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Act on screening of certain foreign direct investments, etc. in Denmark (the Investment Screening Act)

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Act on screening of certain foreign direct investments, etc. in Denmark (the Investment Screening Act)

WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, make it known:

The Danish Parliament (Folketinget) has passed and We have confirmed by Royal Consent the following Act:

Part 1

Purpose, scope and definitions

S. 1. The purpose of this Act is to prevent foreign direct investments and special economic agreements from posing a threat to national security or public order in Denmark, through screening and possible interventions with such investments and agreements.

Subsection 2. The Act does not apply if other legislation lays down rules on screening of and possible intervention against foreign direct investment and special economic agreements for reasons of national security or public order.

S. 2. This Act applies to foreign direct investment and special economic agreements made or concluded by foreign nationals. However, §§ 7, 10 and 11 do not apply to citizens of EU and EFTA countries.

Subsection 2. This Act also applies to foreign direct investments and special financial agreements made or concluded by the following, cf. however 3 and 4:

- 1) Companies not domiciled in the Kingdom of Denmark. This also applies even if the company has premises in Denmark.
- 2) 2) Companies that are domiciled in Denmark, if the company is a subsidiary or a branch of a company domiciled outside the Kingdom of Denmark.
- 3) Companies domiciled in Denmark if a foreign national covered by Subsection 1 or a company that is not domiciled in the Kingdom of Denmark has control over or significant influence over it.

Subsection 3. Regardless of Subsection 2, Sections 7, 10 and 11 do not apply to companies domiciled in an EU or EFTA country, provided that the company is not under the control or significant influence of nationals of a country outside the EU or EFTA or of companies domiciled in a country outside the EU or EFTA.

Subsection 4. Regardless of Subsection 2, the law applies to foreign direct investment and special economic agreements made or entered into by a company domiciled in Greenland or

the Faroe Islands if foreign nationals or companies domiciled outside the Kingdom of Denmark have control of or significant influence on the company.

Subsection 5. The Minister for Industry, Business and Financial Affairs may, following negotiations with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence lay down rules that this Act applies to foreign direct investment and special financial agreements carried out by legal persons other than those referred to in Subsections 2-4, if the investment or agreement may pose a threat to national security or public order.

S. 3. This Act applies to foreign direct investment in and special financial agreements with companies domiciled in Denmark.

Subsection 2. In addition, the Act applies to the incorporation of new companies in Denmark, particularly within sensitive sectors or activities covered by Section 6.

Subsection 3 The Minister for Industry, Business and Financial Affairs may, following negotiations with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence lay down rules that this Act applies to foreign direct investment in and special financial agreements with other Danish entities than those referred to in Subsection 1, if the investment or agreement may pose a threat to national security or public order.

S. 4. For the purposes of this Act, the following definitions apply:

- 1) National security: Matters relating to Denmark's territorial integrity and survival of the population. Threats to national security include actions that constitute or may constitute the risk of disruption of international relations, the peaceful coexistence of nations or threats to military interests, as well as actions intended to cause damage to Denmark, including crimes against the state's independence or crimes against the constitution and the supreme state authorities.

- 2) Public order: Conditions relating to Denmark's ability to maintain an independent, democratic and secure society, without the conditions thereby affecting national security.
- 3) Foreign investor: A natural person or company covered by Section 2 (1-4) or an entity covered by rules laid down pursuant to Section 2 (5) which intends to make or has made a foreign direct investment or which intends to enter into or has entered into a special financial agreement.
- 4) Foreign direct investment: Acquisition of control or significant influence on a company domiciled in Denmark by direct or indirect possession of or control over the shares or voting rights in the company or equivalent control by other means, including the purchase of assets and long-term loans. Furthermore, the establishment of a new company in Denmark falls under a particularly sensitive sector with equivalent control or significant influence.
- 5) Special financial agreement: A joint venture or an operating, supplier or service agreement entered into with a company domiciled in Denmark covered by Section 3 (1) or another entity covered by rules established pursuant to Section 3 (3), if a foreign investor thereby gains control of or significant influence over the company or entity.
- 6) Control or significant influence: Determining influence on decisions on managerial, financial developmental or operational conditions in a company or in business-critical areas in a company.
- 7) Company: All commercial companies regardless of organisational form.

Part 2

Authorisation for foreign direct investments and special financial agreements within particularly sensitive sectors and activities

S. 5. A foreign investor who intends to make a foreign direct investment by acquiring a qualifying holding in a company domiciled in Denmark within particularly sensitive sectors and activities covered by Section 6, must apply in advance to the Danish Business Authority for an authorisation for the investment.

Subsection 2. Direct or indirect possession or control of at least 10 per cent of the shareholding or voting rights or equivalent control by other means is considered a qualifying holding.

Subsection 3. When calculating shareholdings or voting rights, shares from group-affiliated companies or closely-related persons are included, as well as share options and call options- for investments that are currently exercisable or convertible.

