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Recent trends in Danish corporate finance law

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In 2009 and in the first quarter of 2010, the Danish M&A market was dominated by industrial takeovers. After years of private equity fund domination, the lack of an effective acquisition finance market made it easy for the industrial players to finally make a footprint and complete transactions at lower multiples.

Since the first quarter of 2010, the M&A market has been increasingly dramatic, and a much more predominant private-equity activity is observed, having an increasing number of structured sales processes. The number of completed deals has increased dramatically, and the trend is expected to continue throughout 2011.

At the beginning of 2010, OMX Nordic Exchange Copenhagen (OMX) had 194 companies listed. The market value of these companies amounted to more than Dkr 975 billion (?130 billion). The IPO market increased in 2009 and 2010. However, multiple listings have been cancelled or postponed due to uncertainty in the stock market. The public to private market is consistent.

New Danish Companies Act

A new Danish Companies Act (the New Act) was passed in May 2009 and partially entered into force in March 2010. The New Act consolidates the former Danish Private Companies Act (Anpartsselskabsloven) and the Danish Public Companies Act (Aktieselskabsloven) and provides for a number of significant changes in Danish corporate law, financial law and securities trading law.

The New Act creates a larger degree of flexibility in respect of e.g. corporate structure, the structure of the company's management body, completion of general meetings and shareholders' loans. One of the purposes

is to make it more attractive for foreign companies to invest in and establish themselves in Denmark.

The key changes implemented by the New Act of relevance to the Danish corporate finance market are: i) new rules regarding the self-financing regime; and ii) expanding the opportunity to provide loans to shareholders.

New rules regarding self-financing

Prior to the introduction of the New Act, Danish law contained a strict prohibition against target companies (directly or indirectly) providing or lending funds or providing security for the acquisition of shares in the company itself or in its parent company (self-financing). The prohibition against self-financing has been partially lifted by the New Act. The New Act allows self-financing provided that the self-financing is approved at the company's general meeting, is considered to be sound and justifiable and is made available on usual market terms based on a sound credit evaluation of the receiver of the funds. Only funds available for ordinary dividends may be utilised for self-financing.

The New Act creates more flexibility for potential investors provided that the management has made a sound judgment as set out above.

Shareholders' loans

The New Act introduces certain exceptions to the general prohibition against shareholders' loans.

According to the Danish Commerce and Companies Agency's practice, only companies domiciled within EU and EEC countries are considered parent companies (and are therefore covered by the exception). The New Act concludes that loans and securities provided to parent companies domiciled in OECD, classes 0 and 1, are not covered by the prohibition (e.g. USA, Japan, Singapore, Hong Kong, Australia and Switzerland). Consequently, in general loans may be provided to legal entities domiciled within such jurisdiction.

A Danish company is further permitted to provide or lend funds or provide security for the shareholders or the management of the company (other than the parent company which holds a controlling interest in the company), provided that such funds or security constitute a usual commercial act (that the company would have made with an independent third party).

Banking and finance

Recommended firms

Tier 1

Gorrissen Federspiel
Kromann Reumert
Plesner

Tier 2

Bech-Bruun

Tier 3

Accura
Bruun & Hjejle

Tier 4

Horten
Lett

Denmark has seen new rescue packages put in place as many companies are still suffering from the events of the financial crisis the effects of which are still being felt in the Danish markets.

The Kingdom of Denmark is putting in place a new statutory regime for restructuring of banks post the October 1 2010 expiry of the blanket state guarantee regime for simple creditors of banks established in October 2008 through Bank Rescue Package I. The new structure involves sector funding of a scheme whereby a state-owned company will take over and manage the winding-up of distressed banks without going into bankruptcy. The scheme will be funded through the Guarantee Fund for Depositors and Investors.

The number of deals coming into the market is picking up but on a much slower scale than expected. "We see new transactions coming into the markets, but it is slow at the moment. The effects of the financial crisis are still apparent," says one partner.

Investors have become more cautious when taking equity from banks due to the condition of the market, and equally banks are stricter when lending money.

