

## Guidelines on application for authorisation for acquisition of, or increase in, a qualifying interests

### 1. Introduction

These guidelines on application for authorisation for acquisition of, or increase in, a qualifying interest deal with the requirements laid down in the Danish Financial Business Act and the Danish Securities Trading, etc. Act on authorisation for owners of qualifying interests.

The guidelines replace the Danish Financial Supervisory Authority's guidelines of 27 July 2005 on requirements laid down in financial legislation for the fitness and propriety of members of the board of directors and management, as well as requirements for authorisation of owners of qualifying interests<sup>1)</sup> which is about requirements for authorisation for acquisition of, or increase in, qualifying interests.

### 2. Scope

An acquirer must apply for authorisation from the Danish FSA in connection with acquisition of, or increase in, a qualifying interest in a financial undertaking and financial holding company covered by section 61 of the Financial Business Act.

This requirement also applies for acquisition of qualifying interests in electronic money institutions, see section 315 of the Financial Business Act, and for acquisition of qualifying interests in investment advisors, see section 343h of the Financial Business Act, and for acquisition of qualifying interests in operators of a regulated market, clearing centres and central securities depositories, see section 10 of the Securities Trading, etc. Act. The following undertakings are covered by the provisions as of 1 September 2010:

- Banks.
- Mortgage credit institutions.
- Investment companies.
- Investment management companies.
- Insurance companies.
- Electronic money institutions.
- Investment advisors.
- Financial holding companies (section 5(1), no. 10 of the Financial Business Act).
- Operators of a regulated market.
- Clearing centres.
- Central securities depositories.
- Ship finance institutes.
- Payment institutions.
- Mortgage companies.

Such undertakings are called offeree companies in these guidelines.

These guidelines primarily cover references to the provisions in sections 61-62 of the Financial Business Act. These provisions are also found in sections 10-10d of the Securities Trading, etc. Act.

### 3. Authorisation requirement

Any natural or legal person, or natural or legal persons acting in understanding with each other, planning directly or indirectly to acquire a qualifying interest in an offeree company, must apply to

the Danish FSA in advance for approval of the acquisition planned, see section 61(1), 1st clause. If the person(s) in question intend(s) to acquire a small percentage resulting in a qualifying interest for the person(s) in question, authorisation from the Danish FSA must also have been granted.

Prior authorisation is a requirement. The acquirer in question is therefore not entitled to acquire or increase a qualifying interest until authorisation from the Danish FSA has been granted. This authorisation must have been granted regardless of whether the financial undertaking is being established or has already been established.

A qualifying interest is direct or indirect ownership of 10 per cent or more of the capital or voting rights, or an interest which provides the opportunity for exercising significant influence on the management of the offeree company. An acquirer may also obtain a qualifying interest even though the acquirer does not exceed the 10 per cent limit. The vital factor is whether the potential acquirer is able to exercise a significant influence on the management. This may be in the case of undertakings with a very wide ownership.

The acquirer must also apply to the Danish FSA for authorisation of an increase in a qualifying interest. This applies to an increase in the qualifying interest which, after the acquisition, results in the interest equalling or exceeding a limit of 20 per cent, 33 per cent or 50 per cent, respectively of the company capital or voting rights, or results in the offeree company becoming a subsidiary undertaking, see section 61(1), 2nd clause of the Danish Financial Business Act.<sup>2)</sup>

Prior applications must be submitted in connection with direct and indirect acquisition. Indirect acquisition is, for example, acquisition of a controlling interest in a legal person which already owns a qualifying interest in a financial undertaking. If more parties in a group obtain indirect ownership through one party's acquisition, each party must apply for authorisation. If indirect acquisition covers undertakings in several EU member states, the acquirer must apply to the authorities in each member state for authorisation. The scope of the individual application may depend on where the individual company is placed in the chain of companies.

Executive Order no. 277 of 2 April 2009 on calculation of qualifying interests further stipulates when an acquirer must include an acquisition, for example, in cases where a person has voting rights attached to the holdings through shareholders' agreements, rights laid down in the articles of association, mortgaging agreements or similar.

#### **4. The Danish FSA's processing of the application**

The Danish FSA may only authorise the acquisition or increase when such authorisation is not in conflict with ensuring reasonable and appropriate management of the offeree company, see section 61a(2).

To be able to assess whether there is a risk that the applicant will counter reasonable and appropriate management of the undertaking, the applicant must fill in, sign and submit an application form with relevant documents. For more information, see point 7.

If a natural or legal person intends to acquire a qualifying interest in a financial holding company, and if this means that the natural or legal person also indirectly acquires a qualifying interest in a financial undertaking, a form must be filled in about said financial holding company alone, if both undertakings are under supervision in Denmark.

If another EU or EEA country has authorised a natural or legal person to acquire or increase a qualifying interest, the person in question must submit documentation about this in the form of a signature/authorisation from the relevant authority together with the application form. The Danish

FSA will include the documentation submitted in the authority's assessment of whether it can authorise the intended acquisition of, or increase in, a qualifying interest.

