



# IPOs

## MORE THAN JUST FUNDING

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# IPOs

## More than just funding

IPOs is a topic that currently attracts great interest from both politicians and executives. The Confederation of Danish Industry's conference "How to obtain growth capital on the stock exchange in Denmark" held on 28 February 2017 is a good example of this. While an IPO involves a significant investment in terms of time and money, it is often also a good opportunity for companies to obtain venture capital and a global platform. The preparations for an IPO require a detailed review of the company and compliance with a number of formal requirements as to size, prospectus, etc. In addition, the company should be ready to meet the requirements that apply to listed companies, the most important being that the company's activities must be disclosed to the market. An IPO provides transparency, keeps the management agile, and opens doors to business partners and customers. Read more in this Insight where we describe the IPO process and the implications of being a listed company.

## IPOs create growth opportunities

In 2014, Kromann Reumert published an analysis on IPOs ("Initial Public Offering") in Denmark. In the analysis, we made specific proposals for reversing the trend and making more companies realise the potential of being listed on the stock exchange. Since then, politicians and market players have only increased their focus on IPOs. In June 2014, the Copenhagen stock exchange (Nasdaq Copenhagen) published the report "Recommendations for a stronger IPO climate for Denmark's growth" and in May 2016, Axcelfuture published the report "More IPOs to promote Danish prosperity and welfare", which focused on measures to increase the number of IPOs among especially small Danish businesses and drive economic growth in Denmark.

Since 2010, the following companies have gone public in Denmark:

Company	Date of IPO
NETS	23 September 2016
DONG Energy	9 June 2016
Scandinavian Tobacco Group	10 February 2016
Sparekassen Sjælland-Fyn	3 December 2015
NNIT	6 March 2015
OW Bunker	28 March 2014
ISS	13 March 2014
Matas	28 June 2013
Danske Andelskassers Bank	7 July 2011
Zealand Pharma	23 November 2010
Pandora	5 October 2010
Chr. Hansen	3 June 2010

For purposes of comparison, 81 companies went public in Sweden and 31 in Norway in the period from 2014 to April 2016 according to the Axcelfuture report and Oslo Stock Exchange. Thus, the number of IPOs is much higher in Sweden and Norway and, unlike in Denmark, many small businesses also launch their shares on the stock exchange.

There are often multiple reasons for going public. In many cases, an IPO is triggered by the existing owners' decision to realise a partial exit. For the company, it is a way of obtaining venture capital and increasing the level of awareness, thus preparing the ground for future growth. From a socioeconomic perspective, an IPO will often create growth and jobs.

An IPO is not only about raising capital, however. The process leading to an IPO will reveal the company's strengths and weaknesses which may be used for the benefit of the company and its owners. One CEO once referred to the IPO process as a "radiography" uncovering matters that the management would have to deal with anyway.

Being listed increases the awareness of the company and may contribute to opening doors to new customers and business partners. An increased level of awareness may also make it easier for the company to recruit qualified management and staff members. At the same time, the disclosure requirements to be met by a listed company will keep the management and the employees agile in terms of developments in the company. The obligation to disclose corporate matters to investors requires transparency in the group. It means that advantages can be exploited and that risks can be identified and handled. An IPO may therefore prove valuable in several respects to both the company and its shareholders, but it is no secret that the publicity surrounding a listed company may also be seen as a strain on management and employees in relation to information that can and information that must be communicated to the public.

## Formal requirements - what does it take to go public?

An IPO involves both a listing of the company's shares on the stock exchange and an offering of all or part of its shares to the public. Investors may be offered either to purchase existing shares, to subscribe for new shares or a combination. In order to be admitted to the stock exchange, the company must meet a number of statutory requirements and comply with the stock exchange rules. Nasdaq Copenhagen generally requires that the company must be suitable for listing. In addition, the Danish Securities Trading Act stipulates that the company must prepare a prospectus which must be approved by the Danish Financial Supervisory Authority and made available to the public.

## Profitable and liquid company, distribution of the shares, and minimum value of eur 1 million

In order to be found suitable for listing, the company must generally have published at least three annual reports and have a sufficient operating history. It is also a requirement that the company is profitable and capable of generating a profit, and the company must demonstrate that it has sufficient working capital available for its contemplated activities for at least 12 months after the first day of trading.

