial records and acts of the company's corporate bodies, or to appoint a minority auditor who will take part in the statutory audit.
More than 1/3 (33,33) % of the shares (at a general shareholders' meeting)	The ability at a general meeting to block any changes to the articles of association. Substantial holding level which in listed companies requires the holder once the level is reached to announce the magnitude of the shareholding and within four weeks place a mandatory bid regarding the remaining shares.
More than 50% of the shares (at a general shareholders' meeting)	At a general meeting the majority can pass resolutions regarding most issues. However, some resolutions require two-thirds of the votes and the capital and some resolutions require 90% majority of votes and capital. When holding more than 50% of the votes, the shareholder has the ability to, among other things: · appoint and dismiss directors and approve the remuneration and, as relevant, severance package of directors; · approve remuneration policies for incentive schemes for the executive management; · appoint and dismiss statutory auditors and approve their remuneration; · approve the annual financial statements (including the remuneration report of the remuneration committee of the board of directors); and · approve payment of dividend.
At least 2/3 (66,67%) of the votes and capital	The ability to ensure that certain special resolutions are passed, e.g., directed share issues and to change the articles of association.
More than 90% of the votes and the shares held by a single shareholder	The possibility to force all other shareholders to sell their shares through a bid process (a "squeeze-out") and corresponding right for the minority shareholder to request a redemption of shares.

Danish law allows multiple classes of shares with different voting rights. One class of shares may even be

without any voting rights, alternatively, a class of shares may be entitled to e.g. 10 or 100 times the voting rights of another share class. Consequently, the number of shares does not always correspond to the voting power. It is not possible to issue shares without the right to attend and speak at the annual general meeting.

In privately held Danish SME companies the shareholders often enter into a shareholders' agreement to ensure their alignment of interests. Such shareholders' agreements most often contain certain veto rights, pre-emptive rights and condition of pre-approval for transfer of shares to third parties.

Public M&A

A publicly traded company must be formed as a public limited company (A/S) with a board of directors and an executive daily management (CEO).

The general meeting is the ultimate deciding body of a listed company. However, a transfer of shares in a listed company may not be not subject to the pre-approval of the board of directors nor the general meeting, ensuring that the shares are negotiable and transferable.

9. What are the duties of the directors and controlling shareholders of a target company?

In Denmark the public limited company ("A/S") has a two-tier management split between the non-executive board off directors and the daily management. In the private limited company ("ApS") the shareholders can chose between this two-tier system and a one tier system where all management is placed with managing director (-s).

Overall, the full management is responsible for safeguarding the interests of the company and its shareholders with due consideration for investors and other stakeholders, including creditors.

Specifically the Danish Companies Act provides that the board of directors shall be in charge of overall and strategic management and ensuring proper organization of the company's activities, including ensuring that:

- the bookkeeping and financial reporting procedures are satisfactory
- adequate risk management and internal control procedures have been established
- the board of directors receives adequate reporting about the company's financial position on a continuous basis
- the executive board performs its duties properly and according to the directions issued by the board of directors; and
- the financial resources of the company are adequate at all times

The executive management is in charge of the day-to-day management, including ensuring that the company's bookkeeping procedures comply with current legislation, that its assets are properly managed and insured, and that the financial resources of the company remain adequate at all times.

The controlling shareholders do not have any specific duties. However, reference is made to question no. 27 for a description of minority protection.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

Generally, Danish law does not require the employee approval of any M&A transaction.

In asset deals the employees are generally protected under the Danish Act on Transfer of Undertakings (implementing the Transfer of Undertakings Directive) providing consultation rights as well as a right and obligation to continue the employment at unaltered terms in the buyer's organization after closing. Similar applies to mergers where the employees are engaged in the discontinuing company.

Collaborative parties and other stakeholders also have no specific approval rights, unless a change of control provision is agreed upon in agreements. Such provisions are often handled as a closing condition in the transfer agreement.

11. To what degree is conditionality an accepted market feature on acquisitions?

In Danish law the parties are free introduce any condition for the consummation of the transaction which they agree upon, and such terms may be introduced at the interest and initiative of one party as they may be forced upon the parties from outside circumstances, and conditions are often tailored into the transactions, including:

- Approvals and third-party consents: Merger control clearance, FDI approvals and other permits from public authorities and third party consents to transfer of rights and obligations.
- Material adverse change condition: The buyer will typically require that the transaction is conditioned

upon no material adverse change in the business of the target having occurred between signing and closing.
- Satisfactory completion of due diligence: Often due diligence is completed before signing, but if not, the buyer will often request that a transaction is conditioned upon satisfactory completion of a due diligence process.