Subsection 4. Subsections 1-3 shall apply mutatis mutandis to an increase in the holding if, after the acquisition, the holding constitutes or exceeds a limit of 20 per cent, a third, 50 per cent, two thirds or 100 per cent of the shares or voting rights in the Danish company.

Subsection 5. Subsections 1-3 shall apply correspondingly to the establishment of new companies.

Subsection 6. The Danish Business Authority may lay down further rules on the application of Subsections 1-3 when establishing new companies pursuant to Subsection 5, on similar control by other means pursuant to Subsection 2 and on the calculation of shareholding or voting rights pursuant to Subsections 3 and 4.

S. 6. Particularly sensitive sectors and activities in relation to national security or public order as mentioned in Section 5 (1), and Section 7 (1) include:

- 1) Companies in the defence sector.
- 2) Companies in the field of IT security functions or the processing of classified information.
- 3) Companies producing dual-use items as defined in Section 2 (1) of the Council Regulation (EC) No 428/2009 of 5 May 2009, as amended.
- 4) Companies within critical technology other than those under nos 1-3
- 5) Companies within critical infrastructure.

Subsection 2. After consultation with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence, the Minister for Industry, Business and Financial Affairs can lay down detailed rules on particularly sensitive sectors and activities covered by Subsection 1.

S. 7. A foreign investor who is not covered by the exceptions in Section 2 (1), 2nd sentence, and (3) and who intends to enter into a special financial agreement within a particularly sensitive sector or activity covered by Section 6 with a company domiciled in Denmark or an entity covered by rules laid down pursuant to Section 3 (3) must apply in advance to the Danish Business Authority for authorisation for the agreement.

Subsection 2. (2) After consultation with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence, the Minister for Industry, Business and Financial Affairs can lay down detailed rules on which agreements are covered by Subsection (1).

S. 8. No later than 60 working days after receipt of a complete application for authorisation, pursuant to Sections 5 or 7, the Danish Business Authority shall inform whether the foreign direct investment or special financial agreement may be permitted pursuant to Section 9 (1) or (2), or if it must be submitted to the Minister for Industry Business and Financial Affairs pursuant to Section 32 (1). The deadline in the 1st sentence may be extended to 90 working days if the application requires further examination or if the foreign investor commits to mitigating measures, including revised commitments, pursuant to Section 16. The time limit may be further extended at the request of the foreign investor.

Subsection 2. The Danish Business Authority can require all information from the foreign investor necessary to assess whether the intended investment or agreement constitutes a threat to national security or public order. The Danish Business Authority can also obtain information from the

Danish company or entity that is covered by rules laid down pursuant to Section 3 (3), with a view to i.a. verify information from the foreign investor or obtain information about the Danish company or entity, including about management structure and business areas. If the required information is not submitted to the Danish Business Authority or has not been confirmed by an approved auditor in accordance with Subsection (3), the Danish Business Authority can notify the foreign investor that the application cannot be processed on the existing grounds.

Subsection 3 The Danish Business Authority can require that information submitted in accordance with Subsection 2, or rules issued in pursuance of this Act, is accompanied by a statement from an auditor approved in accordance with the Danish Act on Approved Auditors and Audit Firms on the accuracy of such information. Anyone submitting a declaration in accordance with the 1st sentence must confirm in the declaration that they are independent of the foreign investor.

Subsection 4. Other information that the Danish Business Authority has received or obtained, including in connection with coordination of screening of foreign investments in the EU under Section 23 (1), may be included in investigations pursuant to Subsection 1.

Subsection 5. The Danish Business Authority may lay down more detailed rules on procedures for applying for an authorisation.

Subsection 6. The Danish Business Authority can lay down rules on the payment of a fee for the administration of the rules on applying for authorisation pursuant to Sections 5 and 7.

S. 9. If the Danish Business Authority finds that an application for acquiring a qualifying holding under Section 5 or an application for a special financial agreement under Section 7 cannot pose a threat to national security or public order, the Danish Business Authority will issue an authorisation for the investment or agreement. Authorisation in accordance with the 1st sentence can be notified on more detailed terms if the foreign investor has committed to terms under Section 16.

Subsection 2. If the application is submitted to the Minister for Industry, Business and Financial Affairs pursuant to Section 32 (1), the minister may permit the investment or agreement pursuant to Subsection 1.

Subsection 3. If a company covered by Section 2 (2-4) or an entity covered by rules laid down pursuant to Section 2 (5) has obtained authorisation for a foreign direct investment or a special financial agreement pursuant to Subsection 1 and, subsequently, changes are made with respect to who has control over or significant influence on the business or entity, the person or entity must apply for new authorisation in accordance with Section 5 or 7.

Subsection 4. The Danish Business Authority may amend or revoke a decision on authorisation pursuant to Subsection 1 in the following cases:

- 1) The decision was made on the basis of incorrect or misleading information from the parties to the case.
- 2) The parties to the decision do not comply with agreed terms.
- 3) The parties to the decision do not comply with the obligation to apply for an authorisation in the event of an increase in the shareholding in the company under Section 5 (4).
- 4) The parties to the decision do not comply with the obligation to submit an annual statement, cf. Section 16 (2) or Section 17 (2).

Subsection 5. If the Minister for Industry, Business and Financial Affairs has made a decision on authorisation pursuant to Subsection 2, the Danish Business Authority may correspondingly amend or revoke the decision, pursuant to Subsection 4.

Subsection 6 In the event of changed circumstances entailing serious threats to national security or public order, the Ministry for Industry, Business and Financial Affairs can revoke an authorisation in accordance with Subsection 1.

Part 3

Notification of other foreign direct investment and special financial agreements relevant to national security or public order

S. 10. A foreign investor who is not covered by the exceptions in Section 2 (1), 2nd sentence, and (3), may submit a notification to the Danish Business Authority of an intended or completed foreign direct investment if the investment may pose a threat to national security or public order and the foreign investor directly or indirectly obtains possession of or control over at least 25 per cent of the shares or voting rights in a company domiciled in Denmark or equivalent control by other means.

Subsection 2. When calculating shareholdings or voting rights, shares from group-affiliated companies or closely-related persons are included, as well as share options and call options- for investments that are currently exercisable or convertible.

Subsection 3. The Danish Business Authority may lay down further rules on similar controls by other means pursuant to Subsection 1 and on the calculation of shareholding or voting rights, pursuant to Subsection 2.

S. 11. A foreign investor who is not covered by the exceptions in Section 2 (1), 2nd sentence, and (3), may submit a notification to the Danish Business Authority of an intended or completed special financial agreement with a company domiciled in Denmark or an entity that is covered by rules laid down pursuant to Section 3 (3), if the agreement may pose a threat to national security or public order. Section 7 (2) shall apply correspondingly.

S. 12. The Danish Business Authority will investigate whether a foreign direct investment or special financial agreement reported under Section 10 or 11 may pose a threat to national security or public order.

Subsection 2. No later than 60 working days after the Danish Business Authority has received a complete notification pursuant to Sections 10 or 11, the Danish Business Authority shall announce whether the foreign direct investment or special financial agreement can be approved pursuant to Section 13 (1) or (2) or must be submitted to the Minister for Industry, Business and Financial Affairs, in accordance with Section 32 (1). The deadline may be further extended at the request of the foreign investor.

Subsection 3. The Danish Business Authority can demand all information from the foreign investor necessary to assess whether the intended investment or agreement constitutes a threat to national security or public order. The Danish Business Authority may also obtain information from the Danish company with a view to verify information from the foreign investor, or obtain information about the Danish company or entity subject to the rules established in accordance with Section 3 (3), including about management structure and business areas. If the required information is

not submitted to the Danish Business Authority or has not been confirmed by an approved auditor in accordance with Subsection 5, the Danish Business Authority can notify the foreign investor that the notification cannot be processed on the existing grounds.

Subsection 4. Other information that the Danish Business Authority has received or obtained, including in connection with coordination of screening of foreign investments in the EU, under Section 23 (1), may be included in investigations pursuant to Subsection 1.

Subsection 5 The Danish Business Authority can require that information submitted in accordance with Subsection 3, first sentence, or rules issued pursuant to this Act, is accompanied by a statement from an auditor approved in accordance with the Danish Act on Approved Auditors and Audit Firms on the accuracy of such information. Anyone submitting a declaration in accordance with the 1st sentence must confirm in the declaration that they are independent of the foreign investor.

Subsection 6. The Danish Business Authority may lay down more detailed rules on procedures for notification of foreign direct investment and special financial agreements.

Subsection 7. The Danish Business Authority can lay down rules on the payment of a fee for the administration of the rules on notification, in accordance with Section 10 or 11.

S. 13. If the Danish Business Authority finds that a foreign direct investment or a special financial agreement notified pursuant to Section 10 or 11 does not constitute a threat to national security or public order, the Danish Business Authority shall approve the investment or agreement.

Subsection 2. The Danish Business Authority may approve the foreign direct investment or special financial agreement on more detailed terms if the foreign investor has consented to terms, cf. Section 16.

Subsection 3. If the notification is submitted to the Minister for Industry, Business and Financial Affairs pursuant to Section 32 (1), the Minister may approve the investment or agreement in accordance with Subsections 1 or 2.

Subsection 4. If the Danish Business Authority has not informed the foreign investor within 60 working days after the time of the notification, pursuant to Section 12 (1), this shall be deemed as a decision to approve the investment, unless the Danish Business Authority has indicated that the notification cannot be processed on the available basis, pursuant to Section 12 (3), or the foreign investor has requested a longer deadline, pursuant to Section 12 (2).

Subsection 5. The Danish Business Authority may amend or revoke an authorisation pursuant to Subsections 1 or 2 in the following cases:

- 1) The decision was made on the basis of incorrect or misleading information from the parties to the case.
- 2) The parties to the decision do not comply with agreed terms.
- 3) The parties to the decision do not comply with the obligation to submit an annual statement in accordance with Section 16 (2) or Section 17 (2).

Subsection 6. If the Minister for Industry, Business and Financial Affairs has made a decision on authorisation pursuant to Subsection 3, the Danish Business Authority may correspondingly amend or revoke the decision, pursuant to Subsection 5.

Subsection 7. In the event of changed circumstances entailing serious threats to national security or public order, the Ministry for Industry, Business and Financial Affairs can revoke an authorisation in accordance with Subsection 1.

Section 14. If the Danish Business Authority presumes that a foreign direct investment or special financial agreement which is covered by Section 10 or 11 but which has not been notified to the Danish Business Authority may pose a threat to national security or public order, the authority may decide to initiate an investigation for up to 5 years from the implementation of the investment or agreement. Section 12 (3-5) and Section 13 (1-3) shall apply correspondingly.

Part 4

Decision criteria

S. 15. In assessing whether a foreign direct investment or a special economic agreement, pursuant to this Act and rules issued in pursuance thereof, may constitute a threat to national security or public order, all relevant circumstances and available information must be taken into account with respect to the Danish company, including the following criteria:

- 1) Whether the Danish company operates within or influences critical infrastructure.
- 2) Whether the Danish company processes or has access to classified information or sensitive personal data.
- 3) The Danish company's position on the Danish market, including opportunities for substitution.
- 4) Whether the Danish company belongs to the defence industry, produces dual-use items or other critical technology of importance to national security or public order.
- 5) Whether the Danish company deals with supply of critical raw materials, including energy and food safety.

Subsection 2. In assessing whether a foreign direct investment or a special economic agreement, pursuant to this Act and rules issued in pursuance thereof, may constitute a threat to national security or public order, all relevant circumstances and available information must be taken into account with respect to the foreign investor, including the following- criteria:

- 1) Whether the foreign 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.
- 2) Whether the foreign 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.
- 3) Whether there is a serious risk that the foreign investor will engage in or has relationships to illegal or criminal activities significant to national security or public order.
- 4) Whether there are indications that the foreign investor is deliberately trying to circumvent the screening rules, e.g. through the use of front company constructions.

Subsection 3. The Minister for Industry, Business and Financial Affairs may, following negotiations with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Climate, Energy and Utilities and the Minister for Defence lay down further rules on the criteria pursuant to Subsections 1 and 2 and other criteria for evaluation whether a foreign direct investment or special financial agreement may constitute a threat to national security or public order.

Part 5

Commitment to accept terms for implementation of investments (agreed terms)

S. 16. Following negotiation with the Danish Business Authority, a foreign investor may commit to comply with further agreed terms for the implementation of a foreign direct investment or special financial agreement covered by Section 5 or 7 or Section 10 or 11 in order to prevent the possibility that the investment or agreement poses a threat to national security or public order.

Subsection 2. If an application for or a notification of a foreign direct investment or special financial agreement is submitted to the Minister for Industry, Business and Financial Affairs pursuant to section 32 (1), a foreign investor may, after negotiation with the Minister, commit to comply with further agreed terms for the investment or agreement, pursuant to Subsection 1.

Subsection 3. Commitment on terms pursuant to Subsections 1 or 2 must be complied with for as long as the respective foreign direct investment or special financial agreement is maintained. The foreign investor must submit an annual statement of how it ensures that the agreed terms are complied with during the year. The statement must be accompanied by a statement of the accuracy of the information, provided by an auditor approved under the Danish Act on Approved Auditors and Audit Firms.

Part 6

Orders, prohibitions and refusals

S. 17. The Minister for Industry, Business and Financial Affairs may lay down more detailed terms for authorisation for or approval of a foreign direct investment or special financial agreement covered by Section 5 or 7 or Section 10 or 11.

Subsection 2. Terms established pursuant to Subsection 1 must be complied with for as long as the respective foreign direct investment or special financial agreement is maintained. Section 16 (3) shall apply correspondingly.

S. 18. The Minister for Industry, Business and Financial Affairs may issue a refusal or prohibitions against the implementation of a foreign direct investment or special financial agreement covered by Section 5 or 7 or Section 10 or 11, if the investment or agreement constitutes a threat to national security or public order and it has not been possible to mitigate this by further conditions for the implementation of the investment or agreement in accordance with Section 16 or 17.

S. 19. The Minister for Industry, Business and Financial Affairs may order the termination of a foreign direct investment or special financial agreement covered by Section 10 or 11 if the Minister decides that the investment or agreement constitutes a threat to national security or public order.