The last 12 months have also shown that there is reluctance for investors to take new debt. A growing interest in the bond market has become more apparent as investors look for safer means of financing. "We have seen a pickup in bond transactions, it is a growing market," says one client.

Gorrissen Federspiel

Gorrissen Federspiel's banking and finance department maintains its tier one position after being involved in some high-profile transactions over the last 12 months. "Our biggest competitor is Gorrissen, beside us they are the best in the banking and finance practice area," says one rival partner and another agrees: "If there is any firm that we are seeing more and more of, it is them and on the most prominent transactions."

Clients praised the firm's quality of work: "We like this particular firm; we are very satisfied with the service that they provide. We chose them because they are one of the biggest firms and the quality of their work certainly lives up to their reputation," says one.

Rivals were impressed by the firm's scope, as one says, "Gorrissen is a firm that is very focused and structured. They have many advantages in this market as they have many specialists."

The firm was active in corporate bond issuance in 2010 and expect this pattern to continue in the coming months. A highlight this year for the firm was acting on the first corporate bond issue from Vestas wind systems, valued at €600 million.

Another example of its capital market work saw the firm represent facility services company ISS on the issue of €125 million of high-yield notes in March 2010.

On the banking side, one notable deal saw Michael Steen Jensen and Tobias Linde represent distressed bank Finansiel Stabilitet, on various issues which included the transfer of the banking business from the organisation to Nordea bank in Denmark.

Jensen also acted for Danmarks Nationalbank on the Dkr22billion (€3billion) transfer of Roskilde Bank to Finansiel Stabilitet. Jensen is seen as one of the firm's leading figures and peers appreciate his approach: "As a lawyer he is brilliant, and as a

human being he is marvellous. If I was to copy anyone in life, I would copy him and the way that he works; he is simply remarkable."

A client adds: "He is always very professional, he has a deep understanding of financial and legal matters."

Leading lawyers

Tobias Linde
Jens Mathiasen
Morten Nybom Bethe
Michael Steen Jensen

Kromann Reumert

"Kromann Reumert are one of the finest firms this country has," says one rival partner. "They are our biggest rivals, this is a thought that I have developed over the years," says another.

A different peer notes: "They are the leading firm, in terms of the quality of their work, they are doing very well in the market given the current climate."

The firm also holds a high reputation among its clients: "We are very satisfied; they are always professional, concise and offer great advice." Another client adds: "They were very fast with their responses. I was very happy with the services they provided."

Thomas Kass was highlighted by clients: "Thomas Kass is very hard-working and pragmatic." Another client says: "We chose to use Kromann because of their expertise in the field of what we were looking for; they have experience in similar cases previously."

Thomas Kass led a notable deal this year for an international shipping company. The \$500 million (€400 million) transaction was closed in the first quarter of 2010; the deal provided financing for the extensive new building programme of the company, which included export credit funding.

The firm also advised one of the world's largest brewery groups in connection with the establishment of a new EMTN programme and two major bond loans, totalling €1 billion.

Another highlight this year for the firm was acting for the Danish government through the Ministry of Economics and Business on the capital injection by the Danish state to more than 40 Danish banks and other financial institutions. The capital injection was done by a way of hybrid loans, which amounted to more than Dkr40 billion (€31 billion).

The team was led by Kim Rasmussen who is respected among his clients and colleagues: "He is a grand figure that is shining bright," says one peer. A client adds: "We are very, very satisfied with him; he has a great commercial approach and is very professional."

In March 2010, Kromann advised French bank, BNP Paribas and Danske bank on a €750 million notes issue. The structured bond transaction was rated triple A and funded banks which have not previously tapped into the international capital market. One rival partner says, "We always see them on the top deals and it is the firm we recommend to clients in a conflict of interest."

An important transaction the firm worked on was for the Danish Export Credit Arrangement in connection with a \$500 million shopping line to AP Møller-Maersk. Kromann also acted for EQT Infrastructure Fund in connection with the purchase and financing of Kommune Kemi, the leading Danish company for treatment of hazardous waste.

The firm also assisted Denmark's largest pension fund, with a junior financing of KMD, a leading developer and provider of IT solutions for local authorities, state and corporate markets.

