THE INTERNATIONAL CAPITAL MARKETS REVIEW

EIGHTH 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 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 multi-jurisdictional ambitions or, even if unintended, its activities often may risk multi-jurisdictional 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!'

Ironically, the second purpose this book aims to serve is 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 frameworks, thereby also giving lawyers, in-house compliance officers, regulators, law students and law teachers 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 both our domestic and 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.

Not long ago, 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, on 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 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 and direct exchanges of information between lawyers from different jurisdictions. 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 to identify local counterparts in potentially relevant jurisdictions (three new jurisdictions – China, the Netherlands and Switzerland – having been added this year). And, in that case, I hope that reading the content of this book 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 for 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 amid the growing interdependence of our professional world.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2018

Chapter 6

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 of the regulatory structures will be familiar to capital markets practitioners in other EU Member States.

The primary legislation for Danish capital markets is:

a the Capital Markets Act,[2] which regulates, *inter alia*, marketplaces, public takeovers and public offerings of securities;

b the EU Regulation on market abuse (MAR);[3]

c the Financial Business Act,[4] which regulates financial business, including portfolio management;

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

e the Act on Managers of Alternative Investment Funds,[6] which regulates managers of alternative investment funds and the marketing of alternative investment funds.

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

a the Prospectus Executive Order;[7]

b the Executive Order on the Threshold for Reporting of Securities Transactions;[8]

c the Executive Order on Major Shareholders;[9]

d the Executive Order on Takeover Bids;[10] and

e the Executive Order on Conditions for Admission of Securities to Official Listing.[11]

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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. 12 of 8 January 2018 as amended.

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

4 Consolidated Act No. 1140 of 26 September 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. 1176 of 31 October 2017.

8 Executive Order No. 684 of 8 June 2016.

9 Executive Order No. 1172 of 31 October 2017.

10 Executive Order No. 1171 of 31 October 2017.

11 Executive Order No. 1170 of 31 October 2017.

ii Stock exchange regulation

Securities can be admitted to trading and official listing in two marketplaces in Denmark: NASDAQ Copenhagen A/S (Nasdaq Copenhagen) and NASDAQ First North Denmark (First North).[12] Nasdaq Copenhagen is a regulated market, whereas First North is 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)[13] or the Transparency Directive).[14] 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 Capital Markets Act and MAR.

iii Structure of the courts

The Danish court system has a three-tier hierarchy: (1) the district courts, (2) the two high courts (Eastern High Court and Western High Court) and the Maritime and Commercial Court, and (3) 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, which is 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 government agency and part of the Ministry of Industry, Business and Financial Affairs. Its main tasks are to issue required licences and to supervise compliance by financial undertakings, marketplaces and their participants, issuers of securities, and investors.

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

12 In addition, an over-the-counter list is operated by Københavns Andelskasse, being one of the smaller Danish financial institutions.

13 Directive 2004/39/EC on markets in financial instruments, as amended.

14 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.

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 market abuse prohibitions (e.g., insider trading and price manipulation). The Danish FSA is also empowered to conduct on-site inspections without a court order at the premises of legal entities subject to MAR obligations. It is also vested with the authority to approve prospectuses and offering circulars (for listings and public offerings of securities), to offer documents for public takeover bids, and to pursue possible non-compliance with MAR obligations, as well as takeover and prospectus regulations.

In the event of possible violations, the Danish FSA may impose various sanctions on financial undertakings, issuers, investors and other stakeholders, which include 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 imprisonment for up to six years is also possible.

The majority of alleged violations are handled and resolved by the Danish FSA; only a few cases are appealed to and finally resolved by the ordinary courts. Decisions by the Danish FSA can be tried by the Company Appeals Board, and decisions by the Board can be appealed to the courts. Current cases within the framework of financial regulation include the pending investigation of alleged involvement in money laundering by the Estonian branch of the largest Danish bank, Danske Bank. The matter is being scrutinised by the Danish police and the FSA. Other recent cases include the FSA lifting its previous suspension of the voting rights of a major shareholder in the Danish bank, Totalbanken, and the FSA's rejection of certain persons nominated as managers for financial companies with reference to the fit and proper regulations, which are carefully overseen by the Danish FSA.

