

LISTED COMPANIES AND INVESTORS - POSSIBILITIES AND TRENDS

COVID-19 - Capital resources, stakeholder
management and capital markets transactions

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1 INTRODUCTION

We expect that the significant uncertainty as regards listed companies' future capital resources and commercial viability as a consequence of the COVID-19 pandemic and the resulting volatility in Danish and international capital markets may give rise to a number of capital market transactions.

This is relevant to both the listed companies and the investors - both current and future investors seeking opportunities.

2 TRENDS

With a few exceptions, Danish listed companies have so far generally been in a situation where they have either had the required capital resources or been able to increase their resources by means of additional loan facilities. Few companies have up to now carried out equity capital transactions.

In this Plesner Insight we outline our expectations as to how we believe various capital market transactions will be relevant in 2020, and the trends driving them:

- An increased focus from the board of director on, quickly and efficiently, having capabilities and access to be able to raise equity capital through transactions with support from existing shareholders or new investors, including the importance for listed companies and their managements to be close to their stakeholders, and in particular major shareholders, in order to be able to navigate through needs requirements to raise equity capital and potentially facing opportunistic takeover bids.
- An increasing number of secondary issues aimed at strengthening current listed companies' capital resources and liquidity and, when allowed by the companies' structure, with a preference for flexible and quick issues in the form of ABB or PIPE transactions.
- Rights issues for companies seeking support from existing shareholders or financing opportunistic and strategic M&A.
- A possibility of European Member States being able to participate in future capitalisations.
- Possibilities for investors to acquire significant ownership interests in listed companies at a "minor discount" in connection with capital injections.
- Possibilities for opportunistic takeovers of listed companies with increased focus on screening of hostile investors/purchasers in critical sectors (FDI regulations).

3 CAPITAL RAISING

The injection of equity or loan capital in the capital market can take place by means of (i) rights issues, i.e. an offering of new shares at a favourable price to existing shareholders, (ii) an accelerated offering of new shares to a

limited number of investors (also known as an accelerated bookbuilding or ABB), (iii) a sale of new shares to one or several pre-identified investors (also known as private investment in public equity or PIPE), or (iv) loan financing, for example in the capital market by means of an issue of corporate bonds in an existing or new programme.

ABB and PIPE transactions are characterised by streamlined documentation requirements (no prospectus) and by being less time-consuming and capable of speedy execution as done for example by Pandora and Zealand Pharma recently.

We believe that the acute and hopefully transient need for capital injections could trigger a trend towards more flexible transaction types such as ABB and PIPE transactions.

In connection with these transactions, companies will be able to raise capital on an accelerated time plan when there is a window of opportunity in otherwise volatile markets. In addition, companies and their advisers is expected to have a preference for being able to complete the transaction quickly and avoid a longer period of open price formation.

Companies anticipating a need for capital injections can rightly consider starting preparations for capital raisings and commence analyses of the preferred transaction type, retain advisers and start preparing the necessary documentation in order for the company to be able to exploit a window of opportunity. At the same time, the company should consider timing in terms of getting closer to its stakeholders, see below.

4 STAKEHOLDER MANAGEMENT

The COVID-19 pandemic may result in an increased need for interaction between the company, its management and its present and potential future shareholders. In connection with capital raisings investors and lenders must be expected to put forward more stringent demands on how to address the specific company's exposure to and handling of the COVID-19 pandemic in order to provide the company's stakeholders with a thorough understanding of the company's situation, handling, possibilities and risks related to COVID-19.



Plesner Insight (in Danish) on companies' disclosure obligations and the need for communication to the market preparing the company for capital market transactions.

5 CLEAR COMMUNICATION

See our Plesner Insight on companies' disclosure obligations and the need for communication to the market preparing the company for capital market transactions.

We strongly believe that good disclosure practice prompts companies to carefully consider their disclosure for transaction preparedness.

6 CORPORATE AUTHORIZATIONS AND CAPITAL RESOURCES

In the light of the rapid development (the development of the COVID-19 pandemic itself, the extent of the financial consequences, regulatory measures, etc.) created by the current COVID-19 reality, more companies will need quick and efficient access to raise capital and should therefore continuously evaluate and, if necessary, adapt their capital resources to the current situation.

In listed companies where ownership is diversified, the ability to procure capital to the company quickly, efficiently and/or to the proper extent can be crucial.

The necessary corporate authorisations must be available to the board of directors to avoid a general meeting. In addition, the carrying out of such general meeting may give rise to additional difficulties due to the COVID-19 pandemic. See also Plesner Insight - Corona virus - extended deadline for annual general meetings and annual reports, Coronavirus - corporate law consequences and Corona virus - update on corporate law.

Companies Authorizations; Many listed companies have an authorisation to increase the share capital of up to 10% of the share capital without pre-emptive rights for existing shareholders and an authorisation that often exceeds 10% of the share capital with pre-emptive right for existing shareholders (up to 50%). This is the basis for the board of directors' range of options under existing authorisations.