Leading lawyers

Jakob Bernhoft
Thomas Kaas
Kim Rasmussen
Ian Tokley

Plesner

Plesner move up a tier this year after commentators note that the firm has been visible on some of the most prominent transactions in the market. "Plesner are a great firm, we see them around a lot and they deserve to have that same status as Gorrissen and Kromann," says one rival partner.

The firm have been kept busy this year with a substantial amount of high-end banking work caused by the global-crisis. "Plesner benefits from the long-standing close ties to the establishment within the Danish financial markets," says one peer. Some of the firms clients include: Danske Bank, Nordea Bank Denmark, RBS, Citigroup, JPMorgan, Morgan Stanley and Goldman Sachs.

Thomas Maaberg Hansen is highly respected among his clients and colleagues. "He is a great lawyer, he is very pragmatic and always driven to get the best result," says one client. A rival partner adds: "He is a leading star, he spent a lot of time in London and this has benefited him. He is very constructive, very good at negotiations and understands how to get along with people."

The firm acted for the Royal Bank of Scotland on various issues in connection with the RBS takeover of ABN Amro's activities in Denmark. The team also acted for Lehman Brothers on the various Danish legal aspects

of the insolvency of Lehman Brothers International Europe.

Leading lawyers

Jacob Bier
Thomas Maaberg Hansen
Jørgen Permin
Birgitte Schøtt Knudsen
Søren Thyssen Valerius

Bech-Bruun

Bech-Bruun stays firmly placed in tier two this year, after commentators note the firm has been active in the market. "A splendid firm, that is active in the Danish market," one rival partner says.

"It is their relationship with international organisations that gives the team strong knowledge of the market," says one rival partner, while a client adds: "The assistance that we gained from the firm was remarkable. They were excellent, in every respect."

The firm maintains a strong network of clients, including RBS, Barclays Capital, Goldman Sachs, DnB Nor Bank, Citibank and Nordea. The team recently advised ISS Global on the €130 million senior notes issue due 2016.

Another highlight saw Steen Halmind and Morten Krogsgaard act for Interxion Holding on a senior secured notes issue and revolving credit facility.

Clients appreciate the services Steen Halmind provides: "He lets off a good impression - he is very proactive, hardworking and a fast worker. He is excellent in my view." A rival partner adds: "He is very client focused and very competent."

Leading lawyers

Steen Jensen
Morten Krogsgaard
Jørgen Reimer Jensen
Steen Halmind

Other ranked firms

Accura increased its banking capacity this year, after poaching the majority of Rønne and Lundgren's banking and finance lawyers, most notably partner Thomas Skjellerup who joined the team in the summer of 2010.

Rival's commended the firm on its approach: "The provide a good service, we see them on transactions," says one rival peer.

Leading lawyers: Kim Toftgaard

Bruun & Hjejle has worked on some noteworthy deals in the past year including the bank rescue package.

Leading lawyers: Henrik Dahl and Karsten Kristoffersen

This year **Horten** acted as Danish counsel to Global Crossing in connection with its \$750 million senior secured note offering. This was a major multi-jurisdictional transaction involving subsidiaries in many different countries. Our work in this deal involved advice on Danish legal issues and drafting of various documents and issuance of legal opinion.

Leading lawyers: Claus Bennetsen and Mikkel Fritsch

Lett increased its capacity in banking and finance this year poaching rival partner Søren Brinkmann from Eversheds earlier this year. The firm has built up a strong client database, advising on some interesting deals including advising the lead lenders on a \$4 million credit facility extended to the Oxford Finance Corporation. The transaction was complex due to requirements that the US-financing techniques and structures be adapted to comply and work under Danish law.

Leading lawyers: Henrik Puggaard, Søren Jenstrup and Søren Brinkmann

Other notable firms

Danders and More have become more visible in the banking and finance market over the last twelve months. The firm advised a group of investors in the financing of 7TM Pharma, a biotech company focusing on the discovery and development of drugs with a primary therapeutic focus on metabolic diseases, including obesity and cardiovascular diseases.

