The International Capital Markets Review

Sixth Edition

Editor
Jeffrey Golden

Law Business Research

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Law Business Research Ltd

PUBLISHER
Gideon Roberton

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-910813-35-5

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AFRIDI & ANGELL LEGAL CONSULTANTS

ALLEN & OVERY

BHARUCHA & PARTNERS

BORENIUS ATTORNEYS LTD

DE PARDIEU BROCAS MAFFEI

DLA PIPER MARTÍNEZ BELTRÁN

FENXUN PARTNERS

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HOGAN LOVELLS BSTL, SC

INTERNATIONAL COUNSEL BUREAU

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KOLCUOĞLU DEMİRKAN KOÇAKLI ATTORNEYS AT LAW

MAPLES AND CALDER

MIRANDA & AMADO ABOGADOS

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MORRISON & FOERSTER LLP / ITO & MITOMI

NIELSEN NØRAGER LAW FIRM LLP

PETER YUEN & ASSOCIATES IN ASSOCIATION WITH FANGDA PARTNERS

PINHEIRO NETO ADVOGADOS

P.R.I.M.E. FINANCE FOUNDATION

REED SMITH

RUSSELL MCVEAGH

SIDLEY AUSTIN LLP

SYCIP SALAZAR HERNANDEZ & GATMAITAN

TOKUSHEV AND PARTNERS

URÍA MENÉNDEZ ABOGADOS, SLP

VIEIRA DE ALMEIDA & ASSOCIADOS, SOCIEDADE DE ADVOGADOS, SP RL

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EDITOR'S PREFACE TO THE SIXTH EDITION

There is a lesson from the international capital markets that took me, as a young ICM lawyer, a measure of time to both comprehend and appreciate. It was namely this: in matters legal, market participants have a marked preference for certainty above almost anything else. Even sometimes ahead of justice!

Market participants need to know where they stand.

You see, you can trade or structure around a position that you know to be certain, however undesirable that position may be, and whether or not you believe it to be fair. What is abhorred is not knowing what your position is. Eventually being told by a court after months or years of litigation, for example, that you were correct in your earlier view does not give a lot of comfort if, waiting on that answer, you stood 'naked' to a market that has moved on and significantly against you while you remained uncertain whether, when and to what extent to hedge your exposure or otherwise move in reliance on the position you had previously assumed.

Let me give you an extreme example of this preference for certainty over justice as it is reflected in the terms widely used by the derivatives markets when structuring a trade under my favourite contract form, the ISDA Master Agreement. There, a library of product-specific definitional booklets provide various terms tied to particular product markets, including details of pricing sources, relevant market conventions, and fallbacks and adjustments for when a given source may not be available and for other market disruptions. Relevant booklets can be incorporated into the parties' trade confirmations and thus added to the parties' contract on an 'as and when needed' basis.

Many of these booklets include a provision that is widely embraced for trades that base their prices on published and displayed screen rates. It provides, for example, that where a relevant rate for a pricing date is based on information from certain sources such as a Reuters screen page the rate is, as you might expect, subject to corrections made by that source – but only if the correction is made within one hour of the time when the

relevant rate is first displayed.[1] After that, even if the displayed rate has an extra zero in it, and even if it is later corrected, the rate as it stood one hour out becomes the irrevocable basis for the relevant pricing of the transaction. That is the potentially harsh but, in order to ensure certainty, market-preferred position.

This desire for timely and reliable answers can also be seen by the considerable contractual privilege and discretion afforded, for example, to a non-defaulting party by allowing it to self-determine a close-out amount following its counterparty's default. That determination is subject to good faith and reasonableness. However, a conscious decision was taken that the number of issues subject to referral to court for determination, and the evidentiary basis on which those issues should be decided, would, in each case, be narrow. It was intended that it should be of no consequence if, perhaps with the benefit of hindsight, a better answer could be determined by the court. It was thought more important by the markets that an answer honestly derived by a party could be relied upon as final so that the party could move on.

Whether it is the measure of their claims following a default, the scope of their exposure to market risk, or the strength of their collateral credit support, market participants hate surprises. They need to know where they stand. They seek authoritative answers that can be relied upon. And they trust in the rule of law.

My former law partner, Philip Wood CBE, QC (Hon) recently published a fascinating book.[2] In it, Philip argues that the challenge set for our planet is survival, that the rule of law has supplanted religion in providing the basis for a morality that will be necessary to ensure that survival, and that it falls to lawyers to form a 'priesthood' capable of providing relevant answers, as well as preserving the certainty and order, that can contribute to that quest for survival.

