ICLG

The International Comparative Legal Guide to:

Corporate Governance 2015

8th Edition

A practical cross-border insight into corporate governance

Published by Global Legal Group, with contributions from:

Afridi & Angell
Allens
Andreas Neocleous & Co LLC
Ashurst LLP
Astrea
Atlantik Legal Services
BEITEN BURKHARDT
Borenius Attorneys Ltd
bpv Hügel Rechtsanwälte OG
Cajigas Partners
Debarliev, Dameski & Kelesoska Attorneys at Law
Dryllerakis & Associates
Ferraiuoli LLC
Georgiev, Todorov & Co.
Hadiputranto, Hadinoto & Partners
Haiwen & Partners
Jenner & Block LLP
Koep & Partners
Lawson Lundell LLP
LEAD Consulting Law Firm
Lendvai Partners
Lenz & Staehelin
Lobo & Ibeas Advogados
McCann FitzGerald
Nielsen Nørager Law Firm LLP
Nishimura & Asahi
Portilla Ruy-Diaz y Aguilar, S.C.
WBW Weremczuk Bobel & Partners Attorneys at Law
WH Partners

GLG
Global Legal Group

GLG
Global Legal Group

Contributing Editors
Bruce Hanton & Vanessa Marrison, Ashurst LLP

Head of Business Development
Dror Levy

Sales Director
Florjan Osmani

Commercial Director
Antony Dine

Account Directors
Oliver Smith, Rory Smith

Senior Account Manager
Maria Lopez

Sales Support Manager
Toni Hayward

Sub Editor
Amy Hirst

Senior Editor
Suzie Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd.
June 2015

ISBN 978-1-910083-48-2
ISSN 1756-1035

Strategic Partners

MIX
Paper from responsible sources
FSC® C011748

Country Question and Answer Chapters:

Chapter 9

Denmark

Peter Lyck

Thomas Melchior Fischer

Nielsen Nørager Law Firm LLP

1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The relatively new Danish Companies Act adopted in 2009 (in Danish: *selskabsloven*) (the "Companies Act") facilitates four types of companies in which the shareholders' liability is limited to the capital contributed as payment for the shares: (i) the public limited company (in Danish "*aktieselskab*" or "*A/S*"); (ii) the private limited company (in Danish "*anpartsselskab*" or "*ApS*"); (iii) the limited partnership company (in Danish "*partnerselskab*" or "*P/S*"); and (iv) the new low-capital private limited company (in Danish "*iværksætterselskab*" or "*IVS*") which is mainly expected to be used by entrepreneurs. A new act adopted in 2014 introduces a new corporate form which facilitates a new employee investment company (in Danish: *medarbejderinvesteringsselskab* or "*MS*"), please refer to question 5.2 below.

Only Danish public limited companies, as opposed to e.g. private limited companies, are admitted to trading and official listing. In Denmark there are two existing Danish regulated markets; NASDAQ OMX Copenhagen *A/S* and GXG Markets *A/S*. In addition, securities may be traded on an alternative market place called NASDAQ OMX First North Denmark which is categorised as a multilateral trading facility and is not a regulated market.

Most trading of listed securities is effected through the main regulated market in Denmark being NASDAQ OMX Copenhagen *A/S* which is a part of NASDAQ OMX Group, Inc. This chapter focuses on public limited companies whose securities are admitted to trading and official listing on NASDAQ OMX Copenhagen *A/S*.

Unless otherwise stated, this chapter is not concerned with financial undertakings such as e.g. credit institutions, investment companies, insurance companies, etc.

1.2 What are the main legislative, regulatory and other corporate governance sources?

The key sources of corporate governance for Danish listed companies consist of a combination of legislation (acts and executive orders), corporate documents (e.g. the articles of association of a company), stock exchange regulation, codes/recommendations of a soft-law nature containing generally accepted best practices, and guidelines.

The Companies Act lays down the fundamental rules under which public and private limited companies operate in Denmark. Being a public limited company, a listed company is subject to the Companies Act. The Danish Financial Statements Act (in Danish: *årsregnskabsloven*) includes also certain provisions regarding corporate governance just as the Danish Act on Approved Auditors and Audit Firms does (in Danish: *revisorloven*) which deals specifically with auditors and the audit of financial accounts. The Danish Business Authority operates the Danish business register and is the authority supervising compliance with the Companies Act and the Auditors Act.