Within the framework of the securities regulation, the Danish FSA has recently imposed fines on a natural person for price manipulation, on the listed football club AAB for violation of MAR in relation to disclosure and insider lists, and on Carnegie for violations under the EU Short-selling Regulation.[15]

The predominant court cases initiated by the public prosecutor have been with regard to alleged price manipulation. Within the past few years, Vestjysk Bank, Parken Sport & Entertainment and 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 using a matching halt, placing securities on an observation list, issuing reprimands, imposing administrative fines of up to a maximum of 1 million kroner and removal from listing.

15 Regulation (EU) No. 236/2012 on short selling and certain aspects of credit default swaps.

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.

During the second half of 2017, the main market on Nasdaq Copenhagen welcomed Orphazyme and TCM Group followed by Netcompany in Spring 2018. Although KMD and Flying Tiger Copenhagen remain IPO candidates for the main market, Nykredit aborted its plans in connection with the transfer of a significant block of shares to a consortium consisting of Danish pension funds. The shortlist now includes Symphogen, Aquaporin A/S, Adform, Axzon and recently AP Møller – Maersk has announced its intention to spin off Maersk Drilling through an IPO. First North of Nasdaq Copenhagen has continued to attract small cap IPO prospects in 2018 with the admission to trading of NP Investor, Agillic, Happy Helper, Virogates, Odico and Hypefactors. The increase in activity has led to a decline of interest among Danish IPO candidates to go to Sweden. One exception has been Bettercollective, which listed on the main market of Nasdaq Stockholm in Spring 2018, joining peers that are already listed.

A number of other capital market transactions materialised in the second half of 2017 and the first half of 2018:

a Payments firm Nets was delisted following completion of a voluntary takeover bid by US private equity (PE) fund Hellman and Friedman.

b Australian PE and infrastructure fund Macquarie teamed up with certain Danish pension funds in a public bid for telecommunications operator TDC.

c Macquarie sold its stake in Københavns Lufthavne to a consortium consisting of Danish pension fund ATP and Canadian pension fund OTPP.

d Former biotech company Neurosearch came under siege as real estate developer Gefion Group and Nordic Transportation Group launched competing takeover bids, the latter being the winner.

e There have also been takeover bids on Nordjyske Bank and on Glunz & Jensen Holding in 2018.

Adoption of Capital Markets Act to replace the Securities Trading Act

The new Capital Markets Act came into force on 3 January 2018, replacing the Securities Trading Act. The new Act reflects a rewriting of the existing rules and also serves the purpose of implementing MiFID II[16] and MiFIR;[17] see also 'Reform of capital market regulation because of MAR, MiFID II and MiFIR', below. 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[18] introduces when it becomes effective (for the most part in July 2019). There are, however, two important changes. The first is an increase of the exemption threshold for admittance of new shares to listing from less than

16 Markets in Financial Instruments Directive (2004/39/EC).

17 Markets in Financial Instruments Regulation (No. 600/2014).

18 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.

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 to the related exemption on conversion of instruments into shares of the same class as already listed. The second change is that, effective from 21 July 2018, the threshold for the requirement to publish a prospectus has been increased from €5 million to €8 million.

Public takeovers

The takeover regime consists of the Capital Markets Act and the Executive Order on Takeover Bids, which collectively implement parts of the EU Takeover Bids Directive.[19] In addition, the Danish FSA has issued supplementing guidelines.[20]

The increase in public-to-private activity in recent years continued in Autumn 2017 and early 2018 with the voluntary public offers on Nets, Neurosearch, TDC, Nordjyske Bank and the mandatory offers on Københavns Lufthavne and Glunz & Jensen Holding.

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[21] came into effect in Denmark and replaced the existing Danish rules on benchmarks.[22] The objective of the new Regulation is to ensure the accuracy and integrity of benchmarks and the process for determining benchmarks and preventing the manipulation of benchmarks and distrust in benchmarks. The new legal framework comprises, *inter alia*, the prevailing Danish interest rate benchmarks, CIBOR[23] and CITA,[24] and imposes new requirements on the administrators thereof and benchmark contributors. Sanctions are available to the Danish regulator.