And yet we look out at a marketplace with more than a little uncertainty at the moment (Brexit, a worrying US presidential election looming, equally worrying ongoing world political tensions and even conflict, a systemically relevant global financial institution facing crippling fines and a crisis of confidence, cyber insecurity, etc.). Perhaps not surprisingly then, the press reports that the value of initial public offerings has fallen by about a third this year when compared with last year in this period of market volatility and political uncertainty.

That is where this book comes in (with a new jurisdiction, Hong Kong, having been added). Our legal experts who have contributed have been tasked with promoting legal certainty through guidance about where matters relevant to the international capital markets stand in their home jurisdictions. They are our priests!

Join them, and take up Philip Wood's challenge. If you are reading this book, it is almost certainly because someone is looking to you for answers – looking to you to provide the legal certainty the capital markets seek.

1 See, e.g., 2006 ISDA Definitions, Section 7.6.

2 Philip R Wood, *The Fall of the Priests and the Rise of the Lawyers*, (Hart Publishing Ltd, 2016).

My admiration for our contributing experts continues, and of course I shall be glad if their collective effort proves helpful to our readers when facing the important challenge of framing the correct answers.[3]

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2016

3 Did I finally make it through a preface without mentioning the Global Financial Crisis?

Chapter 6

DENMARK

Thomas Weisbjerg and Peter Lyck[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.

1 Thomas Weisbjerg and Peter Lyck are partners at Nielsen Nørager Law Firm LLP.

2 Consolidated Act No. 1530 of 2 December 2015, as amended.

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

4 Consolidated Act No. 182 of 18 February 2015, as amended.

5 Consolidated Act No. 1053 of 25 August 2015, as amended, implementing the EU UCITS Directives.

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

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]

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:[13] NASDAQ Copenhagen A/S (Nasdaq Copenhagen) and NASDAQ First North Denmark (First North). 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 rulebooks, 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.

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.

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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.

11 Executive Order No. 562 of 2 June 2014.

12 Executive Order No. 1069 of 9 April 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.

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 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 and issuers of securities as well as investors on the marketplaces.

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). The authority to approve prospectuses and offering circulars (for listings and public offerings of securities), and 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 (the latter two are appealed), while Sparekassen Himmerland was acquitted.

In addition, Nasdaq Copenhagen supervises and imposes sanctions for violations of its rulebook, 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.

The Danish capital markets slowly recovered during 2015 with the IPO of NNIT (a spin-off from Novo Nordisk) and the listing of Sparekassen Sjælland. In 2016, Nasdaq Copenhagen welcomed Scandinavian Tobacco Group, Nets and DONG Energy. The latter is the largest (market capitalisation) IPO in the Nordic countries since 2000. A number of companies are rumoured to be IPO candidates, including KMD, Flying Tiger Copenhagen and Nykredit.

In recent years, an increasing number of Danish companies have listed their shares on foreign stock exchanges: in 2016, for example, there were the IPO of Nordic Waterproofing on the main market of Nasdaq Stockholm and the listings of Lauritz.com, GomSpace, Saniona (moving from Aktietorget) 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.

A number of other capital market transactions were completed in Denmark during 2016. Examples include the shipping company TORM's public offering of new shares in connection with a complex group restructuring, OTPP's exit from ISS and the private placements through accelerated bookbuildings in Bavarian Nordic and NKT.

New rules on, inter alia, major shareholder flagging and financial reporting

In November 2015, changes to the Securities Trading Act entered into force implementing amendments to the Transparency Directive. The new rules repealed issuers' obligations to publish quarterly financial reports. At the same time, Nasdaq Copenhagen aligned its rule-book accordingly and extended the deadline for publication of the half year financial report from two to three months after the lapse of the first half of the financial year.

The legislative change also implied a wider scope of application of the major shareholder flagging requirements that now cover a wider variety of securities, in particular derivatives and financial instruments relating to already issued shares, including those that are cash-settled. A three-basket principle was also introduced, pursuant to which flagging is required for a shareholder if that person's direct or indirect holding of either (1) voting rights or share capital alone, (2) share-based financial instruments alone, or (3) a combination of (1) and (2) reaches or crosses one of the flagging thresholds (5, 10, 15, 20, 25, 50 or 90 per cent and one-third or two-thirds). As a new sanction for violation of the flagging rules, the Danish FSA will have authority to suspend voting rights on shares.