In addition, listed companies are subject to the Danish Securities Trading Act (in Danish: *værdipapirhandelsloven*). The Danish Financial Supervisory Authority (the "Danish FSA") is the competent authority monitoring compliance with the Danish Securities Trading Act.

The Danish Business Authority and the Danish FSA have under the authority of the said acts adopted a number of executive orders providing a more detailed regulation on specific matters. Generally, non-compliance with the legislation is subject to fines and/or reprimands and to some extent sanctions are published revealing the identity of the listed company in question.

The primary constitutional document is the articles of association (the "Articles") which prescribes the overarching rules applying to the company. The Articles are publicly available and can be requested from the Danish Business Authority. The Articles reflect the legal relationship between the shareholders (and the company) and include rules on for instance the company's corporate objective, its share capital and rights attached to the shares, the meetings of shareholders, the powers to bind the company, the duties of the board of directors and the management board, restrictions on share transfers, the company's financial year, and many other aspects relating to the governance – in its widest sense – of the company. The Articles are often concerned only with basic information required by law.

Public limited companies whose shares are listed on NASDAQ OMX Copenhagen *A/S* shall adhere to the terms and conditions for admission for listing as set out in the latest revised version of the NASDAQ OMX Copenhagen *A/S'* "Rules for issuers of shares" of 1 June 2013. NASDAQ OMX Copenhagen *A/S* supervises compliance with these rules and may in the event of non-compliance give the issuer a reprimand, a fine, decide to delete the issuer's securities from admittance to trading and/or publish any such sanction and the identity of the issuer. The Rules for issuers of shares include, *inter alia*, listing and disclosure requirements and implement the "comply or explain" principle whereby the issuer shall give a statement on how the company addresses the Danish Recommendations on Corporate Governance of May 2013 (updated as of November 2014) issued by the Committee on Corporate Governance. Under this principle, listed companies must either comply with the Recommendations

on Corporate Governance or explain why they do not comply with some or all of the recommendations. The developed practice by NASDAQ OMX Copenhagen *A/S* suggests that it is not sufficient to merely explain the reason for non-compliance as the company must also specify its different approach to the recommendation. The Danish Recommendations on Corporate Governance do not have legal force and are thus considered "soft law", however, the "comply or explain" principle is embedded in the Financial Statements Act requiring issuers to present a statement in its annual report or on its website concerning any given applicable code on corporate governance (i.e. in this context the Danish Recommendations on Corporate Governance).

The current set of Danish Recommendations on Corporate Governance accommodates certain criticism voiced by issuers on the need for simplification by reducing the number of recommendations from 79 to 47 compared to the previous Recommendations from 2011. Further, the Committee has emphasised focus on value creation, the framework for active ownership and development of the board of directors primarily by means of use of assessment procedures.

The Committee on Corporate Governance has prepared guidelines containing practices with respect to management committees, assessment of the board of directors, remuneration policies and incentive based remuneration.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

While having been in existence for some time, many aspects of the corporate governance debate in Denmark remain topical and important and focus, *inter alia*, on: (i) diversity and gender issues with respect to the composition of the board of directors as, e.g., traditionally there have been relatively few women on the boards of directors of Danish listed companies; (ii) independence of the board of directors; (iii) remuneration policy of the management board and the board of directors; (iv) the duties of the board of directors in connection with a public takeover bid; (v) the impact of corporate social responsibility; (vi) risk-taking with particular focus on remuneration as well as the board of directors' duties in insolvency situations; and (vii) shareholder activism e.g. in the form of increased participation in general meetings, including the increased number of shareholder proposals and statements at general meetings and the increased focus on associations formed by minority shareholders trying to voice their interests in the most efficient manner.

In particular, obligations and sufficient qualifications of and remuneration to members of the management board and the board of directors in the financial sector are subject to substantial interest and increased regulatory focus.