Packaged retail and insurance-based investment products

The EU Regulation on key information documents for packaged retail and insurance-based investment products (the PRIIPs Regulation)[25] came into force in Denmark on 1 January 2018. The objective of the PRIIPs initiative is to improve the protection of retail investors within financial services. The PRIIPs Regulation and related Annexes (Level 2 Measures) set out information to be provided to retail investors with respect to investment products to ensure that a retail investor's purchase of an investment product is made after having had access to clear and reliable information about 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 to retail investors. The service provider is required to prepare a key information document (KID) on each product. A KID provides information about the key characteristics of an investment

19 Directive 2004/25/EC.

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

21 Regulation (EU) No. 1011/2016.

22 Executive Order No. 1299/2013.

23 Copenhagen Interbank Offered Rate.

24 Copenhagen Interbank Tomorrow/Next Average.

25 Regulation (EU) No. 1286/2014.

product, including risks and costs. The document must also specify whether the product can incur losses and include information about the complexity of the product. With respect to investment funds (undertakings for collective investment in transferable securities (UCITS)), the PRIIPs Regulation includes a transitional provision, under which there is no need for investment funds to provide a KID until the end of 2019.

European Banking 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. The Danish government has established an expert committee that will analyse certain aspects related to potential participation in the Banking Union. Based on the committee's analysis and recommendations, which are expected to be available during the course of 2019, the government will decide on Denmark's accession to the Banking Union. Recently, the largest bank in Scandinavia, Nordea, moved its headquarters from Stockholm to Helsinki. According to bank officials, one of the decisive factors for the move was that Finland is a member of the Banking Union.

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

MiFID II's regulation of third-party payments has been implemented in Danish law and are effective as of 1 July 2017.[26] The remaining parts of MiFID II have been implemented in Danish law via the new Capital Markets Act[27] and via certain amendments to the Financial Business Act and the Financial Advisers Act.[28]

The Capital Markets Act incorporates the parts of MiFID II and MiFIR aimed at increasing investor trade transparency, strengthening the consumer protection level and improving competition between players on the capital markets. The amendments to the Financial Business Act and the 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.

Furthermore, a number of executive orders relating to the new legal framework have been issued.

The EU Market Abuse Regulation – compliance

More than two years after MAR entered into force (3 July 2016), all the signs suggest that Danish issuers were 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 the 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. However, based on statistics released by the Danish FSA, the two areas in which Danish listed companies have faced challenges with MAR compliance are insider lists and disclosure of inside information. With regard to insider lists, the most frequent errors have been missing information, a lack of information or insufficient reasons for inclusion of individuals on the insider list and inclusion of a too-wide group of

26 Act No. 632 of 8 June 2016.

27 See footnote 2.

28 Act No. 665 of 8 June 2017.

individuals as permanent insiders. There is less transparency on the nature of non-compliance with the disclosure rules except that the statistics reveal a significant increase in the number of cases opened by the Danish FSA. One reason for the increase may be that some issuers have struggled with adapting to a MAR disclosure regime that is fundamentally different from the regime and market practice developed under Denmark's previous securities legislation.

Crowdfunding

After a substantial increase in crowdfunding activities during the years from 2011 up to and including 2016, the total amount of funds raised via crowdfunding plateaued at approximately 100 million kroner in 2017. New and sector-specific crowdfunding platforms are emerging and crowdfunding is carefully considered by Danish start-ups as an alternative source of financing. There are currently no indications that new or amended regulations will be introduced in relation to crowdfunding in Denmark.

UCITS – increased investor protection

Amendments to Danish financial regulations – including, *inter alia*, the Financial Business Act and the Act on Investment Associations – implementing the UCITS V Directive[29] came into force in 2016. UCITS V 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 a 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 2018 with respect to the derivatives market. The main focus of financial institutions and counterparties has been to continue ensuring compliance with the applicable requirements of the European Market Infrastructure Regulation[30] and the appurtenant regulatory technical standards.