Finally, the Danish legislators have at the same time abolished the specific flagging rule for treasury shares that gave rise to some confusion among issuers. Issuers are now subject to the same flagging rules for their treasury shares as other shareholders.

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.[16] In addition, the Danish FSA has issued supplementing guidelines.[17]

The increased public-to-private activity in 2015 (e.g., Bestseller's public offer on Stylepit, the private equity (PE) fund Polaris' public offer on Mols-Linien and Immeo Dansk Holdings public offer on Berlin IV) has continued in 2016 with, for example, Layout Bidco's public offer on BoConcept, Qiagen's public offer on Exiqon and Leisure Holding BV's public offer on Land & Leisure and Sampo's mandatory offer on Topdanmark.

Financial sector

Danish banks displayed robustness in 2016 EU stress test

In July 2016, the European Banking Authority (EBA) published the results of the 2016 EU-wide stress test, covering 51 banks in 15 countries, corresponding to more than 70 per cent of the total assets of the European banking sector.

Certain Danish financial institutions – Danske Bank, Nykredit and Jyske Bank – participated in the EBA stress test. The Danish FSA conducted a similar stress test on Sydbank. Overall, the stress test covers more than 90 per cent of the total assets of the Danish banking sector.

These stress tests showed that these systemically important Danish financial institutions will maintain their capital buffers even in the event of negative economic developments. Even under stress, these banks will maintain Common Equity Tier 1 capital ratios of between 12.6 and 14.2 per cent at the end of 2018.

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.

Solvency II

The Solvency II Directive[18] was implemented into Danish legislation with effect as of 1 January 2016.[19] Two Danish insurance companies have publicly announced that they are contemplating issuing subordinated capital that complies with the new regime under the Solvency II Directive.

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

In November 2015, the Danish FSA submitted for public hearing draft bills induced by:

a Directive 2014/65/EU on markets in financial instruments (MiFID II);
b Regulation (EU) No. 600/2014 on markets in financial instruments (MiFIR); and
c Regulation (EU) No. 596/2014 on market abuse (MAR).

16 Directive 2004/25/EC on takeover bids.

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

18 Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance.

19 Act No. 308 of 28 March 2015 amending the Financial Business Act.

The draft body of legislation was denoted by the Danish FSA as the most significant legal reform of the capital market framework in 20 years and consisted of three separate draft bills:

a Bill on the amendment of the Securities Trading Act, contemplated to be in force only for an interim period from 3 July 2016 to 1 January 2017 (repealing national Danish rules to be composed of MAR as per 3 July 2016 (i.e., rules on market abuse, disclosure obligations for issuers and certain insiders).

b Bill on a new Capital Market Act, contemplated to replace the Securities Trading Act in its entirety as from 1 January 2017 (incorporating certain parts of MiFID II and MiFIR aiming at increasing investor trade transparency, strengthening the consumer protection level and improving competition between the players on the capital markets).

c Bill on the amendment of the Financial Business Act and Financial Advisors Act (capturing, *inter alia*, such other parts of MiFID II and MiFIR falling within the scope of these two acts).

However, in June 2016, the application date of MiFID II and MiFIR was extended by the European Parliament and the Council, prolonging the date of application to 3 January 2018 and the transposition of MiFID II into national laws to 3 July 2017. In addition, the co-legislators agreed on limited substantive amendments to MiFID II and MiFIR, notably regarding pre-trade transparency for package transactions, the exemption for non-financial entities trading on their own account and transparency for securities financing transactions.

Consequently, only the amendment of the Securities Trading Act was enacted and put into force as per 3 July 2016, thus coinciding with the date for the entry into force of MAR. The remaining part the announced legal reform of the capital market framework, notably the planned new Capital Market Act, has been postponed in parallel with MiFID II and MiFIR.

The New EU Market Abuse Regulation

On 3 July, MAR entered into force and became directly and immediately applicable in all of the EU Member States, unifying and aligning all Member States' approach to market abuse and disclosure obligations.

These new rules imply, *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;[20] and

f rules governing whistleblowing systems.

Securities Financing Transactions Regulation (SFTR)

By the end of 2015, the Council of the European Union adopted rules enhancing transparency of securities financing transactions (SFTs),[21] and certain obligations under SFTR have now come into force.