New legislation came into force with effect from 1 April 2013 aiming at equalising the gender composition at management levels by requiring that larger companies, including listed companies, should set specific targets and implement a policy in order to achieve a greater balance between men and women at management level. The new rules require the company to set target figures for the proportion of the underrepresented gender in the board of directors (no quota is imposed) and that a policy is drawn up to increase the proportion of the underrepresented gender in the other management levels. The affected companies must include a statement in their annual report for financial years starting 1 January 2013 describing the company's gender policy and reporting the target figures and current status. If the target figures have not been met, the company must provide an explanation.

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

Shareholders exercise their power of decision-making at the general meeting. Besides that, being a shareholder does not entail additional rights to make decisions regarding the company or to act on behalf of the company. The rights of the shareholders are protected, *inter alia*, through the general corporate law principles including equal treatment of all shareholders and the fiduciary duties of the board of directors and the management board.

A shareholder is entitled to attend and address the general meeting and to exercise voting rights on the shares, if any. In a public company whose shares are admitted to trading and are officially listed on a regulated market, the shareholder's right to attend the general meeting and the ability to vote shall, however, be determined based on the shareholding one week before the date of the general meeting (record date). In addition, the Articles may provide that shareholders are required to notify the company if they wish to attend the general meeting no later than three days before the date of the meeting.

2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

The shareholders do not have an obligation to promote the interest of the company. Thus, the shareholders are not obliged to attend the general meetings of the company and the shareholders do not have a duty to vote for or against specific proposals at such meetings. However, shareholders are liable for damages for any losses that the shareholders cause to the company, other shareholders or third parties through gross negligence or intentional behaviour or omissions.

Further, the shareholders can be instrumental in wrongful decisions being taken, if the shareholder, through its influence, ownership interest, voting rights or similar, has participated in deciding on proposals at the general meeting which the shareholder knows are incorrect or will cause the company to suffer a loss or give the shareholders an unjustified benefit.

Imposing liability on shareholders is a rare phenomenon under Danish law.

2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

The general meeting shall be convened and organised by the board of directors. If the board of directors fails to convene a general meeting required to be held by statute or by the Articles, such meeting must be convened by the Danish Business Authority upon request of a member of the company's board of directors, a shareholder or the auditor elected by the general meeting.

Any shareholder may attend a general meeting either electronically in case of an electronic meeting or physically in case of a physical meeting. Furthermore, any shareholder may vote by letter, email or other written instrument or attend by proxy to any person or to the board of directors.

The general meeting is omnipotent and may decide on any matter which is not explicitly made a prerogative of the board of directors. Matters reserved for the general meeting are amendments of the

Articles, election and removal of members of the board of directors and the company's auditor, remuneration of the members of the board of directors and approval of the annual report.

Any shareholder is entitled to address the general meeting, *cf.* question 2.1 above, and can request and is entitled to receive specific information on issues related to the annual accounts, the financial position of the company and items on the agenda, provided always that conveyance of such information is not liable to cause substantial damage to the company. If the information is not available at the general meeting, it must be made available to the shareholders (e.g. on the company's website) no later than two weeks thereafter.

Shareholders holding 5% of the share capital or such smaller fraction of the capital, if provided for in the Articles, can make a written request for an extraordinary general meeting to be held. An extraordinary general meeting to resolve specific issues must be convened within two weeks of receipt of such a request.

2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?

A public limited company is characterised by the fundamental principle that the shareholders are not personally liable for the acts and/or omissions of the company, and the liability of the shareholders is therefore limited to the amount invested in the company, i.e. the amount the shareholder has paid for its shares in subscription or purchase price, as the case may be.

While the applicability of piercing the corporate veil doctrine remains to be discussed in legal theory, the only express authority for holding a shareholder liable is a provision in the Companies Act whereby a shareholder is liable for damages suffered by the company, other shareholders or third parties if the shareholder intentionally or negligently has caused damage to the company and/or the shareholders, e.g., through the shareholder's participation by way of voting for an unlawful proposal at the general meeting.

If there is a risk of continued abuse by the damaging shareholder, the court may order the shareholder to sell its shares to the other shareholders or to the company or to redeem the shares of the other shareholders at a reasonable price which is to be fixed by taking the company's financial position and the circumstances of the case in to account.

2.5 Can shareholders be disenfranchised?

The rights attached to the shares held by an individual shareholder cannot be reduced without the consent of the shareholder. However, in a company having several share classes, the rights of an entire class of shares can be reduced by amending the Articles subject to certain voting majority requirements being observed.

