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TAKEOVERS A-Z

This A-Z guide gives an introduction to the most frequently used legal terms in the world of M&A and provides a quick explanation of the most common issues in M&A involving Danish private or publicly traded companies. Additionally, it serves as a legal translator of English terms in a Danish takeover context.

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A

A and B Shares

- Under Danish law, shares can be divided into classes, A and B shares. Each class can have different rights.

- A and B shares are rarely seen in new Danish IPOs today. However, some Danish issuers still have A and B shares listed.

- Dividing shares into classes can be used in order to retain control of a company whilst still allowing third parties to acquire a major interest in the company. Also, it can be used to differentiate between the financial rights of different share classes (preference shares).

- There are no limits on the disparities in voting rights that can be imposed. Pursuant to the Danish Companies Act, shares can even be issued with no voting rights. Shares without voting rights do not have representation rights, unless the articles of association include a provision to that effect.

Acting in Concert

- If persons acting in concert acquire a relevant controlling interest in a Danish issuer, this will trigger a requirement for a mandatory takeover bid. A mandatory takeover bid will only be triggered by an acquisition of shares, which implies a change of control over the company (see "Mandatory Takeover Bids"), and not by parties who already have collective control over the company entering into an agreement to act in concert.

- For the purposes of these provisions, acting in concert occurs when a natural or legal person cooperates with the offeror on the basis of an agreement, either expressly or tacitly and either orally or written, aimed at acquiring control of the target.

- For the avoidance of doubt, a constellation where an existing shareholder participates by investing in the offeror does not in itself constitute an "acting in concert" scenario.

Acting in Concert Outside of Takeover Situations

- An obligation to make a takeover bid is not triggered if two or more shareholders commence acting in concert, e.g. by way of a shareholders agreement or similar, provided that such agreement did not exist at the time they acquired their respective shareholdings.

Approval from the General Meeting

- In a listed company, the general meeting may with a 2/3 majority introduce a procedure whereby the board of directors of the company must obtain the approval of the general meeting, if the shares become subject to a takeover bid, prior to taking any action that may hinder or frustrate a takeover bid, other than resolving to seek alternative bids.

- The approval of the general meeting is required from the time the offeror announces his intention to bid for the shares and until the result of the bid is available and has been made public. However, the normal responsibility of the board of directors to look after the interests of the shareholders would also imply that the board of directors should not take initiatives to hinder or frustrate a takeover bid that has not yet been published if such a resolution has been made at the general meeting.

- This is not an often used approach in Denmark. However, the board of directors in a Danish issuer will generally be very hesitant to hinder or frustrate a takeover bid without the approval of the general meeting or without first obtaining a fairness opinion (see “Fairness Opinion”).

B

Break Fee

- It is not unusual to have a break-fee provision in a term sheet or in a letter of intent. The break-fee may be connected to an exclusivity period.

Breakthrough Rule

- Section 340 of the Danish Companies Act has implemented the breakthrough rule of the European Takeover Directive.

- Accordingly, shareholders of a target company may adopt a motion under which special rights or restrictions attached to the shares (e.g., restrictions on voting rights or ownership) will be suspended if the company becomes subject to a takeover bid.

- By implementing the breakthrough rule, the special rights and restrictions attached to the shares cannot be enforced against an acquirer.

- If the shareholders of a target company have decided to implement the breakthrough rule and the takeover is completed, the acquirer must pay compensation to the shareholders suffering an economic loss as a result of their special rights being deferred.

C

Capital Increase Majority Requirements

- The majority of votes required at a general meeting in order to carry out an issue of shares depends on whether the issue is directed at all shareholders, some shareholders or, an external investor. The majority requirements further depend on whether the share issue is carried out on market-terms or at a discount compared to the market price. The same majority requirements apply whether the issue relates to shares or other equity related instruments, such as warrants.

- The below table shows the general majority requirements. However, please note that the articles of association of a company may contain stricter provisions requiring a larger majority than stated. The majority requirements are double and relates to both the votes cast and the share capital present.

ISSUE DIRECTED AT	MARKET TERMS	DISCOUNT
All existing shareholders (possibility of letting an external investor subscribe for shares not subscribed for by existing shareholders)	2/3	2/3

One or more existing share-holders only	2/3	Consent from all share-holders (100% majority)
External investor only	2/3	9/10
Employees	2/3	2/3 (if general scheme)

Changing the conditions of the Bid

- The offeror may change the conditions linked to a bid at any time up to expiry of the offer period if the conditions offered are improved. However, the offeror may only cancel or reduce conditions outlined in a bid in conformity with the statutory requirements if this possibility is specifically stated in the offer document.

- The offeror is always entitled to extend the offer period by no less than 14 days at a time. The total offer period must be no shorter than four weeks and may not last for more than 10 weeks from the day of publication of the offer document. If required by competition law regulators to obtain the authorization of the competition authorities, the offeror may extend the offer period beyond the maximum 10 weeks, but only for four weeks at a time, and only for a total of four months from publication of the offer document.

- The shareholders must always have at least 14 days to consider a revised offer. If the revised offer is made within the last two weeks of the 10 week period, the offer period is extended to up to 12 weeks. The offer cannot be revised further after the first 10 weeks (see “Offer Period”).

CIBOR

- CIBOR is an abbreviation of Copenhagen Interbank Offered Rate and is the interest rate banks apply when lending money to other banks.

- CIBOR can be used in acquisition contracts as a reference rate, to ensure that the interests payable under the contract follow market development.

- CITA is an alternative interest rate hereto (see “CITA”).

- Other common-used reference rates include LIBOR (London Interbank Offered Rate), STIBOR (Stockholm Interbank Offered Rate) and EURIBOR (Euro Interbank Offered Rate).

CITA

- CITA (abbreviation of Copenhagen Interbank Tomorrow/Next Average) is as an alternative to CIBOR (Copenhagen Interbank Offered Rate).

- CITA is an interest rate swaps with which banks with a floating rate deposit may swap the floating rate payments for fixed rate payments. Considering the deposit and the interest rate swap as one, this is equivalent to the bank having restructured its interest rate exposure from a floating rate deposit to a fixed rate deposit.

- All Danish banks are required to offer loans based on CITA.

Combination Agreement

- In Denmark, a combination agreement can be used in both reverse takeover transactions, and in situations where a potential offeror for an issuer, prior to a voluntary public tender offer, enters into agreement with the issuer's major shareholders and board of directors regarding, amongst other things, approval and support of the tender offer.

- Combination Agreement in Reverse Takeover Transactions

- An agreement whereby a privately held company is acquired by a publicly listed company but with control passing to the shareholders of the privately held company in a reverse takeover transaction.

- Consideration for the privately held company is new shares in the issuer issued to the former shareholders in the privately held company. At closing, the issuer issues a substantial majority of its shares to the shareholders of the privately held company. The privately held company's shareholders pay for the interest in the issuer by contributing their shares in the privately held company to the issuer.

- A mandatory takeover bid may be triggered if one, or a connected group, of the privately held company's former shareholders becomes holder of the majority of the voting rights of the issuer or becomes entitled to exercise a controlling influence over the issuer (see "Mandatory Takeover Bids").