From the date of receipt of the application, see section 61(2), and receipt of all documents required to be enclosed with the application, the Danish FSA has an assessment period of 60 business days to carry out the assessment mentioned in section 61a. At the same time as confirming receipt of the application, see subsection (2), the Danish FSA must notify the intended acquirer of the expiry date of the assessment period.

The Danish FSA may, when authorising acquisitions or increases, stipulate a time limit for the completion of such acquisitions or increases, see section 61(8). If the acquirer does not comply with the time limit, the authorisation will lapse.

## **5. Duty of owners of capital to notify the Danish FSA about reductions**

Owners of a qualifying interest must also notify the Danish FSA in writing if it is intended to sell the interest. The person in question must also notify the Danish FSA if it is intended to reduce the interest to such an extent that the sale means that the limit of 20 per cent, 33 per cent or 50 per cent, respectively, of voting rights or holdings is no longer held, or that the undertaking ceases to be a subsidiary undertaking of the person in question.

Prior notification to the Danish FSA must include information about the size of the holding of the person in question owned after the sale. The Danish FSA does not need to authorise the sale.

## **6. Sanctions**

Where the owners of capital mentioned in section 61(1) fail to meet the requirements of section 61a(1), the Danish FSA may withdraw the voting rights associated with the equity investments of the relevant owners, or order the undertaking to follow specific guidelines, see section 62(1).

The Danish FSA may withdraw the voting rights associated with equity investments owned by natural or legal persons who do not comply with the duty to submit to the Danish FSA prior notification mentioned in section 61(1). The Danish FSA will reallocate full voting rights, if the Danish FSA is able to authorise the acquisition at a later stage.

The Danish FSA must withdraw the voting rights associated with equity investments owned by natural or legal persons who have acquired equity investments as specified in section 61(1), notwithstanding the fact that the Danish FSA has refused to authorise the acquisition, see section 62(3).

Where the Danish FSA has withdrawn voting rights, the relevant equity investment cannot be included in calculations of the voting capital present at general meetings.

## **7. What documents and information must the acquirer submit to the Danish FSA?**

In the processing of an application for authorisation for an acquisition of, or increase in, a qualifying interest, the Danish FSA requires a number of documents and information from the applicant. The information required is stated in the application forms available at the website of the Danish FSA. The application forms also state which additional documents to enclose.

The documents submitted must be drafted in a Scandinavian language (Danish, Swedish or Norwegian) or in English. Documents in other languages must include a certified translation into one of the languages mentioned.

Confirmation of receipt of the application by the Danish FSA will state whether the applicant has submitted the required documents to be used for the Danish FSA's processing of the application, i.e.

the relevant application form and documents listed in the checklist for the form. This is solely a confirmation of receipt of the application and the documents, and not confirmation of the completeness of the application and documents. The Danish FSA may thus subsequently request an elaboration of the information provided in the documents.

Which application form must the acquirer use?

- If the acquirer is a natural person, the acquirer must fill in and submit the application form for natural persons.
- If the acquirer is a legal person, the acquirer must fill in and submit the application form for legal persons. In addition, each member of the board of directors and management must fill in the form for members of management, which is to be submitted together with the application form.

Must all information be provided in all cases?

If the Danish FSA has already received the information in another context, the intended acquirer need not submit this information. This is, for example, the case if the intended acquirer is a legal person supervised by the Danish FSA, or if the intended acquirer has previously been assessed as an acquirer of a qualifying interest.

If the intended acquirer is a legal person supervised by the Danish FSA, information in points 1.4, 1.5, 1.6, 1.7, 1.11 and 1.12 may be omitted.

If the intended acquirer is a natural or legal person who has previously been approved as owner of a qualifying interest, or a natural person who has previously been assessed as fit and proper to maintain the position as member of the board of directors or management of a financial undertaking, etc., the information provided in the form for natural persons in points 1.2, 1.3, 1.11, 1.12 and 1.13, and the form for legal persons in points 1.6, 1.7, 1.11 and 1.12 may be omitted.

The intended acquirer must provide information about any changes occurring in the interim period.

On page 1 of the application form, the intended acquirer must state whether information has been omitted.

The Danish FSA may furthermore specifically exempt the intended acquirer from having to provide the information mentioned in the forms, if the Danish FSA finds that there is no need for the information in order to make the assessment.

Finally, point 4 in the forms for natural and legal persons states that the volume of supplementary information to be submitted depends on the size of the intended acquisition.

## **8. Duty of confidentiality of the Danish FSA**

The information that persons intending to acquire/increase a qualifying interest are required to provide to be used for the Danish FSA's assessment of whether the Danish FSA can authorise said acquisition/increase, is covered by the duty of confidentiality of the Danish FSA pursuant to section 354(1) of the Financial Business Act. Pursuant to the provision, by virtue of sections 152-152e of the Danish Criminal Code, employees of the Danish FSA are obliged to keep secret any confidential information they receive in the course of their supervisory duties.

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<sup>1)</sup> The guidelines are available on the Danish FSA website [www.finanstilsynet.dk](http://www.finanstilsynet.dk) under »Reporting« - »Guides« - »Fit & proper guidelines«.

<sup>2)</sup> Parent companies and subsidiary undertakings, as well as the group concept are defined in sections 5a and 5b of the Financial Business Act.