



BRITISH CHAMBER OF
COMMERCE IN DENMARK

WHO ARE FOREIGNERS?



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The "real" ownership structure is decisive. Aggregation of common ownership or voting rights.

ANY FOREIGN PERSON AND (ALMOST) ALL FOREIGN LEGAL ENTITIES

FOREIGNERS BASED IN EU, EEA AND OECD INCLUDED

A FOREIGNER WITH RESIDENCE PERMIT AND/OR PERMANENT ESTABLISHMENT IN DENMARK

ONLY "TRUE" EU / EEA COMPANIES AS CONCERNS SPECIAL ECONOMIC AGREEMENTS

DANISH COMPANY WITH FOREIGN ULTIMATE BUSINESS OWNER (INCLUDING VC/PE FUNDS)

NON-EU/EAC ASSOCIATION AND NON-COMMERCIAL TRUST ETC.

DUAL DANISH AND FOREIGN CITIZENSHIP

"ACCESS TO INFLUENCE" OR "CONTROL"

25%, VETO, DIRECTOR APPOINTMENT, ETC.)

NON-EU/EAC NATIONAL AUTHORITIES AND INVESTMENT FUNDS

(EXAMPLE: THE NORWEGIAN OIL FUND IS NOT COMPRISED WHEN INVESTING DIRECTLY, BUT NOT EXCEMPTED WHEN THROUGH A SUBSIDIARY

MULTIPLE FOREIGNERS IN CONSORTIUM – ALL NEED TO BE APPROVED

CRITICAL AREAS



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Defense	IT security	Dual-use products	AI / machine learning	Nuclear technology	Nano-technology
Semi-conductors	3D print	Cyber security	Space-tech	Power to X technology	Advanced industrial robots
Biotech (synthetic biology)	<i>Regarding critical technologies, NOT... if technology is developed or manufactured for consumer products that are widely available (e.g. toys and consumer goods for home use)</i>	Transport infrastructure	IT infrastructure	Emergency services and civil protection	Energy infrastructure
Quantum technology		Sewage water and renovation	Financial infrastructure	Meteorology	Public authorities
			Health infrastructure	Food and drinks infrastructure	Public crisis management

INVESTMENT TRANSACTIONS

- Control of share ownership or voting interests – including "or similar control"



- From 0 to 15% and then afterwards from 15% to 25% requires two applications, i.e. Increase of existing investment above thresholds requires application
- No lower monetary threshold
- Percentage calculation includes shares directly and indirectly controlled by the foreigner or shares which the foreigner may influence through ownership by closely related parties (IAS 24)
- Ownership percentage(s) to be calculated for each entity in an ownership structure?
- NOT: Intra-group reorganisations where ultimate owner remains the same

INVESTMENT TRANSACTIONS

When looking at the Danish Companies Act, what is control "similar to 10% ownership interest or voting rights...?"



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No minimum financial thresholds

TAKE, VETO OR APPROVE DECISIONS ON MATERIAL FINANCIAL, OPERATIONAL, MANAGERIAL AND/OR DEVELOPMENT ISSUES

JOINT CONTROL OVER VOTING RIGHTS WITH OTHER INVESTORS, E.G. VIA SHAREHOLDER AGREEMENTS, CONSORTIA OR CONCERTED PRACTICE

"POTENTIAL" VOTING RIGHTS (WARRANTS / OPTIONS) ELIGIBLE FOR EXERCISE

NOTE: Possibly exemptions for 1) indirect acquisitions of smaller sales companies etc. and 2) sale and lease back arrangements

SIMPLIFYING MATTERS

CONTROL OVER FOREIGN ENTITY WITH A BRANCH IN DENMARK?

CONTROL OVER OR "ACCESS" TO VOTING RIGHTS

RIGHT TO APPOINT OR REMOVE MEMBERS OF THE BOARD OF DIRECTORS AND/OR THE EXECUTIVE MANAGEMENT

EXTRATERRITORIAL EFFECT – APPLIES TO OFFSHORE TRANSACTIONS WHERE (INDIRECTLY) CONTROL OVER A DANISH COMPANY SHIFTS

GREENFIELD INVESTMENTS – IF NEW ENTITY BECOMES SUBSIDIARY OR IF INVESTMENT ABOVE EUR 10M

CHANGE TO "CRITICAL SECTOR" AFTER INCORPORATION OF LEGAL ENTITY?

CONTROL VIA ARTICLES OF ASSOCIATION

CONTROL VIA LONG-TERM OR UNTERMINABLE AGREEMENTS, INCLUDING LOAN AGREEMENTS AND LEASE CONTRACTS

ASSETS DEALS, E.G. CONCERNING IPR, OTHER KEY COMPONENTS OR STRUCTURES AND REAL ESTATE

APPLIES TO ACQUISITION OF SHARES IN OR CONTROL OVER LISTED COMPANIES, AND WATCH OUT FOR STAKE-BUILDING IN PUBLIC M&A

TEMPORARY AND INTERIM ACQUISITIONS