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Investor Update

2017Q4



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Market highlights

- Following the trend of the last couple of years, the total number of European deals increased by 7 % in 2017 compared to 2016. The number of European businesses sold in 2017 was 7,837, making 2017 a new record year in this regard with an increase of 6 % compared to last year.
- In terms of deal value of European deals, the general observation is that the price movement follows the stock market with a slight delay. This entailed a minor increase in deal prices in 2017.
- Transaction activity in Denmark continued to be high in 2017 as well. With 314 deals, the number of Danish deals was the same as in 2016. In terms of Danish businesses being sold, we saw a minor decrease of 1 % compared to last year.
- Strategic investors continued to dominate the buyer side in Danish deals, being responsible for 73 % of acquisitions in Denmark, while financial investors were behind the remaining 27 %. This very much reflects the situation in 2016.
- 78 % of non-Danish buyers of Danish businesses came from Europe, 17 % from the US and 5% from Asia.
- Danish buyers were also very active in foreign countries in 2017. Compared to 2016, we saw a 16 % increase in acquisitions by Danish buyers of businesses outside of Denmark.

W&I insurance: An international buyer's quick guide

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W&I insurance has become an integral part of the Danish private M&A market

Warranty & indemnity insurance products have been a theme in the global M&A markets for some time now. However, buyers' familiarity with the product varies greatly - both across geographies but also between different buyer types, with private equity sponsors generally having a greater level of insight and experience than industrial buyers (even the more M&A-centric ones). In the past five years, W&I insurance has become a frequently-used private M&A instrument in Denmark and now appears to be a consideration in the majority of transactions, due to a perceived lack of willingness among sellers to take on the warranty exposure associated with anything but "fundamental warranties". While naturally always a matter for discussion, the concept of fundamental warranties in a Danish context is typically warranties for title, capacity, intra-group trading with tax and environmental being a discussion

point. Particularly buyers with a more US-style approach to warranties will often be looking at some very protracted discussions with Danish sellers on the extent of warranties.

This trend - which, of course, is also down to current markets being quite attractive for sellers - is not, however, the only driver of W&I insurance. Others include the ability of insurance providers to adapt their products to specific targets and processes, pricing being very competitive and the case for escrow arrangements in the Danish negative environment being very difficult.

Therefore, foreign buyers should familiarize themselves with the product as part of their preparations for a Danish deal, as very likely the issue will come up as part of discussions and as warranty discussions may otherwise risk becoming a stumbling block for discussions. Below, therefore, a few basic traits of the product:

Object and coverage

A W&I insurance basically covers losses suffered from warranty and indemnification claims in an M&A transaction (shares or assets).

As a starting point, however, it will only cover unknown matters, i.e. matters which the buyer did not become aware of through the due diligence exercise (known as the concept of “buyer’s knowledge” in

most policies and transaction documents). Specific indemnities for known issues are therefore not covered as part of general W&I insurance but, depending on the subject-matter, coverage may be available under a separate policy, only with a slightly different process and, notably, pricing to take into account.

Usually, also, there will be certain specific exclusions from coverage:

- forward-looking warranties (e.g. financial records for the coming years)
- certain tax matters (e.g. transfer pricing)
- certain specific warranty categories (e.g. environmental warranties).

If signing and closing do not occur simultaneously, insurers are usually willing to cover matters arising in this interim period, subject to a so-called “bring down of disclosures” taking place immediately prior to closing.

Process

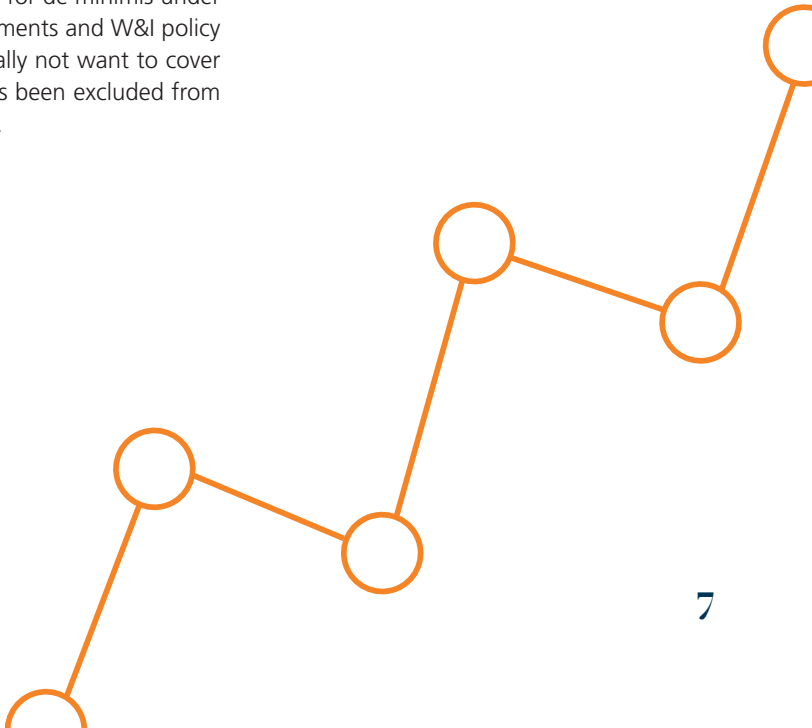
In principle, both “sell-side” and “buy-side” insurance policies are available, but in the clear majority of cases the buyer will take out the insurance. That means the buyer has a direct relationship with the insurer in case of any warranty claims. The seller will typically insist on “clean coverage” in the sense that it will have no incremental or part liability for specific warranties, claims over the policy amount, etc. In the end, of course, this will come down to