29 Directive 2014/91/EU amending Directive 2009/65/EC 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.

30 Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

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 an agreement reached on 30 May 2017 between the Parliament, the Council and the Commission on a regulatory package that includes 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 (the jewellery manufacturer and retailer) 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, in 2016, acquitted Pandora in the criminal action. The parallel civil actions have probably been dropped.

In the aftermath of OW Bunker's bankruptcy in November 2014 following its IPO in March 2014, two legal proceedings were filed in 2016 by institutional investors against the bankruptcy estate of OW Bunker, and against 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 it 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 announced in November 2017 that it had entered into 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 Company Appeals Board upheld the delisting decision by Nasdaq Copenhagen.

Finally, Novo Nordisk, which has a dual listing on the New York Stock Exchange, was subject to class action litigation filed in the United States in 2017 by frustrated investors, who were claiming damages alleging materially false and misleading earnings and forecasts and misrepresentations, 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 2018.

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 52,900 kroner (for cohabiting spouses, a total of 105,800 kroner) and at a rate of 42 per cent on share income exceeding 52,900 kroner (for cohabiting spouses, over 105,800 kroner).[31]

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 they hold 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 company receiving dividends 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 these instruments are deductible in full. However, with respect to intra-group financing, losses on receivables and gains on debts are tax-exempt as a general rule. 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, in the main, subject to taxation on all capital gains on ordinary claims, bonds, debt and financial debt contracts if the gains exceed 2,000 kroner per year. The right of individual investors to deduct losses on ordinary claims is limited to losses exceeding 2,000 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).

On 12 November 2017, the Danish Parliament adopted new tax rules aimed at encouraging further retail investment in non-listed companies, including start-ups, by introducing, *inter alia*, a share savings account with a flat 17 per cent annual taxation on the mark-to-market year-end balance of the equity investments on the account. The amount that may be deposited in the share savings account is limited to 50,000 kroner (2019) but will increase gradually by 50,000 kroner per year, subject to certain limitations. The new rules will become effective on 1 January 2019.

31 Rates as applicable in 2018.

Insolvency

The Bankruptcy Act[32] governs the two main types of insolvency proceedings: restructuring and bankruptcy. As part of its 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. However, Denmark 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 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 Capital Markets Act either provide the marketplace with direct powers, however limited, 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 central counterparties.

Denmark assumes no special position in respect of credit rating agencies. These agencies can be registered or certified by the European Banking Authority as external credit assessment institutions and, thus, conduct various valuation tasks for financial institutions as part of their compliance with the EU capital requirement legislation, such as the Capital Requirements Regulation[33] and Capital Requirements Directive No. IV,[34] implementing the Basel III rules in the European Union. International rating agencies continue to be a determining factor for the larger Danish financial institutions, banks as well as credit mortgage institutions, that make use of the 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 marketplaces with generally higher IPO activity, in combination with pharma and biotech IPO candidates looking for primary listings in the United States owing to peer group and pricing considerations, has, during 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. The only apparent shift in a trend is the increased listing activity on the First North platform of Nasdaq Copenhagen, despite some criticism of valuations and lack of IPO readiness voiced in the Danish media.

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.

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

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

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

III OUTLOOK AND CONCLUSIONS

Despite market uncertainty from the current US leadership and the uncertainty surrounding the negotiations for implementation of the Brexit referendum decision of June 2016, the capital markets remain largely unaffected. Generally, 2018 has been a strong year in the Danish capital market with the listing of Netcompany on Nasdaq Copenhagen and several small companies on Nasdaq First North Copenhagen, and the expected listing on the main market of Adform and Axzon in the autumn.

Appendix 1

ABOUT THE AUTHORS

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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 in domestic and cross-border transactions. He has served on a number of committees, including one established by Nasdaq Copenhagen to analyse and propose means to facilitate more activity in initial public offerings 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.

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Brian Jørgensen advises Danish and foreign clients on capital markets matters and mergers and acquisitions. He 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 advises Danish and foreign clients on general commercial law. He has extensive experience in and knowledge of, *inter alia*, the healthcare industry in the Scandinavian countries.

Brian Jørgensen was born in 1979 and graduated from the University of Copenhagen in 2003. He 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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