

Executive Order on outsourcing significant areas of activity

Executive Order no. 21 of 11 January 2010

The following shall be laid down pursuant to section 72a(1) and section 373(4) of the Financial Business Act, cf. Consolidating Act no. 793 of 20 August 2009, section 15a(1) and section 93(4) of the Securities Trading, etc. Act, cf. Consolidating Act no. 795 of 20 August 2009, section 30a(1) and section 71(5) of the Supervision of Company Pension Funds Act, cf. Consolidating Act no. 1561 of 19 December 2007, as amended by Act no. 392 of 25 May 2009, section 23c(1) and section 32a(2) of the Arbejdsmarkedets Tillægspension (ATP) Act, cf. Consolidating Act no. 942 of 2 October 2009, and section 4d(1) and section 14a(2) of the Lønmodtagernes Dyrtingsfond (LD) Act, cf. Consolidating Act no. 1156 of 3 October 2007, as amended by Act no. 392 of 25 May 2009:

Scope and Definitions

1.-(1) This Executive Order shall apply to the following undertakings under supervision by the Danish FSA:

- 1) Financial undertakings, cf. section 5(1), no. 1. of the Financial Business Act.
- 2) Electronic money institutions, cf. section 308(1) of the Financial Business Act.
- 3) Savings undertakings, cf. section 334(1) of the Financial Business Act.
- 4) Operators of regulated markets, clearing centres and central securities depositories, cf. section 7(1) of the Securities Trading, etc. Act.
- 5) Company pension funds, cf. section 2(1) of the Supervision of Company Pension Funds Act.
- 6) Lønmodtagernes Dyrtingsfond (LD).
- 7) Arbejdsmarkedets Tillægspension (ATP).

(2) The definitions in section 5(1), nos. 22-25 of the Financial Business Act, section 2c of the Securities Trading, etc. Act, and section 3b of the Supervision of Company Pensions Act shall apply to this Executive Order.

(3) The regulations on outsourcing in this Executive Order shall apply to chain outsourcing.

The outsourcing undertaking's responsibilities and supervision of a service provider

2.-(1) Outsourcing important areas of activity shall be decided by the board of directors.

(2) There shall be regular reports to the board of directors to enable the board of directors to ensure compliance with this Executive Order, including that the guidelines in section 4 are followed, and the board of directors shall assess regularly whether activities are being carried out satisfactorily. The responsibilities of the board of directors for carrying out the activities may not be outsourced.

3.-(1) On establishment of the contract, the outsourcing undertaking shall ensure that the service provider possesses the ability and capacity to carry out the outsourced activities satis-

factorily and in this respect has the licenses required by the relevant legislation for the specific outsourcing area.

(2) The outsourcing undertaking shall regularly check that the service provider meets the obligations in the contract. The outsourcing undertaking shall monitor whether, in carrying out the outsourced activities, the service provider is complying with the relevant regulations for the area.

(3) If the service provider fails to meet the requirements of the contract and the relevant provisions for the specific outsourcing area, the outsourcing undertaking shall take appropriate measures to ensure that the service provider meets these and, if necessary, the undertaking itself or through contracting with a new service provider shall ensure that the requirements of the contract and the relevant provisions for the specific outsourcing area are met within an appropriate time limit, given the circumstances.

(4) The outsourcing undertaking shall have adequate insight to ensure that the service provider and the service meet the requirements of the contract and the relevant provisions for the specific outsourcing area.

The outsourcing undertaking's internal guidelines

4,-(1) The outsourcing undertaking shall prepare internal guidelines, which shall ensure that carrying out activities through outsourcing takes place satisfactorily.