negotiations, but especially in the context of competitive processes buyers should consider the advantages of offering the seller a clean exit.

The insurance provider will base its policy on its own due diligence of the target company as part of the underwriting of the insurances and will engage an adviser to assist with this exercise. For buy-side policies, this is primarily a diligence review of the buyer's due diligence efforts with a view to generally verify the quality of disclosure and the diligence exercise. Therefore, buyers should also consider the likelihood of W&I insurance coming on the table in deciding on their scope of due diligence. As an example, decisions on applying a quantitative materiality threshold for diligence should normally be aligned with the expectation for de minimis under the acquisition documents and W&I policy as insurers will typically not want to cover something which has been excluded from the review/reporting.

Similarly, completely leaving out subsidiaries which are not immaterial in the context of the business may also leave insurers unwilling to provide cover for warranties in respect of such subsidiaries.

This underwriting diligence process will usually be done in parallel with buyer finalizing its due diligence and will not generally complicate or prolong the process.



Recent deals

Athena Investments A/S (formerly Greentech Energy Systems A/S) sells its Danish wind activities to Wind Estate A/S

Athena Investments (which is a recent name change for Greentech Energy Systems), a listed company operating renewable wind and solar energy projects and plants, has divested its Danish wind business activities with a total net capacity of 15.5 MW to the Danish energy company Wind Estate. The disposed Danish wind business activities comprise four wind farms in Milbakken, Ooppelstrup, Hannesborg and Frørup, which came into operation in 2000 and 2001 and have a total net capacity of 15.5 MW.

Athena Investments' main activities are wind and solar energy parks in Italy and Spain. Wind Estate A/S is one of Denmark's leading energy companies. It owns, develops, constructs, operates and maintains wind farms in Denmark. The company owns more than 300 wind turbines in Denmark with a total capacity of more than 200 MW.

Bjerg Holding sells Mountain Top Industries to Axcel

Kromann Reumert advised the owners of Mountain Top Industries A/S on a sale of the company to Axcel. Mountain Top Industries is one of the world's leading producers of accessories to pickup trucks of various brands, including Toyota, Ford, Volkswagen, Nissan, and others. The company is headquartered in Frederikssund, Denmark, where it employs a little under 170 people working in design, development and production. In 2016, the sellers were named Owner-Managers of the Year by PwC. Mountain Top Industries has seen substantial growth in recent years.

Greentech Energy Systems A/S sells its Danish wind activities to Wind Estate A/S

Greentech Energy, a listed company, has divested its Danish wind business activities with a total net capacity of 15.5 MW to the Danish energy company Wind Estate at a price of DKK 24.4 million. Greentech Energy Systems A/S is a listed company operating renewable wind and solar energy projects and plants. Greentech Energy Systems' Danish wind business activities comprise four wind farms in Milbakken, Opelestrup, Hannesborg and Frørup, which came into operation in 2000 and 2001 and have a total net capacity of 15.5 MW. In addition, the company has activities in Germany, Italy, Poland and Spain.

Wind Estate A/S is one of Denmark's leading energy companies. It owns, develops, constructs, operates and maintains wind farms in Denmark. The company owns more than 300 wind turbines in Denmark with a total capacity of more than 200 MW.

The owners of Hunter Macdonald Ltd. sell all shares to Netcompany

Kromann Reumert advised the owners of UK IT company Hunter Macdonald Ltd. on the sale of their shares in the company to Netcompany. Formed in 2013, Hunter Macdonald Ltd. was recognised in 2017 as the fastest-growing IT service enterprise in the UK by prestigious Sunday Times Tech Trek. In 2017, Netcompany became the first Danish startup in twenty years to reach a staff total of 1,000+. Its acquisition of Hunter Macdonald is Netcompany's biggest yet, underlining its continued growth. Going forward, Hunter MacDonald's 350 employees will contribute towards making Northern Europe a winner in the digital landscape as part of Netcompany.