If a shareholder holds more than 90% of the shares of a company and a corresponding proportion of the voting rights, such shareholder may compulsorily acquire the shares of all remaining shareholders (squeeze-out). The remaining shareholders shall in such case be required to transfer their shares to the majority shareholder within a period of four weeks. If the redemption price cannot be agreed upon, the redemption price must be determined by independent experts appointed by the court of the jurisdiction of the company's registered office.

If a single shareholder holds more than 90% of the share capital of the company and a corresponding share of the votes, each minority shareholder of the company may in such case demand to have its shares redeemed by the majority shareholder. Moreover, the Articles can contain provisions pursuant to which a shareholder can be required to have its shares to be redeemed.

2.6 Can shareholders seek enforcement action against members of the management body?

Shareholders or the company may bring enforcement action against members of the management board and the board of directors if these corporate bodies have breached their duties under the Companies Act or the Articles and/or if individual members, in the performance of their duties, have intentionally or negligently caused damage to the company and/or shareholders. Any resolution passed to the effect that the company should take legal action against its members of the management board and/or members of the board of directors must be passed by the general meeting.

2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

An investor's ability to invest in shares is not subject to any limitations under the Companies Act, and no rules exist which regulate the frequency with which a shareholder may build up a shareholding. However, the Articles may include provisions which generally limit ownership to the effect that no shareholder is allowed to hold more than a specific predetermined percentage of the share capital and/or voting rights or provisions to the effect that no matter how large a percentage of shares any shareholder possesses, the attached votes may only count for a certain predetermined percentage. Finally, certain governmental approval requirements in the Danish Financial Business Act apply to qualified holdings in Danish financial business undertakings.

Shares are freely transferable and non-redeemable, unless otherwise provided for by statute. The Articles may include restrictions on the transferability of registered shares, or provisions on their redemption.

Disclosure requirements under the Securities Trading Act apply to shareholders in a company having its securities admitted for trading and official listing on NASDAQ OMX Copenhagen *A/S* as they are under an obligation to notify the company and the Danish FSA of the shareholdings in the company when the holding of shares reaches or exceeds (i) 5% of the share capital's voting rights, or (ii) accounts for no less than 5% of the share capital. In addition, notification shall be made when the shareholding passes the thresholds of 10%, 15%, 20%, 25%, 50% and 90%, as well as one-third and two-thirds of the total outstanding share capital on the day of trading.

A new registration regime has recently been introduced in the Companies Act introducing a public register of shareholders (in Danish: *Det Offentlige Ejerregister*). The rules apply to both listed and non-listed companies. For listed companies this means that major shareholders most notify their holdings to the company and the company must record this in the public register. The reporting thresholds are by and large similar to those of the major shareholder disclosure requirement under the Securities Trading Act. The statutory obligation for a company to keep a (non-public) register of shareholders is not affected by these new rules.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The Companies Act sets out that Danish companies can adopt a governance structure where the company is either managed by (i) a board of directors being responsible for the overall and strategic management and which appoints a management board to be responsible for the day-to-day management of the company, or (ii) a

management board appointed by a supervisory board that monitors the management board. The latter structure with a supervisory board is rarely used in Denmark as most companies choose to be governed by a structure with a management board and a board of directors. A member of the management board must not be a member of the supervisory board.

In a company with a board of directors and a management board, the management board must consist of one or more individuals who may as well be members of the board of directors, or consist of persons who are not members of the board of directors. In order to ensure independence, the majority of the members of the board of directors of a public limited company must be members who are not members of the management board, and no member of the management board must be chairman or deputy chairman of the board of directors.

3.2 How are members of the management body appointed and removed?

The management board is appointed and dismissed by the board of directors and shall be composed of at least one member unless the Articles of the company provide for a larger number of members. Members of the management board (and the board of directors) must be registered as such with the Danish Business Authority.

The board of directors shall be comprised of no less than three members, and such board members are as a general rule elected by the shareholders at the general meeting, but special provisions of rights to appoint directors may also be found in Articles. A member of the board of directors may at any time resign.

Employees of companies may in certain cases be entitled to employee representation on the board of directors, *cf.* question 5.2 below.

