

INITIAL PUBLIC OFFERINGS

Denmark



Initial Public Offerings

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into initial public offerings (IPOs), including market overview (size, issuers and exchanges); rulemaking and enforcement bodies; listing requirements (authorisation process, prospectuses, publicity and marketing, enforcement); timetable and costs; corporate governance (typical requirements, allowances for new issues, takeover rules and anti-takeover devices); foreign issuers (special requirements and selling foreign issues to domestic investors); tax issues; investor claims (fora, class actions, claims, defendants and remedies); and recent trends.

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MARKET OVERVIEW

Size of market

What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The Danish IPO market is relatively small and underdeveloped in comparison to those of other Nordic countries, albeit an increasing number of small and medium-sized growth companies have conducted IPOs in the Danish market in recent years. However, this growth in numbers stopped in 2022, during which, there were only three listings in the Danish market (Danish Main Market and Growth Market). The significant decrease in listings can be attributed to turbulence in the financial markets stemming from mounting geopolitical tensions, rising inflation and increasing interest rates.

Law stated - 31 March 2023

Issuers

Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The Danish IPO market attracts issuers from a wide variety of sectors. As of 30 March 2023 there were 127 issuers on Nasdaq Copenhagen Main Market, of which 10 were foreign issuers. On Nasdaq First North Growth Market Denmark, there were 50 issuers as of 30 March 2023, including one foreign issuer. A number of Danish companies are listed on stock exchanges outside Denmark – primarily in other Nordic countries and the United States.

Law stated - 31 March 2023

Primary exchanges

What are the primary exchanges for IPOs? How do they differ?

The main stock exchange in Denmark is Nasdaq Copenhagen A/S, which is part of the Nasdaq Nordic Group ultimately owned by NASDAQ Inc.

Nasdaq Copenhagen operates two equity markets:

- Nasdaq Copenhagen Main Market. The Main Market, which is a regulated market for purposes of EU law and Danish legislation, is divided into three segments determined by the issuers' market capitalisation (large, mid and small cap).
- Nasdaq First North Growth Market Denmark. First North is a multilateral trading facility primarily for small and medium-sized growth companies subject to a lower level of regulation both at the time of admission and on an ongoing basis. First North is divided into a regular segment and a premier segment. The premier segment is primarily for issuers opting for higher listing requirements, thus raising investor visibility and preparing them for a main market listing.

In addition, Spotlight Stock Market, a Swedish marketplace, is a multilateral trading facility for smaller companies, which launched a Danish list in 2018, on which Danish issuers can be listed in kroner (the Danish local currency). Spotlight Stock Market is regulated by the Swedish Financial Supervisory Authority and being a multilateral trading facility has the same regulatory status as First North.

REGULATION**Regulators****Which bodies are responsible for rulemaking and enforcing the rules on IPOs?**

National legislation in Denmark is passed by the Danish Parliament after consultation with various market participants and other stakeholders in the equity markets. In addition, certain legislative powers are delegated to the Danish Minister of Industry, Business and Financial Affairs who can issue Danish Executive Orders (ie, delegated acts) regarding supplementary legislation to the laws adopted by the Danish Parliament. The principal Danish statute governing equity markets is the Capital Markets Act (which, among others, incorporates parts of Directive 2014/65/EU on markets in financial instruments (MiFID II), Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities, Directive 2004/109/EC on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Regulation 2014/596/EC on market abuse (market abuse regulation) and Directive 2004/25/EC on takeover bids).

The Danish Financial Supervisory Authority is the competent authority in Denmark supervising the securities markets in Denmark (in addition to supervising financial undertakings – banks, mortgage-credit institutions, pension and insurance companies, etc). The Danish Financial Supervisory Authority supervises issuers' compliance with their obligations to publish internal knowledge and other relevant information. Supervision of the securities market area also includes checking that prospectuses are published when securities are offered to the public and that prospectus material meets all statutory requirements. Finally, the Danish Financial Supervisory Authority monitors the markets with a view to intervening in market abuse (insider dealing and price manipulation).