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Preferential treatment of investors in alternative investment funds

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Institutional investors are increasingly looking to make co-investments, whereby they invest in alternative assets together with a majority investor (e.g. a private equity fund). As there may be a number of benefits associated with such co-investments, namely for the institutional investor, there is often considerable competition among the institutional investors for the co-investment opportunities.

Hence, when making an investment in a private equity fund, a pension fund or other major institutional investor may seek to obtain a preferential right to co-invest along with the private equity fund. In our opinion, generally such preferential right will be in compliance with the rules on preferential treatment of investors in the Danish Alternative Investment Fund Managers Act (the AIFM Act).

Under Article 23 (2) of the Level II Regulation, any preferential treatment accorded by a manager of an alternative investment fund (an AIFM) to one or more investors

shall not result in an overall material disadvantage to other investors.

If an institutional investor is granted a preferential right to co-invest along with the private equity fund and such right is not granted to the other investors in the fund, the institutional investor may be said to have obtained preferential treatment by the AIFM, and as such, the first condition in Article 23(2) of the Level II Regulation is satisfied.

However, arguably such preferential treatment cannot be said to imply an overall material disadvantage to the other investors given that it is not normal for all investors in a private equity fund (regardless of the size of their commitment) to obtain a preferential right to be offered co-investment opportunities.

Consequently, investors with a smaller commitment in the fund are not deprived of any right they would otherwise be accorded, as their bargaining position would not make it commercially realistic for them to be awarded a preferential right to participate in co-investments along with the private equity fund.

Furthermore, any concern that the AIFM will favour certain investors with larger commitments over the fund (to the potential detriment of some of the investors with smaller commitments) by offering co-investments in situations where it was

possible and commercially attractive for the fund itself to make the entire investment seems unfounded as the AIFM is required to serve the interest of the fund and all its investors and has a commercial self-interest in allocating to the fund all commercially attractive investments which fall within the ambit of the investment guidelines in order to obtain the highest possible carried interest. Also, the AIFM will typically not earn any management fee on co-investments.

In our opinion, generally a preferential right for an institutional investor to co-invest along with the private equity fund will be in compliance with the rule on preferential treatment of investors in the AIFM Act and Article 23 (2) of the Level II Regulation. The AIFM will of course have to comply with the disclosure requirements otherwise applicable under the AIFM Act and the Level II Regulation.



New legislation: Permanent establishment for foreign investors in Danish private equity funds

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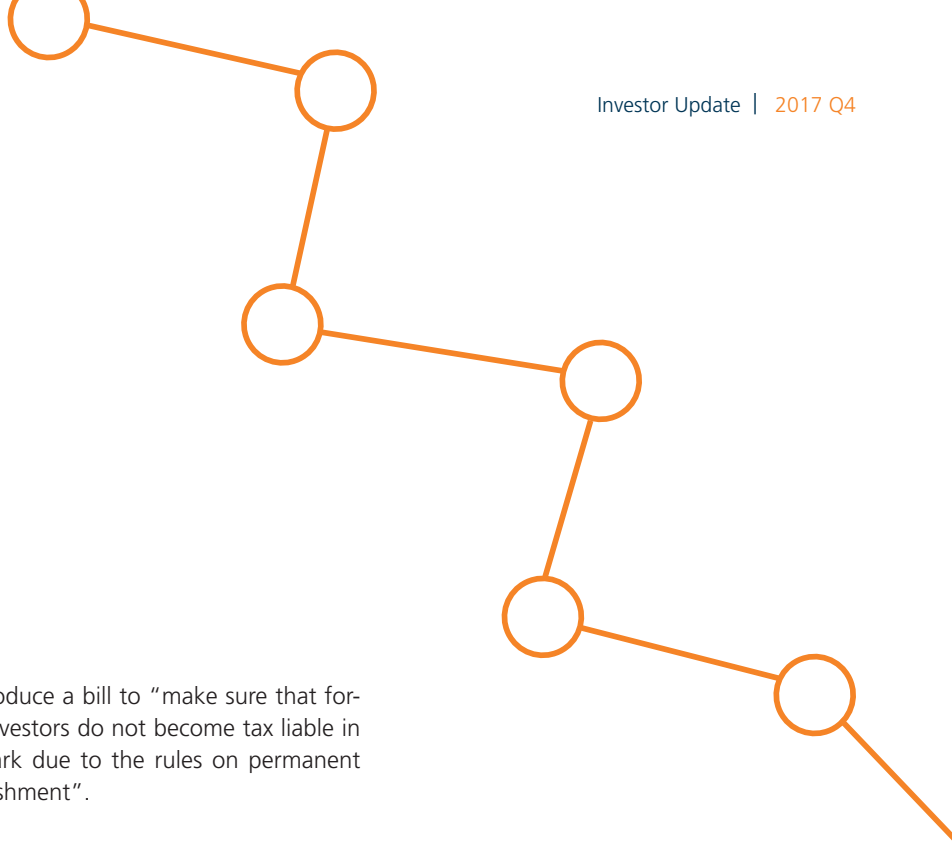
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Private equity and venture funds are often established as limited partnerships due to the limited liability of the investors and the tax transparency of the limited partnership.