(2) The guidelines mentioned in subsection (1) shall contain the following as a minimum:

- 1) Procedures for how the outsourcing undertaking is to ensure that the service provider meets the obligations in the contract.
- 2) Procedures for reporting to the board of directors so that the board of directors has insight into whether the activities are being carried out satisfactorily.
- 3) Procedures for the outsourcing undertaking to ensure that, when outsourcing IT functions via the contract, the service provider complies with the relevant parts of the outsourcing undertaking's IT security policy and security rules. Procedures by which the outsourcing undertaking may regularly check this shall also be agreed with the service provider.
- 4) Procedures to ensure that outsourcing does not impede implementation of the outsourcing undertaking's contingency plans.

Requirements for the contract

5. The rights and obligations of the outsourcing undertaking and the service provider respectively shall clearly be stipulated in a contract, which shall contain the following as a minimum:

- 1) Clear delimitation of the outsourced activities.
- 2) A clear description of the requirements to be met by the service provider and from where the service is to be supplied.
- 3) Requirements that the service provider is to carry out the outsourced activities on time and in accordance with the agreed requirements.
- 4) Requirements that the outsourcing undertaking shall be notified immediately regarding developments which could significantly impede the service provider's current or future ability or possibilities to carry out the outsourced activities.

- 5) Requirements that the service provider shall report on progress in the activity to the outsourcing undertaking. The requirements shall define the content, quality and frequency of such reporting.
- 6) Requirements that the service provider is to protect personal information as well as other information which has been made confidential by law. Such protection shall also apply after cessation of the outsourcing contract.
- 7) Requirements that the service provider shall provide the Danish FSA, the outsourcing undertaking and its auditors with all necessary information regarding the outsourced activities.
- 8) Requirements that the Danish FSA may receive information about the outsourced activity by either the Danish FSA or a representative acting on behalf of the Danish FSA, on proof of identity, having access to the service provider.
- 9) Requirements that, on cessation of the outsourcing agreement, notwithstanding the reason for such cessation, the service provider shall loyally and as soon as possible help ensure either that the activity is transferred to another service provider or that it reverts to the outsourcing undertaking. The service provider shall supply the outsourced services until final transfer has taken place.
- 10) Requirements that the outsourcing undertaking shall approve any chain outsourcing by the service provider or the sub-service provider of the outsourced activities.
- 11) Requirements that, on cessation of an agreement on chain outsourcing, the service provider shall notify the outsourcing undertaking of this.

Chain outsourcing

6. On approval, cf. section 5, no. 10, the outsourcing undertaking shall ensure that the service provider ensures that the undertaking to which chain outsourcing has taken place meets the same requirements as those placed on the service provider by this Executive Order with regard to the part of the activity which has been chain outsourced.

Notification

7.-(1) The outsourcing undertaking shall, no later than eight working days after establishment of an outsourcing contract or after approval of a contract on chain outsourcing, cf. section 5, no. 10, notify the Danish FSA in this respect.

(2) Notification pursuant to subsection (1) shall contain the names and addresses of the parties, the nature, scope and duration of the agreement as well as the date the agreement on which is to take effect.

(3) Subsection (1) shall not apply for undertakings subject to section 7(1) of the Securities Trading, etc. Act.

Exemptions

8. In special cases, the Danish FSA may grant exemptions from the provisions of this Executive Order.

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. 21 of 11 January 2010. Only the Danish document has legal validity.

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Penalties

9.-(1) Any person violating sections 2-6 and section 7(1) and (2) 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.

Entry into force and transitional provisions

10. This Executive Order shall enter into force on 1 March 2010.

11.-(1) Outsourcing contracts already established shall be subject to sections 5-7, at the first renegotiation after entry into force of this Executive Order, and no later than 1 March 2013, cf. however, subsection (2).

(2) Contracts which are renegotiated before 1 March 2013, and for which renegotiation relates solely to the price of the contract, shall be subject to sections 5-7 from 1 March 2013. Contracts which do not allow for renegotiation and which terminate after 2013 shall be subject to sections 5-7 from 1 March 2015.

Ministry of Economic and Business Affairs, 11 January 2010

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