



Newsletter

– Corporate/M&A and Labour & Employment

New flexibility in the rules on employee representation

The entry into force of the new Danish Companies Act and its Executive Order of 28 June 2010 on Employee Representation has made the rules on employee representation in the company's Board of Directors/Supervisory Board (the "Board") in private and public companies more flexible.

In order to take advantage of the new flexibility, consensus between the employees and the management is a prerequisite. Typically this means that derogation from the rules requires consensus in the company's election committee or group election committee.

Fewer representatives

In the former legislation, i.e. the Public Companies Act and the Private Companies Act, the employees had to choose a certain number of representatives. Pursuant to the new Danish Companies Act employees now have the right to choose fewer representatives to the company's Board than prescribed in the law.

Continuation of voluntary schemes

Voluntary schemes on employee representation may continue in force, even though they derogate from the rules set out in the Danish Companies Act, provided that the employees and the management agree. This applies even if the companies due to their size are obliged to fulfil the conditions set in the Act on employee representation.

Foreign subsidiaries

The general meeting of shareholders may now choose to widen the circle of electable employees and employees entitled to vote with employees from one or more foreign subsidiaries for the election to group representation. However, employees in Danish subsidiaries must always elect one representative, and if the Danish employees exceed more than ten percent of the total number of electable employees, they must elect two representatives.

Derogation from election rules and procedures

It is now possible to derogate from election rules and procedures, provided that the employees and the management agree:

- Yes/No voting in connection with election to company and group representation can be opted out.



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- Changes in the length of the election period can be adopted. For instance representatives can be elected in variable periods, i.e. two and four years, respectively.
 - The rules on procedural time-limits may be deviated from, for instance prolongation or dispensation from deadlines to avoid an exceeded deadline resulting in re-election.
 - As a main rule an employee must be employed in the company or the group for a minimum of twelve months in order to become electable for employee representation. It is now possible to deviate from this condition.

Alternative rules of procedure

Alternative rules of procedure have now entered into force:

- Electronic voting is now permitted.
- As a main rule one election list is used for both representatives and alternates. This may be derogated from in order for all representatives and all alternates to stand on two lists, or to stand as personal alternates.

Reduction of the number of members in the Board

Pursuant to section 120 of the Danish Companies Act, the majority of the Board members must be elected at the general meeting. If the number of Board members elected in general meeting is permanently reduced in the election period, the number of employee representatives must hitherto be reduced in order to comply with the rule.

Now it is also possible to reduce the number of employee representatives during the election period, if consensus is reached between the employees in the election committee/group election committee, as long as the requirements and conditions in section 120 are met.

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