Executive Order on Takeover Bids

Executive Order no. 221 of 10 March 2010

The following shall be laid down pursuant to section 32(4), section 32a(2) and section 93(4) of the Securities Trading etc. Act, cf. Consolidating Act no. 795 of 20 August 2009:

Definitions

1. For the purposes of this Executive Order:

1) Takeover bid or bid:
   A public offer made to the shareholders in a company, which has one or more share classes admitted to trading on a regulated market or an alternative market place, to acquire all or some of their shares, following the acquisition of control of the offeree company or has acquisition of control as its objective, whether the offer is mandatory or voluntary.

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, oral or written, and aimed either at acquiring control of the offeree company or at frustrating the successful outcome of the bid.

Mandatory bids

2.- (1) If a shareholding is transferred directly or indirectly in a company with one or more share classes admitted to trading on a regulated market or an alternative market place, to an acquirer or to persons who act in concert with him, the acquirer shall give all the shareholders of the company the opportunity to sell their shares on identical terms, if the transfer means that the acquirer obtains a controlling influence over the company, cf. section 31(2)-(5) of the Securities Trading, etc. Act.

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

(3) For conversion of convertible debt instruments, cf. part 10 of the 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 the 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 in 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.

(6) The obligation to make a bid according to subsection (1) shall not apply for securities dealers, credit institutions and investment companies, which acquire shares as a consequence of underwriting issues or as a consequence of an agreement with an issuer or one or more shareholders on resale of shares. The exemption under the 1st clause is conditional upon the shares being sold within five days and on the voting rights not being exercised during the period, or in some other way utilised to intervene in the management of the company.

Voluntary bids

3. An offeror, who makes a bid which is not subject to the obligation to make a bid in section 2(1), shall, as soon as possible and 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 a 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 the 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 place.
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(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 place to which the shares are admitted to trading. The Danish FSA will publish the announcement on its website.

(5) Immediately after publication of an announcement pursuant to subsection (1) or (2), the central management bodies 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 it can meet in full any demands for cash consideration and, after taking all reasonable measures, ensure that any other type of consideration can be paid.

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 judgement of the bid. As a minimum the bid shall contain information on:

1) name, address and company registration no. (CVR no.) of the offeree company.
2) name and address of the offeror, or where the offeror is a company, the name, address, company registration no. (CVR no.), registered office and type of 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 as well as their 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, is managing 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 information on as yet unimplemented transfer agreements as well as on special terms linked to the voting rights or the controlling influence acquired. As yet unimplemented transfer agreements shall include convertible debt instruments, cf. part 10 of the Companies Act, 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 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 344(2) of the 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 to be determined, or, if a combination of cash and shares is offered, how the combination of cash and conversion of shares is to be 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 offer period, 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 continued trading in the companies' shares on a regulated market or an alternative market place, safeguarding the jobs of their employees and management, including any material change in the conditions of employment; the offeror shall inform about the offeror's strategic plans for these companies and the likely repercussions on employment and 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.
21) the national law which will govern contracts concluded between the offeror and the shareholders as a result of the bid, as well as 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,
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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 significant changes in the information issued which cannot be deemed as terms and which are deemed necessary for shareholders to arrive at an informed judgement of 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 offer period 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 shareholders of the same share 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 offer period 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 10 of the Companies Act, subscription rights, options or 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 proportionate mutually equivalent treatment. The price offered shall also afford the owners of these securities proportionate 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 upwards or downwards the price set pursuant to subsection (1), 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 company in distress to be rescued,
4) the price set is an evasion of the principle of equivalent treatment, or
5) the offer 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 offer 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 place, an offer price shall be set, 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 place, 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 place, the price set for the share classes not admitted in connection with a majority transfer shall not be more than 50 percent 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 place, the consideration may also consist of liquid shares which are admitted to trading on an alternative market place.

(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 shares carrying 5 percent 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).

Agreements on bonuses or similar benefits and payments from the offeree company’s funds

11. The offeror or persons acting in concert with the offeror and the central management body 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 central management body 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 179(1) of the 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 184 of the 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.
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(3) The bid announcement, cf. subsection (2), shall contain information on the time allowed 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 approval 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 place.

(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 place 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 central management bodies 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.

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

(8) No later than three days after expiry of the offer period, the offeror shall make public the result of the bid. Publication shall be in the manner stipulated in section 4(3) and (4).

Reports from the central management body of the offeree company

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

(2) The central management body of the offeree company shall make public and submit the report, cf. subsection (1), in the manner stipulated in section 4(3) and (4). The report shall be made public before expiry of the first half of the offer period, cf. section 6.

(3) At the same time as publication of the report, the central management body of the offeree company shall communicate its opinion, cf. subsection (1), to the
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representatives of its employees or, where there are no such representatives, to the employees themselves. Where the central management body 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 by the central management body of the offeree company in the manner stipulated in section 4(3) and (4).

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

(5) The offeree company shall send the report 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 offer 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 offer period, the offer period shall be extended such that it expires 14 days after publication of the changed bid.

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

(3) The offeror may extend the offer period beyond the ten weeks calculated from the date of publication of the offer document, cf. section 6, by four weeks at a time, however not beyond four months from publication of the offer document, with a view to approval 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.

(6) The central management body 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 offer period or, if the remaining offer 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.
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(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 offer 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 offer period of the original bid shall be extended automatically to the date of expiry of the competing bid. This automatic extension of the original offer period shall be made public as stipulated in section 13.

Language, competence, choice of law and delegation

17. Documents required to be drawn up in pursuance of this Executive Order shall be drafted 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 place.

(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 on a regulated market in another Member State of the European Union or countries with which the Community has entered into an agreement for the financial area, the Danish FSA shall supervise bids, if 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 Member States of 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 and notify these regulated markets, the Danish FSA and supervisory authorities in the other countries on the first trading day.
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(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 Member States of the European Union or countries with which the Community has entered into an agreement for the financial 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 shall 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 publication of the bid shall be dealt with pursuant to Danish regulations.

(3) Notwithstanding section 18(2)-(4), matters relating to the notification of the employees of the offeree company, acquisition of control and any exemptions from the obligation to make a bid shall be dealt with by the supervisory authority in the Member State of the European Union, or country 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 that country.

Exemptions and penalty provisions

20. In exceptional circumstances the Danish FSA may grant exemptions from section 2(1), (2) and (6), 2nd clause, 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), sections 3-7, 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.
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(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

22.- (1) This Executive Order shall enter into force on 15 March 2010.

(2) At the same time Executive Order no. 947 of 23 September 2008 on takeover bids shall be repealed.

Danish Financial Supervisory Authority, 10 March 2010

Ulrik Nødgaard

/ Hanne Råde Larsen