Law stated - 31 March 2023

Authorisation for listing**Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?**

Issuers apply to the relevant marketplace for listing. The listing rules provide information on the eligibility requirements and the documents to be provided by issuers in connection with an application for listing. The listing requirements for Nasdaq Copenhagen Main Market are more stringent than those for Nasdaq First North Growth Market Denmark and Spotlight Stock Market. The eligibility requirements for listing on these marketplaces are as follows (non-exhaustive):

- the issuer must be duly incorporated or otherwise validly established according to the relevant legislation in the jurisdiction of incorporation or establishment;
- the shares of the issuer must be issued in accordance with the legislation applicable to the issuer in the jurisdiction of incorporation or establishment;
- the shares of the issuer must be freely negotiable;
- the listing application must relate to all the shares of the class to be listed;
- the issuer must possess documented earnings capacity on a business group level, or alternatively, the issuer must have sufficient working capital available for its planned business for at least 12 months after the first day of trading;
- for issuers seeking to be listed on the Nasdaq Copenhagen Main Market, audited financial reports must have been published or filed for at least three years in accordance with the accounting legislation applicable to the issuer in its jurisdictions of incorporation or establishment;

- a sufficient number of shares must be held in public hands (25 per cent with respect to Nasdaq Copenhagen Main Market, 10 per cent with respect to Nasdaq First North Growth Market Denmark and 10 per cent with respect to the Spotlight Stock Market). In addition, the issuer must have a sufficient number of shareholders and conditions for sufficient demand and supply must exist;
- the issuer must apply the corporate governance code applicable to the issuer in its jurisdiction of incorporation or establishment. Alternatively, the issuer must apply the corporate governance code applicable in the jurisdiction of the relevant marketplace;
- the issuer must have in place adequate procedures, controls and systems, including systems and procedures for financial reporting, to enable compliance with its obligations to provide the market with timely, reliable, accurate and up-to-date information; and
- the management must have appropriate qualifications and sufficient competence to govern and manage the issuer and to comply with the obligations of being a listed company.

Law stated - 31 March 2023

Prospectus

What information must be made available to prospective investors and how must it be presented?

For issuers seeking to have their shares listed on the Nasdaq Copenhagen Main Market, a prospectus must be prepared and published before the shares are offered to the public and admitted for trading and official listing. Therefore, before any public offering or listing of shares occurs, the prospectus must be approved by the Danish Financial Supervisory Authority and published. Failure to do so can entail a significant penalty.

If the issuer is incorporated in Denmark, or, where the issuer is incorporated outside of the EEA, has chosen Denmark as its home member state, the Danish Financial Supervisory Authority is responsible for granting the formal approval of the prospectus. Before being finally approved, draft versions of the prospectus will be submitted to the Danish Financial Supervisory Authority for review and commenting. The Danish Financial Supervisory Authority typically will receive four to five draft prospectuses over the course of approximately two to three months before the prospectus is finally approved. The first review will take up to 10 business days (20 business days in case of IPOs, unless a shorter review period is agreed with the Danish Financial Supervisory Authority), and the subsequent reviews will also take 10 business days (although a shorter review period can again be agreed). Comments received from the Danish Financial Supervisory Authority after each filing must be answered with the subsequent filing. During the procedure of approval, Nasdaq Copenhagen will also have an opportunity to comment on the draft prospectuses.

A prospectus is only required for the admission of shares to a regulated market such as the Nasdaq Copenhagen Main Market. For a multilateral trading facility such as Nasdaq First North Growth Market Denmark and Spotlight Stock Market, no prospectus is required (unless the prospectus requirement is specifically triggered by the size of the offering itself), and the requirements are less extensive and follow on from the rules of the relevant marketplace in question. In addition, there are certain other exceptions to the prospectus requirement.

A prospectus consists of three parts: a summary, a registration document and a securities note. The prospectus must contain the necessary information that is material to an investor for making an informed assessment of the assets and liabilities, profits and losses, financial position and prospects of, the issuer; the rights attaching to the shares; and the reasons for the issuance and its impact on the issuer. Specifically, the prospectus must include a detailed description of the issuer's business areas, management, financial information, dividend policy and shareholders as well as the risks that may be associated with an investment in the shares of the issuer, and a description of the share offering.

Law stated - 31 March 2023

Publicity and marketing

What restrictions on publicity and marketing apply during the IPO process?

All information disclosed through advertisement, whether in an oral or written form, must correspond to the information contained in the prospectus and may not be misleading or incorrect. Specifically, no information may be disclosed that contradicts anything in the prospectus, refers to information that contradicts the information in the prospectus, presents the information in a materially unbalanced way or contains alternative performance measures, unless they are contained in the prospectus. Advertising is required to be clearly marked as such and should mention that a prospectus is (or will be) prepared (including where the prospectus is (or will be) made available).

