

FDI Guide
Denmark

Contact

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Foreword: A specific section is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: 1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former (see item 19).

	Topic	Explanation/description of what is expected	Denmark
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Regime by exception</p> <ul style="list-style-type: none"> • The Maastricht Treaty (Treaty of the Functioning of the EU or TFEU) applicable to Denmark guarantees the principle of free movement of capital between Member States of the EU and third countries. • In accordance with Article 65 of the TFEU, exceptions nevertheless exist, including, <i>inter alia</i>, measures grounded on public policy or public security. • Based on this exception principle, Denmark has implemented a screening procedure regarding FDI for Danish target companies operating in certain particularly sensitive sectors (the ‘FDI rules’).
2.	Legal regime Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/...).	<p>Danish FDI rules are set out in:</p> <ul style="list-style-type: none"> • The Danish Act on screening of certain FDI and so on in Denmark (Act No 842 of 10 May 2021 as amended) (the ‘Danish FDI Act’); • Executive Order No 1491 of 25 June 2021 on the delimitation of the scope of application of the Act on screening of certain FDI and so on in Denmark (the ‘Application Order’);

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			<ul style="list-style-type: none"> • Executive Order No 958 of 26 June 2023 on procedures and so on when applying for authorisation for or notification of certain FDI or special financial agreements in Denmark (the ‘Procedural Order’); and • Executive Order No 959 of 26 June 2023 on the transfer of confidential information about certain FDI and so on in Denmark to other authorities (the ‘Confidentiality Order’). <p>The Danish FDI Act establishes a mandatory authorisation scheme for investments in and special financial agreements with Danish entities active within certain particularly sensitive sectors (the ‘Mandatory Authorisation Scheme’), as well as a voluntary notification scheme for investments in and special financial agreements with Danish entities in all other sectors (the ‘Voluntary Notification Scheme’).</p> <p>In addition to the Mandatory Authorisation Scheme and Voluntary Notifications Scheme, the Danish FDI Act also establishes a mandatory authorisation for contracting parties wishing to enter into a contract regarding the establishment, co-ownership and operation of the Danish energy island in the North Sea (the ‘Mandatory Authorisation Scheme regarding the Danish Energi Island’).</p> <p>Both the Mandatory Authorisation Scheme and Voluntary Notifications Scheme, as well as the Mandatory Authorisation Scheme regarding the Danish Energi Island, are enforced by the Danish Business Authority (the DBA). Applications/notifications must be sent to the DBA electronically through an online portal established by the DBA. The application/notification forms are available on the DBA’s website.</p> <p>If the DBA finds that an investment or special financial agreement may pose a threat to national security or public order, and the DBA’s concerns cannot be alleviated by conditions, the DBA must submit the matter to the Danish Ministry for Industry, Business and Financial Affairs (the ‘Minister’) for further consideration.</p> <p>In addition to the Danish FDI Act, there are a few other sector-specific screening mechanisms in Denmark, including in the Danish Act on War Materials and in the Danish Act concerning the Continental Shelf. The Danish FDI Act does not apply if rules on the screening of and possible intervention against foreign investment for reasons of national security or public order are laid down in other legislation.</p>