SFTR aims at enhancing transparency in three ways:

a first, it introduces the reporting of SFTs to central databases (the trade repositories, which are expected to be the same as those that are today approved and applied under EMIR with respect to over-the-counter and listed derivatives). Delegated regulation is to be prepared by the European Securities and Markets Authority at the beginning of 2017;

b secondly, investment funds (UCITS and AIFs) shall disclose information on the use of SFTs and total return swaps to investors in their regular reports and in their pre-contractual documents; and

c finally, it introduces certain minimum transparency conditions that should be met on the reuse of collateral, such as disclosure of the risks and the need to grant prior consent. In addition, the reuse shall be in accordance with the terms specified in the collateral arrangement, and the financial instruments received under the collateral arrangement shall be transferred from the account of the providing counterparty.

Crowdfunding

On 8 May 2015, the Danish Ministry of Business and Growth published a report entitled 'Crowdfunding in Denmark'. The report was prepared as part of the government's political agreement on a growth package and investigated the possibilities of facilitating the use of crowdfunding in Denmark.

The report concluded that no barriers as such for crowdfunding exist, and that the major constraint for the establishment of a crowdfunding market in Denmark presumably is uncertainty about which rules apply to the platforms, the investors, the business enterprises and the other participants. Consequently, the report does not propose new or amended regulations for either loan-based or share-based crowdfunding.

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

21 Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse.

As part of the Capital Markets Union Action Plan, the European Commission published its report on the EU crowdfunding sector in May 2016.[22] The Commission found that crowdfunding remains relatively small in scale, but is developing rapidly and has the potential to be a key source of financing for small and medium-sized enterprises in the long term. The Commission concluded that since crowdfunding remains largely local and the sector is changing rapidly, there is no rationale for an EU level framework at this juncture.

Consequently, 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[23] 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 2016 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.

22 Commission Staff Working Document: Crowdfunding in the EU Capital Markets Union (SWD(2016) 154 final).

23 Directive 2014/91/EU on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.

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.

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.

iv Relevant tax and insolvency law

Danish tax principles

The main 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 2016.

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 50,600 Danish kroner (for cohabiting spouses, a total of 101,200 Danish kroner), and at a rate of 42 per cent on share income exceeding 50,600 Danish kroner (for cohabiting spouses, over 101,200 Danish kroner) (2016 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).

Insolvency

The Bankruptcy Act[24] 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 reaffirmed by the Danish people in a referendum in December 2015.

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[25]) and CRD IV (Capital Requirements Directive No. IV[26]) implementing the

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

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

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

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 fact that 2016 has shown substantial price fluctuations in the stock markets in Denmark and worldwide due to several terror attacks in Europe, and macroeconomic and political challenges like the Brexit referendum in the UK on 23 June 2016, 2016 has continued the trends of 2015 by being a relatively busy year both in respect of public takeover bids and IPOs. The outlook for the remainder of 2016 does not look less challenging for the capital markets with the presidential election in the US in the autumn, current political and military instability in Turkey, and uncertainty as to how the Brexit negotiations between the EU and the United Kingdom will turn out. Under these circumstances, it will be interesting to see whether the rumoured IPO pipeline will remain strong over the next year.

It will be equally interesting to follow the future developments of the bankruptcy of OW Bunker and the legal actions in the wake thereof.

Appendix 1

ABOUT THE AUTHORS

THOMAS WEISBJERG

Nielsen Nørager Law Firm LLP

Thomas Weisbjerg's areas of practice comprise mergers and acquisitions, stock exchange and capital market matters as well as equity and debt financing. He also advises on general commercial and company law matters. He is a member of the Danish Venture Capital and Private Equity Association's committee on financial regulation, and has been external lecturer in mergers and acquisitions at the University of Copenhagen. Furthermore, he is a member of the Danish Association for Company Law and the Danish Association for Banking and Finance Law.

Thomas Weisbjerg was born in 1972 and qualified as a lawyer at the University of Copenhagen in 1997. He was admitted as an attorney in 2002. Before that, he was at the Danish Ministry of Justice (1997–2000) and has been an external lecturer at Copenhagen Business School. In 2002, he worked in the legal department of Danisco A/S at the same time as a period working at Kromann Reumert law firm from 2000 to 2004.

Thomas Weisbjerg is a contributor to several legal publications within his field of practice.

PETER LYCK

Nielsen Nørager Law Firm LLP

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 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 expertise.

NIELSEN NØRAGER LAW FIRM LLP
Frederiksberggade 16
1459 Copenhagen K
Denmark
Tel: +45 33 11 45 45
Fax: +45 33 11 80 81
twe@nnlaw.dk
pl@nnlaw.dk
www.nnlaw.dk