Law stated - 31 March 2023

Enforcement

What sanctions can public enforcers impose for breach of IPO rules? On whom?

The Danish Financial Supervisory Authority has a number of enforcement powers available to it where an issuer has made an offer of shares to the public in Denmark or an application of listing of shares on Nasdaq Copenhagen Main Market or First North. These powers include requiring withdrawal or suspension of the securities offer or listing application and submitting the matter to the State Prosecutor for Serious Economic and International Crime for further criminal investigation of whether there is a basis for criminal charges resulting in fines or imprisonment for the issuer or its management as applicable. The Danish Financial Supervisory Authority also has enforcement powers in relation to the market abuse civil regime, and sanctions include administration fines for certain violations and in severe cases submitting the matter for criminal investigation. Spotlight Stock Market is subject to the supervision of the Swedish Financial Supervisory Authority.

Nasdaq Copenhagen has also the power to reject an application for listing if the exchange considers that the listing would be detrimental for the exchange, the securities market or investors' interests. Nasdaq Copenhagen can also penalise violations of the listing requirements, including market abuse violations, with fines, and can de-list companies in severe cases.

In addition, violations are made publicly available through public announcements by the Danish Financial Supervisory Authority or Nasdaq Copenhagen causing reputational damage, and could result in follow-on civil lawsuits.

Law stated - 31 March 2023

TIMETABLE AND COSTS

Timetable

Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The time from initiation of an IPO procedure until the consummation is normally approximately six to nine months:

- IPO readiness (six to nine months before listing). The issuer prepares for the IPO, including appointing advisers, commencing due diligence, making organisational changes (as necessary under the listing requirements), initial submission of timetable for the prospectus and commencing the prospectus drafting.
- Prospectus submission (two to three months before listing of new shares or the offering). The first draft prospectus is submitted to the Danish Financial Supervisory Authority.
- Approval and commencement of offer period (six to 14 days before listing). The Danish Financial Supervisory

Authority approves the prospectus, which is then made public. The offer period commences, which usually last 10 days or shortened if it, during the offer period, is decided to close the offer earlier. The first review will take up to 20 business days (unless a shorter review period is agreed with the Danish Financial Supervisory Authority), and the subsequent reviews will also take 10 business days (although a shorter review period can again be agreed).

- Listing. The shares are listed after the end of the offer and subscription period. In a Danish IPO with a (soft) underwriting commitment, the shares will typically be admitted for trading and official listing a couple of days after the announcement of the results of the offering and the pricing.

Law stated - 31 March 2023

Costs

What are the usual costs and fees for conducting an IPO?

There are a number of fees to be paid by the issuer in connection with an IPO.

In the case of Nasdaq Copenhagen Main Market, the listing fees for issuers comprise a fixed one-off fee of 700,000 kroner as well as a variable one-off fee of 313 kroner per market capitalisation (MCAP) million, but capped at 600,000 kroner. The fixed fee is due at preliminary application before the exchange starts processing the listing, while the variable fee is due after completion of the listing and is based on the average market capitalisation for the first month of trading. The annual fees to be paid to Nasdaq Copenhagen Main Market are made up of a fixed fee of 100,000 kroner and a variable fee of 63 kroner per market capitalisation (MCAP) million; however, the total annual fee is capped at 750,000 kroner.

In the case of Nasdaq First North Growth Market Denmark and Nasdaq First North Premier Growth Market Denmark, the listing fee amounts to 240,000 kroner and 310,000 kroner, respectively, as well as a variable one-off fee of 112 kroner per market capitalisation (MCAP) million, but capped at 370,000 kroner and 440,000 kroner, respectively. The annual fee is between 80,000 kroner and 335,000 kroner, and 88,000 kroner and 348,000 kroner, respectively, depending on the average market capitalisation.

The fee to be paid to the Danish Financial Supervisory Authority for the application of approval of the prospectus is approximately 85,000 kroner, subject to annual regulation.

The underwriters typically receive an amount equal to a percentage of the proceeds of the underwritten portion of the offering – typically 4 to 6 per cent. In addition to underwriting fees, the issuer will be responsible for additional fees such as the fees and expenses of its legal counsel and accountants as well the costs associated with the marketing of the offering, including the roadshows and printing costs; such additional fees will often amount to approximately 2 to 4 per cent of the proceeds of the offering.

Law stated - 31 March 2023

CORPORATE GOVERNANCE

Typical requirements

What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The key corporate governance requirements are set out in the Danish Companies Act, the Danish Corporate Governance Recommendations and Nasdaq Copenhagen's rulebook for respectively the Main Market and First North. The Danish Corporate Governance Recommendations apply to Danish issuers listed on a regulated market (ie, Nasdaq

Copenhagen Main Market) in accordance with Nasdaq's 'comply-or-explain' principle, and set out rules on, for example, the composition of the board of directors and nomination committee and remuneration of the board of directors and the executive management of an issuer. It is considered good stock market practice for issuers with their shares listed on a regulated market to apply the Danish Corporate Governance Recommendations. Consequently, issuers conducting an IPO on a regulated market must apply the Danish Corporate Governance Recommendations from the time of completion of the IPO or explain why they do not follow these recommendations. However, foreign issuers listed on Nasdaq Copenhagen Main Market must apply the corporate governance code, or corporate governance recommendations, applicable to such issuers in their jurisdiction of incorporation. Alternatively, foreign issuers must apply the Danish Corporate Governance Recommendations.

Law stated - 31 March 2023

New issuers

Are there special allowances for certain types of new issuers?

Small and medium-sized growth companies can seek to have their shares listed on Nasdaq First North Growth Market Denmark or Spotlight Stock Market subject to a lower level of regulation both at the time of admission and on an ongoing basis. The regulatory framework for Nasdaq First North Growth Market Denmark and Spotlight Stock Market includes a set of regulatory alleviations compared to Nasdaq Copenhagen Main Market with respect to, for example, the prospectus regulation, insider list requirement, general meetings of shareholders and major shareholder notifications. Moreover, the rulebooks for Nasdaq First North Growth Market Denmark and Spotlight Stock Market have lighter requirements than the corresponding rulebook for Nasdaq Copenhagen Main Market, including in relation to free float, applied accounting principles, disclosure obligations and corporate governance reporting, etc.

In 2021, Nasdaq Copenhagen Main Market reintroduced specific listing requirements for special purpose acquisition companies (SPACs) so that SPACs can be listed on Nasdaq Copenhagen Main Market. The new rules for SPACs are included in Nasdaq's Main Market Rulebook and include, for example: exemption from the requirement to produce at least three annual financial reports, published in accordance with the accounting legislation applicable to the issuer in the jurisdiction of incorporation or establishment; having a clear business strategy; and demonstrating ongoing business operations. We have yet to see a listing of a SPAC on Nasdaq Copenhagen Main Market.

Law stated - 31 March 2023

Anti-takeover devices

What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

A number of Danish issuers have implemented measures against hostile takeovers in their articles of association by way of limitations on voting rights, a voting ceiling and division of the issue's shares into classes – typically into a class of unlisted shares with the majority of the voting rights and a listed class of shares with minimum voting rights. Consequently, hostile takeovers are not frequently experienced in Denmark. However, Danish law provides that shareholders representing at least two-thirds of both votes and share capital may at a general meeting adopt a resolution suspending all special rights or restrictions associated with a shareholding or specific shares if a takeover bid is submitted.

Other anti-takeover devices available for the issuer's board of directors include refusal to have due diligence carried out by the bidder; a recommendation to the shareholders to refuse the submitted takeover bid; and determining the possibility of a more favourable competing bid. Alternatively, the board of directors may decide to actively defend

against the takeover by the use of a capital increase directed at friendly third parties or conducting merger negotiations with third parties.

Law stated - 31 March 2023

FOREIGN ISSUERS

Special requirements

What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

There are no separate procedures applicable to a foreign issuer. The procedures are the same as for a Danish issuer.

Law stated - 31 March 2023

Selling foreign issues to domestic investors

Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

There are a number of situations where a foreign issuer may offer shares in Denmark without having to publish a prospectus or other offering document pursuant to the EU Prospectus Regulation:

- offers solely directed to qualified investors (ie, professional investors);
- offers to fewer than 150 natural or legal persons other than qualified investors;
- offers of securities whose denomination per unit amounts to at least €100,000;
- offers to investors who acquire securities for a total consideration of at least €100,000; and
- offers to the public with a total consideration for the securities not exceeding €8 million.

The exemptions above may be combined.

