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## The Danish Act on the European Company (the SE Act)

BE IT KNOWN that the Folketing has enacted and We Margrethe the Second, by the Grace of God Queen of Denmark, have given Our Royal Assent to the following Act:

### **Part 1**

#### *Introductory provisions*

**1-(1)**The provisions laid down in this Act shall apply to all European public limited-liability companies (SEs) having their registered offices in Denmark and to companies participating in the formation of an SE.

**2-**The capital of an SE shall be expressed in Danish kroner or euros.

**3-**The head office of an SE shall be situated in the Danish municipality of the SE's registered office.

### **Part 2**

#### *Formation of SEs*

**4-**A company the head office of which is not in the European Union or the European Economic Area may participate in the formation of an SE which has its registered office in Denmark, if such SE

- 1) is formed under the law of a Member State;
- 2) has its registered office in that Member State; and
- 3) has a real and continuous link with a Member State's economy.

**5-(1)**When an SE is formed by merger pursuant to the provisions of the SE Regulation, shareholders who opposed the merger at the general meeting of shareholders shall be entitled to demand that the company redeems their shares, provided that such demand is submitted in writing within four weeks of the general meeting.

(2) If, prior to the resolution of the general meeting, shareholders were asked to declare whether they intended to avail themselves of the redemption entitlement laid down in subsection (1) above, the redemption right shall, however, be conditional on a shareholder having so declared at the general meeting.

(3) Shares redeemed by the company shall be redeemed at a price equivalent to the value of the shares. If the company and shareholders fail to agree the value for the purposes of redemption, the value shall be determined by experts appointed by the court in the jurisdiction of the company's registered office. The decision of the experts may be appealed by either the company or by dissenting shareholders who opposed the merger at the general meeting. Any such appeal must be brought before the court within three months of receipt of the experts' valuation.

(4) The certificate to be issued pursuant to article 25 (2) of the SE Regulation attesting that all pre-merger acts and formalities have been completed may be issued when acceptable security has been provided for the value of the shares. Experts appointed by the court in the jurisdiction of the company's registered office shall determine whether the security provided is acceptable. Where the experts' decision is brought before the court, this shall not delay the issue of the certificate pursuant to article 25 (2) of the SE Regulation by the Danish Commerce and Companies Agency, unless otherwise determined by the court.

### **Part 3**

#### *Transfer of the registered office of an SE*

6-(1) When an SE's registered office is transferred to another Member State in accordance with the provisions of the SE Regulation, shareholders who opposed the transfer at the general meeting of shareholders shall be entitled to demand that the company redeems their shares, provided that such demand is submitted in writing within four weeks of the general meeting. Section 5 (2) and (3) shall apply correspondingly.

(2) The certificate to be issued pursuant to article 8 (8) of the SE Regulation attesting that all pre-transfer acts and formalities have been completed may be issued when acceptable security has been provided for the value of the shares. Experts appointed by the court in the jurisdiction of the company's registered office shall determine whether the security provided is acceptable. Where the experts' decision is brought before the court, this shall not delay the issue of the certificate pursuant to article 25 (2) of the SE Regulation by the Danish Commerce and Companies Agency, unless otherwise determined by the court.

7-(1) When an SE transfers its registered office to another Member State in accordance with the provisions of the SE Regulation, the company's creditors and holders of other rights shall be invited to file their claims within two months following the publication of the transfer proposal. Such invitation shall be advertised in the Danish Official Gazette (*Statstidende*). The transfer shall not be effected so long as filed claims that have fallen due have not been satisfied, and acceptable security has not been provided upon request for claims that have not yet fallen due or for disputed claims.

(2) In the event of disagreement between the company and creditors who have filed claims or holders of other rights as to whether security must be provided or as to whether the security offered is sufficient, either party may, within two weeks of the claim being filed, bring the matter before the bankruptcy court in the jurisdiction in which the company's registered office is situated to obtain a ruling on the issue.

(3) The provisions of subsections (1) and (2) shall apply to liabilities that have arisen during the period until two weeks after publication of the transfer proposal.

(4) An SE shall retain its name after publication of the transfer proposal with »under flytning« (under transfer) added to the name.

## Part 4

### *The management of an SE*

#### *SEs with a two-tier management system*

**8-(1)** In SEs with a management organ and a supervisory organ (a two-tier management system), the provisions of the Danish Companies Act and legislation in general applicable to the board of directors, executive board or members thereof in public limited-liability companies shall apply *mutatis mutandis* to the management organ or members thereof, unless otherwise provided in other legislation or rules laid down under subsection (6), cf. however subsections (3) and (4).

(2) Where the legislation identified in subsection (1) above contains conflicting or contradictory provisions concerning matters which in public limited-liability companies apply to the board of directors, executive board or members thereof, respectively, the provisions that apply to the board of directors or members thereof shall be applied *mutatis mutandis* to the management organ or members thereof, unless otherwise provided in other legislation or rules laid down under subsection (6) below.