To ensure a reliable price formation after the IPO, it is also a condition that there is sufficient demand for and supply of the shares. It means, among other things, that there must be a certain minimum number of shareholders in the company and that the number of shares offered to the public must be high enough to create demand for and supply of the shares. According to the rules of the stock exchange, the distribution of shares is in general sufficient when 25% of the shares

are in public hands, i.e. are owned by shareholders each holding less than 10% of the shares. As a rule of thumb, the company must have at least 500 shareholders, but to ensure the liquidity of the shares, a higher number is recommended.

Furthermore, the expected market value of the shares must be at least EUR 1 million.

## Preparation of a prospectus

The requirement for publication of a prospectus is an EU law requirement. A prospectus is a detailed description of the company and of the risks that may be associated with an investment in its shares. The prospectus must also include a detailed description of the company's business areas, management, financial information, dividend policy and shareholders.

In addition, the prospectus must provide information on the company's share capital, the existence of any authority to increase the capital, general meetings, voting rights and the tax implications of investing in the shares. Finally, a description must be given of the offering of shares that takes place at the time of the listing. It must be stated which bank is the investment or issuing bank, who is offered to purchase the shares (private/retail investors in Denmark and institutional investors in Denmark and other countries, e.g. the USA), the offer price, the offer period, etc.

The prospectus is prepared by the company and often the company's legal adviser will be in charge of drafting the prospectus, the prospectus being first of all a legal and only in the second place a promotional document. The bank's legal adviser will usually verify the prospectus by checking that it gives a true and fair view. The verification is made by random checks and by conducting a due diligence.

In the prospectus, the company's management and external auditor make a number of representations. As an example, the management represents that the information contained in the prospectus, to the best of its knowledge, is true and accurate and that there are no omissions likely to affect its contents. In this respect, it is relevant to consider the risk of incurring prospectus liability and often both professional indemnity insurance for the management and prospectus liability insurance for the company are taken out.

The prospectus must be approved by the Danish Financial Supervisory Authority and made available to the public. Before being finally approved, draft versions of the prospectus will be forwarded to the Authority to allow the Authority to comment on it. During the procedure of approval, the stock exchange will also have an opportunity to comment on the draft prospectus.

The preparatory work and drafting usually take at least 4-6 months to which should be added approximately 2 months (at a maximum) for the approval procedure.

## Time schedule and list of documents

The IPO schedule will typically be as follows:



### Appointment of advisers

The first thing a stock exchange candidate should do is to appoint advisers to assist in the IPO process, including (a) bank(s), attorneys and auditor and a communications adviser. The bank, or a consortium of banks (investment or issuing banks), will be in charge of offering the shares to the investors. In addition to the external advisers, the executive board, the board of directors and the company's existing shareholders are part of the process, including also other departments in the company such as the finance, communications, HR and legal departments. In connection with the IPO, the company must establish an investor relations function.

## The most important documents

In addition to the prospectus, a number of other documents must also be drafted for the purpose of the IPO, including:

- > **An underwriting agreement with the banks**
  - a verification document
  - legal opinions
  - declarations by the auditor
- > **Analyst and investor presentations**
- > **Brochure for retail investors**
- > **IR policy and internal rules**
- > **Corporate documents**
  - rules of procedure for the board of directors/executive board
  - revised articles of association
  - corporate governance reporting
  - other company policies
- > **Company announcements**

Often, the company will enter into an agreement with the banks whereby the banks warrant to purchase the shares offered for sale (a so-called "underwriting agreement").

## How to prepare for an IPO?

Financial preparations	Corporate governance	Due diligence
Business plan	Information and investor relations	Attraction of investors

First, the company should establish financial functions and accounting procedures to ensure that it meets the additional financial reporting requirements that apply to listed companies. As an example, listed companies must prepare their financial statements in accordance with the International Financial Reporting Standards (IFRS). It must also be decided how budgets and statements on the company's future prospects should be prepared and on what basis.

In order to ensure that financial statements are prepared in accordance with the rules and that financial risks etc. are identified and handled, effective internal auditing and risk management procedures should be established.