Under the current practice of the Danish tax authorities, foreign investors in a Danish private equity or venture fund may in certain circumstances be deemed to have a permanent establishment in Denmark and therefore risk being tax liable in Denmark. Furthermore, the practice of the Danish tax authorities is in this respect not entirely clear and has been changing frequently over the years.

The Danish government annually publishes an agenda regarding upcoming legislation, and according to the most recent agenda the Ministry of Taxation intends



to introduce a bill to “make sure that foreign investors do not become tax liable in Denmark due to the rules on permanent establishment”.

The details of the new bill are not yet clear, but in a written answer to the Danish Parliament’s tax committee the Minister for Taxation expands a bit on the proposed legislation. In the answer to the committee, the Minister explains that the aim of the new rules is to make sure that passive investors in transparent entities do not become tax liable in Denmark. However, the proposed rule change will not affect foreign companies with business activities in Denmark.

It is not yet clear when the new bill will be published.



2017 retail and shopping centre transactions

Reflections upon a surge in 2017 in Danish transactions regarding shopping centres and prime retail properties located throughout Denmark

The ownership of shopping centres in Denmark has historically been concentrated on relatively few investors, primarily long-term institutional investors.

Danica Ejendomme, Dades, Steen&Strøm, Dansk Supermarked Group and IKEA are historically among the large stakeholders in Danish shopping centres.

Recently, and particularly in 2017, there has been a surge in shopping centre transactions where new investors have acquired stakes in Danish shopping centres. Furthermore, a large number of new developments of and additions to existing centres are currently being planned and carried out.

The increased interest in shopping centres coincides with a peak in pricing and an appetite for investment in traditional retail properties such as prime Copenhagen high street properties located in the old city centre where average pricing has reached new highs, particularly for tier 1 locations.

In 2017, the two Danish pension funds ATP and Danica entered into a joint venture agreement that will include 16 leading Danish shopping centres with a total value of €1.9bn, and whereby Danica effectively transferred 50 % of its share in the centres to ATP. The portfolio consists of 16 centres across Denmark, the majority located in Greater Copenhagen, and includes some of the largest and most prestigiously located centres in the country. The centres cover a total area of around 400,000 sqm. and have approx. 1,100 tenants. Over 60 million shoppers visit the centres each year.

In another high profile 2017 deal, Blackrock acquired from Dansk Supermarked Group the shopping centre Næstved Storcenter covering 41,000 sqm., 75 shops and 5 million customers annually. Næstved Storcenter was constructed in 1989 and is among the 10 biggest shopping centres in Denmark measured on turnover.

The new development “Kronen Shopping Centre” in Vanløse, a partnership between Tristan Capital Partners and Solstra Capital Partners, was finalized and opened in October 2017. The centre includes 75 shops and restaurants spread across 59,000 sqm. (including residential roof units), which

had practically been 100 % leased out at the opening, and more than 4.3 million shoppers are expected annually.

In 2017 IKEA obtained approval to develop a 37,000 sqm. IKEA warehouse near the Copenhagen city centre, together with another approx. 37,000 sqm. of hotel, commercial buildings and student housing. The warehouse will be the first of a new type of city variant of the well-known yellow and blue colored warehouse. Construction has started and opening is expected in late 2019.

Many more new developments and additions are underway and expected in 2018.

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Recent deals

Blackrock - Næstved Storcenter

Kromann Reumert advised Blackrock in connection with the acquisition of Denmark's 9th largest shopping centre, Næstved Storcenter, from Dansk Supermarked Group.

Solstra Capital / Tristan Capital - Kronen Vanløse

Kromann Reumert advised the parties throughout the process from acquisition of the land plot to the opening in October 2017. The project covers 59,000 sqm., 75 shops and restaurants, fitness centre and modern residential units on the rooftop.

IKEA - Development of a new Copenhagen City warehouse

Kromann Reumert advised IKEA on the purchase from DSB and planning of the development of the new city variant of the IKEA warehouse and nearby hotel, commercial properties and student housing.



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