- By undertaking a reverse takeover, the privately held company avoids the public offering process and gains automatic admission on a stock exchange.

Combination Agreement in Connection with Public Tender Offer

- An irrevocable tender agreement between a potential offeror, the major shareholders and the board of directors stipulating that both the major shareholders and, if relevant, the board of directors of the target company must accept the terms of the offer document once it is published (see "Irrevocable Tender Agreement"). In addition, the board of directors of the target company must also recommend in its opinion that the shareholders accept the offer (see "Opinion").

- The irrevocable tender agreement will contain the conditions under which the offeror is obliged to put the offer forward and the conditions for the completion of the sale and purchase of the shares on the part of both the offeror and the major shareholders. The irrevocable agreement may further contain representations and warranties by the major shareholders. The combination agreement is a key agreement relating to the offer. The signing of the combination agreement will usually require publication by a company announcement. The combination agreement must usually be described in the offer document.

- A memorandum of understanding for a public tender offer can be used in lieu of a combination agreement to express a convergence of will between a potential offeror, the major shareholders and the board of directors regarding the aforementioned parties' acceptance of the offer in addition to the board of directors' recommendation of the offer without creating legal commitments. A memorandum of understanding for public tender is usually not binding on the parties.

Combined Instruments

- *See* "Units".

Communicating a Public Tender Offer

- A mandatory takeover bid must be made public as soon as possible and no later than four weeks after the acquisition of a controlling interest (see "Mandatory Takeover Bids").

- A voluntary takeover bid must be made public immediately after the decision by the offeror to put the offer forward (see "Voluntary Takeover Bids").

- Publication must be via electronic media in such a manner that the announcement reaches the public in the countries in which the shares are admitted for trading. In addition, the offeror must send the announcement to the Danish Financial Supervisory Authority and to the relevant regulated market(s).

- Before publication, the Danish Financial Supervisory Authority must ensure that the requirements regarding the offer document and the bid announcement have been fulfilled.

Competing Offer

- In the event the original offeror does not withdraw his bid, the bid period of the original bid will be extended automatically to the date of expiry of the competing bid. The reason is to ensure that the target company's shareholders have an opportunity to compare both bids (see "Withdrawal of an Offer").

Compulsory Offer

- *See* "Mandatory Takeover Bids".

Conditional Offers

- It is possible for an offeror to make a voluntary offer conditional, e.g., on the acquisition of a certain minimum percentage of the target company's shares.

- However, if an offeror becomes a holder of a controlling interest in the target company (see "Mandatory Takeover Bids"), and this is not due to a voluntary bid, no conditions can be tied to the mandatory offer.

- An offeror can avoid the prohibition against conditional offers by making a voluntary takeover bid from the outset where conditions can be tied to the offer (see "Voluntary Takeover Bids").

Consolidated Returns

- A Danish company and its Danish subsidiaries are taxed on a consolidated basis, i.e. it is possible to deduct losses incurred by one company from the profits of another company within the same group of companies. In order to take advantage of the consolidated return rules, a company must control the subsidiary company.

- The mandatory consolidated return rules do not apply to any foreign subsidiaries.

- A Danish parent company can choose to include foreign subsidiaries when filing consolidated returns. If the Danish company chooses to include the foreign subsidiaries then all members of the group must be included.

- If the ultimate parent company is a foreign company, the parent company can choose to include foreign-owned subsidiaries when filing consolidated returns. If the ultimate parent company chooses to include a foreign-owned subsidiary then it is mandatory to include the whole group of companies.

Controlling Influence

- *See* “Mandatory Takeover Bids”.

Convertible Loan Issue

- *See* “Capital Increase Majority Requirements”.

Corporate Governance

- *See* “Board of Directors”.

Creditor Suits

- Acquisition by creditor suits is not covered by the obligation to make a takeover bid.

Cumulative Voting

- Cumulative voting allows shareholders to cast votes equal to the number of shares the shareholder owns multiplied by the number of directors to be voted. Thus, where the shareholder owns 10 shares, and there are three available seats on the board, the shareholder may cast 30 votes.

- Cumulative voting is possible under Danish law if provided for in the articles of association.

D

Debt as a Takeover Defence

- The target company takes on large debts in an effort to make the target unattractive.

- This defence technique is likely to be in conflict with the management's responsibilities since it could be contested whether it serves a legitimate corporate purpose. Taking on debt must serve another purpose than functioning solely as a takeover defence.

De-listing following Takeover

- An issuer on NASDAQ Copenhagen A/S may be de-listed from NASDAQ Copenhagen A/S according to the provisions of the Rules for Issuers. The company does not itself decide the de-listing.

- The company may at a general meeting adopt a resolution to request NASDAQ Copenhagen A/S to be de-listed. Unless the Articles of Association require a larger majority, such resolution must be passed with a majority of at least 9/10 of the represented share capital and 9/10 of the votes cast. Existing shareholders must be offered the option to sell their shares in a period of at least four weeks, and on the same terms and conditions as the public tender offer.

- The majority requirement is close to the majority required for a squeeze-out. However, the difference is that squeeze-out requires more than 9/10 of the total shares and votes in the company, while de-listing may be passed with a majority of 9/10 of the total votes and shares represented at the general meeting, where the decision is passed. Also, in case of a squeeze-out, the shares must be held by a single shareholder, while de-listing may be passed by approval from different shareholders.

- The 9/10 majority requirement does not apply in case it is decided that the shares of the issuer should be listed on a different regulated market or equivalent market. Further, the requirement does apply if the issuer ceases to exist either as a result of a dissolution, a merger or a de-merger. Also, it should be noted that the de-listing rules do not address asset sales.

- See also "Public-to-Private".

Decisions of the Board of Directors in connection with a Takeover Bid

- The Committee on Corporate Governance recommends that the board of directors from the moment it obtains knowledge that a takeover bid will be submitted does not, without the general meeting's approval, attempt to counter the takeover bid by adopting decisions which in reality prevent the shareholders from deciding on the takeover bid. Knowledge will in most cases be obtained prior to the time when the offeror publishes the decision to submit a takeover bid, for example in connection with the negotiation of irrevocable tender agreements (see "Irrevocable Tender Agreements"). The board of directors will not be in conflict with the recommendation of the Committee by seeking alternative (competing) takeover bids.

- The Committee recommends that the board of directors give the shareholders the opportunity to decide whether or not they wish to dispose of their shares in the company under the terms offered.

- According to the Rules for Issuers of Shares on NASDAQ Copenhagen A/S, Danish companies are obliged to give a statement on how they address the Recommendations on Corporate Governance issued by the Committee on Corporate Governance. The "comply-or-explain" principle implies that the companies are required either to comply with the Recommendations or explain why they do not comply with the Recommendations. The implementation of the Recommendations into these rules is not based on the premise that compliance with the Recommendations should be the first choice for the individual company. Transparency in the company's governance structure is the key element. The statement must be published either in the company's annual report or on its homepage.

Different Financial Rights

- The fact that a shareholder has the right to receive the majority of dividends or any other distributions from a company does not mean that such shareholder has control over the company for the purposes of the Danish takeover rules.