3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

The Companies Act provides that members of the board of directors and management board may receive remuneration, both in the form of base pay and a performance related bonus. The amount of remuneration may not exceed what is considered ordinary given the nature and extent of the position, as well as what is considered financially reasonable and sound relative to the financial situation of the company.

The rights and obligations of the members of the management board are regulated in the individual terms of employment (i.e. the service contracts). Such service contracts are generally subject to the freedom of contract and regulate the employee's functions and duties, remuneration and bonus, termination, vacation rights and pension plan, etc.

Before a public company with shares admitted to trading and official listing on a regulated market can enter into a specific agreement for incentive-based remuneration for a member of the board of directors and/or management board, the shareholders must adopt general guidelines for such incentive-based remuneration at a general meeting.

The Danish FSA has issued an executive order on remuneration in the financial sector. In addition to certain disclosure obligations, the order covers rules on how salary to directors and management is composed between fixed and variable elements and securities based instruments.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Subject to a threshold of EUR 5,000 (on a 12-month basis), senior employees of public companies with shares admitted to trading and official listing on a regulated market are required to disclose to the Danish FSA their personal trading in securities of the company. Senior employees include members of the board of directors, management board or other supervisory corporate bodies of the company, as well as other high-ranking employees who have had access to inside or privileged information which directly or indirectly relates to the issuer, provided that the employee has the authority to make executive decisions of a superior nature regarding the company's future development.

Senior executives must immediately and not later than two days after a transaction notify the Danish FSA about the transaction.

The Securities Trading Act and NASDAQ OMX Copenhagen *A/S'* rules for issuers of shares set forth that listed companies shall adopt internal rules for trading in securities issued by the company for members of the board of directors, management board and other employees, whether the trading is executed for the member's own or third party's account. A copy of the internal rules shall be provided to NASDAQ OMX Copenhagen *A/S* and the Danish FSA upon request.

3.5 What is the process for meetings of members of the management body?

The Companies Act requires that the board of directors shall have a set of rules of procedure governing its function and duties. The chairman of the board of directors shall procure that the board convenes whenever necessary and in addition ensure that all members receive due notice of any meeting.

Any member of the board of directors or management board may request that a board meeting is held. Members of the management board (or the company's auditor) who are not members of the board of directors have the right to be present and to speak at meetings, unless the board in the specific situation decides otherwise.

The board of directors forms a quorum when more than half of the members are present, unless the Articles require a larger representation. The opinion of the majority shall normally constitute the decision of the board. In the event of a tie, the chairman of the board of directors shall have the casting vote.

Meetings of the board of directors are held in person, unless the board decides that members may participate by electronic means and such participation is compatible with the members carrying out their duties. Certain defined duties may be dealt with by written procedure if the decision to do so has been made in advance. However, any member of the board of directors or of the management board may demand an oral discussion.

3.6 What are the principal general legal duties and liabilities of members of the management body?

The board of directors is entrusted with the ultimate responsibility of the company as they have both the supervisory function of the management board and the overall strategic responsibility of the company. Thus, it is a primary function of the board of directors to determine the company's policies in relation to business strategy, organisation, accounting and finance, and the board of directors

undertakes such policies to ensure the observance of, *inter alia*: (i) bookkeeping and financial reporting; (ii) risk management and internal control; (iii) reporting on the company's financial position; (iv) the management board's overall performance and duties; (v) sufficient liquidity in the company; and (vi) appointment and dismissal of the management board.

The management board is responsible for the day-to-day management of the company and must observe the guidelines and recommendations issued by the board of directors. The day-to-day management does not include transactions which, considering the scope and nature of the company's activities, are of an unusual nature or magnitude. These decisions can only be made with the approval of the board of directors, unless awaiting the approval will be to the detriment of the company.

In general, the basis for liability is negligence and wilful misconduct, but the board of directors and the management board could also be held liable where damage has been inflicted on the company by a violation of the provisions of the Companies Act or the Articles.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

As regards corporate governance, the main areas of responsibility of the members of the board of directors and the management board, as set out by the Danish Recommendations on Corporate Governance of May 2013, are as follows:

(i) relationships with shareholders through continuous dialogue between the company and the shareholders based on the mutual understanding of the company's objectives and corporate social responsibility;

(ii) the tasks and responsibilities of the board of directors and management board;

(iii) composition and organisation of the board of directors by taking into consideration the need for integration of new talent and the need for diversity in relation to gender, international experience and age, etc.;

(iv) remuneration policy for incentive schemes and performance related pay based on shares;

(v) financial reporting by presenting a balanced and understandable assessment of the company's financial position and prospects;

(vi) internal control and risk management by maintaining sound systems of risk management and internal control to safeguard shareholders' investment and the company's assets; and

(vii) openness and transparency in the company's investor relations by providing timely disclosures and transparent information to the market.