When embarking on the purchase of a listed company triggering the mandatory takeover bid, the buyer's bid will have to be unconditional.

In a voluntary takeover bid, the buyer is free to make the takeover bid subject to certain specified conditions which the buyer has control over, such as, e.g. merger control clearance, minimum acceptance level (typically 90%), the offer being recommended by the board of directors, resolutions by the general meeting in the target company approving amendments of the articles of association, including deletion of defensive measures, voting restrictions, or a material adverse change condition. Conditions relating to financing are typically not accepted.

12. What steps can an acquirer of a target company take to secure deal exclusivity?

Exclusivity agreements are the most common deal protection mechanism used by acquirers in connection with acquisitions of non-listed companies in Denmark. The acquirer will often push for such exclusivity in connection with the Letter of intent (LOI), whereas the shareholders of target might want an auction or broader sales process where exclusivity is pushed until the due diligence process or even further along in the process. However, we often see the exclusivity agreement entered early in the process as a requirement from the acquirer prior to the due diligence.

Exclusivity is often entered into between the acquirer, target and shareholders of target.

If the target is a listed company, the acquirer usually makes contact with the board of directors to ensure exclusivity for the period before the bid is made public. Exclusivity can also be agreed upon by the board of directors, shareholders of target and the acquirer.

Even if exclusivity stays in effect it does not prevent the possibility of a competing offer being made to the shareholders of the target which may bring them in a difficult situation.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

A distinction can be drawn between protection before and after closing of the deal.

Before closing, we occasionally see that parties as part of the Letter of Intent or otherwise introduce a break fee provision most often aiming to compensate a party for costs invested in the process in the event that the other party decide to pull out of the process without reasonable cause.

Danish law generally presupposes that the break fee is proportionate to the size of the transaction, and excessively high break fees may be seen as a penalty and may not be enforceable under Danish contract law.

Following closing the following protection and cost coverage mechanisms are common in transaction agreements:

- Indemnity provisions
  - Indemnity provisions are used to allocate risk between the parties. The seller agrees to compensate the acquirer for specific liabilities, breaches of representations or warranties, or other defined risks that may arise after closing of the transaction.
- Escrow Agreements/deposit
  - A portion of the purchase price is held in a separate account for a specific period post-closing to cover potential liabilities, indemnities, or disputes arising after the completion of the transaction
- Earn-Out Provisions
  - In Danish M&A deals, earn-outs are frequently used when there is uncertainty – or deviating opinions – regarding the target's future performance. The parties agree that a portion of the purchase price will be paid based on the achievement of certain future milestones or financial targets.

The specific mechanisms used obviously depend on the nature of the deal, the parties involved, and the negotiated terms.

14. Which forms of consideration are most commonly used?

The most commonly used form of consideration is cash payment.

The cash payment is often combined with a deposit of part of the purchase price, escrow agreement and/or earn out clauses, cf. question 13, and could also include consideration shares, occasionally taking the form of reinvestment programs. Also, long-term service or consultancy agreements with the seller with the target may be part of the transaction, but mandatory Danish law prescribes that such agreements shall be provided at arms' length since it is prohibited for the target to carry the purchase price, or part hereof, in share-based deals.

For public listed companies with a mandatory takeover bid, the contribution must be in cash, however, it is possible to offer alternative forms of consideration (e.g., stocks in the bidder), provided that an option to receive the total offer price in cash is made available and that this option is at least as favorable as the alternative settlement.

In a voluntary takeover bid, the buyer is in principle free to determine the form of consideration offered to the target shareholders, cash or shares or other contribution in kind, or a combination thereof. However, all shareholders must have equal rights to any form of consideration, subject to exceptions granted by the Danish FSA.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

Private M&A

In Denmark, all companies must public disclose information regarding both beneficial and legal owners in The Central Business Register (CVR) managed by the Danish Business Authority.

A beneficial owner is a natural person who either directly or indirectly controls a company. As a main rule, a natural person who owns or controls more than 25 % of the shares or voting rights of the company is considered beneficial owner. If the company has no beneficial owners, the daily management is inserted as beneficial owners in CVR.

Based on court cases from the European Court of Justice (2022) and changes made of the EU AML directives (2024), the Danish government has proposed (March 2025) changes to the Danish AML Acti which will significantly reduce the public access to information on beneficial owners as such insight will be confined to the public authorities and officials exercising AML control.