Disclosure Announcement

- The company is allowed to selectively disclose inside information to one (or more) serious offeror(s) intending to submit a takeover offer. The offeror is permitted to present and execute the takeover offer even if the offeror possesses insider information. A potential offeror does not become an insider merely by meeting with the management of the potential target company to discuss the possibility of acquiring

shares in the target company or hear the management's explanations of publicly available information such as accounts.

- The above implies that the company is not required to disclose the insider information (a so-called "disclosure announcement") that may have been disclosed in connection with a due diligence review.

- Although the company is not obliged to publish a disclosure announcement pertaining to the insider information that has been presented to the offeror, the board of directors should always consider a disclosure announcement, as the board might have a legitimate interest in publishing the information to the market. If a disclosure announcement is not made, it is the board of directors' sole responsibility to assess whether the takeover offer takes into account the insider information that is unknown to the shareholders and the market.

- The lack of equal presentation of information between the market on one side and the company and the offeror on the other will, all things being equal, increase the risk of the board of directors subsequently being met with criticism.

Disparate Voting Rights

- According to the Danish Companies Act, all shares carry equal voting rights. The articles of association may, however, provide disparate voting rights, including no voting shares (*see also* "A and B Shares").

Duty of Care and Loyalty

- The duty of care requires that directors and officers, in performing their decision-making and supervisory functions, be attentive and act with prudence.

- Managers must act in good faith, after sufficient investigation and for acceptable reasons.

- The duty of loyalty governs fiduciaries conflicts of interest and requires that fiduciaries put the company's interests ahead of their own.

- Danish law operates with a Duty of Care and Duty of Loyalty, although these duties are not as broad as under Anglo-Saxon law.

Dilution of Interest

- Where a company issues additional shares on a non-pro rata basis, the interest of those shareholders who do not receive additional shares is diluted.

- Under the Danish Companies Act, all existing shareholders have a preemptive right to subscribe for new shares issued by the company.

- The pre-emptive rights can be deviated from by the general meeting under certain conditions. For example, if shares are issued at market price, pre-emptive rights can be deviated from by a double two-thirds majority vote (the votes cast and the voting share capital represented at the general meeting). If shares are issued below market price, there are a number of more restrictive requirements to be fulfilled before the pre-emptive rights can be waived.

- See also “Capital Increase Majority Requirements”.

Dividends

- It is within the discretion of the shareholders to decide whether to declare dividends, but the shareholders cannot declare a higher dividend than proposed or approved by the board of directors.

E

Equal Treatment

- Under the Danish Companies Act, all shares of a company have equal rights. The articles of association may, however, provide that a company can have more than one class of shares, in which case equal treatment will apply within each share class (see “A and B Shares”).

- At a general meeting, the shareholders of a company cannot pass resolutions that are likely to confer upon certain shareholders undue advantage at the expense of other shareholders or the company.

- For example, the shareholders of a target company cannot discriminate against an acquiror with a minority shareholding by granting themselves the sole right to sub-

scribe for new shares while excluding the acquiror (which would likewise be a violation of Section 45 of the Danish Companies Act).

- For the purposes of this guide, it should be noted that equal treatment only applies to acts made at a general meeting, i.e. attempts made outside a general meeting regarding a takeover is not subject to equal treatment.

- In addition, equal treatment only governs the relationship between the shareholders and the company. Thus, under certain conditions, the shareholders of a target company may grant a third party the sole right to subscribe for new shares because the third party is not a shareholder of the company.

Equity Commitment Letter

- An equity commitment letter is used in leveraged buyouts. The letter is a document, pursuant to which, the company funding the purchaser, usually a private equity firm, commits to provide the equity contribution.

Exclusivity Agreement

- In a "friendly takeover", the offeror may contact the target with a view to conclude an exclusivity agreement. This way, the offeror seeks to ensure that the target does not team up with other parties to invite an alternative takeover offer (or initiate an actual auction process).

- There is no actual prohibition against concluding such agreements, but in cases of several potential offerors, it is recommended for the target company/sellers to avoid accepting exclusivity restrictions.

- Especially long "non-solicit tails" following failed negotiations as well as financial "poison pills", e.g. in the form of penalty payments in connection with exclusivity agreements, should be carefully considered prior to accepting such arrangements.

- In this connection, it is important for the target company/sellers to make sure that any exclusivity restrictions accepted are not worded so as to prevent the board of directors from advising the shareholders to accept a competing offer, which the board of directors, from an overall assessment, finds more attractive than the original offer.

Exemptions from Takeover Rules

- The authorities may exempt certain takeovers from one or more of the requirements that would otherwise apply according to the Danish takeover rules. Thus, the authorities may exempt a takeover from the rules regarding:

  - mandatory takeover offers
  - voluntary offers
  - the length of the offer period
  - the obligation to pay the consideration in cash
  - the prohibition from linking conditions to the bid
  - timing of the publication of the offer
  - timing of the opinion from the board of directors
  - extension of the offer period in connection with changes (improvements) of the offer
  - timing of a competing offer

- Historically, the authorities have granted such exemptions in connection with the takeover of financially distressed companies, since the takeover rules are aimed at protecting the interests of minority shareholders, and it is in the general interest of the minority shareholders (and the target company as a whole) that a reorganization effort can be conducted as efficiently as possible.

- The authorities have occasionally granted exemptions from making mandatory takeover offers. Such exemptions may be granted where the acquisition of the controlling stake in the company resulted in insignificant changes to the minority shareholders' premise for the investment and the company's on-going business, since the takeovers did not result in any changes of the board of directors and the purpose of the takeovers were not to later sell the company.

- Furthermore, the authorities have granted exemptions from making a mandatory takeover offer, where the target company was a financially distressed company and the company's existence was threatened. Therefore, the authorities concluded that the takeover was in the interest of the minority shareholders.

F

Fairness Opinion

- A fairness opinion is an evaluation by an investment bank or other third party as to whether the terms of a merger, acquisition, buyback, spin-off, or going private are fair. It is rendered for a fee.

- The board of directors will almost always request a fairness opinion to ensure that the offer is satisfactory.

Fiduciary Duty

- Fiduciary duties are imposed on the directors and officers. Generally, it is required that they act in the company's best interest, principally for the common benefit of the shareholders.

- Under Danish law, the relationship between the management and the company's shareholders is not considered a fiduciary relationship, but Danish law does operate with a Duty of Care and Duty of Loyalty, although these duties are not as broad as under Anglo-Saxon law (see "Duty of Care and Loyalty").

Financially Distressed Companies

- *See* "Exemptions from Takeover Rules".

Financing

- The Offer Document must include information regarding the financing of the offer. Financing must be secured by the offeror before the offer document is submitted. Consequently, the offer cannot be conditional on the offeror's financing.

Financing Out

- A Financing Out provision is a condition precedent, i.e. a condition that must be met before the agreement becomes effective, in the merger or share purchase agreement that makes the acquisition transaction subject to financing.

- If a Financing Out provision is agreed and if the financing is not obtained as set forth in the agreement, the potential acquiror is not required to complete the acquisition.

G

Gift Transactions

- Acquisition by gift is not covered by the obligation to make a takeover bid.