The board of directors as a whole is responsible for disclosure and transparency.

Some of the key, current challenges for the management body in respect of corporate governance are, *inter alia* (a) implementation of policies in relation to gender diversity as the larger Danish companies, including listed companies, are obligated to set up target figures for the underrepresented gender in the board of directors as a result of the adopted amendment of the Companies Act, the Financial Statements Act and the Danish Act on Gender Equality, and (b) considerations among members of the management body of whether reserves available for distribution should be allocated to investments or paid out as dividend to the shareholders.

3.8 What public disclosures concerning management body practices are required?

The Danish Recommendations on Corporate Governance of May 2013 recommend that the board of directors make all relevant information regarding the company publicly available if such information is of importance to the shareholders, the capital markets or stakeholders in general. The shareholders in particular have an interest in being able to follow the development of the company and the company will in many cases have an interest in making such information easily accessible to the shareholders.

Public limited companies whose securities are admitted for trading and official listing on NASDAQ OMX Copenhagen *A/S* are subject to additional detailed disclosure requirements concerning management body practices.

3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

At the annual general meeting the shareholders may by simple majority decide to discharge the board of directors and/or the management board for liability with respect to the content of the annual report. Although there are no provisions specifically dealing with the issue of indemnification of members of the board of directors and management board, it is with certain limitations possible to enter into an agreement regarding this issue. Members of the board of directors will sometimes require the company or its shareholder(s) to indemnify the member of his/her liability related to the performance of his/her duties as a board member in order for him/her to accept the appointment.

Proceedings to take legal action may, however, be commenced regardless of any previous decision on discharge if the passed resolution was based on inaccurate or incomplete information.

Companies are also permitted to, and usually do, maintain insurance coverage (i.e. D&O insurance) for members of the board of directors and the management board in respect of liability to the company.

4 Transparency and Reporting

4.1 Who is responsible for disclosure and transparency?

In accordance with the general principle of collective responsibility, it is the board of directors as a whole, not any one individual member that is responsible for transparency and disclosure of information. In practice, it is common that the management board (i.e. the CEO), in cooperation with the chairman of the board of directors, is delegated the task of disclosing the information.

4.2 What corporate governance related disclosures are required?

The Companies Act and the Securities Trading Act set out the main statutory disclosure requirements relating to the publication of financial reports and continuous disclosure of information relating to the company. An amendment of the Companies Act in 2013 made it possible to prepare annual reports only in the English language (and not also in the Danish language).

The audited and approved annual report of all public and private companies shall be filed with the Danish Business Authority without undue delay after approval and the annual report must be received no later than five months after the end of the financial year, subject to a time limit of four months for public companies whose securities are admitted for trading and official listing on NASDAQ OMX Copenhagen *A/S*.

The Danish Financial Statements Act requires that information on how companies apply the principles of corporate governance be included either in the management's review in the annual report, which will be audited by the auditor(s), or posted on the company's website together with a reference thereto in the management's review.

4.3 What is the role of audit and auditors in such disclosures?

The annual report is prepared by the management board, adopted by the board of directors and audited by the company's auditor(s). The report, which shall be subject to final adoption by the shareholders at the general meeting, shall include statements from the auditor(s) regarding whether the auditor finds that the annual accounts give a true and accurate view of the financial situation of the company.

4.4 What corporate governance information should be published on websites?

Public limited companies whose securities are admitted for trading and official listing on NASDAQ OMX Copenhagen *A/S* shall as soon as possible after the publication of inside information make all such information available to all investors on the company's website.

As regards corporate governance, company announcements to NASDAQ OMX Copenhagen *A/S* and approved guidelines for the company's incentive pay system shall be published on the company's website, together with basic information about the issuer (i.e. company name, the address of the corporate headquarters, company registration number, etc.).