Financial preparations	Corporate governance	Due diligence
Business plan	Information and investor relations	Attraction of investors

### The board of directors of a listed company - qualifications and board committees

As a result of the IPO, the company will, among other things, have to comply with e.g. additional financial reporting and disclosure obligations. It should therefore be considered whether the existing board of directors has the qualifications that are necessary or whether some of the members should be replaced.

Listed companies is obliged to take the Corporate Governance Recommendations into consideration (the “observe or explain” principle). The recommendations concern the composition and organisation of the board of directors. It is for instance recommended that the board explains once every year which qualifications the members should have in order to perform their duties, and that at least half of the members elected by the general meeting are independent members. It is a requirement under the Danish Act on Approved Auditors and Audit Firms that at least one member of the audit committee has accounting or auditing qualifications. Most listed companies have, in accordance with the Corporate Governance Recommendations, set up audit, nomination and remunerations committees under the board of directors. These committees merely prepare proposals to be submitted to the board of directors for final decision.

### Management remuneration - what about incentive programmes?

An IPO is an opportunity to introduce incentive programmes, linking the value to the company’s shares. Most listed companies have incentive programmes. In connection with an IPO, it should therefore be considered whether part of the management’s remuneration should be paid as shares, options or other instruments. In order to make the management’s remuneration more transparent, it is recommended that the company adopts a remuneration policy and makes it available to the public. Also, both the annual report and the prospectus must provide information on management remuneration. The board of directors is required under the Danish Companies Act to lay down general guidelines on incentive remuneration to be approved by the general meeting before it enters into a specific agreement for incentive remuneration with a management member.

### Revised articles of association and internal rules

When preparing for an IPO, the company should also take a look at its articles of association. As an example, the shares must be freely negotiable and different time limits apply to listed companies when convening general meetings.

We also recommend that the company draws up internal guidelines on:

- (i) the company’s disclosure obligations
- (ii) management’s trading in the company’s shares, notification duty and handling of inside information
- (iii) other employees’ trading in the company’s shares and handling of inside information.

The internal rules contribute, among other things, to preventing unlawful disclosure of inside information and insider trading. The company’s disclosure obligations are described in more detail below.

Financial preparations	Corporate governance	Due diligence
Business plan	Information and investor relations	Attraction of investors

One should know the product that one sells. The company will therefore be investigated as part of a combined due diligence/verification process. The investigation is intended to obtain assurance that the prospectus that is being prepared gives a true and fair view. Both the company’s advisers and the bank’s attorney will therefore scrutinise the company.

They will typically go through financial matters, including accounts and budgets, important contracts, lawsuits (if any) and insurance and employee matters, but it all depends on the type of business carried on by the company.

Financial preparations	Corporate governance	Due diligence
Business plan	Information and investor relations	Attraction of investors

The company’s business plan is important when describing the company’s strategy and business activities in the analyst and investor presentation and in the prospectus, and when estimating the company’s value. Therefore, the business plan often requires a considerable amount of work in connection with an IPO.

The business plan will have to be presented to analysts and investors, and for this purpose presentations must be prepared in cooperation with the company’s advisers. The analyst and investor presentations must not include information which is not also included in the prospectus, and these documents should therefore be carefully coordinated. If the company’s shares are offered to retail investors, a so-called “retail brochure”, which is a brief summary of the prospectus, will also be prepared.

Financial preparations	Corporate governance	Due diligence
Business plan	Information and investor relations	Attraction of investors

According to Nasdaq Copenhagen's rules, a listed company must adopt an information policy to ensure that it consistently provides information of a high quality. The policy should be worded so as not to make the company dependent on one single person to comply with the policy and so that it reflects the company's situation. It will usually be stated in the policy who is the company's spokesperson (typically the chairman of the board of directors, the CEO, CFO and an IR manager), which types of information will be published, how and when publication will take place, and which crisis communication strategy will be pursued (e.g. in case of a leak of inside information).

It will be relevant for the company at an early stage to consider how the company intends to communicate with the market prior to the listing. The information communicated should be stringent and the company should avoid making statements on future objectives and activities that will bind the company going forward.

In large companies, an IR (Investor Relations) function is established to handle all communication with shareholders, potential investors, analysts and other stakeholders. In small companies, the IR function may be performed by e.g. the company's CFO.