Mergers and acquisitions

Recommended firms

Tier 1

Bech-Bruun
Gorissen Federspiel
Kromann Reumert
Plesner

Tier 2

Accura
Bruun & Hjejle

Tier 3

Horten
Lett
Lind Cadovius
Philip & Partners
Rønne and Lundgren

The days of seeing many M&A transactions in the pipeline are all but a distant memory for many legal advisors in the Danish market. Many commentators have noted that the flow of deals in the M&A market has been lower than previous years. "The activity is very low

at the moment, I have not seen much of a pickup," says one client.

The global crisis has impacted large players, who are stepping back from their normal stance in the market. "We are not happy with the way the market is, the general expectation is for things to pick up later this year. We are relying on this," says one partner.

Lawyers have been experiencing a high level of broken deals due to a lack of equity available to investors. Despite this, the activity within the public M&A market has generally been higher than in the private sector.

Two sectors where firms are seeing a substantial amount of work are the pharmaceutical industries and shipping sectors, which were not hit hard by the financial crisis.

Investors are sceptical about banks increasing their lending capabilities and lawyers are hoping 2011 will bring a stronger market for M&A transactions to take place.

Bech-Bruun

The firm maintains its tier one status this year after numerous recommendations from the market: "Bech Bruun are a key player in the market, we often see them on the M&A scene; they cover most of the area," says a peer. "They are specialists in the market. They are one of our biggest competitors."

Clients also appreciate the firm's lawyers. "They are very good lawyers, very good, very technical and very precise. I can not single out one of them as all the M&A partners' legal knowledge is of a very high standard," one client says.

Leading lawyers

Mikkel Baaring Lerche
Jacob Hjortshøj
Søren Meisling
Jørgen Reimer Jensen

Gorissen Federspiel

"A good firm, that has a strong portion of the market," says one rival partner of Gorissen Federspiel. The firm proved its worth by working on some of the most significant deals in the market this year. "They have been very lucky, even in the current climate," adds another partner.

"They are a brilliant firm, one of the best we have used in Denmark. They are very focused on the client's needs," says a client.

Tomas Haagen Jensen in particular is recommended by clients for his skills and the way he handles his clients. "He is a brilliant lawyer, I have used many lawyers but he is one of the best I have come across. I would describe working with him as refreshing, he always delivers." says one.

One highlight saw the firm advise Jeudan on its acquisition of Landic's Danish real estate portfolio by way of a purchase of 100% shares in Landic Property.

The team also acted for Norfolk Holdings on its DKr2.6 billion (€4 billion) sale to AP Møller Maersk in December 2009.

A rival partner says, "They are at the top of their game."

Leading lawyers

Tomas Haagen Jensen
Niels Heering
Finn Møller
Henrik Thouber

Kromann Reumert

"They are an outstanding firm and are our biggest rivals," says one rival partner. The firm retained their tier one position after having an active 12 months. Commentators have also noted how much of the market share that the firm possess.

"The firm has a great client database and works on some of the most prominent deals in the market, this is why I see them as one of the main players in Denmark," says one rival partner.

One client says of Anders Stubbe Arndal: "He is a great lawyer, very client-focused, very diligent and very hardworking."

The firm also advised EQT Infrastructure's on its acquisition of Kommunekemi. The deal represents one of the few private equity transactions in Denmark in 2009 and is an example of the focus on infrastructure as an investment opportunity.

Christian Lundgren also led a team advising Scandinavian Tobacco Group on its agreement to combine its global cigar and other tobacco business of Swedish Match.

Leading lawyers

Jørgen Kjergaard Madsen
Henrik Møgelmoose
Marianne Philip

Plesner

Plesner moves up to tier one this year after commentators note that the firm now has the same capabilities as its peers in the top tier. "The firm are working on some noteworthy transactions; we see them around in the market," says one rival.

A client adds: "Plesner are always great to work with; a splendid firm who have a high level of legal knowledge."

The firm has acted for all the key private-equity houses, including Nordic Capital, EQT and IK Investment, and for many of the venture-capital entities in the Danish market.

Jacob Bier also headed a team for EQT Expansion Capital in the first expansion capital investment in Denmark.

Elsewhere, the firm advised on the €18 million acquisition of Cypriot feeder operator IMCL Holdings.