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3.	<p>Transactions that may be subject to FDI</p> <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>Mandatory Authorisation Scheme</p> <p>Under the Mandatory Authorisation Scheme, a mandatory, pre-closing and suspensory filing to the DBA is required in the case of:</p> <ul style="list-style-type: none"> • a foreign investor’s direct or indirect acquisition of ten per cent or more of the shares or the voting rights of or similar control by other means in a Danish entity active within a particularly sensitive sector: an exhaustive list of what constitutes ‘similar control by other means’ is set out in the Procedural Order; • a foreign investor’s increase of its stake to 20 per cent or more, one-third or more, 50 per cent or more, two-thirds or more, or 100 per cent in a Danish entity active within a particularly sensitive sector; • a foreign investor’s greenfield investment in (ie, establishment of or capital injection up to certain monetary thresholds into) a Danish entity, which is going to be active within a particularly sensitive sector; • a foreign investor’s conclusion of a ‘special financial agreement’ with a Danish entity active within a particularly sensitive sector, which includes the establishment of joint ventures with certain Danish entities and the conclusion of supply, service or operation agreements with a Danish entity active within a particularly sensitive sector, if the agreement grants the foreign investor decisive influence over the Danish entity (what grants the foreign investor ‘decisive influence’ is further defined in the Application Order); <p>Voluntary Notification Scheme</p> <p>Under the Voluntary Notification Scheme, a voluntary and non-suspensory notification may be submitted to the DBA in the case of:</p> <ul style="list-style-type: none"> • a foreign investor’s direct or indirect acquisition of 25 per cent or more of the shares or voting rights or similar control by other means in a Danish entity active within all other sectors than the particularly sensitive sectors if the acquisition may constitute a threat to national security or public order; and • a foreign investor’s conclusion of a special financial agreement with a Danish entity active within all other sectors than the particularly sensitive sectors if the agreement may constitute a threat to national security or public order.

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		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are shares transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>Indirect acquisitions</p> <p>Indirect acquisitions are covered by the Danish FDI rules. Consequently, the Danish FDI rules also cover situations in which a Danish entity is owned by a foreign company and the ownership structure of the foreign company changes, thereby also resulting in a change of the indirect ownership of the Danish entity. For example, if a Danish entity is 100 per cent owned by a French company, and a Chinese company then acquires 50 per cent of the shares in the French company, this will entail an indirect acquisition of 50 per cent of the shares in the Danish entity and therefore trigger a mandatory, pre-closing and suspensory filing requirement, provided that the Danish entity is active within a particularly sensitive sector.</p> <p>Internal restructurings</p> <p>Internal restructurings are covered by the Danish FDI Act. However, the Danish FDI rules contain an exemption for certain internal restructurings. This exemption entails that internal restructurings (ie, transfers within a group, ie, changes in the possession or size of or control over shareholdings or voting rights or similar control by other means) are exempt to the extent that they do not result in an increase in the ultimate investor's shares or voting rights or similar control by other means over the Danish entity that exceeds one of the thresholds for subsequent investments (ie, 20 per cent, one-third, 50 per cent, two-thirds or 100 per cent).</p> <p>Greenfield investments</p> <p>Greenfield investments (ie, establishment of or capital injection into a Danish entity, which is going to be active within one of the particularly sensitive sectors) are covered by the Danish FDI rules. However, a <i>de minimis</i> threshold applies to such investments. Thus, pursuant to the Application Order, a mandatory, pre-closing and suspensory filing is not required, if the total investment does not exceed a total value of DKK 75m (approximately €10m) within three years from the establishment of the Danish entity, and the newly established entity is not a subsidiary of the foreign investor.</p>

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			<p>If the threshold is exceeded, a filing is required, for example, if a foreign investor invests DKK 30m in year one, DKK 30m in year two and DKK 30m in year three, the investor must apply for approval of the last DKK 30m investment. If several foreign investors are involved in the establishment of or capital injection into a Danish entity, which is going to be active within one of the particularly sensitive sectors, then the <i>de minimis</i> threshold applies to the total foreign investment.</p>
		<p>Does the FDI Authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.</p>	<p>Mandatory Authorisation Scheme</p> <p>If the investment or special financial agreement covered by the Mandatory Authorisation Scheme has been completed without prior approval, the DBA can initiate a review of the investment or special financial agreement for an indefinite period of time. If the DBA subsequently finds that the investment or special financial agreement cannot be approved (even subject to conditions), the DBA can order the investment to be divested or a special financial agreement to be terminated.</p> <p>Voluntary Notification Scheme</p> <p>If the notification of the investment or special financial agreement is not voluntarily submitted to the DBA, and the DBA subsequently considers the investment or special financial agreement to pose a threat to national security or public order, the DBA can review the investment or special financial agreement for a period of up to five years from completion. If the DBA finds that the investment or special financial agreement constitutes a threat to national security or public order, the DBA can order the investment to be divested or the special financial agreement to be terminated.</p>

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4.	<p>Sectors falling under FDI scope</p>	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<p>Mandatory Authorisation Scheme</p> <p>Five sectors are referred to as ‘particularly sensitive sectors’. If the investment is made in or special financial agreement concluded with a Danish entity active within any of these sectors, a mandatory, pre-closing and suspensory filing is required.</p> <p>The particularly sensitive sectors are:</p> <ul style="list-style-type: none"> • entities in the defence sector: for example, entities that develop or produce weapons or other technology for military use or provide services that are important to the operation of Denmark’s defence; • entities in the field of IT security functions or the processing of classified information: for example, entities that develop or produce products with IT security functions or provide services that are used to process classified information; • entities manufacturing dual-use items: ie, items that can be used for both civil and military purposes, as defined in Article 2 (1) of the Regulation (EU) No 2021/821 of 20 May 2021, as amended; • entities within developing or manufacturing other critical technology: for example, robotics, three-dimensional printing, aerospace, energy storage, and quantum and nuclear technologies; and • entities within critical infrastructure: for example, within energy (gas, electricity, oil and water), information and communications technology, transport, preparedness and protection of civilians, health, drinking water and food, wastewater, finance and economy, and education and research. <p>The particularly sensitive sectors are further defined in the Application Order. Given the novelty of the Danish FDI rules, there is still uncertainty attached to the interpretation of the scope of particularly sensitive sectors and thus, whether an entity is considered active within any of the sectors. However, the DBA has generally interpreted the particularly sensitive sectors broadly.</p>

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			<p>Voluntary Notification Scheme</p> <p>The Voluntary Notification Scheme applies to investments in and special financial agreements with Danish entities that are active within all other sectors other than the particularly sensitive sectors, if the investment or special financial agreement may pose a threat to national security or public order. Foreign investors may self-assess whether their investments or special financial agreement may pose a threat to national security or public order and thus, whether voluntary filing should be submitted.</p>
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>Mandatory Authorisation Regime (with regard to investments)</p> <p>Under the Mandatory Authorisation Scheme (with regard to investments), foreign investors are (1) non-Danish citizens; (2) non-Danish companies; and (3) Danish companies, which are subject to control or significant influence by non-Danish citizens or companies (the non-Danish citizens or companies are considered to have control or significant influence if they have at least 25 per cent of the shares or voting rights of or similar control by other means in the Danish company).</p> <p>Mandatory Authorisation Regime (with regard to special financial agreements) and Voluntary Notification Regime</p> <p>Under the Mandatory Authorisation Scheme (with regard to special financial agreements) as well as under the Voluntary Notification Scheme, foreign investors are: (1) non-EU/European Free Trade Area (EFTA) citizens; (2) non-EU/EFTA companies; and (3) EU/EFTA companies, which are subject to control or significant influence by non-EU/EFTA citizens or companies (the non-EU/EFTA citizens or companies are considered to have control or significant influence if they have at least 25 per cent of the shares or voting rights of or similar control by other means in the EU/EFTA company).</p>
6.	Procedure 6.1 Before or post-closing filing		<p>Mandatory Authorisation Scheme</p> <p>If the investment or special financial agreement falls within the scope of the Mandatory Authorisation Scheme, it is mandatory for the foreign investor to submit an application to the DBA and obtain the DBA's authorisation prior to the completion of the investment or special financial agreement.</p>

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			<p>Voluntary Notification Scheme</p> <p>If the investment or special financial agreement falls within the scope of the Voluntary Notification Scheme, prior approval is not required, but a notification may voluntarily be submitted to the DBA either pre-closing or post-closing.</p>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<p>Mandatory Authorisation Scheme</p> <p>If the investment or special financial agreement falls within the scope of the Mandatory Authorisation Scheme, it is mandatory for the foreign investor to submit an application to the DBA and obtain the DBA's authorisation prior to the completion of the investment or special financial agreement. Foreign investment clearance should <i>be a condition precedent to the completion of the transaction.</i></p> <p>Voluntary Notification Scheme</p> <p>If the investment or special financial agreement falls within the scope of the Voluntary Notification Scheme, prior approval is not required, but a notification may voluntarily be submitted to the DBA either pre-closing or post-closing.</p>
8.	6.3 In the case of post-closing, what are the powers of the authority?		<p>Mandatory Authorisation Scheme</p> <p>Not applicable under the Mandatory Authorisation Scheme.</p> <p>Voluntary Notification Scheme</p> <p>Under the Voluntary Notification Scheme, the submission of a notification may voluntarily be submitted to the DBA either pre-closing or post-closing.</p>
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	In the case of doubts as to whether a Danish entity is considered active within 'critical technology' or 'critical infrastructure', it is possible to ask the DBA for a so-called 'request for a pre-screening'. A request for a pre-screening entails a formal decision by the DBA whether a Danish entity is considered active within 'critical technology' or 'critical infrastructure' (it cannot be used to clarify whether the Danish entity is considered active within any of the other particularly sensitive sectors).

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			There is no set timeframe for requests for pre-screenings, but the DBA has indicated that the pre-screening process will take approximately two to three weeks, which is also the case in practice. The DBA has developed a form to be applied for requests for pre-screenings, which requires less information than the full authorisation/notification form. Pursuant to the pre-screening form, information about the nature of the transaction and the Danish entity's activities must be provided.
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	<p>If the investment or special financial agreement falls within the scope of the Danish FDI rules, the foreign investor must submit either an application or a notification to the DBA. The relevant forms are available on the DBA's website.</p> <p>Following submission of the application/notification, the DBA will review and ask questions. When the DBA does not have further questions, the DBA will declare the application/notification complete. This process often takes two to three weeks.</p>
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	<p>Under both the Mandatory Authorisation Scheme and the Voluntary Notification Scheme, the DBA's review is divided into two phases.</p> <ul style="list-style-type: none"> • Phase one: phase one will start when the application/notification has been declared complete by the DBA. Phase one must be completed within 45 calendar days after the application/notification has been declared complete. The review can result in either (1) approval or (2) initiation of phase two if further investigation is deemed necessary. • Phase two: the DBA can request additional information from the parties. Phase two will start when the DBA has declared the additional information complete. Phase two must be completed within 125 calendar days after the additional information has been declared complete. Phase two may result in either (1) approval, (2) a decision to negotiate conditions with the foreign investor or (3) the application/notification being submitted to the Minister for further review. The Minister's review is not subject to any deadlines. <p>The review deadlines in Phase One and Phase Two are not binding to the DBA. Therefore, if the DBA has not issued a decision at the end of the review period, the investment or special financial agreement is not automatically considered approved.</p>

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12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	After the application/notification has been declared complete, there is limited interaction between the foreign investor and the DBA until the DBA either reaches a decision to approve the investment or special financial agreement or decides that further investigation is needed. If, following the further investigation of the matter, the DBA finds that the investment or special financial agreement may give rise to national security or public order concerns, the foreign investor may engage in discussion with the DBA regarding conditions for obtaining an approval.

		Are there any guidelines issued by the authority?	<p>Currently no publicly available guidelines provide insight into the review process. However, pursuant to the Danish FDI Act, when assessing whether an investment or special economic agreement may constitute a threat to national security or public order, the DBA takes into account, <i>inter alia</i>, the following criteria:</p> <ul style="list-style-type: none"> • the investor is directly or indirectly controlled by a foreign government, including foreign government agencies or foreign armed forces of a third country, including through ownership or substantial financing; • the investor is or has been involved in activities affecting security or public order in an EU Member State or in other friendly and allied countries; • there is a serious risk that the investor will engage in or has relationships to illegal or criminal activities significant to national security or public order; and • there are indications that the investor is deliberately trying to circumvent the screening regime, for example, through the use of front company constructions.
13.	(iv) Filing fees	Is there a filing fee?	No.

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14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	Pursuant to the application/notification form, the following information about the foreign investor must be provided: <ul style="list-style-type: none"> • information about the investing company (name, address, etc); • information about the ultimate investor (name, address, etc); • description of the ownership structure of the investor, including ownership structure chart showing any entity holding directly or indirectly more than ten per cent of the shares or voting rights of the Danish entity; and • whether the investor or any entity in its chain of ownership are directly or indirectly controlled by foreign governments, national authorities and bodies, including public institutions and state-owned investment funds or armed forces – either through ownership or financing.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	The review deadlines in phase one and phase two are not binding. If the DBA has not issued a decision at the end of the review period, the investment or special financial agreement is not automatically considered approved.
16.	Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	The approval of the investment or special financial agreement may be subject to conditions in order to alleviate concerns as to national security or public order. Such conditions may relate to, <i>inter alia</i> , limitation of the foreign investor’s ownership (shares or voting rights), limitation of the foreign investor’s participation in the management of the Danish entity, or conditions aimed at limiting the foreign investor’s opportunity to gain insight into the entity in certain areas. The conditions must be observed for as long as the foreign direct investment or special financial agreement is maintained, and the foreign investor must submit an annual report to the DBA documenting their compliance with these conditions.
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	No. There is no discretion to review transactions that do not meet the conditions set by the Danish FDI rules.

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18.	(iii) Risk of veto	Describe a topical case. Statistics	<p>The DBA has decision-making powers to approve investment and special financial agreements based on the DBA's assessment that the investment or special financial agreement cannot threaten national security or public order. The DBA can negotiate conditions with the foreign investor to mitigate such threats (eg, limiting the possibilities of influencing the management of the Danish entity in question).</p> <p>If the DBA finds that the investment or special financial agreement can constitute a threat to national security or public order, which cannot be alleviated by conditions, the DBA must refer the matter to the Minister. The Minister can then either approve without conditions, impose conditions for its approval or prohibit the investment or special financial agreement. The Minister must consult with other Danish ministries prior to prohibiting the investment or special financial agreement.</p> <p>Experience since the Danish FDI Act came into force in September 2021 shows that most applications are approved in phase one. Based on publicly available information, the Minister has only prohibited one case, Hamamatsu Photonics KK's acquisition of NKT Photonics Management Europe SRL. The decision is not publicly available, so the reason for the prohibition is not publicly known. Following a new application submitted by Hamamatsu, the acquisition has subsequently been approved.</p>
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	<p>As part of its review and assessment of the investment or special financial agreement, the DBA consults with other Danish authorities depending on the activities of the Danish entity (eg, if the Danish entity is active within the energy sector, the DBA consults with the Danish Ministry of Climate, Energy and Utilities).</p> <p>Moreover, due to the cooperation mechanism in the FDI Regulation (Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019), all applications for authorisation are submitted to the European Commission and other EU Member States. The DBA also receives notifications from other EU Member States about applications undergoing screening in these jurisdictions.</p>

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20.	Sanctions	Describe the type of sanctions that may be imposed by the Authority in the case of:	
		<ul style="list-style-type: none"> breach of conditions and/or commitments attached to the approval; and 	If the investment or special financial agreement is approved subject to conditions, and the foreign investor <i>fails to comply with the clearance conditions</i> , the DBA may order the investment to be divested or the special financial agreement to be terminated within a timeframe set by the DBA.
		<ul style="list-style-type: none"> investment carried out without prior approval. 	If the investment or special financial agreement is completed without prior approval, and the DBA subsequently assesses that approval was required, the DBA can initiate an investigation and require a filing. If the DBA ultimately finds that the investment or special financial agreement cannot be approved (even with conditions), the DBA can order the investment to be divested or the special financial agreement to be terminated within a timeframe set by the DBA. If the investment or special financial agreement is not divested or terminated within the set timeframe, the DBA may suspend the voting rights of the investor and publish the investor's non-compliance. Breach of a filing obligation is not subject to a fine or other criminal liability.
21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	Not applicable.

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