(3) The following provisions of the Danish Companies Act which apply to the board of directors or members thereof shall be applied *mutatis mutandis* to the supervisory board or members thereof only: Section 2 (2) (ii), section 4 (1) (vi), section 10 (4), section 49 (2) second sentence and section 49 (6), section 50, section 126, (1) (ii) second sentence and section 134 h (5).

(4) The following provisions of the Danish Companies Act which apply to the board of directors or members thereof shall be applied *mutatis mutandis* to both the supervisory organ or members thereof and the management organ or members thereof, cf. subsection (1) above: Section 28 b (3), section 52 (1), sections 53 and 54 b, section 56, (2)-(8), sections 58, 62 and 64, section 72 (2), section 76, section 76 a (1) and (3), section 81, section 82 (3), sections 85 and 115, section 118 a (5) and (6), section 121 (1), section 127, section 134 a (1) (ix), section 136 a (1) (xi), section 140 (1) second sentence, section 144, section 156 (2), section 157 (2) and section 160 (1) second sentence and (2) and the provisions that apply to the executive board and in section 118.

(5) The provisions of the Act concerning the members of the supervisory organ shall apply correspondingly to alternates for such members, unless otherwise provided in other legislation or rules laid down under subsection (6) below.

(6) To the extent allowed by the SE Regulation, the Danish Minister for Economic and Business Affairs, or the relevant minister after negotiations with Danish Minister for Economic and Business Affairs, may lay down rules to the effect that all or part of the provisions of subsections (1), (2) and (5) shall not apply to legislation falling within the sphere of the Danish Minister for Economic and Business Affairs or the minister in question.

**9-(1)** The supervisory organ shall have not less than three members.

(2) The management organ shall have at least one member.

**10-**The supervisory organ may decide that certain categories of decisions made by the management organ shall require approval by the supervisory organ.

### *SEs with a one-tier management system*

**11-(1)**In SEs with an administrative organ (one-tier management system) the provisions of the Danish Companies Act and other legislation which applies to the board of directors or members thereof in public limited-liability companies shall be applied *mutatis mutandis* to the administrative organ or members thereof.

(2) Subsection (1) above shall apply correspondingly to any alternates to the members of the administrative organ.

**12-(1)**The administrative organ shall consist of not less than three members.

(2) The administrative organ shall appoint at least one managing director to be in charge of the day-to-day management of the company. The provisions of the Danish Companies Act and other legislation which applies to the executive board or members thereof in public limited-liability companies shall be applied *mutatis mutandis* to managing directors.

### **Part 5**

#### *General meetings*

**13-**The first general meeting of an SE shall be held not later than 18 months after the formation of the SE.

**14-**Any shareholder shall be entitled to have a matter considered by the general meeting if the shareholder has so notified the management organ or administrative organ in time for the matter to be placed on the agenda of the general meeting.

### **Part 6**

#### *Dissolution of an SE*

**15-**The Danish Commerce and Companies Agency shall decide that an SE shall be dissolved, if necessary under section 117 of the Danish Companies Act, if the SE does not meet the SE Regulation requirement that it must have its registered office and head office in the same Member State and if such situation is not remedied before the expiry of a deadline to be fixed by the Danish Commerce and Companies Agency.

### **Part 7**

#### *Filing, registration, etc.*

**16-**The Danish Commerce and Companies Agency shall handle the registration of SEs whose registered office is situated in Denmark and shall handle the tasks set forth in article 68 (2) of the SE Regulation.

**17-(1)**The Danish Commerce and Companies Agency shall have the power to lay down such rules as may be necessary for applying the regulations of the European Communities on SEs.

(2) The Danish Commerce and Companies Agency shall have the power to lay down rules for SEs on filing, filing fees, publication in connection with the filing, extracts from the register, etc.

**18-(1)**The management or administrative organ of the SE shall file with the Danish Commerce and Companies Agency the documents and information set forth in articles 8 (2), 21, 32 (2), 37 (4) and 66 (3). Such information and the acknowledgement of receipt of the documents shall be publicised immediately in the computer system of the Danish Commerce and Companies Agency.

(2) For mergers subject to sections 226-232 of the Danish Financial Business Act, the information required under article 21 of the SE Regulation shall be filed solely with the Danish Financial Supervisory Authority. The information shall be publicised immediately in the Danish Official Gazette (*Statstidende*).

**19-(1)**In the case of companies subject to supervision by the Danish Financial Supervisory Authority, the Danish Minister for Economic and Business Affairs shall have the power to submit oppositions pursuant to article 8 (14) and article 19 of the SE Regulation.

