

**While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 1228 of 22 October 2007. Only the Danish document has legal validity.**

**GlobalDenmark Translations, December 2007**

Executive Order on Takeover bids<sup>1)</sup>

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Executive Order no. 1228 of 22 October 2007

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The following shall be laid down in pursuance of section 32(4), section 32a(2) and section 93(3) of the Securities Trading etc. Act, cf. Consolidated Act no. 1077 of 4 September 2007, as amended by Act no. 108 of 7 February 2007:

#### *Definitions*

1. For the purposes of this Executive Order, the following definitions shall apply:

1) *Takeover bid or bid:*

A public offer made to the holders of the shares of a company, which has one or more share classes admitted to trading on a regulated market or an alternative market, to acquire all or some of those shares, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company.

2) *Offeree company:*

The company, the shares of which are the subject of a bid.

3) *Offeror:*

Any natural or legal person making a bid.

4) *Persons acting in concert:*

Natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid.

#### *Compulsory bids*

**2.-(1)** If a shareholding is to be transferred directly or indirectly in a company which has several share classes admitted to trading on a regulated market or an alternative market to an acquirer or to persons who act in concert with him, the acquirer shall make bids to all the shareholders of the company to buy their shares on identical terms, if the transfer means that the acquirer

1) becomes the holder of the majority of the voting rights of the company,

2) becomes entitled to appoint or dismiss a majority of the company's members of the board of directors,

3) becomes entitled to exercise a controlling influence on the company under the articles of association or other agreements with said company,

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<sup>1)</sup> This Executive Order contains provisions to implement parts of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (Official Journal 2004 L 142, p. 12).

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- 4) on the basis of agreements with other shareholders becomes able to exercise influence over the majority of the voting rights of the company, or
- 5) becomes entitled to exercise controlling influence on the company and becomes the holder of more than one-third of the voting rights.

**(2)** The acquirer shall, as soon as possible and no later than four weeks after acquisition, publish an offer document which complies with the provisions of section 5.

**(3)** For conversion of convertible debt instruments, cf. part 6 of the Public Companies Act, exercising subscription rights, options or warrants etc. to shares, the acquirer shall, as quickly as possible and no later than four weeks after the day on which the acquirer may exercise voting rights, publish an offer document which complies with the provisions of section 5.

**(4)** Acquisition by inheritance, gift, creditor suits, transfer within the same group or similar is not covered by the obligation to make a bid of subsection (1).

**(5)** The obligation to make a bid according to subsection (1) shall not apply if the transfer is the result of a voluntary bid to all the shareholders to acquire all their shares pursuant to section 3.

*Voluntary bids*

**3.** An offeror who makes a bid which is not subject to the obligation to make a bid of section 2(1) shall, no later than four weeks after publication of the decision to make a bid, cf. section 4(2), publish an offer document which complies with the provisions of section 5.

*Announcement of bid*

**4.-(1)** The acquirer of a controlling shareholding which occasions an obligation to make a bid pursuant to section 2(1) shall publish an announcement of this immediately after acquisition.

**(2)** The offeror shall immediately publish an announcement of a decision to make a voluntary bid subject to section 3.

**(3)** Publication pursuant to subsections (1) and (2) shall be via electronic media in such a manner that the announcement reaches the public in the countries in which the shares of the offeree company are admitted to trading on a regulated market or an alternative market.

**(4)** Offerors shall, no later than publication, cf. subsection (3), send the announcement pursuant to subsection (1) or (2) to the Danish FSA and the regulated market or the alternative market to which the shares are admitted to trading. The Danish FSA shall publish the announcement on its website.

**(5)** Immediately after publication of an announcement pursuant to subsection (1) or (2) the boards of directors of the offeree company and the acquirer or offeror shall inform their respective employee representatives or, where there are no such representatives, the employees themselves.

**(6)** Before announcing a bid covered by subsection (1) or (2), the acquirer or offeror shall ensure that he/she can fulfil in full any cash consideration and after taking all reasonable measures to secure the implementation of any other type of consideration.