Section 20. The Danish Business Authority may establish a temporary prohibition against the implementation of a foreign direct investment or special financial agreement which has been notified pursuant to Section 10 or 11 but not finally implemented until the Danish Business Authority has made a decision, pursuant to Section 13 (1) or (2). However, this does not apply if the deadline in Section 13 (4), has been exceeded.

Subsection 2. If the Danish Business Authority has set a temporary prohibition, pursuant to Subsection 1, and the case has been submitted to the Minister for Industry, Business and Financial Affairs, pursuant to section 32 (1), the temporary prohibition applies until the Minister has made a decision pursuant to Section 32 (2).

Part 7

Expropriation

S. 21. The Minister for Industry, Business and Financial Affairs may, to the extent necessary for the implementation of measures under this act, initiate expropriation of private property.

Subsection 2. If the implementation of measures under this Act constitutes expropriation, full compensation shall be granted to the owner or owners concerned.

Subsection 3. The Minister for Business and Industry can lay down further rules on the procedure for expropriation in accordance with Subsection 1.

Part 8

Control of foreign direct investment and special financial agreements

General provision on the Danish Business Authority's control

S. 22. The Danish Business Authority controls foreign direct investments and special financial agreements in Denmark subject to this Act.

Subsection 2. The control covers the following matters:

- 1) Checking the accuracy of information when applying for authorisation.
- 2) Compliance with terms agreed or stipulated for authorisations or approvals under this Act.
- 3) Foreign direct investment and special financial agreements notified under this Act.
- 4) Foreign direct investment and special financial agreements under this Act which have not been notified.
- 5) Foreign direct investment and special financial agreements where, in violation of this Act, no application for authorisation has been submitted.

Subsection 3. In special cases, control can be performed as a random check.

Subsection 4. The Danish Business Authority's inspections in accordance with this Act can be carried out in connection with inspections or investigations in pursuance of other legislation under the Agency's area. The Danish Business Authority's control can be organised in collaboration with other authorities that carry out control in accordance with legislation in their area.

Subsection 5. If deemed necessary, the Danish Business Authority can gain access to commercial premises and means of transport upon presentation of proper identification and without a court order in pursuance of its supervisory and control duties, in accordance with this Act or rules laid down in pursuance of this Act. The same applies to other authorities that participate in the control together with

the Danish Business Authority, pursuant to Subsection 4 and in accordance with rules laid down pursuant to Subsection 7. Control visits in accordance with the first sentence must take place as pre-announced visits.

Subsection 6 Companies and persons covered by this Act shall provide the Danish Business Authority with the necessary assistance for the effective implementation of supervisory and inspection duties in accordance with Subsection 5, including the provision of relevant information, providing access to commercial premises and means of transport and assisting with the control visits.

Subsection 7. The Danish Business Authority may determine further provisions on cooperation with other authorities, pursuant to Subsections 4 and 5, after negotiation with these authorities.

Coordination of control of foreign direct investments in the EU

S. 23. The Danish Business Authority is the national contact point in matters relating to the implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments- into the Union. As the national contact point, the Danish Business Authority undertakes the duties arising from the regulation's cooperation mechanism in connection with screening-foreign direct investment.

Subsection 2. The Danish Business Authority can lay down further provisions on cooperation with other authorities on the performance of its tasks as the national contact point, in accordance with Subsection 1, after consultation with such authorities.

Control on receipt of applications for authorisations for foreign direct investment and special financial agreements

S. 24. The Danish Business Authority carries out control on the accuracy of information in connection with applications for permits for foreign direct investment or special financial agreements, pursuant to Section 5 or 7.

Subsection 2. The Danish Business Authority can reject applications for- authorisation that contain errors and omissions.

The Danish Business Authority's subsequent control of foreign investments and special financial agreements

S. 25. The Danish Business Authority carries out risk-based control of compliance with conditions for authorisations for foreign direct investments and special financial agreements which have been agreed or stipulated in accordance with this Act, cf. Section 16 or 17.

S. 26. The Danish Business Authority conducts a risk-based control of foreign direct investments or special financial agreements notified in accordance with Section 10 or 11 in order to prevent the possibility that they pose a threat to national security or public order.

S. 27. If the Danish Business Authority presumes that a foreign direct investment or special financial agreement which is covered by this Act and which has not been notified pursuant to Section 10 or 11 may pose a threat to national security or public order, the authority may decide to initiate a further investigation of the investment or agreement. The same applies if the Danish Business Authority becomes aware that, in violation of Sections 5 or 7,

an investment has been made or an agreement has been concluded without authorisation.

S. 28. In special cases, the Danish Business Authority can use external assistance to carry out control of a foreign direct investment or special financial agreement which is covered by this Act.

S. 29. In connection with control pursuant to Sections 25-27, the Danish Business Authority may request the information from the foreign investor that is necessary to be able to decide whether the Act and rules laid down pursuant to the Act have been complied with, or whether the foreign direct investment or special economic agreement can pose a threat to national security or public order. The Danish Business Authority can also obtain information from a Danish company or entity with a view to verifying information from a foreign investor or obtaining information about the Danish company or entity, including management structure, and business areas.

Subsection 2. The Danish Business Authority may, in connection with the authority imposing requirements for information pursuant to Subsection 1, 1st sentence, require the foreign investor to obtain a statement from an auditor on the accuracy of certain information. Anyone submitting a declaration in accordance with the 1st sentence must confirm in the declaration that they are independent of the foreign investor. Only auditors who are approved in accordance with the Danish Act on Approved Auditors and Audit Firms may submit a statement in accordance with the 1st sentence.

Subsection 3. The Danish Business Authority may lay down more detailed rules on declarations from approved auditors pursuant to Subsection 1, Section 8 (3), Section 12 (5) and Section 16 (3).

S. 30. The Danish Business Authority can announce that an investigation in pursuance of Sections 25-27 is to be initiated or has been initiated when deemed appropriate. The Authority can also publish the result of the inspection.

Subsection 2. If a foreign investor does not comply with an order to wind up a foreign direct investment or special financial agreement, pursuant to Section 19 or Section 31 (2), within the stipulated time limit, the Danish Business Authority may publish this and inform about it through the cooperation mechanism pursuant to Section 23.

Subsection 3. Publication pursuant to Subsections 1 and 2 will take place on the website of the Danish Business Authority. The Danish Business Authority will decide how publication takes place.

Subsection 4. Publication pursuant to Subsections 1-3 may not occur if the disclosure is deemed to be a threat to an ongoing investigation or if the disclosure would cause disproportionate harm to the foreign investor.

S. 31. In connection with control pursuant to this Act or rules issued pursuant to this Act, the Danish Business Authority may reprimand an infringement or order that an infringement be brought to an end.

Subsection 2. The Danish Business Authority may also order the winding up of a foreign direct investment or special financial agreement covered by Section 5 or 7 or Section 10 or 11 in the following cases:

- 1) Lack of compliance with terms for an investment or agreement established in accordance with section 17 (1) while the investment or agreement in question is maintained.
- 2) An investment or agreement is not brought to an end in violation of revocation pursuant to Section 9 (4-6) or Section 13 (5-7).
- 3) In violation of Section 5 or 7, no application for authorisation has been submitted for the investment or agreement.
- 4) The foreign investor does not disclose the information as the authority has requested, pursuant to Section 29, to the authority.

Subsection 3. The Danish Business Authority sets a deadline for compliance with an order under Subsection 1 to bring a violation to an end and an order pursuant to Subsection 2 to wind up a foreign direct investment or special financial agreement.

Part 9

Competent authority and decision-making competence

S. 32. The Danish Business Authority is the competent authority and makes decisions pursuant to this Act and rules issued pursuant thereto, cf. however Subsection 2. If the Danish Business Authority assesses that, pursuant to Section 5 or 7, a foreign direct investment or special financial agreement for which an application has been received or, pursuant to Section 10 or 11, a notified foreign direct investment or special financial agreement may constitute a threat to national security or public order, and that the threat may not be mitigated by agreed terms for the implementation of the investment or agreement pursuant to Section 16, the authority will submit the application or notification to the Minister for Industry, Business and Financial Affairs, pursuant to Subsection 2 and 3.

Subsection 2. In cases submitted to the Minister for Industry, Business and Financial Affairs pursuant to Subsection 1, the Minister for Industry, Business and Financial Affairs will commence negotiations with the Minister for Finance, the Minister for Foreign Affairs, the Minister for Justice the Minister for Defence and other relevant ministers. On the basis of the negotiations, the Minister for Industry, Business and Financial Affairs decides on the following:

- 1) Authorisation pursuant to Section 9 (2) for an application for a foreign direct investment or special financial agreement pursuant to Section 5 or 7, or approval pursuant to Section 13 (3) of a foreign direct investment or special financial agreement notified in accordance with Section 10 or 11.
- 2) Authorisation pursuant to Section 17 (1) for an applied foreign direct investment or special financial agreement pursuant to Section 5 or 7 or approval pursuant to Section 17 (1) of a foreign direct investment or special financial agreement notified in accordance with Section 10 or 11 on specified terms.
- 3) Refusal pursuant to Section 18 for an authorisation for a foreign direct investment or special financial agreement pursuant to Section 5 or 7, or a prohibition pursuant to section 18 against a foreign direct investment or special financial agreement notified pursuant to Section 10 or 11.
- 4) Order pursuant to Section 19 on the winding up of a foreign direct investment or special financial agreement covered by Sections 10 or 11 which constitutes a threat to national security or public order, whether or not the investment or agreement has been notified.

Subsection 3. Decisions in accordance with Subsection 3, no. 4, will be notified by the Danish Business Authority.

