



DANISH FDI REGULATION COMES INTO FORCE 1 JULY 2021

25 May 2021

Introduction

We have previously [written](#) about the proposal for the Danish Act on Screening of Foreign Investments (the “Act”) in Denmark. The Danish Parliament has now adopted the proposal and consequently, the Act will come into force on 1 July 2021.

The new Danish regime is based on two filing schemes:

i) Mandatory Notification

The mandatory scheme applies to foreign investors intending to acquire a “qualifying holding” in a Danish undertaking which operates in a particularly sensitive sector. A qualifying holding means direct or indirect possession or control of 10% or more of the shares or voting rights or similar control by other means.

The obligation to seek prior clearance applies to investments within sensitive sectors, which has been defined as business activities within national defense industry, IT security services or processing of classified information, manufacturing of dual-use items, other types of critical technologies and critical infrastructure. The more precise field of application is to be clarified in yet to be published executive orders by the Danish Business Authority.

The obligation to seek prior approval is imposed on all foreign investors, including investors from EU/EFTA countries, provided that the relevant undertaking is active within a sensitive sector.

ii) Voluntary Notification

A foreign investor may voluntarily notify the authority about a foreign direct investment if the contemplated investment potentially implies a risk to the national security or the public order. This scheme applies to acquisitions of holdings of no less than 25% of the shares or voting rights or similar control by other means. Investors from EU/EFTA are exempt from this scheme, meaning that investors from EU/EFTA should not apply under this voluntary scheme.

It may be difficult for an investor to assess the extent to which an acquisition might imply a risk, and the Danish Business Authority is authorized to provide guidance on this. Furthermore, the more precise field of application is to be specified in yet to be published executive orders by the Danish Business Authority.

Application for clearance is to be filed with the Danish Business Authority. As a main rule, the Danish Business Authority has a 60 business days' timeframe to clear the investment. The timeframe may be extended.

The Act does not define or set out the form of the filing. This is to be set out in yet to be published executive orders and guidelines from the Danish Business Authority. According to the preparatory works, the screening will focus on a verification of the information related to ownership structure, including funding and funds flow, and whether the investor or any other parties in the ownership structure may have any relations to parties which could potentially harm the national security and public order. It has been specifically mentioned in the preparatory works that many different pieces of information may be required, and no general list of required information and documentation can be made.

Generally when assessing a foreign investment, the Danish Business Authority will investigate whether the investment might impose a risk on the national security and public order. This assessment will include the following considerations:

- If the foreign investor is directly or indirectly controlled by a foreign government, authority etc. either through ownership or funding.
- If the foreign investor has been involved in activities affecting the security or public order in any EU member state or in any other allied country.
- If there is a severe risk that the foreign investor will participate in or have connections to illegal or criminal activities
- If there are indications that the foreign investor is working to circumvent the regulation on foreign direct investments, including by way of a straw man structure.

The Act will enter into force on 1 July 2021, but will not be applicable to investments or certain special financial arrangements that have been completed before 1 September 2021.

Our Comments

The new FDI regime provides more complexity into future international investments and M&A transactions, especially in terms of planning. For future investments and M&A transactions it will – in addition to any required merger filing analyses – also be necessary to

complete an FDI analysis. Where an FDI filing is required, this will have significant timing implications for completion of the transaction.

Especially for transactions up for signing and closing in the near future, the lack of practice and executive orders and guidelines from the Danish Business Authority should be taken into due consideration. Until clear practice and/or guidelines are in place, it is advisable to engage with both legal advisors and the Business Authority in order to identify and plan for any filing obligations and requirements.

We advise both Danish and foreign companies within FDI analysis and planning. For any questions please do not hesitate to reach out to us:



Pernille Nørkær
Partner

pernille.noerkaer@moalemweitemeyer.com



Rasmus Juel Schiøtt
Senior Associate

rasmus.juel@moalemweitemeyer.com



Flora Hua Ting Chieng
Associate

flora.chieng@moalemweitemeyer.com

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