Leading Lawyers

Jacob Bier
Christian Kjølbøye

Accura

Accura increased its headcount this year with the addition of the majority of Rønne & Lundgren's M&A team, which will make Accura one of the biggest firms in Denmark. The new Accura team will employ more than 100 specialised lawyers.

One client says: "The firm have been doing some good work for us. They are results driven, we were satisfied with them."

One highlight last year was its advise to Unliever on its planned acquisition from Sara Lee of its Personal Care business for €1.27 billion in cash. The team at Accura also acted for Metso corporation in its acquisition of M&J Industries from Dansk Kapitalanlaeg.

Leading lawyers

Kåre Stolt
Jacob Vinther
Thomas Weincke

Bruun & Hjejle

Bruun & Hjejle increased its headcount this year with the addition of Henning Aasmul-Olsen who joins from Danske Bank will be welcomed with a steady flow of M&A transactions.

Clients speak highly of Mogens Eblings: "You can't find another client that would speak higher of his skills than me. I would give him five golden stars; if there were six I would give him six. He is hardworking, reliable, smart, quick and responsive. He is a leader."

One highlight this year saw the firm advise Technitrol Inc on the sale by Technitrol Inc of Pulse Medtech business to Altor Fund. The complicated cross-border transaction that involved several jurisdiction worldwide was worth €140 million.

The team at Bruun & Hjejle also acted for Bunzl on its purchase of Clean Care in January 2010.

In another notable transaction the firm advised Dansk Kapitalanlaeg Clipper Group and LD InvestEquity on the sale of A2Sea to Dong Energy. The transaction was valued at €167million and was closed in June last year.

"I have used the firm many times and they never compromise on quality; they are very conservative, very thorough and extremely good," says a client.

Leading lawyers

Mogens Ebeling
Henrik Rossing Lønberg

Other ranked firms

Horten advised Pernod Ricard on the Danish elements of its sale of a number of Swedish and Danish assets to Altia for SKr835 million (€88 million) including the bottling facility in Svendborg and a logistic centre located in Odense.

Leading lawyers: Hans Christian Pape and Lise Lotte Hjerrild

Lett has had a busy year and has had a good portion of market share. "We have noted their presence in the market," says one rival partner.

The firm also advised TDC in connection with the purchase of 100% of the shares in the Danish broadband company Fullrate. The €53 million deal was led by Sebastian Ingversen.

Other notable firms

Moalem Weitemeyer Bendtsen expanded its presence in the M&A market this year, poaching Christoffer Galbo from Kromann Reumert's team in October 2009.

This year the firm advised Asseco on the takeover of IT Practice, and advised Masco on the €10 million sale of Damixa to its management and a regional private-equity fund.

Danders and More has become more visible in the banking and finance market over the last twelve months. One highlight this year was advising IMG Holding in the purchase of the majority of shares in Swedish company Capto Financial Consulting.

Brunn & Hjejle has expanded its M&A practice by one partner this year. Henning Aasmul-Olsen joined Brunn & Hjejle on July 1 from Danske Bank.

One key deal for the year saw the firm advise Technitrol Inc on the sale of Pulse Medtech business Altor Fund in Sweden.

Restructuring and insolvency

Recommended firms

Tier 1

Kromann Reumert
Plesner

Tier 2

Accura
Bech-Bruun
Gorrissen Federspiel
Mazanti-Andersen Korsø Jensen & Partnere
Poul Schmith

Tier 3

Horten
Lett
Lind Cadovius
Lund Elmer Sandager
Philip & Partners

The financial crisis left a lot of companies requiring restructuring advice over the last 12 months and the Danish market was one that witnessed an overflow of work in this area. "The workload has increased, there has been an increase in new cases," says one partner.

The Danish market has been heavily exposed to many bankruptcy and insolvency cases and the market expects that this will continue to be the case for the next year.

Fee pressure for restructuring and insolvency cases is not as apparent as those of the M&A and banking practices, as one partner explains: "Clients are worried about the nature of their companies, they want the best service, and they are not as concerned about fees here."