Subsection 4. The Minister for Industry, Business and Financial Affairs can authorise the Danish Business Authority to exercise specified powers conferred on the Minister for Industry, Business and Financial Affairs in Subsection 2.

Part 10

Communication, etc.

S. 33. The Minister for Industry, Business and Financial Affairs can lay down rules which require written communications to and from the Danish Business Authority on matters covered by this Act or regulations issued in pursuance of this Act to be digital.

Subsection 2. The Minister for Industry, Business and Financial Affairs may establish rules for digital communication, including on the use of certain IT systems, particular digital formats and electronic signature or the like.

(3) A digital communication will be regarded as received when available to the addressee.

S. 34. The Minister for Industry, Business and Financial Affairs can lay down rules empowering the Danish Business Authority to issue rulings and other documents, in accordance with this Act or rules issued in pursuance of this Act, without signature, with signatures produced mechanically or by other means that ensure uniform identification of the entity issuing the ruling or document. Such rulings and documents are comparable with those with personal signatures.

Subsection 2. The Minister for Industry, Business and Financial Affairs can lay down rules- to the effect that rulings and other documents that are exclusively resolved or issued on the basis of electronic data processing can only be issued with the Minister for Industry, Business and Financial Affairs cited as the sender.

S. 35. When it is a requirement of this Act or regulations issued in pursuance of this Act that a document issued by someone other than the Danish Business Authority be signed, this requirement can be met by using a technique ensuring unequivocal identification of the issuer of the document; cf. however Subsection 2. Such documents are considered equivalent to documents with a personal signature.

(2) The Danish Business Authority may lay down further rules on waiving the requirement for signatures. In this respect, it may provide that the requirement for personal signatures cannot be waived for certain types of documents.

Part 11

Language requirements

S. 36. The Danish Business Authority can process cases and make decisions in English if the foreign investor so wishes. If the Danish Business Authority has made a decision in English, a Danish summary of the decision must be available.

S. 37. Applications for authorisations, notifications, commitments to terms, etc. which are submitted to the Danish Business Authority must be written in Danish or English. The Danish Business Authority can require that documents be submitted in a certified translation into Danish or English.

Part 12

Duty of confidentiality and publication

S. 38. The rules on access to documents and personal access in the Public Administration Act do not apply to cases processed in accordance with this Act.

Subsection 2. The Danish Business Authority and the Minister for Industry, Business and Financial Affairs can, regardless of the rules on access to documents in the Public Administration Act and after consultation with relevant authorities, stipulate that information involved in a decision, pursuant to Section 9 (1), (2) or (4-6), Section 13, Section 17 (1), Section 18 or 19, Section 20 (1), and Section 31, may not be passed on to the parties to whom the decision relates when this is necessary for reasons of national security or public order.

S. 39. The Danish Business Authority and employees of the Ministry of Industry, Business and Financial Affairs are responsible, in accordance with Sections 152-152 e of the Danish Criminal Code, to keep information confidential that they become aware of through performance of their duties in accordance with this Act, cf. however Section 30. The same applies to persons performing service tasks as part of the operation of the Danish Business Authority and Ministry of Industry, Business and Financial Affairs and experts that act on behalf of the authority or ministry. This also applies after the termination of the employment or contractual relationship.

Subsection 2 Consent from the individual whom the duty of confidentiality is intended to protect shall not entitle the persons mentioned in Subsection 1 to divulge confidential information.

Subsection 3. The Minister for Business and Industry can lay down rules to the effect that confidential information (notwithstanding Subsection 1) can be divulged to specified authorities.

Subsection 4. Anyone who, in accordance with rules laid down in pursuance of Subsection 3 receives confidential information from the Danish Business Authority or the Ministry of Industry, Business and Financial Affairs is subject to the duty of confidentiality as mentioned in Subsection 1 with regard to such information.

Part 13

Judicial review

S. 40. Pursuant to this Act, the decision of the Minister for Industry, Business and Financial Affairs and the Danish Business Authority cannot be brought before another administrative authority.

S. 41. Legal action against orders, prohibitions or conditions pursuant to Sections 17-20 and Section 31 (2) may be brought before a court by bringing an action against the Minister for Industry, Business and Financial Affairs; however, for decisions made pursuant to Section 20 or Section 31 (2) against the Danish Business Authority, at the Copenhagen City Court. A panel of 3 judges will sit in judgement of cases at the district court.

Subsection 2. Legal actions against orders, prohibitions or conditions pursuant to Section 17-20 and Section 31 (2), must be brought within 6 months after the decision has been notified to the party in question.

Subsection 3 In special cases, the Minister for Justice or anyone authorised by the Minister can deputise persons employed by the Police Intelligence Service to appear on behalf of the Minister for Industry, Business and Financial Affairs or the Danish Business Authority in court as a legal representative.