H

Hedge Funds

- In connection with an on-going or pending takeover, the target company and the offeror may have to deal with hedge funds which have acquired a portion of the shares in the target company, either as a long-term investment or as an event-driven investment due to rumours of a pending takeover of the target company.

- Hedge funds may employ unconventional methods, such as proxy fights or using the media to pressure the board of directors of the target company. Hedge funds may "hunt in packs", and one hedge fund having published an ownership of the target company's shares of more than 5 % may be supported by a number of other hedge funds with smaller ownership shares.

- Activist hedge funds focus on shareholder value and will often have great knowledge of the workings of the target company and challenge the decisions of the target company's board of directors. The target company's board of directors should listen to the hedge fund, engage it and be prepared to defend its own decisions.

- Hedge funds may have strong opinions about takeover offers and may publicly challenge the board of directors' opinion (see "Opinion"). A dispute between the board of directors of the target company and a shareholder may reflect poorly on the target company and the board of directors.

Holding Company Taxation

- A Danish parent holding shares of a Danish (unlisted) subsidiary is generally exempt from taxation on dividends. If the parent owns 10% or more of the shares, sale proceeds are also generally exempt from taxation.

- Generally, by conducting the business through a holding-company structure, taxation can be postponed, which, when considering the time value of money, can prove beneficial to the company.

- Profits can be transferred tax-free from the subsidiary to the holding company and losses of the subsidiary, provided the subsidiary is wholly-owned, are fully deductible by the holding company through consolidated tax returns.

- Pure holding companies do not conduct activities subject to sales tax (VAT). Consequently, such holding companies cannot deduct sales tax on expenses.

I

IFRS

- IFRS is an acronym for the International Financial Reporting Standards. These standards are a set of accounting principles developed by the International Accounting Standards Board. More than one hundred countries require or permit the use of these standards, including the countries within the European Union.

Incentive-based Remuneration

- If the company’s shares are admitted for trading on a regulated market, the company can enter into a specific agreement for incentive-based remuneration for a member of its management. The company's central governing body must set general guidelines for incentive-based remuneration for the company's management.

- The guidelines must be adopted by the limited liability company at the general meeting. If the general meeting has adopted guidelines for incentive-based remu-

neration for the limited liability company's management, a provision must be included in the company's articles of association to that effect.

- From the date on which the offeror or persons acting in concert with the offeror initiate negotiations with the target and until the negotiations cease, or a takeover bid is implemented, the offeror may not enter into agreements and the board of directors may not change existing agreements on bonuses and similar benefits for the board, directors or management of the target.

- Existing agreements on bonuses must be disclosed in the offer document. It must be stated in the offer document if there are no such bonus agreements.

Inheritance

- Acquisition by inheritance is not covered by the obligation to make a takeover bid.

Inside Information

- The Issuer must ensure that all market participants have simultaneous access to any inside information about the Issuer. The Issuer should therefore ensure that inside information is treated confidentially and that no unauthorised party is given such information prior to disclosure. Unless the inside information is simultaneously made public to the market, it should not be disclosed to analysts, journalists, or any other parties (individually or in groups).

- Public disclosure of inside information by the Issuer is essential to avoid insider dealing and ensure that investors are not misled. Issuers should therefore be required to inform the public as soon as possible of inside information. That obligation may, however, under special circumstances prejudice the legitimate interests of the Issuer. In such circumstances, delayed disclosure should be permitted provided that the delay would not be likely to mislead the public and that the Issuer is able to ensure the confidentiality of the information. The Issuer is only under an obligation to disclose inside information if it has requested or approved admission of the financial instrument to trading, or in case of leakage (see “Leakage”).

Intra-Group Transfers

- Acquisition by transfers within the same group is not covered by the obligation to make a takeover bid.

Irrevocable Tender Agreement

- In connection with a potential takeover, the offeror may wish to secure that one or more major shareholders will accept the offer once it is published. The offeror can enter into irrevocable tender agreements stipulating that the major shareholder must accept the terms of the offer document once it is published. The irrevocable tender agreement can contain further provisions, such as warranties by the major shareholder.

- The offer document must specify how many shares the offeror owns at the time of publication as well as any acceptances the offeror has already secured, e.g. by way of irrevocable tender agreements.

- In a "soft irrevocable tender agreement", the major shareholder will not be prohibited from accepting competing offers (see "Competing Offer") on more beneficial terms. The soft irrevocable tender agreement may specify which terms of a competing offer that will allow the major shareholder to accept the competing offer (qualified soft irrevocable).

- In a "hard irrevocable tender agreement", the major shareholder is prohibited from accepting competing offers, regardless of the terms of the competing offer.

- There are a number of different combinations of agreements (Irrevocable Tender Agreements, Exclusivity Agreements and Non-Solicitation Agreements) which may be entered into between on the one hand the offeror and on the other hand the board of directors and major shareholders of a target company in connection with the preparation of a voluntary takeover offer. Examples of such combinations of agreements are described below, ranging from most restrictive (scenario 1) to least restrictive (scenario 5) on the board of directors and major shareholders:

  Scenario 1

  - Hard irrevocable tender agreement from shareholders to tender shares upon launch of tender offer.

  - Exclusivity agreement, non-solicitation agreement and/or break fee to prevent shopping of deal.

  Scenario 2

  - Hard irrevocable tender agreement from shareholders to tender shares upon launch of tender offer.

Scenario 3

- o Soft irrevocable tender agreement from shareholders to tender shares upon launch of tender offer only

- o to be disregarded if higher price is obtained by third party.

- o Exclusivity agreement, non-solicitation agreement and/or break fee to prevent shopping of deal.

Scenario 4

- o Soft irrevocable tender agreement from shareholders to tender shares upon launch of tender offer only to be disregarded if higher price is obtained by third party.

Scenario 5

- o Exclusivity agreement, non-solicitation agreement and/or break fee to prevent shopping of deal.

L

Leakage

- In case inside information has been withheld in order not to prejudice the legitimate interests of the Issuer (delayed disclosure), disclosure must be made immediately in event of a leakage of the inside information.

- It is therefore of essential importance that the Issuer has prepared draft leakage announcements and is generally prepared to handle a potential leakage.

Limitation on Interest Deductions

- Deductibility for interest payments may be limited as follows.

- Thin capitalization limitation: If a company has debt to another company that is in control of the first company, as defined by the Danish Tax Assessment Act, and the controlled company's debt-to-equity ratio exceed 4:1, deductions are disallowed for the interest that exceed that ratio, provided the controlled debt exceeds DKK

10,000,000, and subject to certain consolidation rules regarding affiliated companies.

- Asset-based limitation (applicable to financing costs that remain after the thin capitalization limitation): The deductibility of net financing costs in excess of DKK 21,300,000 (2020) can be limited to 2.5% (2020) of the tax value of certain assets of the tax group.

- EBITDA-based limitation (applicable to financing costs that remain after thin capitalization limitation and asset-based limitation): Net financing costs can be limited to 30% of the tax group's EBITDA. A minimum deduction of DKK 22,313,400 is permitted, and excess net financing costs can be carried forward.

- In addition to the above limitations, if a creditor treats the repayment of debt as dividends, the Danish debtor can be prevented from deducting interest payments entirely, as such may be considered dividend payments instead.

Lockups

- A lockup is a term of art whereby management of a target company grants a friendly third party a right (option) to purchase shares or assets of the target company on favorable conditions. If the option is tied to a vital part of the target company (e.g. an important division of the company or real estate), the lockup is referred to as a crown-jewel lockup.

- In Denmark, the board of a company has far-reaching powers to dispose of the company's assets, etc. However, the board is not entitled to enter into transactions that are likely to confer upon certain shareholders or others an undue advantage at the expense of other shareholders or the company.

- Giving a third party a right to purchase a substantial part of a target company, especially in case of a crown-jewel lockup, may confer upon the third party an undue advantage. It may, however, be justified if it serves an overriding corporate purpose.

M

Mala-Fide Doctrine

- A party to an agreement is normally free to exercise his rights arising under the agreement. By way of example, a majority shareholder is free to exercise his rights arising under a shareholders' agreement.

- However, according to Danish case law, a party to an agreement may in exceptional circumstances be barred from exercising his rights arising under the agreement if he acts with actual malice, with no bona-fide reason and as such, causes harm to the other party.

Management Buy-Outs

- Target company management acquires equity in the target company. The acquisition will normally be made through an acquisition vehicle (an "SPV") set up by the management where other investors may invest capital.

- Management buy-outs have been seen often in Denmark. The acquisition can be coupled with A and B shares, ensuring that the management of the target company remains in control. This can be done by having the A shares represent the majority of the voting rights (see "A and B Shares").

- Section 19 of the Danish Executive Order on Takeover Bids prohibits the offeror or persons acting in concert with the offeror from entering into bonus agreements (or changing existing bonus agreements) with the board of directors of the target company from the date when the takeover negotiations are initiated until the negotiations are stopped, or a takeover bid is implemented.

- The provision does not prohibit agreements whereby the management agrees to continue in their current position after the takeover, provided such agreements do not contain more favourable conditions for the management than those already in force prior to the start of the negotiations with the target company.

- If the target company's directors are allowed to invest in the target company or the offeror company on market terms as a part of the offer, this will most likely not be considered a bonus agreement, as long as the investment takes place on market terms without economic advantages for the management.

- Further, the SPV is not formally prohibited from entering into agreements with the management prior to the start of the negotiations with the target company. However, there is a risk that the Danish Financial Supervisory Authority would find that the negotiations regarding the takeover have been initiated as soon as the negotiations with the management regarding any bonus agreement or management participation scheme are initiated.

Mandatory Takeover Bids

- If a shareholding in a company with one or several share classes admitted to trading on a regulated market is transferred, directly or indirectly, to an acquiror or to persons who act in concert with him, the acquiror must enable all the shareholders of the company to dispose of their shares on identical terms.

- A mandatory takeover bid is triggered when the acquiror becomes holder of the majority of the voting rights of a company or becomes entitled to exercise a controlling influence over the company. This also applies where the acquiror becomes a majority shareholder as a result of the company issuing new shares.

- The mandatory takeover bid will not be triggered by a share transfer in the form of a (i) creditor suit, (ii) gift, (iii) inheritance, (iv) intra-group transaction, or (v) merger or other form of restructuring not involving an acquisition of shares.

- No later than four weeks after the acquisition of a controlling influence, the acquiror must publish an offer document. The offer document must contain information on the financial terms and other terms of the bid as well as other information that is deemed necessary for the shareholders to arrive at an informed judgment of the bid. No conditions may be linked to a mandatory takeover bid.

- As consideration, the offeror has an option to offer the shareholders voting rights, cash, or a combination of both. If the voting rights do not consist of liquid shares admitted to trading on a regulated market, the consideration must consist of a cash alternative. If the offeror has purchased shares for cash representing at least 5% of the voting rights in the target company during a period of six months preceding the making of the offer and until the offer is closed for acceptance, the offeror must offer cash consideration (at least as an alternative).

- The price offered must correspond to no less than the highest price the offeror has paid for shares in the target company already acquired in the six months preceding

the date the offer is made. The Danish Financial Supervisory Authority may, in exceptional circumstances, adjust the price upwards or downwards (see "Market Value").

- The acquiror is only obligated to publish a mandatory takeover bid on the above terms at the time when the acquiror becomes entitled to exercise a controlling influence over the company, and not at any subsequent share acquisitions. Since the price of the mandatory takeover bid is dictated by the price paid for shares of the target company by the acquiror at the acquisition triggering the mandatory takeover bid (and in the preceding six months), it may be beneficial for an acquiror who is planning to make subsequent share acquisitions to reach a controlling influence in the company by making a share purchase below market value. In this case, it is unlikely that many of the other shareholders will accept the mandatory takeover offer.

Market Value

- For public companies, the market value of the shares will as a general rule be equal to the price quoted on Nasdaq Copenhagen A/S for the company's shares. However, in connection with a mandatory takeover bid or a share capital increase, the market value may need to be assessed by alternative means.

- In a mandatory takeover bid (see "Mandatory Takeover Bids"), the price offered must as a starting point be no less than the highest price the offeror has paid for shares acquired in the six months preceding the date the offer is made.

- The Danish Financial Supervisory Authority may, in exceptional circumstances, adjust the price. The Danish Financial Supervisory Authority may consider (i) the highest price paid by the offeror in the past 12 months, (ii) average price of the shares over the past 12 months, (iii) liquidation value of the target, and (iv) other objective criteria. When considering whether the price should be adjusted, case law shows that the Danish Financial Supervisory Authority among other factors may consider (i) whether the share is illiquid, (ii) whether the general meeting have approved the price e.g. in connection with a capital increase, (iii) whether the company is in financial distress and (iv) the price development.

- In case of a share capital increase, the majority requirement dependS on whether the increase takes place below fair market value or at or above fair market value (see "Capital Increase Majority Requirements"). A starting point for determining the fair market value would be the price quoted at Nasdaq Copenhagen A/S as described above. However, a different share price may be used, e.g. in a scenario where a

lower price is a result of negotiations with an investor and no relevant investor would subscribe for a price higher than such share price.

- The responsibility for setting the correct market price to be used in connection with the subscription primarily lies with the board of directors, but if a subscription price is set below the price quoted at Nasdaq Copenhagen A/S, the board of directors will most likely wish to obtain a fairness opinion (see "Fairness Opinion") as to whether this lower price reflects the fair market value.

Material Adverse Change

- This is commonly referred to as a MAC-clause. An offer to acquire a company's shares may include such a clause pursuant to which a party can walk away from the transaction if material adverse changes occur before closing.

Material Changes (Voting Requirements)

- In order to effect a material change in the company, a supermajority is generally required.

- Under Danish law, a supermajority is a two-prong test and is defined by two-thirds of the votes cast and two-thirds of the voting share capital represented at the shareholders' meeting.

N

NASDAQ Copenhagen A/S' Disclosure Requirements

- When an offeror has made internal preparations to make a public tender offer for securities in an issuer, the offeror must notify NASDAQ Copenhagen A/S when there are reasonable grounds to assume that the preparations will result in a public tender offer.

- If the target company has been informed that a third party intends to make a public tender offer to the shareholders of the target company, and such public tender offer has not been disclosed, the target company must notify NASDAQ Copenhagen A/S when there are reasonable grounds to assume that the intention to make a public tender offer will be realized.

Non-solicit Tail

- A non-solicit tail may be required by either party to the takeover, requiring each party from refraining from soliciting customers or employees of the other party for a defined period of time following failed negotiations.

Notification and Registration of Shareholdings

- An acquiror who has acquired shares in an issuer representing 5% of the voting rights or share capital must give notice of the ownership to the issuer and must have their ownership registered with the Danish Business Authority.

- In computing an acquiror's ownership interest, voting rights held by undertakings controlled by the acquiror or other closely related parties must be included. Furthermore, warrants, tradable purchase options, derivatives and other securities giving the right to acquire shares or the right to vote on shares must also be included.

- In relation to notification of ownership to the issuer, the acquiror is under an ongoing obligation to report additional share purchases when the level of ownership rises above, or falls below, thresholds at 10%, 15%, 20%, 25%, 50% and 90% and at 1/3 and 2/3. These thresholds effectively rule out the possibility of a "sneaking" takeover.

- Furthermore, in the above-mentioned instances, the acquiror or seller, as the case may be, must immediately publish a "major shareholder announcement" in the same manner as a company announcement stipulating which thresholds were passed in the latest transaction as set out above.

- The Issuer must give notice to the Danish Business Authority when the acquiror's shareholdings in the Issuer exceed 5% of the share capital and/or the voting rights. The acquiror's shareholdings will be made public in the Danish Shareholder Register.

- Furthermore, if any natural person or persons in the ultimate link of owners in the acquiror own sufficient shares or voting rights in the Issuer enabling them to exercise control hereof or exercise control in any other way over the Issuer, the Issuer must give notice hereof to the Danish Business Authority, and such natural person will be registered as a beneficial owner of the Issuer. Such information will also be made public in the Danish Shareholder Register. For the purpose of this provision, any natural person holding more than 25% of the share capital or voting rights will

generally always be considered a beneficial owner of the issuer. If a fund owns sufficient shares, the beneficial owner will either be the person(s) in control of the fund (e.g. the board of directors) or the beneficiary of the fund. If the beneficial owners cannot be identified, or if the legal entity in question is not deemed to have beneficial owners for the purpose of the applicable provisions, the management must ordinarily be registered instead as beneficial owners along with the reason for such registration.

O

Offer Advertisement

- The offer advertisement accompanies the offer document (see “Offer Document”), and must include information regarding (i) the deadline for accepting an offer, (ii) a website where the offer document can be downloaded, and (iii) whom the shareholders should contact in order to have the offer document sent to them. The offer advertisement must be in Danish.

- The Offer Advertisement must be approved by the authorities prior to its publication.

Offer Document

- If an offeror is required to make a mandatory takeover bid, the offeror must prepare an offer document.

- In order for the shareholders to make an informed decision, an offer document must include details concerning the target company, the offeror, the terms of the offer, the offer conditions, the tender price, information regarding the financing of the offer, the time and terms of payment, the period for acceptance, information on publication of the result of the tender, and a description of the offeror's future plans for the target company etc. Further, it shall appear from the offer document which shareholders have already accepted the offer and whether the shareholders who have already accepted an offer may freely accept any subsequent offer (see “Irrevocable Tender Agreement”) – for example, competitive offers. Furthermore, any material contracts entered into in connection with the offer must be described in the offer document.

Offer Period

- If an offeror is obligated to draft an offer document, the document must contain provisions regarding the offer period.

- The offer period must be no shorter than four weeks and no longer than 10 weeks calculated from the date of the offer document's publication.

- Moreover, the offer period may last for 12 weeks if the offeror changes the bid within the last two weeks of a 10-week offer period (*see* "Changing the Bid Offer").

- If required by competition law regulators, the offeror may extend the offer period beyond the maximum 10 weeks, but only for four weeks at a time, and only for a total of four months.

Offeror's Plans

- When an offeror makes a takeover bid, whether being voluntary or mandatory, the offeror must disclose his intentions with regard to the future business of the target company. Any amendments to the target company's articles of association are to be included in the offer document in so far it is relevant.

- The offeror must initially disclose his intentions with regard to the future business in the offer document. If there are material changes to the future plans, the offeror must announce these as soon as possible to the market in the form of a company announcement.

Opinion

- When an offeror has made a takeover bid, whether being voluntary or mandatory, the board of directors of the target company must prepare and disclose a document containing its opinion on the bid and the reasons on which it is based.

- The document must include the effects of the implementation of the bid on all of the target company's interests (with emphasis on employment), the offeror's strategic plans for the target company and the target company's place of business after the possible takeover.

- In the document, the board of directors must give its reasoned opinion to the takeover. For example, the board of directors must recommend the shareholders to accept

or decline the offer or give no recommendation at all, e.g. based on insufficient information.

- As a general rule, the business-judgment rule applies to the board of directors of the target company in case of a takeover, i.e., if the board of directors makes its decisions on an adequately informed basis, the board of directors will have no subsequent liability (see “Business-Judgment Rule”).

- If a competing offer is submitted, the board of directors must publish a new opinion describing both offers including the board of directors’ opinion regarding both offers.

- The board of directors may agree in advance to recommend a particular offer as long as this is compatible with the board of directors’ judgment of a particular proposed offer (see “Business Judgment Rule”). In case of competing offers, the board of directors is bound by their fiduciary duties.

P

Pre-emptive Right of Subscription

- Under the Danish Companies Act, all existing shareholders have a pre-emptive right to subscribe for new shares issued by the company.

- By a double two-thirds majority vote (the votes cast and the voting share capital represented at the general meeting), the shareholders can limit the preemptive right to subscribe for new shares.

- If the pre-emptive rights of some, but not all, shareholders are revoked or limited and the price for the shares allocated is less than the market value, additional requirements with respect to voting majority are required.

- If an allocation to a third party of new shares is desired, and the subscription price for the shares allocated is less than the market value, 9/10 of the shareholders must agree to this course of action.

- If an allocation to a third party of new shares is desired, and the subscription price for the shares allocated is at market value, 2/3 of the shareholders must agree to this course of action.