A legal owner is a natural or a legal person who owns or controls more than 5 % of the shares or voting rights of the company.

The following information is published in CVR:

- Name
- Address
- Information on ownership and voting rights in predefined intervals

Further, the company is obligated to register nationality, identity number and to upload a copy of passport or ID card for individuals without a Danish CPR number or business registration certificate for foreign companies.

Public M&A

Listed companies are considered not to have any beneficial owners regardless of ownership share.

For listed companies, there is a requirement to disclose of any significant shareholdings (the so-called 'transparency rules'), the rules are regulated in the Capital Markets Act and the Danish Companies Act.

A shareholder will be obliged to announce its stake if the voting rights attached thereto have passed an applicable disclosure threshold. The relevant disclosure thresholds are 5%, multiples of 5% up to 25%, 33 % and 50%, 66 % and 90% thereafter.

When determining whether a threshold has been passed, a potential acquirer must also take into account the voting securities held by the parties with whom it acts in concert or may be deemed to act in concert. These include affiliates or other specific arrangements.

Furthermore, it is required to notify and publicly disclose transactions by natural persons discharging managerial responsibilities and natural persons closely associated with them, if the total value exceeds 20,000 euros within a calendar year.

16. At what stage of negotiation is public disclosure required or customary?

Private M&A

It is neither required nor customary to public disclose negotiations in relation to a transaction.

The parties often jointly choose to announce the completion of the transaction after closing. The change in ownership is published in CVR, cf. question 15.

Public M&A

According to the MAR (EU Market Abuse Regulation), a publicly traded company is subject to the disclosure requirement of inside information, and the board of directors of Danish companies must ensure compliance with MAR and the regulations ensuring transparency.

A Danish listed company has the obligation to immediately disclose to the public any inside information that relates to it including all material changes in information that has already been disclosed to the public.

"Inside information" means information of a precise nature which has not been made public, relating directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

Information shall be deemed to be of a "precise nature" if it specifies a set of circumstances which already exists or is reasonably expected to come into existence or an event which has occurred or may reasonably be expected to do so and if the information is as specific as to enable a conclusion to be drawn as to the possible effect of that set of circumstances or events on the prices of financial instruments or related derivative financial instruments.

Information which, if it were made public, "would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments" has the meaning as information which a reasonable investor would be likely to use as part of the basis of their investment decisions.

It is up to the target company to determine if certain information qualifies as "inside information". In many events, this will be a difficult exercise for the target company.

The public disclosure of inside information may under certain circumstances be delayed according to MAR.

The facts surrounding the preparation of a public takeover bid would in most cases constitute inside information. If so, the target company may be obliged to announce this. However, the board of the target company can delay the announcement for a limited period of time, if a disclosure would not be in the legitimate interest of the company, in accordance with article 17.4 of the MAR. For instance, this could be the case if the target's board believes that an early disclosure would prejudice the negotiation of a bid. A delay of the announcement, however, is only permitted to the extent that the non-disclosure does not entail the risk of the public being misled, and that the company can keep the relevant information secured and confidential. In case of rumors or leaks, an obligation to disclose information may be imposed by MAR, listing rules or by a decision from the Danish FSA.

17. Is there any maximum time period for negotiations or due diligence?

Under Danish law, there is no regulation of the time period for negotiation or due diligence.

Hence, the time period for negotiation and due diligence depends on the transaction, and the parties are free to contractually agree on this.

18. Is there any maximum time period between announcement of a transaction and completion of a transaction?

Under Danish law there is no regulation of the time period between announcement of a transaction and completion of a transaction.

It is therefore up to the transactional parties to agree upon a timeframe for the transaction.

19. Are there any circumstances where a minimum price may be set for the shares in a target company?

Private M&A

Under Danish law the parties are free to negotiate and agree upon the price, including the nature of the consideration.

Public M&A

Under the takeover rules the buyer is generally free to choose the form of consideration offered to target shareholders, which may include cash, possibly combined with shares, see question 14.

If the consideration is paid in cash, the buyer can determine the price, provided that any price paid by the buyer within six months before or after the bid is reflected in the offer price.

In terms of the price offered and the form of the consideration, the same rules apply as in case of a voluntary takeover bid, with the following amendments:

- the price must be equal or higher to the price paid by the bidder for any shares within a period of six months before or after the bid, or the weighted average trading price for securities of the target company which have been settled in shares;
- the consideration offered can consist of cash, securities or a combination of both. However, a cash alternative must be offered; and
- the Danish FSA may allow exceptions from the rules on consideration.

20. Is it possible for target companies to provide financial assistance?

According to Danish Companies Act a company may not, directly nor indirectly, advance funds, grant loans or provide security for a third part's acquisition of shares of the company or its parent.

However, if the receiving party is credit rated, the financial assistance is approved by the general meeting on the basis of a written report submitted by the central management body, and arm's length terms are met, the company may provide financial assistance as long as the financial assistance does not exceed what is financially sound and goes beyond the funds available for distribution of dividend.

Because the rules are very restrictive, we often see that sellers distribute liquid free reserves available as dividends pre-acquisition instead of the target providing financial assistance. However, we also see that target make such distribution after closing to reduce the debt burden of the purchaser, as this is not regarded as a violation of the Danish prohibition against financial assistance.

21. Which governing law is customarily used on acquisitions?

In most acquisitions with a Danish company as target, the governing law is Danish.

However, there is no legal impediment to introducing foreign choice of law in Danish transaction and in some rare situations where the matter as a whole has strong connection to another jurisdiction, the parties agree that foreign law shall apply.

It is custom to agree that any dispute relating to a Danish transaction shall be settled by arbitration by the Danish Institute of Arbitration situated in Copenhagen (www.voldgiftsinstituttet.dk/en). However, we do see that the ordinary Danish courts or a dedicated branch hereof, e.g. the Danish Maritime and Commercial Court in Copenhagen enjoying special expertise with trade and commerce, is appointed.

22. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

If the buyer in connection with the acquisition of a listed company makes a public takeover bid, the buyer (offeror) must notify the regulated market on which the target company's shares are admitted to trading, cf. the Capital Markets Act and the Takeover Order.

The offeror must then announce the bid to make sure that all operators on the market have the same knowledge, and the announcement must contain all information relevant to making a proper assessment of the share price.

Within four weeks from the announcement, the bidder must file an offer document with the Danish FSA to provide material that enables the shareholders to make an informed assessment of the terms of the offer. The offer document must be in Danish.

The Danish FSA usually reviews the offer document within 10 business days. As soon as the approved offer document is published, the acceptance period can begin.

23. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

According to Danish company law, the central management body must establish and continuously update a register of all shareholders (in Danish: ejerbog) containing information of the shareholder's aggregate shareholding, the name and address, the date of acquisition, disposal or creation and the voting rights attaching to the shares.

The registration of a transfer of shares in the shareholder register serves as the formal registration of the transfer and it is the buyers' documentation that the transfer has been completed.

In addition, the change in ownership must be registered with the Danish Business Authority within 14 days from the share transfer, cf. question 15. In connection with the registration.

There is no stamp duty nor transfer taxes in Denmark.

24. Are hostile acquisitions a common feature?

Hostile acquisitions are relatively rare in Denmark compared to other markets like the U.S.

Many listed Danish companies have controlling shareholders, dual-class share structures, or foundation ownership models, which can act as barriers to hostile acquisition Several Danish companies have implemented measures against hostile takeovers in their articles of association, including limitations on voting rights, a voting ceiling and division of the company's shares into classes, typically into a class of unlisted shares with the majority of the voting rights and a listed class of shares with minimum voting rights. As a result, hostile takeovers are not frequently experienced in Denmark.

Further, Denmark has protective regulatory frameworks that make hostile takeovers difficult. The Danish Companies Act provides that shareholders representing at least two-thirds of both votes and capital may at a general meeting adopt a resolution suspending all special rights or restrictions associated with a shareholding or specific shares if a public takeover bid is submitted to the company. This 'break-through' rule, which is based on the Takeover Directive, only applies to special rights or restrictions established after 31 March 2004. Furthermore, such suspension may be restricted only to a public tender offer submitted by a company within the European Union or EEA.

25. What protections do directors of a target company have against a hostile approach?

In Denmark, directors of a target company have several means of protection against a hostile takeover, supported by the provisions in the **Danish Companies Act** and the **Danish Capital Markets Act**, which incorporates EU regulations and as the Takeover Directive.

Several Danish companies have implemented measures against hostile takeovers in their articles of association, including limitations on voting rights, a voting ceiling and division of the company's shares into classes, typically into a class of unlisted shares with the majority of the voting rights and a listed class of shares with minimum voting rights. However, the Danish Companies Act provides that shareholders representing at least two-thirds of both votes and capital may at a general meeting adopt a resolution suspending all special rights or restrictions associated with a shareholding or specific shares if a public takeover bid is submitted to the company. This 'break-through' rule, which is based on the Takeover Directive, only applies to special rights or restrictions established after 31 March 2004. Furthermore, such suspension may be restricted only to a public tender offer submitted by a company within the European Union or EEA.