Financial preparations	Corporate governance	Due diligence
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When preparing for an IPO, it is important that the company speaks to the potential investors and inquire about their interest in purchasing the shares. In most cases, such inquiries will be addressed to institutional ("professional") investors such as pension and investment funds. As early as ½-1 year before the IPO it may be relevant for the company to contact selected investors in order to get an impression of the market sentiment. The company's business plan, including via the prospectus, must be presented to the investors. As described above, the drafting of investor presentations is also relevant and should be done in cooperation with the company's advisers.

The determination of the offer price is obviously also of great importance to the investors' interest. Normally, the company will fix a price range and the number of shares to be offered together with its financial advisers. On this basis, the price will then usually be set by means of a book building process which allows potential investors to make non-binding bids for the shares for a period of typically two weeks. After this period, the final share price and volume will then be determined.

## Life as a listed company

Companies entering the stock market will note a number of changes to their everyday life. Klaus Holve, CEO of SimCorp, which went public in April 2000, says:



**"To be a listed company basically requires an organisation that is geared to keep investors updated on the company's situation. Transparency both as to good as well as less good matters in the company is required. It is an advantage in relation to new bigger customer that may understand who their future partner is. In my view, the transparency requirement keeps both management and employees agile, which is a great advantage to the company. Knowing every inch of the organisation is valuable to the company and makes it easier to adopt and implement a strategy. Sometimes, the company may prefer not to reveal some information to competitors, but after all it is the investors who determine the value of the company when trading in its shares, so it is extremely important that the company takes its disclosure obligation seriously".**

## The disclosure obligation

Listed companies have an ongoing disclosure obligation and a number of specific obligations.

The ongoing disclosure obligation implies that the company must disclose all information about the company which is likely to have a significant impact on the share price (referred to as "inside information") as soon as possible. It is important to establish which information relating to the company constitutes inside information. It is also important to identify which part of the organisation generates the inside information and to establish procedures to ensure that the information is passed on to the relevant persons (including the management and IR). Inside information may also concern subsidiaries, and the company should therefore also establish mechanisms to ensure that such information is conveyed to the relevant persons in the listed parent company.

In addition to this, listed companies have a number of specific disclosure obligations under Nasdaq Copenhagen's rules for issuers of shares. The company must for instance publish its notices of general meetings and the resolutions adopted at general meetings. Any replacement of a member of management or the auditor and any introduction of share-based incentive programmes must also be disclosed to the market.

The shareholders in listed companies are also subject to a form of disclosure obligation. Major shareholders, ie. shareholders holding 5% or more of the shares in a listed company, must notify the company and the Danish Financial Supervisory Authority of such shareholding. The company is required under the Danish Securities Trading Act to make such notices from major shareholders available to the public.

## Disclosure of forecasts

In order to stimulate interest in the company, most listed companies disclose future forecasts. If the company discloses its forecasts, it must also provide information about the assumptions or conditions that form the basis for the forecasts. The forecasts must be communicated in a clear and consistent manner.

If it turns out that the actual results deviate from the forecast results, or if the forecasts change, the company must communicate this to the market. It is therefore recommendable to state forecasts within a range to avoid having to announce upward or downward adjustments.

## Investor and analyst meetings

Being listed on the stock exchange also means that the company must maintain a high level of information, for instance by holding capital market days, participating in conferences and other meetings and

keeping investors and analysts updated on the company's situation. Many companies hold annual meetings for investors and analysts as well as meetings in connection with the presentation of their quarterly and annual reports.

At these meetings, the company should remember not to disclose price sensitive information which has not already been published in a company announcement. For this purpose, it may be of great help to the members of management who represent the company at the meetings to bring a manuscript on what they are allowed to say.

## Preparation, preparation, preparation

If you are owner or member of the management of a company and consider whether an IPO is relevant, it may be a good idea to discuss the possibilities with a financial adviser (a bank) and an attorney specialising in IPOs. As in most other contexts, preparation is important and if you are well prepared, it may make the IPO process both shorter and cheaper. By starting in good time and having a good plan, the process becomes clear and transparent.

An IPO is not only relevant for large global companies. In Sweden and Norway, both small and medium-sized companies enter the stock market with great success and we should have the same goal in Denmark. With prospects of funding, international branding and a complete clean-up of the company, an IPO should not be regarded as a difficult process that should be done with, but a positive and value-adding experience for the company - whether large or small - and its stakeholders.

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