THE INTERNATIONAL CAPITAL MARKETS REVIEW

SEVENTH EDITION

Editor
Jeffrey Golden

THE LAWREVIEWS

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PREFACE

This book serves two purposes, one obvious, but the other possibly less so.

Quite obviously, and one reason for its continuing popularity, *The International Capital Markets Review* addresses the comparative law aspect of our readers' international capital markets (ICM) workload and equips them with a comparative law reference source. Globalisation and technological change mean that the transactional practice of a capital markets lawyer, wherever based, no longer enjoys the luxury, if ever it did, of focusing solely at home within the confines of a single jurisdiction. Globalisation means that fewer and fewer opportunities or challenges are truly local, and technology more and more permits a practitioner to tackle international issues.

Moreover, the client certainly may have multijurisdictional ambitions or, even if unintended, its activities often may risk multijurisdictional impact. In such cases, it would be a brave but possibly foolish counsel who assumed: 'The only law, regulation and jurisdiction that matter are my own!'

But actually the second purpose that this book aims to serve is, ironically, to equip its readers to do a better job as practitioners at home. In other words, reading the summaries of foreign lawyers, who can describe relevant foreign laws and practices, is perfectly consistent with and helpful when interpreting and giving advice about one's own law and practice.

As well as giving guidance for navigating a particular local, but, from the standpoint of the reader, foreign scene, the comparative perspectives presented by our authors present an agenda for thought, analysis and response about home jurisdiction laws and regulatory framework, thereby giving lawyers, in-house compliance officers, regulators, law students and law teachers also an opportunity to create a checklist of relevant considerations both in light of what is or may currently be required in their own jurisdiction but also as to where things there could or should best be headed (based on best practices of another jurisdiction) for the future.

Thus, an unfamiliar and still-changing legal jurisdiction abroad may raise awareness and stimulate discussion, which in turn may assist practitioners to revise concepts, practices and advice in our domestic as well as international work. Why is this so important? The simple answer is that it cannot be avoided in today's ICM practice. Just as importantly, an ICM practitioner's clients would not wish us to have a more blinkered perspective.

A week before writing this Preface, I had the honour of sharing the platform with a United Kingdom Supreme Court Justice, a distinguished Queen's Counsel and three American academics. Our topic was 'Comparative Law as an Appropriate Topic for Courts'. The others concentrated their remarks, as might have been expected, in the context of matters of constitutional law, and that gave rise to a spirited debate. I attempted to take some of the

more theoretical aspects of our discussion and ground them in the specific example of the capital markets, and particularly the over-the-counter derivatives market.

Activity in that market, I said, could be characterised as truly global. More to the point, I posited that, whereas you might get varied answers if you asked a country's citizens whether they considered it appropriate for a court to take account of the experiences of other jurisdictions when considering issues of constitutional law, in my view derivatives market participants would uniformly wish courts to at least be aware of and consider relevant financial market practice beyond their jurisdictional borders and comparative jurisprudence (especially from English and New York courts, which are most often called upon to adjudicate disputes about derivatives), even when traditional approaches to contract construction as between courts in different jurisdictions may have differed.

In such cases, with so much at stake given the volumes of financial market trading on standard terms and given the complexity and technicality of many of the products and the way in which they are traded and valued, there appears to me to be a growing interest in comparative law analysis and an almost insatiable appetite among judges to know at least how experienced courts have answered similar questions.

There is no reason to think that ICM practitioners are any differently situated in this regard or less in need of or less benefited by a comparative view when facing up to the often technical and complex problems confronting them than are judges. After all, it is only human nature to wish not to be embarrassed or disadvantaged by what you do not know.

Of course, it must be recognised that there is no substitute for actual exchanges of information between lawyers from different jurisdictions directly. Ours should be an interdependent professional world. A world of shared issues and challenges, such as those posed by market regulation. A world of instant communication. A world of legal practices less constrained by jurisdictional borders. In that sense and to that end, the directory of experts and their law firms in the Appendices to this book may help identify local counterparts in potentially relevant jurisdictions (one new jurisdiction, Thailand, having been added this year). And, in that case, hopefully a pre-read of this book's content may facilitate discussions with a relevant author.