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*Form and content of the bid*

**5.-(1)** An offer document shall contain information on the financial terms and other terms of the bid as well as other information which is deemed necessary for shareholders to arrive at an informed judgment on the bid. As a minimum the bid shall contain information on:

- 1) name, address and company registration no. (CVR-nr.) of the offeree company.
- 2) name and address of the offeror, or where the offeror is a company, the name, address and company registration no. (CVR-nr.) of that company, registered office and type of that company as well as a list of the persons or companies acting in concert with the offeror or, if possible, with the offeree company and, in the case of companies, their types, names and registered offices and relationships with the offeror and, where possible, with the offeree company.
- 3) name and address of the person or the company which, on behalf of the offeror, manages implementation of the bid.
- 4) the proportion of the voting rights or the scope of the controlling interest which the offeror has already acquired or has charge of in some other way, including as yet unimplemented transfer agreements as well as on special terms linked to the voting rights or the controlling interest acquired. As yet unimplemented transfer agreements shall include convertible debt instruments, cf. part 6 of *lov om aktieselskaber, tegningsrettigheder, optioner og warrants m.v.* (Act on Public Companies, Subscription Rights, Options and Warrants etc.).
- 5) consideration, cf. section 9, for mandatory bids.
- 6) the price offered, cf. section 8, for mandatory bids.
- 7) the shares or, where appropriate, the share class or classes for which the bid is made.
- 8) the compensation offered by the offeror to the shareholders and the method of calculation of the compensation, cf. section 81h(2) of the Public Companies Act.
- 9) how the bid is to be financed.
- 10) how the cash payment is to be disbursed or, if shares in another company are offered, how the conversion ratio is determined, or, if a combination of cash and shares is offered, how the combination of cash and conversion of shares is determined.
- 11) the date of settlement.
- 12) from which date shares are entitled to dividends and from which date voting rights may be exercised, if the consideration is shares.
- 13) the maximum and minimum percentages or quantities of shares which the offeror undertakes to acquire, cf. section 3 regarding voluntary bids.
- 14) any conditions to which the bid is subject, cf. section 10, including circumstances under which the bid may be withdrawn.
- 15) the period of the bid, cf. section 6.
- 16) action to be taken by shareholders to accept the bid.
- 17) where and when the result of the bid will be published, including where and when fulfilment of any conditions linked to the bid will be published.
- 18) the offeror's intentions with regard to the future business of the offeree company and, in so far as it is relevant, the offeror company, including trading in the companies' shares on a regulated market or an alternative market, safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business.
- 19) payment from the funds of the offeree company after completion of the takeover bid, cf. section 12.
- 20) any agreements with others regarding exercise of voting rights linked to the shares of the company, if the offeror is part of, or has knowledge of, these agreements.

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21) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's shares as a result of the bid, and the competent courts.

**(2)** In addition to the information stated in subsection (1), the offer document shall also state whether the shareholders who accept the bid are bound by this acceptance in the event of a competing bid pursuant to section 16.

**(3)** If the bid fulfils the conditions of section 2(5), the offer document shall contain information that the offeror is not obliged subsequently to make a mandatory bid if, on the basis of the voluntary bid, control is acquired pursuant to section 31(1) of the Securities Trading etc. Act.

**(4)** If there are material changes in the information issued which cannot be deemed as terms and which are deemed necessary for shareholders to arrive at an informed judgment on the bid, the offeror shall publish an announcement of these as soon as possible in the manner stipulated in section 4(3) and (4).

**6.** The time allowed for acceptance of the bid shall be no less than four weeks and no more than ten weeks from the date of publication of the offer document, cf. however, section 15(3).

**7.-(1)** The offeror shall afford all holders of the shares of an offeree company of the same class equivalent treatment.

**(2)** If the offeror or a person who acts in concert with the offeror, after the offer document has been published and before the time allowed for acceptance of the bid has expired, enters into agreements with shareholders or others regarding purchases and sales of shares in the offeree company, the offeror shall, as a minimum, raise his bid to the other shareholders correspondingly if these shares are covered by the bid and if the agreements are made on more favourable terms than those offered to shareholders in the offer document.

**(3)** If the offeror decides that a takeover bid is to include convertible debt instruments, cf. part 6 of *lov om aktieselskaber, tegningsrettigheder, optioner og warrants m.v.* (Act on Public Companies, Subscription Rights, Options and Warrants etc.), the provisions of subsections (1) and (2) shall apply correspondingly, with the necessary adjustments, to these securities.