(2) Any opposition submitted by the Danish Minister for Economic and Business Affairs under subsection (1) above shall be communicated to the company not later than two months after a transfer proposal or draft terms of a merger has been publicised. The opposition shall be publicised on the computer information system of the Danish Commerce and Companies Agency. However, any opposition to a merger that is subject to sections 226-232 of the Danish Financial Business Act shall be publicised in the Danish Official Gazette by the Danish Financial Supervisory Authority.

(3) Opposition submitted by the Danish Minister for Economic and Business Affairs may be brought before the court in the jurisdiction of the company's registered office within six months of the opposition being communicated to the company.

**20-(1)**Except as provided in subsection (2) below, decisions made by the Danish Commerce and Companies Agency or the Danish Financial Supervisory Authority pursuant to the Act, orders and regulations issued under the Act, or the SE Regulation may be appealed to the Companies Appeal Board of the Danish Ministry of Economic and Business Affairs within four weeks of the decision being communicated.

(2) Decisions by the Danish Commerce and Companies Agency on deadlines and decisions made pursuant to section 15 above may, however, not be appealed to any other administrative authority.

## **Part 8**

### *Penalty provisions etc.*

**21-(1)**Any violation of section 7 (4) of this act and articles 11, 39-45 and 49 of the SE Regulation shall be punishable with a fine, unless a stricter penalty is prescribed by other legislation.

(2) Orders and regulations issued under the Act may stipulate a fine for violating such orders and regulations.

(3) Companies and other entities (legal persons) may be criminally liable pursuant to the provisions of part 5 of the Danish Criminal Code.

**22-(1)** Any violation by an SE of legislation which, pursuant to article 9 (1) c, ii of the EU Regulation, applies correspondingly to SEs and to public limited-liability companies, shall be punishable according to the same provisions as those that would apply if the violation had been committed by a public limited-liability company.

(2) Where a member of the management organ of an SE violates legislation which, under section 8 (1) and (2) applies correspondingly to such person and to a member of the executive board or supervisory board of a public limited-liability company, such member shall be punishable according to the same provisions as would have applied if the violation had been committed by a member of the executive board or supervisory board of a public limited-liability company.

(3) Where a member of the supervisory organ of an SE or an alternate violates legislation which, under section 8 (3)-(5) or other legislation applies correspondingly to such person and to a member of the executive board or supervisory board of a public limited-liability company, such member shall be punishable according to the same provisions as would have applied if the violation had been committed by a member of the executive board or supervisory board of a public limited-liability company.

(4) Where a member of the administrative organ of an SE or an alternate violates legislation which applies correspondingly to such person and to a member of the supervisory board of a public limited-liability company, cf. section 11, such member shall be punishable according to the same provisions as would have applied if the violation had been committed by a member of the supervisory board of a public limited-liability company.

(5) Where a managing director of an SE violates legislation which applies correspondingly to such person and to a member of the executive board of a public limited-liability company, cf. section 12 (2), such member shall be punishable according to the same provisions as would have applied if the violation had been committed by a member of the executive board of a public limited-liability company.

(6) Where an expert, auditor, inspector, founder or shareholder in relation to an SE violates legislation which, pursuant to article 9 (1) c, ii of the EU Regulation, applies correspondingly to such person in an SE and to a similar person in a public limited-liability company, such person shall be punishable according to the same provisions as would have applied if the violation had been committed by a similar person in relation to a public limited-liability company.

(7) The Danish Minister for Economic and Business Affairs, or the relevant minister after negotiations with the Danish Minister for Economic and Business Affairs, may lay down rules to the effect that section 6 shall apply to other persons who could be punished if the violation had been committed by a person with a similar function in relation to a public limited-liability company.

**23-(1)** Where any of the SE's administrative organ, managing directors, supervisory organ, management organ or liquidator fail(s) to fulfil within permitted timeframes their obligations vis-à-vis the Danish Commerce and Companies Agency pursuant to the SE Regulation, the Act or provisions laid down under the Act, the Agency may seek to enforce compliance by imposing daily or weekly default fines on the relevant person(s).

(2) Where any of the SE's administrative organ, managing directors, supervisory organ, management organ, liquidator, the manager of a foreign SE's branch or an auditor of an SE fail(s) to fulfil within permitted timeframes their obligations under legislation which, pursuant to article 9 (1) c (ii), apply correspondingly to SEs and to public limited-liability companies, default fines may likewise be imposed on such persons as if such obligations were on persons with a similar function in relation to a public limited-liability company.

**Part 9**

*Coming into force etc.*

**24-**This Act shall enter into force on 8 October 2004.

**25-**This Act does not apply to the Faroe Islands and Greenland.

Given at Amalienborg on 19 May 2004

Under Our Royal Hand and Seal

Margrethe R.

/Bendt Bendtsen