Information disclosed on the company's website must be available for at least three years. Financial reports, however, shall be available for a minimum of five years from the date of disclosure.

The Company's mandatory duty to prepare a statement on CSR, *cf.* question 5.1, below must be included in the annual report or be published on the company's website.

5 Miscellaneous

5.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

In May 2008 the Danish Government presented its Action Plan for Corporate Social Responsibility, with an ambitious vision for corporate social responsibility ("CSR") for Danish businesses. The approach is to foster best practice by firstly ensuring compliance by companies with relevant laws including internationally-agreed principles and guidelines, and then by encouraging actions that go beyond compliance, integrating socially responsible behaviour and ethical values into the core values of organisations.

According to the Financial Statements Act larger companies (including listed companies) must in their annual reports address CSR matters including personnel, human rights, and environmental responsibility issues such as climate impact reduction, actions against corruption, etc. and may voluntarily publish a separate report on CSR. The statutory requirement means that the companies must account for their policies on CSR, or state that they do not have any.

Any supplementary reports on CSR, knowledge and know-how and employee conditions, environmental issues and ethical objectives (and subsequent follow-up on these matters) must give a true and fair view in accordance with generally accepted guidelines for such reports.

5.2 What, if any, is the role of employees in corporate governance?

Employees in public (and private) limited companies, including listed companies, are entitled to elect employee representatives on the board of directors if such companies have an average number of employees of at least 35 in a period covering the preceding three years. The number of employee representatives on the board of directors may equal up to half the number of the members elected by the shareholders but at least two.

An employee representative has the same rights and obligations as other members of the board of directors, i.e. in relation to conflicts of interest, confidentiality, remuneration, etc. Special provisions apply to group representation.

A recently adopted act (Act no. 1284 dated 9 December 2014 on Employee Investment Companies) provides for the establishment of a quite new Danish company form, an employee investment company (in Danish: *medarbejderinvesteringsselskab* or "*MS*"), allowing the company's employees to invest part of their salary in the company so as to be one of the funding sources for a company. The shareholders in the *MS* are the company and the employees.

Peter Lyck
Nielsen Nørager Law Firm LLP
Frederiksberggade 16
DK-1459 Copenhagen K
Denmark

Tel: *+45 3010 3915*
Fax: *+45 3311 8081*
Email: *pl@nnlaw.dk*
URL: *www.nnlaw.dk*

Peter Lyck is partner in Nielsen Nørager Law Firm LLP in the M&A and Capital Markets practice group and has vast experience with public M&A and ECM transactions. He has assisted both listed and unlisted companies on corporate governance structures and documentation and has advised a number of blue chip companies on a range of transactions covering public tender offers, IPOs and bond and rights issues.

Thomas Melchior Fischer
Nielsen Nørager Law Firm LLP
Frederiksberggade 16
DK-1459 Copenhagen K
Denmark

Tel: *+45 3118 0434*
Fax: *+45 3311 8081*
Email: *tf@nnlaw.dk*
URL: *www.nnlaw.dk*

Thomas advises international and domestic clients primarily in M&A transactions and within the field of general company law, corporate finance and capital markets law.

NIELSEN NØRAGER

Nielsen Nørager Law Firm LLP is a mid-sized, well-respected commercial law firm with broad experience in assisting a multitude of international and domestic clients.

Nielsen Nørager Law Firm LLP's core values – quality, commercial approach, efficiency and accessibility – are well reflected by the firm's and its lawyer's rankings by international rating firms such as Chambers & Partners, IFLR1000, Legal 500, etc.

Located in the centre of Copenhagen and employing some of Denmark's most talented lawyers, Nielsen Nørager Law Firm LLP provides legal advice within a wide range of areas including, *inter alia*: corporate and commercial, private and public M&A; IPOs, public tender offers; venture and private equity; debt and equity capital markets; tax; banking and finance; IP and TMT; IT; infrastructure; shipping and transport; energy; EU, competition and procurement; restructuring and insolvency; litigation and dispute resolution; insurance; employment; real estate; and construction, etc.

Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Litigation & Dispute Resolution
- Lending & Secured Finance
- Merger Control
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks

GLG
Global Legal Group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk