



DOMMANN REU

NEW DANISH COMPANIES ACT

On 1 March 2010, the first part of the new Danish Companies Act took effect. The new Act regulates public limited companies (in Danish: "aktieselskaber") as well as private limited companies (in Danish: "anpartsselskaber"), and modernises and simplifies the overall regulation of both types of company.

This newsletter focuses on those simplifications of the Danish company law regime that we find of particular interest to our non-Danish clients.

Listed companies are subject to special regulation which is not described in this newsletter.

It has not yet been published when the second parts of the new Act shall take effect.

GOVERNANCE STRUCTURE

Under the new Act, public and private limited companies may choose between the following alternative governance structures:

- the traditional Danish governance structure where an executive board performs the day-to-day management of the company and a board of directors exercises overall and strategic management functions as well as certain supervisory functions (the so-called "one-and-a-half tier" governance structure);
- a two-tier (German-inspired) governance structure where all the management functions are vested with an executive board and a supervisory board performs only supervisory functions; and
- a one-tier (Anglo-Saxon-inspired) governance structure, which is only available to private limited companies, where the company is managed only by an executive board. A public limited company may adopt a governance structure somewhat similar to a one-tier governance structure by allowing all members of the executive board to also be directors; however, a majority of the directors must be non-executive (meaning that they may not be members of the executive board).



GENERAL MEETINGS

Written resolutions

The new Danish Companies Act introduces more flexible rules on the convening and holding of general meetings by permitting the use of written resolutions rather than physical or virtual general meetings. By unanimous decision, the shareholders of a company may agree to waive the formal requirements of the Act and the company's Articles of Association applicable to general meetings. Such waiver may either be given in respect of a specific general meeting or in general. A general waiver must be incorporated into the company's Articles of Association. In any event, shareholders representing more than 10% of the company's share capital may require a physical general meeting.

By introducing the above flexibility, the Act codifies the existing practice of using written resolutions instead of physical meetings.

Convening of general meetings

If a physical general meeting is to be convened, the minimum notice period for convening the meeting as well as making available certain documents for inspection at the company's office has been extended from eight days to two weeks (however, under the transitional rules, the first general meeting convened in listed companies after 1 March 2010 may be convened (i) with up to five weeks' notice, irrespective of any shorter notice period stipulated in the Articles of Association; or (ii) with less than three weeks' notice, provided that such shorter notice is set out in the Articles of Association). The motive behind this amendment is to accommodate foreign shareholders for whom eight days' notice may be insufficient.

Company Articles of Association may provide that general meetings can be convened on the company's

website. However, notice convening the general meeting must be sent to all shareholders registered in the company's register of shareholders upon request.

Proxies

In an effort to promote active ownership in Danish companies, current restrictions on the duration and scope of proxies are maintained for proxies given to the board of directors (and the executive board) of a company, but relaxed for other proxies. Accordingly, a proxy issued to the board of directors (and the executive board) may only be valid for a twelve-month period and for a specific general meeting with an agenda known at the time the proxy is issued. Under the new Act, a proxy issued other than to the board of directors (and executive board) may be indefinite and general in nature.

LANGUAGE

Language used by the board of directors or the supervisory board

If a company's Articles of Association stipulate Swedish, Norwegian or English as the group's official language, meetings of the board of directors or the supervisory board may be conducted in such language without simultaneous translation into Danish, and directors or supervisory board members will not have the right to require documents in the official group language to be translated into Danish.

If a company's Articles of Association do not stipulate Swedish, Norwegian or English as the official group language, meetings of the board of directors or the supervisory board may only be conducted in a language other than Danish if simultaneous translation into Danish is provided upon request, and directors or supervisory board members will have the right to require documents in a foreign language to be translated into Danish.

Language at general meetings

The new Danish Companies Act permits general meet-



ings to be held in a language other than Danish. Thus, the general meeting may resolve by a simple majority of votes to conduct general meetings in Swedish, Norwegian or English without providing simultaneous translation into Danish to all the participating shareholders.

However, if the language being approved is another foreign language than Swedish, Norwegian or English, and simultaneous translation into Danish is not provided, such a resolution will require approval by nine-tenths of the votes cast as well as nine-tenths of the share capital represented at the general meeting.

Furthermore, it is expected that the Danish Commerce and Companies Agency will accept registration of corporate documents in Swedish, Norwegian or English.

SHAREHOLDERS' AGREEMENTS

The new Danish Companies Act settles an ongoing debate among Danish company lawyers by expli-

citly providing that shareholders' agreements have no binding effect on the company or the decisions passed by the shareholders at general meetings.

Consequently, many typical shareholders' agreement provisions may be more difficult to enforce. Consideration should be given to including certain shareholders' agreement provisions in the company's Articles of Association. However, Articles of Association are publicly available through the Danish Commerce and Company's website and confidentiality considerations may exclude this possibility.

In light of the limitation on the enforceability of shareholders' agreements described above, it will be important to consider consequences of a breach of shareholders' agreements.



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