In conclusion, let me add that our authors are indeed the heroes of the stories told in the pages that follow. My admiration of our contributing experts, as I wrote in the preface to the last edition, continues. It remains too a distinct privilege to serve as their editor, and once again I shall be glad if their collective effort proves helpful to our readers when facing the challenges of their ICM practices amidst the growing interdependence of our professional world.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
October 2017

Chapter 5

DENMARK

Peter Lyck and Brian Jørgensen[1]

I INTRODUCTION

i Structure of the law

The law governing the Danish capital markets is largely based on EU legislation. Accordingly, many Danish regulatory structures will be familiar to capital market practitioners in other EU Member States.

The primary legislation of the Danish capital markets is:

a the Securities Trading Act,[2] which, *inter alia*, regulates marketplaces, public takeovers and public offerings of securities, and the EU Regulation on Market Abuse;[3]

b the Financial Business Act,[4] which regulates financial businesses, including portfolio management;

c the Act on Investment Associations etc.,[5] which regulates the activities of Danish and foreign undertakings for the collective investment of transferable securities (UCITS); and

d the Act on Managers of Alternative Investment Funds,[6] which regulates managers of alternative investment funds as well as the marketing of alternative investment funds in Denmark.

A number of delegated acts (executive orders) issued pursuant to the foregoing acts are also key, including:

a the Small Prospectus Executive Order;[7]

b the Large Prospectus Executive Order,[8] which implements the EU Prospectus Directive;

c the Executive Order on the Threshold for Reporting of Securities Transactions;[9]

d the Executive Order on Major Shareholders;[10]

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1 Peter Lyck is a partner and Brian Jørgensen is a senior associate at Nielsen Nørager Law Firm LLP.

2 Consolidated Act No. 251 of 21 March 2017, as amended and to be replaced on 1 January 2018 by Act No. 650 of 8 June 2017 on capital markets.

3 Regulation (EU) No. 596/2014 on market abuse.

4 Consolidated Act No. 174 of 31 January 2017, as amended.

5 Consolidated Act No. 1051 of 25 August 2015, as amended, implementing the EU UCITS Directives.

6 Consolidated Act No. 1074 of 6 July 2016, as amended, implementing the EU Alternative Investment Fund Managers Directive.

7 Executive Order No. 811 of 1 July 2015.

8 Executive Order No. 1257 of 6 November 2015, as amended.

9 Executive Order No. 684 of 8 June 2016.

10 Executive Order No. 1256 of 4 November 2015.

e the Executive Order on Takeover Bids;[11] and
f the Executive Order on Conditions for Admission of Securities to Official Listing.[12]

ii Stock exchange regulation

In Denmark, securities can be admitted to trading and official listing on two marketplaces: NASDAQ Copenhagen A/S (Nasdaq Copenhagen) and NASDAQ First North Denmark (First North).[13] Nasdaq Copenhagen is a regulated market, whereas First North is an alternative marketplace (i.e., a multilateral trading facility). Thus, First North is not subject to EU regulations applicable to regulated markets (e.g., the rules in the Markets in Financial Instruments Directive (MiFID[14]) and the Transparency Directive[15]). Nasdaq Copenhagen is a separate legal entity incorporated under Danish law and a member of NASDAQ Nordic, which in turn is part of NASDAQ, Inc Group.

Nasdaq Copenhagen has adopted its own rule books, including rules for issuers of shares, bonds and other types of securities governing, *inter alia*, the requirements for admission to trading and official listing and disclosure requirements, supplementing the rules in the Securities Trading Act and the EU Regulation on Market Abuse (MAR).

iii Structure of the courts

The Danish court system is based on a three-tier hierarchy: the district courts; the two high courts (the Eastern High Court and the Western High Court) and the Maritime and Commercial Court; and the Supreme Court. Generally, any legal action must be brought before the competent district court as the court of first instance with an option to appeal to the relevant high court. However, legal proceedings involving matters of a principle nature may be referred to a high court in the first instance, and legal proceedings regarding certain commercial matters may be brought directly before the Maritime and Commercial Court seated in Copenhagen.