**(4)** If the bid includes convertible debt instruments as mentioned in subsection (3), the owners shall be offered a price which affords them proportionally mutually equivalent treatment. The price offered shall also afford the owners of these securities proportionally equivalent treatment in relation to the price offered to shareholders in the company.

**8.-(1)** The price offered shall correspond to no less than the highest price the offeror or persons acting in concert with the offeror, have paid for shares already acquired in the six months preceding the date the offer is made.

**(2)** The Danish FSA may adjust the price set pursuant to subsection (1) upwards or downwards, if

- 1) the price of the shares in question has been manipulated,
- 2) the price in general or in the particular circumstances has been affected by exceptional occurrences,
- 3) the bid is made to enable a firm in difficulty to be rescued,
- 4) the price set is an evasion of the principle of equivalent treatment, or

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5) the bid price is significantly lower than the market price.

**(3)** If the offeror requests adjustment of the highest price pursuant to subsection (2), such request shall be submitted to the Danish FSA immediately after the offeror publishes an announcement pursuant to section 4(1) and (3).

**(4)** The Danish FSA may, when setting the bid price pursuant to subsection (2) apply,

- 1) the highest price paid by the offeror to acquire shares in the 12 months preceding the announcement by the offeror pursuant to section 4(1) and (3),
- 2) the average price over the 12 months preceding the announcement by the offeror pursuant to section 4(1) and (3),
- 3) the break-up value of the offeree company, or
- 4) other objective criteria.

**(5)** If the offeree company has several share classes, a bid price shall be set for each share class. For the share classes in which the offeror has acquired shares, the principle of highest price, cf. subsection (1) shall be applied. If all share classes are admitted to trading on a regulated market or an alternative market, for share classes in which the offeror has not acquired shares on the basis of the prices on a regulated market or an alternative market, a bid price shall be set which proportionally corresponds to the highest price for the share class(es) in which the offeror has acquired shares.

**(6)** If one or more of several share classes are admitted to trading on a regulated market or an alternative market, the price set for the share classes not admitted in connection with a majority transfer shall not be more than 50 per cent higher than the price offered to the minority shareholders.

**(7)** A voluntary bid pursuant to section 3 shall not be subject to the requirements of subsections (1)-(6).

**9.-(1)** As consideration in a mandatory bid covered by section 2, the offeror may offer shares with voting rights, cash or a combination of both.

**(2)** If the consideration offered does not consist of liquid shares admitted to trading on a regulated market, the consideration shall consist of a cash alternative. For offers of transfers of shares in a company which is admitted to trading on a regulated market or on an alternative market, the consideration may also consist of liquid shares which are admitted to trading on an alternative market.

**(3)** Notwithstanding subsections (1) and (2), the offeror shall offer a cash consideration at least as an alternative where the offeror or persons acting in concert with the offeror, over a period of six months preceding the date the bid was made and ending when the offer closes for acceptance, has purchased for cash securities carrying 5 per cent or more of the voting rights in the offeree company.

**(4)** A voluntary bid pursuant to section 3 shall not be subject to the requirements of subsections (1)-(3).

**10.-(1)** No conditions may be linked to a takeover bid.

**(2)** A voluntary bid pursuant to section 3 shall not be subject to the requirement of subsection (1).

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*Agreements on bonuses and similar benefits and payments from offeree company's funds*

**11.** The offeror or persons acting in concert with the offeror and the board of directors of the offeree company may, from the date on which the offeror or persons acting in concert with the offeror initiate negotiations with the offeree company and until the negotiations are stopped, or a takeover bid is implemented, not enter into agreements or change existing agreements on bonuses and similar benefits for the board or directors or board of management of the offeree company.

**12.-(1)** If the offeror intends to allow the offeree company to make payments from the funds of the offeree company, cf. section 109(1) of the Public Companies Act, in the first 12 months after implementation of the takeover bid, this shall be stated in the offer document. At the same time as this, the offeror shall provide information on the type and size of the intended payment.