Law stated - 31 March 2023

TAX

Tax issues

Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

In Denmark, neither the issue of new shares as part of an IPO nor transfer of shares, whether subsequent to the IPO or as part of a secondary offering, will give rise to any stamp duty or similar tax being levied. However, if shareholders – domiciled in Denmark or otherwise are subject to Danish tax – sell shares in connection with an IPO, the proceeds from such sale are subject to taxation under Danish law.

Law stated - 31 March 2023

INVESTOR CLAIMS

Fora

In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

The IPO investors would need to file a claim with the Danish courts in order to seek compensation of loss suffered.

Law stated - 31 March 2023

Class actions

Are class actions possible in IPO-related claims?

The Danish Administration of Justice Act enables class actions in IPO-related matters. The Danish class action regime is a mass claim process with an opt-in mechanism as the general rule. Any private individual or legal entity that is a holder of a civil claim or credit can commence a class action with the ordinary courts through a request for approval of a class action and appointment of a class action representative as the formal party to the court case. However, few class action procedures have been initiated in Denmark, and only one of these related to an IPO-related claim.

Law stated - 31 March 2023

Claims, defendants and remedies

What are the causes of action? Whom can investors sue? And what remedies may investors seek?

In the prospectus, the members of the issuer's board of directors and the executive management make a number of representations. The liability derives from a mandatory responsibility statement in the prospectus, declaring that the issuer's board of directors and the executive management have taken reasonable steps to ensure that the information contained in the prospectus, to the best of its knowledge, is true and accurate and that there are no omissions likely to affect its contents. Where IPO investors have suffered a loss as a result of an untrue or misleading statement in or omission from the prospectus, such investors may be entitled to seek compensation from the issuer's board of directors and the executive management.

Law stated - 31 March 2023

UPDATE AND TRENDS

Key developments

Are there any other current developments or emerging trends that should be noted?

In 2022 the Danish IPO market saw a significant decrease in activities. Q4 of 2022 showed no signs of recovery and activities had come to a complete standstill. This may mainly be attributed to the financial situation following the war in Ukraine and the increase in interest rates we have seen globally. Q1 of 2023 might show a sign of possible recovery, as two new listings were approved on Nasdaq Copenhagen Main Market in March of 2023.

However, we have recently experienced a potential new listing of a Danish company on Spotlight Stock Market quickly withdraw its application when it was published, that the founder of the company had lied significantly regarding his resumé. The abrupt withdrawal from applying and the following bankruptcy of the company might affect the investors'

trust in the market especially in Danish companies, and we might as a result thereof see more scrutiny of issuers and their executive management and board members to ensure the investors' trust in the issuers.

Nasdaq First North Growth Market Denmark, Sweden, Finland and Iceland introduced an updated Rulebook for Issuers of Shares to further strengthen the confidence, credibility, and transparency of Nasdaq First North which was implemented 1 August 2022.

The most relevant material changes are, among others:

- Liquidity of the shares is now a continuous requirement.
- The requirement of a working capital for 12 months after listing is now a requirement for every issuer and not only issuers that are not profitable.
- Section 4.4 of the rulebook on annual financial statement release and half-yearly financial reports does not apply for companies listed on Nasdaq First North Growth Market Denmark. The issuer's financial statements shall therefore only comply with the relevant accounting rules applicable to the issuer.
- Suspension of trading, which Nasdaq First North Growth Market Denmark has implemented in order to protect the orderly functioning of the market.

On 21 February 2023, Nasdaq notified the market regarding an updated version of the new rulebook with mainly editorial changes effective from 21 March 2023, still aiming to ensure and strengthen the confidence, credibility, and transparency of Nasdaq First North.

Law stated - 31 March 2023

Jurisdictions

	Australia	Gilbert + Tobin
	Denmark	Mazanti-Andersen
	Finland	Bird & Bird LLP
	Germany	Hengeler Mueller
	Greece	Karatzas & Partners Law Firm
	Hong Kong	Simpson Thacher & Bartlett LLP
	Ireland	Eversheds Sutherland (Ireland)
	Japan	Nishimura & Asahi
	Luxembourg	Arendt & Medernach
	Romania	Muşat & Asociații
	South Africa	Bowmans
	Sweden	Advokatfirman Hammariskiöld
	Switzerland	Niederer Kraft Frey
	Turkey	Turunç
	United Kingdom	Simpson Thacher & Bartlett LLP
	USA	Simpson Thacher & Bartlett LLP