As an alternative to the traditional court system, the Danish Institute of Arbitration operates a permanent arbitration institution that assists in the resolution of national and international arbitrable disputes. Denmark is a contracting state to the New York Convention, and Danish arbitration awards are generally enforceable in other New York Convention contracting states.

iv Local agencies and the central bank

The Danish Financial Supervisory Authority (FSA) is a governmental agency and part of the Danish Ministry of Business and Growth. Its main tasks are to issue required licences, and to supervise compliance by financial undertakings, market places and its participants and issuers of securities as well as investors.

11 Executive Order No. 562 of 2 June 2014.
12 Executive Order No. 1069 of 9 September 2007.
13 In addition, an OTC list is operated by Københavns Andelskasse, being one of the smaller Danish financial institutions.
14 Directive 2004/39/EC on markets in financial instruments, as amended.
15 Directive 2013/50/EU on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

The Danish FSA also plays an important role in the legislation process as it both assists the Danish Ministry of Business and Growth with preparing draft bills to be presented to the Danish Parliament and has comprehensive delegated authority to issue executive orders, etc., supplementing the relevant financial or capital markets legislation.

Danmarks Nationalbank is the central bank of Denmark. Its three main objectives are to contribute to ensuring stable prices, safe payments and a stable financial system.

v Supervision and sanction

The supervisory powers of the Danish FSA are extensive. Not only is it responsible for the authorisation, supervision and conducting of on-site inspections of financial undertakings, its authority also includes the responsibility for monitoring compliance with the market abuse prohibitions (e.g., insider trading and price manipulation). Recently, the Danish FSA was empowered with the authority to conduct on-site inspections without a court order at the premises of legal entities subject to MAR obligations. The authority to approve prospectuses and offering circulars (for listings and public offerings of securities), and offer documents for public takeover bids, and to pursue possible non-compliance with such rules, is also vested in the Danish FSA.

In the event of possible violations, the Danish FSA may impose various sanctions on financial undertakings, issuers, investors and other stakeholders, including administrative fines and withdrawal of licences. The agency also has authority to order that executive managers or board members in financial institutions resign. Violations are also subject to criminal sanctions, which typically result in fines, but also imprisonment of up to six years.

The majority of alleged violations are handled and resolved by the Danish FSA, and only a few cases are appealed to and finally resolved by the ordinary courts. Decisions of the Danish FSA can be tried by the Danish Company Appeals Board, and the decisions of the Board can be appealed to the Danish courts.

The predominant court cases initiated by the public prosecutor have regarded alleged price manipulation. Recently, Vestjysk Bank, Parken Sport & Entertainment as well as Neurosearch were convicted, while Sparekassen Himmerland was acquitted.

In addition, Nasdaq Copenhagen supervises and imposes sanctions for violations of its rule book, and it is responsible for activities on its markets being conducted in an appropriate manner. Marketplace measures and sanctions include matching halt, placing securities on an observation list, issuing reprimands, imposing administrative fines of up to a maximum of 1 million Danish kroner and removal from listing.

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

Initial public offering (IPO) activity in recent years in the Danish capital markets is characterised by a relatively small number of transactions compared to the Nordic countries in general. However, except for a few cases, the IPOs that have taken place have been considerable in terms of market capitalisation compared to the Nordic countries in general.

Following a slow recovery in 2015 with the IPO of NNIT (a spin-off from Novo Nordisk) and the listing of Sparekassen Sjælland, the Danish market welcomed Scandinavian Tobacco Group, Nets and DONG Energy. While DONG is the largest (market capitalisation) IPO in the Nordic countries since 2000, NETS nine months after its listing and a poor post-IPO performance suddenly in the early summer confirmed takeover interest from

several potential bidders. KMD, Flying Tiger Copenhagen and Nykredit remain strong IPO candidates for the main market. The most significant market development, however, in 2017 has been the revival of First North of Nasdaq Copenhagen with the IPOs of Green Mobility and Conferize after some years with a perception amongst Danish small cap IPO prospects that only the Swedish stock market could provide strong investor appetite. Examples of Danish companies 'going abroad' are the IPO of Nordic Waterproofing on the main market of Nasdaq Stockholm and the listings of Lauritz.com, GomSpace and Saniona on First North of Nasdaq Stockholm. The successful IPOs on Nasdaq US of Forward Pharma in 2014 and Ascendis Pharma in 2015 have attracted some attention among companies within the pharma, biotech and fintech industries. Recently Zealand Pharma completed a US offering in conjunction with a dual listing on Nasdaq US.

A number of other capital market transactions were completed in Denmark at the end of 2016 and first half of 2017. Examples include the pre-emptive rights issues by the small cap issuers Admiral Capital and Brøndbyernes IF Fodbold, and the announced but yet not completed demerger of NKT into two separate listed companies (NKT and Nilfisk).

Adoption of new Capital Markets Act replacing the Securities Trading Act

On 30 May 2017, the parliament adopted the new Capital Markets Act, which replaces the existing Securities Trading Act when it enters into force on 3 January 2018. The new Act reflects a rewriting of the existing rules and serves also the purpose of implementing MiFID II and MiFIR; see also the Section below with the heading 'Reform of the Danish capital market regulation because of MAR, MiFID II and MiFIR'. From a practical point of view, the Act does not represent any significant changes to the existing rule of law, with the exception of the new prospectus regime that the new Prospective Order[16] introduces when it becomes effective (for the most part in July 2019). One important change, however, is the prospectus exemption having already entered into force on 20 July 2017, increasing the exemption threshold for admittance of new shares to listing from less than 10 per cent to less than 20 per cent, provided the issue is made in the same class of shares as the existing class. The same applies also for the related exemption on conversion of instruments into shares of same class as already listed.

Public takeovers

The Danish takeover regime consists of the Securities Trading Act and the Executive Order on Takeover Bids, which collectively implement parts of the EU Takeover Bids Directive.[17] In addition, the Danish FSA has issued supplementing guidelines.[18]

The increased public-to-private activity in 2015 and 2016 continued in 2017, with the voluntary public offers on Vestjysk Bank, Network Capital, Asgaard, Victoria Properties and the mandatory offers on Brøndbyernes IF Fodbold and Nordicom.

16 Regulation (EU) No. 1129/ 2017 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.

17 Directive 2004/25/EC on takeover bids.

18 Danish FSA Guidelines No. 9687 of 15 September 2014 on Takeover Bids.

Financial sector

Benchmarks

As of January 2018, the new EU regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds[19] will come into effect in Denmark and replace the existing Danish rules on benchmarks.[20] The objective of the new regulation is to ensure accuracy and integrity of benchmarks and the process for determination of benchmarks and prevent manipulation of benchmarks and distrust to the benchmarks. The new legal framework will, *inter alia*, comprise the prevailing Danish interest rate benchmarks, CIBOR and CITA, and impose new requirements on the administrators hereof and the benchmark contributors. Sanctions are available to the Danish regulator.

Packaged retail and insurance-based investment products (PRIIPS)

The PRIIPS Regulation[21] will apply in Denmark from 1 January 2018. The objective of the PRIIPS initiative is to improve the protection of retail investors within financial services. The PRIIPS Regulation and the elaborating level 2 measures set out information to be provided to retail investors with respect to investment products to ensure that the retail investor's purchase of the investment product is made after having had access to clear and reliable information on the investment product. The PRIIPS Regulation applies to banks, insurance companies and management companies, alternative investment fund managers, bond issuers and other service providers producing and offering PRIIPS products to retail investors. The service provider is required to prepare a key information document (KID) on each product. The KID provides information on the key characteristics of the investment product, including risks and costs. The document must also specify if the product can incur losses and information on the complexity of the product. With respect to investment funds (UCITS), the PRIIPS Regulation includes a transitional provision according to which there is no need for investment funds to provide a KID under the PRIIPS Regulation on investment funds until the end of 2019.

The European Bank Union

It is still unclear whether Denmark, despite being outside the eurozone, will join the European Banking Union and thereby become part of the Single Resolution Mechanism, including the Single Resolution Fund. Earlier this year, the Danish government established an expert committee that will analyse certain aspects related to a potential participation in the European Banking Union. Based on the committee's analysis and recommendations, which are expected to be available during the course of 2019, the Danish government will decide on Denmark's accession to the Banking Union.

Reform of the Danish capital market regulation because of MAR, MiFID II and MiFIR

MiFID II's regulations of third-party payments have been implemented in Danish law with effect as of 1 July 2017.[22] The remaining parts of MiFID II are being implemented

19 Regulation (EU) No. 1011/2016.

20 Executive Order No. 1299/2013.

21 Regulation (EU) No. 1286/2014.

22 Act No. 632 of 8 June 2016.

in Danish law via a new Capital Markets Act[23] and via certain amendments to the existing Financial Business Act and Financial Advisers Act,[24] each of which will become effective on 3 January 2018.

The new Capital Markets Act replaces the existing Danish Securities Trading Act in its entirety and incorporates the parts of MiFID II and MiFIR aimed at increasing investor trade transparency, strengthening the consumer protection level and improving competition between the players on the capital markets. The amendments to the Financial Business Act and Financial Advisers Act incorporate those parts of MiFID II that are regulated in these acts because of the existing implementation in Danish law of MiFID I.

Further, a number of executive orders are currently being prepared in relation to the new legal framework that will become effective on 3 January 2018.

The EU Market Abuse Regulation

3 July 2017 was the one-year anniversary of the entering into force of MAR, the EU market abuse Regulation being directly and immediately applicable in all of the EU Member States, unifying and aligning all Member States' approach to market abuse and disclosure obligations. MAR implies, *inter alia*, in a Danish securities law context that:

a a new disclosure regime is introduced resulting, *inter alia*, in the abolishment of the doctrine of reality that was laid down in administrative and judicial precedents, and the introduction of certain compliance measures to be taken in relation to deferred disclosures;

b the existing rules on reporting obligations for certain insiders (board members, executives and certain other employees at executive levels) and their related parties are expanded both in terms of transaction types and in terms of types of securities. MAR allows for the Member States to increase the threshold for reportable transactions from €5,000 to €20,000 and the Danish FSA has set the threshold to the maximum (€20,000);

c the former requirements for issuers to adopt internal rules (governing, e.g., insiders' and the issuers' trading in the issuers' securities) have been replaced by the restrictions in MAR whereby certain insiders are prohibited from trading in any 30 calendar-day period preceding the release of a financial report. However, there is a widespread expectation among practitioners that many issuers will continue using internal rules as a governance measure;

d increased formal requirements on the keeping and maintenance of insider lists and on documentation of notification of insiders and related parties;

e all market abuse rules are now governed exclusively by MAR. MAR introduces as statutory exemptions from the market abuse rules a safe harbour regime for market soundings and a new safe harbour regime for share buy-back programmes replacing the former safe harbour regulation;[25] and

f rules governing whistleblowing systems.

23 See footnote 2.

24 Act No. 665 of 8 June 2017.

25 Regulation (EU) No. 2273/2003 implementing Directive 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments.

Generally, Danish issuers seem to have been well prepared for the new MAR regime. Primarily the larger issuers have established internal disclosure committees vested with powers to decide on inside information issues, comply with formalities on delay of disclosure and filing of reports thereon to the Danish FSA, etc. The general experience is that companies have increased the threshold for what constitutes inside information and have narrowed not only the group of permanent insiders but also the wider group of *ad hoc* insiders.

Crowdfunding

The use of crowdfunding continues to increase in Denmark as an alternative source of financing for start-ups. However, at present there are no indications that new or amended regulation will be introduced in relation to crowdfunding in Denmark.

UCITS – increased investor protection

Amendments to the Danish financial regulation – including, *inter alia*, the Financial Business Act and the Act on Investment Associations – implementing the UCITS V Directive[26] came into force in 2016. The UCITS V Directive aims to increase the level of protection already offered to investors in UCITS, and to improve investor confidence in UCITS by enhancing the rules on the responsibilities of depositaries and by introducing remuneration policy requirements for UCITS fund managers. The changes introduced by UCITS V include:

a a requirement to appoint only a single depositary for each UCITS;
b an exhaustive list of entities eligible to act as a depositary for UCITS;
c harmonisation of the duties of a depositary and specific safe-keeping requirements in respect of assets held in custody by the depositary;
d a strict liability regime making the depositary liable for the avoidable loss of a financial instrument held in custody;
e a requirement for UCITS management companies to adopt remuneration policies complying with certain remuneration and transparency principles; and
f harmonisation of administrative sanctions.

ii Developments affecting derivatives, securitisations and other structured products

Derivatives

There have not been any significant developments in Denmark in 2017 with respect to the Danish derivatives market. The main focus of financial institutions and counterparties has been to continue ensuring compliance with the applicable requirements of EMIR and the appurtenant regulatory technical standards, etc.

Securitisations

The Danish market for securitisations has not experienced any significant activity since the financial crisis, and is not expected to do so in the near future despite the fact that since January 2014, Danish banks have been able to establish refinancing registers for securitisation purposes by issuing securities backed by pools of loans and credits to enterprises. At the EU level, a result of the EU Commission's efforts to create a capital markets union was

26 Directive 2014/91/EU amending Directive 2009/65/EC on coordination of laws, etc. relating to UCITS, etc.

an agreement reached on 30 May 2017 between the Parliament, the Council and the Commission on a regulatory package including a prospective Commission regulation on securitisation aiming to revive the EU securitisation market.

iii Cases and dispute settlement

Very few capital markets-related disputes reach the ordinary courts as most disputes and complaints are dealt with in the administrative system. However, Pandora faced criminal charges for violations of the general disclosure obligation for listed companies in connection with a profit warning, and that was followed by civil actions from frustrated investors claiming damages. After conviction in the court of first instance, the appeal court reversed the judgment and acquitted Pandora in the criminal action. This is likely to result in the parallel civil actions being dropped.

In the aftermath of OW Bunker's bankruptcy in November 2014 following its IPO in March 2014, two legal proceedings have been filed in 2016 by institutional investors against the bankruptcy estate of OW Bunker, and the former management group and board of directors. In one of these two civil actions, Altor, the PE fund that brought OW Bunker to the stock market, has also been sued. This is novel, and will make this a landmark case likely to go through the appeal system and be finally resolved by the Supreme Court. In the late summer of 2017, institutional investors also took legal actions against the investment banks Morgan Stanley and Carnegie in their capacities as joint global coordinators. Furthermore, the bankruptcy estate has recently announced a funding and profit split arrangement with a hedge fund to commence legal action against Altor and OW Bunker's auditor, Deloitte.

Another dispute that has attracted substantial attention is the administrative appellate proceeding in the Company Appeals Board of the decision by Nasdaq Copenhagen to accommodate Mols-Linien's application for the delisting of its shares in the wake of Polaris, a Danish PE fund, completing a public takeover at an acceptance level of approximately 80 per cent. The appeal was made by a frustrated minority shareholder. On 15 August 2016, the Danish Company Appeals Board upheld the delisting decision by Nasdaq Copenhagen.