Preferred Shares

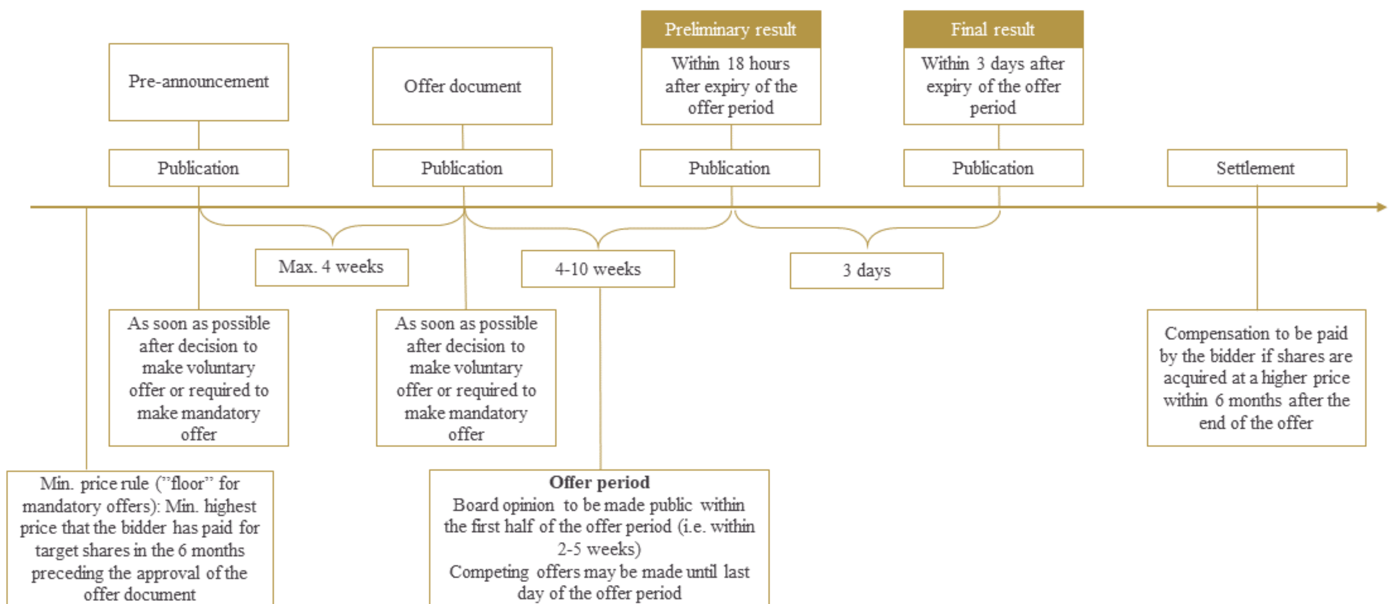
- Preferred shares are hybrids between debt and common stock and known from U.S. law, but they do not exist as such under Danish law. However, it is possible to adopt instruments which to the effect are similar to preferred shares.

- Preferred shares are senior to common shares as to dividends and liquidation rights but junior to the claims of creditors.

- Preferred shares are usually non-voting and have special rights such as cumulative dividend rights, liquidation preferences, and conversion rights.

Process

- Every takeover bid is unique. However, there are some main phases that must be completed in accordance with the takeover. The following illustration shows, in a simplified form, the main phases of the process from the offeror's initial decision to make a takeover bid to the execution of the bid.



Proxy

- Shareholders can vote at general meetings by proxies (*see* also "Consent in Lieu of a Meeting").

- Under the Danish Companies Act, proxies must be in writing and be dated. A proxy is not required to be limited in time but cannot be irrevocable.

- Proxy solicitations are not specifically governed under Danish law, as is the case pursuant to the federal proxy rules in the United States.

Public-to-private

- In a public-to-private deal, the offeror launches a mandatory or voluntary tender offer with the intention of acquiring 90% or more of the total share capital and voting rights in the company. Doing so enables the offeror to complete a squeeze-out (*see* "Squeeze-outs") and de-listing of the target company (*see* "De-listing"), making the target company a wholly owned, non-listed subsidiary of the offeror. Only in case of a voluntary public tender offer, the offer can be made conditional on the offeror obtaining a 90% or higher acceptance.

- This plan must be described in the offer document (*see* "Offer Document") under the section regarding the offeror's plan for the target company.

Q

Quorum Requirement

- Danish law allows for the adoption of provisions in the articles of association according to which a quorum must be present.

- The articles of association may also provide that shareholder resolutions must receive approval at two consecutive general meetings.

R

Recommendation from the Board of Directors

- *See* “Opinion”.

Redemption Rights

- Pursuant to the Danish Companies Act, if one shareholder owns more than 9/10 of the shares and 9/10 of the voting rights, the minority shareholders can demand to be cashed out by the majority shareholder (*see* also “Squeeze-Outs”).

- For the purpose of calculating these thresholds, the company’s treasury shares are disregarded.

Rights of Employees

- Pursuant to the Danish Act of Wage-Earner’s Rights in Mergers and Acquisitions, a seller of a business must inform the employees or their designated representatives about the sale and its consequences to the employees.

- In a takeover situation, employees of the target company have a right to continue their employment in the acquiror (company), and layoffs in the wake of a takeover will generally not be considered dismissals with just cause.

Rights of Minority Shareholders

- Resolutions regarding amendments of the articles of association whereby the share-holders right to dividend or distribution is reduced for the benefit of others than, in-ter alia, the shareholders must be adopted by 9/10 of the shareholders.

- Every shareholder has a right to attend and speak at a general meeting and to have a specific item included in the agenda for the general meeting.

- Under certain conditions, a minority shareholder has a right to be cashed out (see “Squeeze-Outs”).

Remuneration for Members of Management

- *See* “Incentive-based Remuneration”.

S

Share Capital Gains

- Gains with respect to the sale of shares owned by a company holding more than 10% of the shares are not subject to taxation.

- This tax exemption does not apply to physical persons, who continue to be taxed on gains according to the regular rules.

Share Option

- A share option is a right, not an obligation, for the holder of the option to acquire existing shares on a later date. Consideration is not required in return for a share option but it may have adverse tax consequences for the option holder if the option is not acquired at market value.

- A European style option may only be exercised during the exercise period, unlike an American style option that can be exercised at any time prior to the expiry date.

- Share options are a very common form of compensation given to managers and directors of Danish companies. Certain requirements as to disclosure apply to public companies. The details of such arrangements will always be evident from the articles of association.

Share Purchase Deal

- The agreement whereby the buyer purchases the shares. as opposed to the assets, of the target company.

Share Swap as a Defence

- The target company uses its treasury shares to take over smaller companies in an effort to dilute the value of the target company’s shares.

- This is generally not permissible under Danish law, as it is not a prudent business decision.

Spin-Off

- A spin-off takes place where a parent company distributes the shares of a subsidiary pro rata to its shareholders or sells them to a third-party. The subsidiary may either be a pre-existing company, or one that was formed immediately prior to the spin-off.

Split-Off

- A split-off occurs when a parent company makes a distribution of a subsidiary's shares to the shareholders of the subsidiary in exchange of all, or part of, those shareholders shares in the parent company.

Split-Up

- A split-up is conducted when a company separates two or more distinct business divisions into two subsidiaries and distributes the shares of the subsidiaries to its shareholders, or sells them to a third-party.

Squeeze-Outs

- If a majority shareholder holds more than 9/10 of the shares in a company and a corresponding proportion of the voting rights, the majority shareholder may, in a joint resolution with the company's board of directors, demand a squeeze-out of the remaining shareholders, which is to be approved by the shareholders at a general meeting.

- The right to redeem the minority shareholders is a two-prong test: The majority shareholder must hold at least nine-tenths of the share capital and the voting rights represented at the general meeting.