S. 42. The Minister for Industry, Business and Financial Affairs or anyone authorised by the Minister will be a party to the case for the public sector, except for decisions made in accordance with Section 20 and Section 31 (2), when it will be the Danish Business Authority.

Subsection 2. The court appoints a special lawyer to look after the interests of the person who has brought the case before the court or who was entered as a party to the case, and on behalf of this party, exercise power as a party with regard to information covered by a provision under section 38 (2). The same rules apply to fees and compensation for expenses to the special lawyer as in cases where a free trial has been announced, cf. Chapter 31 of the Administration of Justice Act.

Subsection 3. The special lawyer, under Subsection 2, must be notified of all hearings in the case and is entitled to attend them. The special lawyer must be made aware of and be provided with a copy of the materials pertinent to the case before the court, cf. however Subsection 4.

Subsection 4. The Minister for Industry, Business and Financial Affairs or the person authorised by the Minister may, however, decide that, in the interests of national security or public order, a copy may not be provided to the special lawyer. The same applies to the Danish Business Authority in relation to decisions made pursuant to Section 20 and Section 31 (2). The decision may be brought by the special lawyer before the court.

S. 43. Information covered by a provision pursuant to Section 38 (2) is not disclosed to the party but only to the special lawyer appointed in accordance with Section 42 (2). When such information is disclosed to the special lawyer, the special lawyer cannot discuss the case with the party or its lawyer, and nor can the special lawyer speak at court hearings where the party or its lawyer are present. The party and its lawyer can give written details to the special lawyer about the case at any time.

Subsection 2. The court may, of its own motion or at the request of the special lawyer appointed pursuant to Section 42 (2), decide that information involved in the decision of the Minister for Industry, Business and Financial Affairs pursuant to Section 17 (1) or Section 18 or 19 or the decision of the Danish Business Authority pursuant to Section 20 (1) or Section 31 (2) shall be forwarded to the party or its lawyer if the security matters cannot justify the decision of the Minister for Industry, Business and Financial Affairs or the Danish Business Authority pursuant to Section 38 (2). The decision is made by order and after the special lawyer and the Minister for Industry, Business and Financial or a person authorised by the Minister, though for decisions made pursuant to Section 20 or Section 31 (2) the Danish Business Authority, has had the opportunity to comment. The ruling can be appealed by the persons referred to in the 2nd sentence or by the authorities. An appeal against a decision to disclose information has suspensive effect.

Subsection 3. If the court makes a decision in accordance with Subsection (2), 1st sentence, the Minister for Justice or a person authorised by the Minister can decide that the information in question is not included in the case before the court.

Subsection 4. No one can sit as a judge in a case if they have made a decision in accordance with Subsection 2, 1st sentence, or have otherwise had access to information covered by such a decision, and the Minister for Justice or a person authorised by the Minister have made a decision pursuant to Subsection 3 that the information in question is not to be included in the case before the court.

S. 44. The part of a court hearing that concerns or during which information is presented or considered covered by a- decision pursuant to Section 38 (2), and which is not covered by a decision pursuant to Section 43 (2), shall be conducted behind closed doors. In this

part of a court hearing, the special lawyer appointed pursuant to Section 42 (2) can take part, but not the party and its lawyer.

Subsection 2. The court will decide how to conduct court hearings that, pursuant to Subsection 1, are wholly or partly conducted behind closed doors.

S. 45. The court will make its decision after the parties and the special lawyer appointed pursuant to Section 42 (2) have had the- opportunity to comment.

S. 46. The Minister for Justice will retain a number of lawyers who can be appointed pursuant to Section 42 (2), 1st sentence.

Subsection 2. The Minister for Justice can lay down detailed rules on the lawyers in question, including on duty rosters, payment for being on-call and on security issues.

S. 47. The rules in this chapter on conducting a case in the district court apply correspondingly to conducting of cases in the High Court and Supreme Court.

Part 14

Provisions on the winding up of foreign direct investment and the invalidity of special financial agreements

S. 48. If there is a lack of compliance with an order to wind up a foreign direct investment, pursuant to Section 19 or Section 31 (2), within the stipulated time limit,

the Danish Business Authority may revoke the voting rights attached to shareholding in the Danish company belonging to the foreign investor. If the Danish Business Authority has revoked the voting rights, the shareholding shall not be included in the calculation of the shares with voting rights.

Subsection 2. Special financial agreements that are in conflict with a refusal or prohibition, pursuant to Section 18, or an order to terminate a special financial agreement pursuant to Section 19 or Section 31 (2) shall have no validity to the parties.

Part 15

Commencement

S. 49. The Act enters into force on 1 July 2021.

Subsection 2. The Act does not apply to foreign direct investments and special financial agreements implemented before 1 September 2021.

Part 16

Territorial provisions

S. 50. The Act shall not extend to the Faroe Islands and Greenland.

Given at Amalienborg, on 10 May 2021

Under Our Royal Hand and Seal

MARGRETHE R.

/ Simon Kollerup