Finally, Novo Nordisk, having a dual listing on NYSE, has in 2017 become subject to class action litigation filed in the US by frustrated investors claiming damages alleging materially false and misleading earnings and forecasts and misrepresentions and concealing the true extent of the pricing pressures in the US market.

iv Relevant tax and insolvency law

Danish tax principles

The general rule is that corporations, irrespective of the ownership period, are exempt from tax on dividends and capital gains on shareholdings provided that the shareholding accounts for at least 10 per cent. Dividends received on shareholdings of less than 10 per cent in unaffiliated companies (portfolio shares) and capital gains on listed portfolio shares are subject to corporate income tax. However, only 70 per cent of dividends received on non-listed portfolio shares will be subject to corporate income tax. Capital gains on non-listed portfolio shares are exempt from taxation (exceptions and anti-avoidance rules apply). Dividends and capital gains on treasury shares are tax-exempt. Individuals are subject to tax on all dividends and capital gains on shareholdings.

For corporates, the tax on listed portfolio shares will be calculated and paid annually based on a mark-to-market principle, and taxation will take place on an accrual basis even if no shares have been disposed of and no gains or losses have been realised. In recent years, the corporate tax rate has gradually been lowered and is 22 per cent in 2017.

Individuals calculate their tax on all shares based on a realisation principle (exceptions apply). The tax rate for capital gains on shares and dividends is progressive and taxed at a rate of 27 per cent on the first 51,700 Danish kroner (for cohabiting spouses, a total of 103,400 Danish kroner), and at a rate of 42 per cent on share income exceeding 51,700 Danish kroner (for cohabiting spouses, over 103,400 Danish kroner) (2017 rates).

For all non-tax residents, capital gains on shareholdings remain tax-exempt irrespective of ownership percentage and ownership duration (certain anti-avoidance rules apply). Generally, foreign corporate shareholders are also exempt from tax on dividends if holding at least 10 per cent in a Danish company (exceptions and anti-avoidance rules apply). Dividends paid to foreign corporate shareholders holding less than 10 per cent, and dividends paid to individuals are subject to Danish withholding tax at a rate of 22 per cent. A request for a refund of Danish withholding tax may be made if the dividend receiving company is domiciled in a state with which Denmark has entered into a double taxation treaty.

As a main rule, corporate entities are subject to taxation on gains on ordinary claims, bonds, debt and financial debt contracts. Losses on such instruments are deductible in full. With respect to intra-group financing, losses on receivables and gains on debts are, however, as a general rule tax-exempt. Corporate entities may elect to calculate the liable taxes on debt using a realisation principle. A mark-to-market principle must be applied for ordinary claims.

Individual investors are as a main rule subject to taxation on all capital gains on ordinary claims, bonds, debt and financial debt contracts if the gains exceed 2,000 Danish kroner per year. Individual investors' right to deduct losses on ordinary claims is limited to losses exceeding 2,000 Danish kroner, whereas the right to deduct losses on financial contracts is limited to gains on other financial contracts with a possibility to carry a loss forward to be offset against gains in subsequent income years.

For individual investors, the tax will be calculated using a realisation principle as a main rule. The taxpayer may apply for permission to calculate the taxes on a mark-to-market principle (certain conditions apply).

At the end of August 2017, the Danish Government has launched a political initiative proposing new tax rules aiming at encouraging retail investment in start-up enterprises by introducing various tools to ease the taxation on equity investments including the introduction of an *aktiesparekonto* (share savings account) inspired by a Swedish model with a flat annual taxation on the mark-to-market year-end balance. The final outcome and possible adoption is subject to the customary political process and preparatory works.