Accordingly, if the company needs capital in excess of 10% of the share capital, the resulting consequence is in practice a rights issue. A rights issue may be the right course of action, also for the sake of existing shareholders, but

it differs, for instance, from ABB and PIPE offerings of up to 10% of the share capital without pre-emptive rights for existing shareholders by the preparation time being significantly longer as the rights issue requires a prospectus to be carried out and, due to the requirement for a subscription period, will result in an "open" offering for a longer period, with an risk of significant share price fluctuations.

As a consequence, the crucial factor for listed companies is the extent of the respective authorisations. No statutory company law restrictions apply as to the size of an authorisation for the board of directors in listed companies to carry out capital increases.

ISS, etc. Guidelines; The extent of the authorisation and considerations as to an expansion of such authorisation should in particular be seen in the light of the general guidelines issued by international proxy advisers (in particular ISS and Glass Lewis). According to such guidance, it is recommended that authorisations to Danish listed companies constitute, at most, 10% (ISS) and 20% (Glass Lewis) respectively of the share capital for authorisation without pre-emptive rights for existing shareholders, and 50% (ISS) and 100% (Glass Lewis) respectively of the share capital for authorisations with pre-emptive rights for existing shareholders. The recommendations may be deviated from based on a case-by-case principle.

In the light of the COVID-19 pandemic and the ensuing focus on the possibility of increasing authorisations for the completion of capital increases, ISS has published an addendum to their existing recommendations.

ISS maintains their existing guidance. However, it is emphasised that in the light of the COVID-19 pandemic there will be increased focus on specific voting recommendations being subject to the case-by-case principle, and that the COVID-19 pandemic clearly constitutes extraordinary circumstances which, based on an overall assessment, may justify exceeding the general maximum amounts.

Our advice is that the boards and management in listed companies should assess, to a higher extent than normally whether the company is **transaction ready**, including whether it has the necessary corporate authorizations to best possible address the potential need for capital and liquidity.



Plesner Insight on Corona virus - extended deadline for annual general meetings and annual reports



Plesner Insight (in Danish) on Corona virus - corporate law consequences



Plesner Insight (in Danish) on Corona virus - update on corporate law

7 INVESTORS AND SHAREHOLDERS - POSSIBILITIES IN THE MARKET

ABB and PIPE transactions

The expected number of increased ABB and PIPE transactions may provide interesting possibilities existing shareholders, for P/E investors, pension providers, public value funds and “family and closely held offices” to acquire significant shareholdings in listed companies at an attractive price and size which would not be possible in normal circumstances, for instance due to limited illiquidity.

As these transaction types are characterised by speedy completion, it is crucial that potential investors have prepared themselves to be able to complete due diligence, draw funds and complete the transaction in a speedy manner.

In the long term, and when there is no longer an acute cash need, it is our expectation that more listed companies with such needs will utilise the capital markets for post COVID-19 recapitalisation, also of an opportunistic nature.

Takeover bids

Generally, the number of (hostile or unsolicited) opportunistic takeovers and delisting of listed companies has increased in connection with significant drops in share prices and increased short-term volatility.

As a consequence of the expected continued significant fluctuations and volatility in Danish and international capital markets due to the COVID-19 pandemic, companies whose share prices may have declined significantly shall of course continuously monitor if they are or could be subject of potential subjects of takeover attempts or activists approaches. Both may be absolutely right for companies and existing shareholders, but some may also be too opportunistic in the long term analysis.

For that reason, the COVID-19 pandemic may bring about a number of takeover bids with a view to takeover and delisting of listed companies.

There is no tradition for extensive defensive measures in Denmark, and many are protected by the current ownership structure, but listed companies should take steps to protect them-

selves against such takeover bids or activism which is opportunistic and more short term. Companies' preparations may consist of updating their “defence manual”, retaining advisers, intensifying monitoring of developments in the company's shareholder base, procuring an updated valuation etc., but the most important thing is for the companies to stay close to stakeholders and ensure that the market disclosure is precise and open communication.

8 OTHER TRENDS

On a European level, increased focus has during recent years been on screening foreign hostile investments/acquisitions and in particular in connection with the adoption of the FDI Regulation which is to prevent foreign investments and takeovers of companies (primarily in sectors such as health, medical research, biotechnology and infrastructure) which may constitute a threat to national security or public order.

Most recently, the European Commission has pointed out the risk of foreign state-supported investors acquiring European companies which are currently impaired by the COVID-19 pandemic and therefore can be acquired at a reduced price. As the FDI Regulation is not yet applicable, the European Commission recommends that Member States which already have screening arrangements use such arrangements, and that Member States which do not yet have screening arrangements (like Denmark, which only uses sector-specific screening) adopt such arrangements. Screening does not prevent foreign investments/acquisitions but will mean that investors should focus on screenings rules to an even higher degree when assessing potential investments/acquisitions.

Lastly, the European Commission is currently undertaking work to provide for a framework for European Member States to be able to participate in future capitalisations of private (listed) companies.

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