



PROPOSED DANISH ACT ON SCREENING OF FOREIGN INVESTMENTS IN DENMARK

12 March 2021

Introduction

10 March 2021, the Danish Minister for Industry, Business and Financial Affairs submitted the proposal for the Danish Act on Screening of Foreign Investments in Denmark (the “Act”) to the Danish Parliament for approval.

A draft of the Bill was published on 9 December 2020. The main terms herein are described in our previous newsletter: [Proposal for new Danish Act on Screening of Foreign Direct Investments in Denmark](#).

The proposal submitted included (i) a mandatory approval scheme, whereby a foreign direct investor who intends to acquire, directly or indirectly, at least 10% of the share capital or voting rights, or equivalent control by other means, in an enterprise in Denmark within particularly sensitive sectors must apply to the Danish Business Authority, in advance, for transaction clearance; and (ii) a voluntary notification scheme, where investors residing outside the EU/EFTA may notify the Danish Business Authority of any intended or completed investment in cases where the investment might pose a threat to national security or public order in Denmark, and the foreign investor directly or indirectly obtains possession of or control over at least 25% of the share capital or voting rights or equivalent control by other means in an enterprise in Denmark.

According to the Act, particularly sensitive sectors and activities in relation to national security and public order encompass:

1. Enterprises within the defence sector;
2. Enterprises within IT security functions or the processing of classified information;
3. Enterprises producing dual-use items as defined in Council Regulation No. 428/2009 of 5 May 2009, i.e., items, including software and technology, which can be used for both civil and military purposes, and include goods which can be used for both non-explosive uses and for in any way assisting in the manufacture of nuclear weapons or other nuclear explosive devices;
4. Enterprises involved with other critical infrastructure than nos. 1-3 above, e.g. newly developed technology within the areas of AI, robot technology, 3D-print, or energy storage.

It is proposed that the Danish Business Authority must have 60 business days to process any application submitted under the mandatory approval scheme. This deadline may be extended up to a total of 90 business days in particularly complicated cases.

The Act is proposed to enter into force on 1 July 2021. It is also proposed, however, that the Act is not applicable for investments or certain special financial arrangements that are completed before 1 September 2021. Accordingly, the Act will not apply to investments

closed before 1 September 2021. This is regardless of whether signing takes place before or after 1 July 2021, provided that closing takes place before 1 September 2021. If closing takes place after 1 September 2021, the investment will be subject to this new regulation regardless of whether the signing took place before or after July 2021.

The purpose of this proposed transition period is to allow businesses to adopt to the new requirements.

The assessment of whether an investment or a special financial arrangement (such as joint venture or supply or service arrangement) has been completed depends on the nature of the investment and agreement. For investments where equity is acquired, the timing of the registration of the foreign investor as owner of the enterprise on the Danish Business Register would in general be decisive in determining the time of completion.

Irrespective of the fact that the Bill has not yet been passed, this new regulation must be taken into consideration in any future M&A transactions.

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:



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