Insolvency

The Bankruptcy Act[27] governs the two main types of insolvency proceedings: restructuring and bankruptcy. As part of Denmark's opt-outs to certain EU policies, Denmark is not bound by and has not acceded to the EU Insolvency Regulation. The Danish opt-out position was

27 Consolidated Act No. 11 of 6 January 2014, as amended.

reaffirmed by the Danish people in a referendum in December 2015. Denmark, however, has acceded to the Nordic Bankruptcy Convention, which implies that a bankruptcy in Sweden, Norway, Finland or Iceland will also govern a debtor's assets in Denmark.

v Role of exchanges, central counterparties (CCPs) and rating agencies

In addition to its primary function as an exchange, Nasdaq Copenhagen assumes many other roles of importance to the proper functioning and development of the capital markets. Some of the provisions of the Securities Trading Act provide either the marketplace with direct, however limited, powers, or allow the Danish FSA to delegate certain elements of its authority to a marketplace operator. With respect to market surveillance, there is in effect a duplication of functions, as both Nasdaq Copenhagen and the Danish FSA have sophisticated computerised market surveillance systems in place. Generally, Nasdaq Copenhagen and the Danish FSA also collaborate closely with regard to the legislation process.

Currently, no Danish entities are authorised as CCPs.

Denmark assumes no special position in respect of credit rating agencies. Such agencies can be registered or certified by the EBA as external credit assessment institutions, and, thus, conduct various valuation tasks for financial institutions as part of their compliance with the capital requirement legislation within the EU, such as the CRR (Capital Requirements Regulation[28]) and CRD IV (Capital Requirements Directive No. IV[29]) implementing the Basel III rules in the EU. International rating agencies continue to be a determinant factor for those of the larger Danish financial institutions, banks as well as credit mortgage institutions that make use of issuance of debt instruments, etc., as part of their funding.

vi Other strategic considerations

The tendency of small cap IPO candidates to look away from Denmark towards Swedish market places with generally higher IPO activity, in combination with pharma and biotech IPO candidates looking for primary listings in the US due to peer group and pricing considerations, has, over the past few years, raised a lot of strategic considerations among the exchanges, market participants and politicians trying to identify the reasons for such trends and to find appropriate remedies.

Following the bankruptcy of OW Bunker, and in particular the legal proceedings instigated against PE fund Altor, any PE fund is compelled to thoroughly consider whether an IPO is a relevant exit strategy in relation to each of its portfolio companies.

III OUTLOOK AND CONCLUSIONS

Despite the market uncertainty from the outcome of the US presidential election in December 2016, the continuation of terror attacks in Europe and the uncertainty surrounding the negotiations for the implementation of the Brexit referendum in the summer of 2016, the French presidential elections in 2017 and the continuation of quantitative easing and keeping interest rates low by ECB etc. provided the capital markets with some comfort. Generally,

28 Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms.

29 Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

2017 has been a strong year in the Danish capital market. Takeover bids have continued at same levels while IPO activity has declined but with a stronger IPO pipeline than seen in many years.

Appendix 1

ABOUT THE AUTHORS

PETER LYCK

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Peter Lyck is recognised as one of the leading legal capital market experts in Denmark with many years of practical experience with domestic as well as cross-border transactions. He has served on a number of committees, including a committee established by Nasdaq Copenhagen to analyse and propose means to facilitate more IPO activity in Denmark.

Peter was born in 1969 and qualified as a lawyer from the University of Copenhagen in 1993. He has studied at the Nordic Institute for Maritime Law in Oslo and holds a master's degree (LLM) from Georgetown University in Washington, DC. In the past, Peter was an equity partner in Bech-Bruun and Hannes Snellman.

His academic contributions include several articles, papers and other publications within his areas of expertise.

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Brian Jørgensen advises Danish and foreign clients on capital markets matters and mergers and acquisitions. Brian also advises on general shareholder matters, reorganisations of undertakings and establishment of joint ventures in Denmark and abroad. Furthermore, Brian Jørgensen provides advice on finance law, including the financing of acquisitions and other types of financing, and he advises Danish and foreign clients on general commercial law and has, *inter alia*, extensive experience with and knowledge of the healthcare industry in the Scandinavian countries.

Brian Jørgensen was born in 1979 and graduated from the University of Copenhagen in 2003. Brian also holds a master's degree (LLM) from the University of Sydney and has previously worked with Kromann Reumert (2003–2012) and Falck (2012–2015). Brian Jørgensen is a contributor to several legal publications within his field of practice.

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