- The squeeze-out must be notified to the minority shareholders in the same way as a notification of a general meeting. The minority shareholders are given four weeks to accept the offer of the majority shareholder. Any minority shareholder can challenge the price offered by the majority shareholder to the effect that the price is calculated by an independent valuator. If, after the four weeks, not all minority share-

holders have accepted the offer, an announcement is published through the IT-system of the Danish Business Authority stipulating that if all shares have not been sold to the majority shareholder on the proposed terms and conditions, the remaining shares will be transferred to the majority shareholder against the majority shareholders deposit of the purchase price for such shares.

Stake-building

- Stake-building is the gradual accumulation of shares by an offeror or potential offeror. Stake-building may take place prior to a tender offer. Under Danish law, the acquiring company is obligated to publish shareholding in an issuer over 5% of the total shares (see "Notification and Registration of Shareholdings").

- Stake-building may also take place during a takeover offer. The offeror may wish to keep its options open by also picking up shares in the open market. Furthermore, the offeror may acquire so many shares even before the expiry of the offer period that the offeror's shareholding effectively eliminates competing offers.

Standstill Agreement

- This is a defence to a hostile takeover. The target company enters into an agreement with the hostile offeror whereby the offeror obligates itself to cease from acquiring additional shares of the target company. In return, the offeror may receive a seat on the board of directors, or the target company may repurchase the shares acquired by the offeror, usually at a premium.

- The standstill agreement has an expiration date, after which time, the offeror may resume acquiring shares of the target company. However, the idea is that throughout the duration of the agreement, the target company is able to take preventive measure against any future hostile takeover.

- The board of directors of the target company may also wish to enter into standstill agreements with a friendly or hostile offeror to prevent stake-building (see "Stake-building"), so that the offeror does not acquire so many shares that it effectively prevents any competing or subsequent offers.

Successor Liability

- In case of a merger or de-merger, a successor company takes over the obligations of a predecessor company.

T

Takeover Bid

- A public offer is an offer made to the shareholders of a company, which has as its objective to acquire the control of the company.

- The target company may have one or more share classes admitted to trading on a regulated or alternative market. The public offer seeks to acquire all or some of those shares, whether mandatory or voluntary.

Takeover Committee

- A takeover committee can be established in connection with or prior to a potential takeover. It is advisable for the target company to have established a takeover committee or at least made the responsibilities of all parties clear in advance of the takeover offer. The takeover committee's obligations include updating the board of directors on prospective (hostile and friendly) buyers as well as other takeover related matters, including any updates to the takeover manual, on an on-going basis.

Takeover Manual

- A takeover manual is a formal, written preparation by the target company of steps that must be taken, and matters that must be considered, in connection with a possible takeover. There are a number of reasons why a target company would prepare such a manual, including:

    - It is considered good corporate governance to have a takeover manual.
    - A takeover offer marks the start of a very hectic period.
    - A takeover offer will often come as a surprise.
    - A takeover offer puts the management and the board of directors under great pressure.
    - The target company may expect intensive media coverage.
    - The execution of a takeover offer is subject to special securities regulation.
    - Violation of the rules may entail liability for damages and criminal liability.

- The main objectives of a takeover manual are thus to:

  - Provide a practical and operational tool for the board of directors to handle a takeover offer and to support the board of directors at each stage of the process,
  - Ensure clear roles and responsibilities during the first days after a takeover offer is received,
  - Ensure a clear, focused and efficient process,
  - Act as a source document throughout the offer process, and
  - Defending against unsolicited offers that undervalue target.

Target-Asset Financing

- The Danish Companies Act's starting point is that a company may not furnish loans in order to finance the acquisition of its shares or shares of its parent company.

- The Danish Companies Act, however, includes an exception to this general rule, pursuant to which a company may finance the acquisition of its own shares. Thus, a company may advance money to finance the acquisition of its own shares if it follows a special procedure, which includes a double two-thirds majority vote at a general meeting.

- The financing must be reasonable in regards to the company's finances, and the company may only use funds that can be distributed as dividends (free reserves).

- If requirements on approval by the general meeting, reasonableness of the resolution, the report by the central governing body and arm's length terms are satisfied, a limited liability company may, directly or indirectly, advance funds, make loans or provide security with a view to a third party's acquisition of the company's shares or shares in its parent company.

- The exception makes it easier to finance cash heavy companies as the company can help the acquiror in financing the takeover, by using funds that can be distributed as dividends.

Transition Service Agreements

- These agreements are sometimes entered into in connection with a split-up or split-off between the seller and the buyer of a company, pursuant to which the seller will continue to provide certain services, such as office space and IT to the buyer, for a limited period of time until the buyer has established said services by himself.

Tax Loss Carryforward

- As a general rule, the company can deduct tax losses carried forward up to DKK 8,572,500 (2020). Tax losses carried forward in excess of DKK 8,572,500 (2020) can only be set off with 60%. The last 40% can be set off in subsequent years. The principle also applies to the entire group under joint taxation.

U

Ultra Vires

- Ultra vires is a term in law used to describe actions that are beyond the purposes and powers of the company. In principle, a company is not bound by an ultra vires transaction.

Units

- A unit is an instrument that combines equity and debt. In offering its shares for subscription, a company may require as a concurrent condition that each subscriber also subscribes for debt. As such, these instruments combine debt and equity and a subscriber cannot subscribe for only debt or equity.

- Such combined instruments are probably an option under Danish law. However, majority requirements are uncertain and may result in making such an offering impossible in practice for public companies.

V

Voluntary Takeover Bids

- As an alternative to purchasing shares in the secondary securities market, which trigger the mandatory takeover bid at 33% if the acquiror gains controlling influence in the company, any acquiror can make a voluntary takeover bid. In case of a voluntary takeover bid, the offer document must conform to the same requirements as attached to a mandatory takeover bid (see "Mandatory Takeover Bids").

- The offeror is not subsequently obliged to make a mandatory takeover bid if, on the basis of the voluntary bid, a controlling influence is acquired.

- There are certain legislative advantages working in the offeror's favor by making a voluntary takeover bid as opposed to a mandatory takeover bid:

  - The highest-price principle — whereby the price offered must correspond to no less than the highest price the offeror has paid for shares already acquired — does not apply to a voluntary bid.

  - A voluntary bid is not subject to the consideration requirement, *i.e.*, the offeror may choose the type of consideration at his own discretion.

  - The prohibition regarding conditional takeover bids does not apply and conditions can be tied to a voluntary bid.

W, X, Y, Z

Warrants

- A warrant is a security that grants the holder a right, not an obligation, to subscribe for newly issued shares at a fixed price.

- In case of a contested takeover, warrants represent an opportunity to increase the share capital, thereby delaying or preventing the attempt to acquire the company.

- At a general meeting, the shareholders may adopt a resolution to issue warrants. The shareholders may also pass a resolution authorizing the board of directors to issue warrants, which can be granted for one or more periods of up to five years.

- *See* also "Capital Increase Majority Requirements."

White Knight

- In a hostile takeover attempt, a white knight is a friendly acquiror of a target company who is willing to let incumbent target management remain in office.

Withdrawal of an Offer

- In case of a takeover bid, the original offeror may withdraw his bid if a competing bid is made (see "Competing Offer").

- Additionally, there may be a limited number of hardship situations where an offeror can withdraw his offer subject to prior approval by the Danish Financial Supervisory Authority.