When a voluntary takeover bid is made, the board of directors must weigh the interests of the shareholders against other relevant interests, including the interests of the target itself (if contrary to the shareholders), the target's creditors and the employees. However, the shareholders' interests will take priority in most situations. Measures available for the board of directors include refusal to have due diligence carried out by the bidder, a recommendation to the shareholders to refuse the submitted tender offer, determining the possibility of a more favourable competing bid, and so on.

The board of directors of a Danish target company may also decide to actively defend against the takeover by the use (or initiation) of a capital increase directed at friendly third parties, conducting merger negotiations with third parties and other variations of poison pills.

However, these measures must be carefully considered as the members of the board of directors risk incurring liability if not acting in the best interests of the target. It is generally advisable (and in accordance with the Danish Corporate Governance Recommendations) to involve shareholders in such actions. Further, under the Danish Companies Act, shareholders representing at least two-thirds of both votes and capital may at a general meeting resolve to introduce a procedure whereby the board of directors must obtain the approval of the general meeting before taking any actions that may hinder or frustrate a takeover bid, other than resolving to seek alternative bids.

26. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

A takeover offer is triggered when as a person or group of persons acting together as a result of an acquisition of shares, directly or indirectly holds more than 33 % of the (actual outstanding) voting rights of the target. However, instead of making a mandatory bid, the offeror may make a voluntary bid.

The Danish FSA may grant exceptions from the mandatory public takeover bid obligation and has granted exceptions in certain circumstances, including i) when the stake is acquired in connection with an issue in kind, ii) where the third party is being paid shares in the target company as consideration when the target company is making an acquisition and iii) when the stake is acquired

from an affiliate and no real change of control takes place;

27. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

Under the Danish Companies Act, the minority shareholders are offered protection through various mechanisms.

Every shareholder is protected by the principal of equal rights in accordance with the Danish Companies Act where all shares (except in the event of division of the company's shares into classes) carry equal rights, and the general provision principal reflected in the Danish Companies Act where the general meeting cannot pass resolutions which are clearly likely to provide shareholders amongst others with an undue advantage over the other shareholders of the company.

Furthermore, a shareholder of a company is granted certain individual rights, including:

- Attending general meetings,
- Speaking at general meetings,
- Having a specific issue included on the agenda for the annual general meeting,
- Requesting the supreme management body to disclose information available on all matters of importance to the assessment of the proposed resolutions at the general meeting,
- Voting rights, etc.

Reference is made to question 8 for a more detailed description of the shareholders' rights.

In addition to the mentioned rights, shareholders are also granted "negative" protection rights, e.g., the right to refuse an increase of the shareholders' obligations towards the company, e.g. taking on liability or injecting further capital into the company, as all shareholders must agree to such proposals.

Resolutions to amend the articles of association must be passed by at least two-thirds of the votes cast as well as at least two-thirds of the share capital represented at the general meeting.

However, some more wide-reaching reductions and restrictions on shares or shareholders' rights must be passed by at least 9/10 of the votes cast at the general meeting as well as at least 9/10 of the share capital represented at the general meeting. They include decisions on shareholders' rights to dividend, distribution of funds, subscription of shares at a favorable price, transferability of the shares, voting rights, etc.

Other minority shareholder protection rights are according to the Danish Companies Act:

- The shareholder's right to request the convening of a general meeting if the shareholder possesses 5% of the share capital.
- The right to elect a co-liquidator when holding at least 25% of the share capital
- Request to bring an order for the dissolution of the company before the court when holding at lease 1/10 of the share capital.
- Request that a decision on a merger shall be commenced on the general meeting when holding at least 5% of the share capital.

If a shareholder of the company individually holds more than 9/10 of the shares and a correspondingly votes, then each minority shareholder may demand redemption by that shareholder at a redemption price.

28. Is a mechanism available to compulsorily acquire minority stakes?

If the shareholder directly or indirectly holds more than 90% of the share capital with voting rights, the shareholder can force the other shareholders to sell their shares at a redemption price subject to review if challenged, or if it is a public takeover bid at the price offered in the takeover bid.

This type of squeeze-out procedure is subject to the rules and procedures in the Danish Companies Act. 70.

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