Plesner

"Plesner deserve to be at the top of the table, they are our biggest rivals," says a peer. "We are uncertain of the size of transactions that they have recently been dealing with but we know they are key players in the market."

Clients appreciate the firm's skills and approach: "The firm are very good, they are very client focused and always driven to produce results," says one. "They are brilliant - we will be using them again."

Highlights this year include Michael Ziegler and Pernille Bigaard being appointed as liquidators of the Landic group, Sterling airlines, the Atlas Group, the Griffin Group and the Nordic Aero.

One rival partner says: "The firm is doing extremely well; their lawyers are brilliant and very diligent, and they are running a great practice."

Leading lawyers

Pernille Bigaard
Michael Ziegler

Accura

Accura retains its tier two spot this year after working on a number of noteworthy deals with blue-chip companies.

Clients are impressed by the service the firm provides: "The reason I use Accura is I know what I will get all the time a consistently good service, they kept me satisfied with the quality of work," says one.

Key jobs this year include instructions regarding the bank's portfolio with Danish and Swedish real-estate activities owned by Icelandic Landic, and co-receivership of major real estate bankruptcy estate SL Holding.

The first half of 2009 saw the firm receive instructions from Nykredit Bank regarding claims against Akity Wind. The firm has also been advising Roskilde Bank on ongoing issues regarding its 2008 rescue by the Danish Central Bank.

Jesper Trommer Volf this year received instructions from Jyske bank, particularly regarding its appointment as trustee in mid-size bankruptcies in Copenhagen.

Clients appreciate Trommer Volf's presence in the market: "He gives a very good explanation to a non-Dane, he has a real focus and is very practical," says one. A rival partner adds: "He is the star of the firm."

Trommer Volf is also working with Nordea bank's national departments and regional branches on various issues.

Leading lawyers

Jesper Trommer Volf

Bech-Bruun

Commentators notice this year that Bech-Bruun's presence has been more evident than last year, however peers still contend that the firm still trails behind its top-tier peers for quality and complexity of deals.

Despite this, the firm has maintained its relationships with some of the key players in Denmark, enabling it to build a strong client network. "The firm are hard-working and have a good bunch of lawyers. They are client focused and very responsive," says a client.

One highlight this year saw the firm advise on the restructuring of commodity-linked bond Råvare Plus 2013. This was the first time where a security package for a bond was dismantled to allow flexibility should the underlying CDO default.

Leading lawyers

Ulrik Holsted-Sandgreen
Michael Serring
Karl Stephensen
Troels Tuxen

Gorrissen Federspiel

Gorrissen retained its tier two position this year after commentators noted the firm's solid market presence. Clients appreciate the firm's approach to their clients: "They are very approachable, their responses are very timely and they are always a pleasure to work alongside," says one.

The firm has gained a pipeline of strong deals over the last twelve months including advice to Estaum Holding in a bankruptcy case. Anne Birgitte Gammeljord was the appointed trustee of a number of companies in the Estatum group, which involves projects in real estate in the UK and Dubai.

Gammeljord is commended by rival peers: "She is a well-known bankruptcy lawyer. She is a fine lawyer," says one.

The firm also recently acted for EBH-Fonden, a subsidiary of EBH bank, on its insolvency proceedings.

The team also advised Ejendomselska bet Voldbrohus in a bankruptcy case. The large real-estate company has more than 50 estates in Denmark and Germany.

Leading lawyer

Lars Grøngaard

Other ranked firms

Horten moves down a tier this year as commentators note that the firm have not been active in the key deals in the market.

However that's not to say that the firm has been dormant; one highlight saw the firm advising on the administration of a ferry company, which has involved several disputes before the Supreme Court.

Leading lawyers: Piya Mukherjee

Lett has been involved in a number of insolvency and bankruptcy cases in the last year. The firm advised De Lage Landen, a major leasing company under the bankruptcy of IT Factory regarding the estate's claim against KPMG.

Leading lawyers: Michael Carsted Rosenberg

Moalem Weitemeyer Bendtsen acted for creditors Skælsskør Bank and Max Bank in the restructuring of Danish real-estate company Finansieringshuset Fredensborg, with assets worth €175 million.

Leading lawyers: Thomas Weitemeyer