**(2)** If the offeror has not provided information about the intended payment in accordance with subsection (1), the offeror may not permit the offeree company to make payments during the first 12 months after implementation of the takeover bid unless the payment from the funds of the company is made on the basis of specific circumstances, which improve the financial situation of the company and which could not be anticipated by the offeror during preparation of the offer document, cf. section 109(2) and (3) of the Public Companies Act.

*Publication of bids and the bid results*

**13.-(1)** A bid covered by sections 2 and 3 shall be made public in the manner mentioned in subsection (4) before other publication is permitted.

**(2)** The offeror shall submit the offer document and an announcement which mentions the bid (bid announcement) to the Danish FSA. The Danish FSA shall ensure that, before publication, the requirements regarding the offer document and the bid announcement have been fulfilled.

**(3)** The bid announcement, cf. subsection (2), shall contain information on the time limit for acceptance of the bid, a website from which the offer document can be retrieved, and information on where shareholders can refer in order to obtain a copy of the offer document.

**(4)** Immediately after receiving authorisation of the offer document and the bid announcement from the Danish FSA, the offeror shall make public the bid announcement via electronic media in such a manner that the bid announcement reaches the public in the countries in which the offeree company's shares are admitted to trading on a regulated market or an alternative market.

**(5)** At the same time as publication, cf. subsection (4), the offeror shall send the bid announcement to the regulated market or the alternative market on which the offeree company's shares are admitted to trading and publish the offer document on the website stated in the bid announcement. The Danish FSA shall publish the offer document and the bid announcement on its website.

**(6)** When the bid is made public, the boards of directors of the offeree company and the offeror shall submit the offer document to their respective employee representatives or, where there are no such representatives, to the employees themselves.

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**(7)** The offeree company shall send the bid announcement to the registered shareholders at the expense of the offeror.

**(8)** Not later than three days after expiry of the bid period, the offeror shall make public the result of the bid. Publication shall be in the manner stipulated in subsections (3) and (4).

#### *Reports from the board of directors of the offeree company*

**14.-(1)** The board of directors of the offeree company shall draw up a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer document, cf. section 5(1), no. 18.

**(2)** The board of directors of the offeree company shall make public and submit the document, cf. subsection (1), in the manner stipulated in section 4(3) and (4). The document shall be made public before expiry of the first half of the bid period, cf. section 6.

**(3)** At the same time as publication of the document, the board of the offeree company shall communicate its opinion, cf. subsection (1), to the representatives of its employees or, where there are no such representatives, to the employees themselves. Where the board of the offeree company receives a separate statement from the representatives of its employees on the effects of the bid on employment, that statement shall be made public immediately in the manner stipulated in section 4(3) and (4).

**(4)** Immediately after publication, the offeree company shall publish the document on a website.

**(5)** The offeree company shall send the document to the registered shareholders at the expense of the offeror.

#### *Changes in the bid*

**15.-(1)** The offeror may change the conditions linked to the bid at any time up to expiry of the bid period, cf. section 6 and section 16(2), if the conditions offered are improved. If the change takes place within the last two weeks of the bid period, the bid period shall be extended such that it expires 14 days after publication of the changed bid.

**(2)** The offeror may extend the bid period by no less than 14 days at a time. The total bid period may not, however, extend for more than ten weeks from the date of publication of the offer document.

**(3)** The offeror may extend the bid period for more than the ten weeks calculated from the date of publication of the offer document, cf. section 6, by four weeks at a time, however no more than four months from publication of the offer document, with a view to authorisation from the competition authorities.

**(4)** The offeror may cancel or reduce conditions set, cf. section 5(1), no. 14 and section 10, under compliance with subsection (1), if this possibility is stated in the original offer document.

**(5)** The offeror shall draw up a supplement to the offer document which shall be made public as stipulated in section 13.

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**(6)** The board of directors of the offeree company shall, in the event of changes pursuant to subsection (1) or (4), publish a supplementary report for the shareholders of the company on the changes. The report shall be made public before expiry of one-half of the remaining bid period or, if the remaining bid period is 14 days or less, within seven days of publication of the change document. Publication of the supplementary report shall be in the manner stipulated in section 14.

**(7)** For bids covered by subsection (1), shareholders who have already accepted the original bid from the offeror shall be provided with the same improved conditions as are contained in the change document.

#### *Competing bids*

**16.-(1)** A competing bid shall be submitted before expiry of the bid period for the existing bid with the latest date of expiry. Otherwise the provisions of this Executive Order shall apply correspondingly for competing bids.

**(2)** In the event that the original offeror does not withdraw his bid, the bid period of the original bid shall be extended automatically to the date of expiry of the competing bid. This automatic extension of the original bid period shall be made public as stipulated in section 13.

#### *Language, competence, choice of law and delegation*

**17.** Documents requiring preparation in pursuance of this Executive Order shall be drawn up in Danish.

**18.-(1)** The Danish FSA shall supervise bids for which the offeree company has its registered office in Denmark or in a country outside the European Union with which the Community has not entered into an agreement for the financial area, if the shares of the offeree company are admitted to trading on a regulated market in Denmark. Furthermore, the Danish FSA shall supervise bids for which the shares of the offeree company are admitted to trading on an alternative market.

**(2)** The Danish FSA shall supervise bids for which the shares of the offeree company are admitted to trading on a regulated market in Denmark and if the shares of the offeree company are not admitted to trading on a regulated market in the country in which the offeree company has its registered office. If the shares of the offeree company are both admitted to trading on a regulated market in Denmark and in a country within the European Union or countries with which the Community has entered into an agreement for the financial area, the Danish FSA shall supervise bids for which the shares were first admitted to trading in Denmark.

**(3)** If the shares of the offeree company are at the same time admitted to trading for the first time on regulated markets in Denmark and one or more countries within the European Union or countries with which the Community has entered into an agreement for the financial area, the offeree company shall determine which of the supervisory authorities of these countries shall be the authority competent to supervise the bid by notifying these regulated markets, the Danish FSA and supervisory authorities in the other countries on the first day of trading.

**(4)** If shares of the offeree company have already been admitted to trading on a regulated market in Denmark and on a regulated market in one or more countries within the European Union or countries with which the Community has entered into an agreement for the financial

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area on the date of entry into force of this Executive Order, and were admitted simultaneously, the offeree company shall determine on the first day of trading which of the supervisory authorities of these countries shall be the authority competent to supervise the bid, if the supervisory authorities have not decided the matter within four weeks of the date of entry into force.

**(5)** The offeree company shall, as soon as possible, make public the decision of the company under subsections (3) and (4). Publication must be in accordance with section 4(3).

**19.-(1)** In the circumstances mentioned in section 18(1), the takeover bid shall be treated in accordance with Danish regulations.

**(2)** In the circumstances mentioned in section 18(2)-(4), in which the Danish FSA is the competent authority, matters relating to the consideration to be offered in connection with a bid, including in particular the price, and matters related to the procedure for the bid, in particular information about the decision of the offeror to make a bid, the content of the offer document and disclosure of the bid shall be dealt with pursuant to Danish regulations.

**(3)** Notwithstanding section 18(2)-(4), matters relating to the information to be provided to the employees of the offeree company, acquisition of control and any derogation from the obligation to make a bid shall be dealt with by the supervisory authority in the country within the European Union, or countries with which the Community has entered into an agreement for the financial area, in which the offeree company has its registered office, in accordance with the regulations of this country.

#### *Exemptions and penalties*

**20.** In exceptional circumstances the Danish FSA may grant exemptions from section 2(1) and (2), section 3, section 6, section 9(2) and (3), section 10(1), section 13(8), 1st clause, section 14(2), 2nd clause, section 15(1)-(3) and section 16(1).

**21.-(1)** Any person who violates section 2(1)-(3), section 3, section 4, section 5, section 6, section 7, section 8(1), (5) and (6), section 9(2), 1st clause and (3), section 10(1), section 11, section 12(1), section 13, section 14, section 15(5)-(7), section 16(2), 2nd clause, section 17 and section 18(5) shall be liable to a fine.

**(2)** Companies, etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the Criminal Code, cf. section 93(5) of the Securities Trading etc. Act.

#### *Entry into force and transitional provisions*

**22.-(1)** This Executive Order shall enter into force on 1 November 2007.

**(2)** At the same time Executive Order no. 712 of 21 June 2007 on takeover bids shall be repealed.