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October 2004

Executive Order on Intra-Group Transactions

Executive Order no. 904 of 1 September 2004

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The following shall be laid down pursuant to section 181(1) and section 373(2) of the Financial Business Act, cf. Consolidated Act no. 686 of 25 June 2004, and sections 14(4) and 93(3) of the Securities Trading, etc. Act, cf. Consolidated Act no. 1269 of 19 December 2003:

Scope

1.-(1) This Executive Order shall apply to banks, mortgage-credit institutions, insurance companies, lateral pension funds (nationwide occupational pension funds), investment companies, investment management companies and limited companies covered by section 7 of the Securities Trading, etc. Act.

(2) The undertakings mentioned in subsection (1) shall hereinafter be referred to as "financial undertakings".

Intra-group transactions

2.-(1) For the purposes of this Executive Order, an "intra-group transaction" shall mean any type of transaction, including management agreements concluded between:

- 1) Banks, mortgage-credit institutions, insurance companies, lateral pension funds (nationwide occupational pension funds), investment companies, investment management companies, and
 - a) undertakings directly or indirectly linked to the financial undertaking as subsidiaries, associated undertakings, parent undertakings, or as associated undertakings or other subsidiaries of the parent company.
 - b) undertakings or persons linked to the financial undertaking through close links, cf. section 5(1), no. 17 of the Financial Business Act, or
 - c) undertakings not covered by paragraphs a) and b) where the majority of the members of the management of said undertakings are the same individuals or where the undertakings have joint management under an agreement or provisions in their articles of association.
- 2) Limited companies covered by section 7 of the Securities Trading, etc. Act, and
 - a) undertakings directly or indirectly linked to said limited company as subsidiaries, associated undertakings or parent company, or as associated undertakings or subsidiaries of a parent company, or
 - b) undertakings or persons with direct or indirect ownership of 20 per cent or more of the capital or voting rights of said limited company, or the limited company and an associated undertaking or subsidiary of an undertaking with direct or indirect ownership of 20 per cent or more of the capital or voting rights in said limited company.

(2) Sections 4-6 shall not apply to transactions which are immaterial.

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3. Intra-group transactions shall be entered into on the basis of written agreements.

4.-(1) Intra-group transactions shall be entered into on market-based terms and conditions. Where there is no actual market, reasoned estimates shall be applied.

(2) Intra-group transactions may be entered into on a cost-coverage basis to the extent such transactions pertain to common group tasks, group administration, or other common functions. The costs and allocation of costs shall not favour a financial undertaking or an undertaking covered by section 2 at the expense of another financial undertaking or another undertaking covered by section 2. This shall apply correspondingly to shifts between application of market-based terms and conditions and a cost-coverage basis, and shall also apply correspondingly to changes in the method of cost allocation.

(3) The method used to determine the price or cost of each transaction shall appear from the transaction vouchers or other written documentation.

Guidelines

5.-(1) The financial undertaking shall prepare written general guidelines regarding intra-group transactions.

(2) Said guidelines shall be subject to approval by the board of directors of said financial undertaking.

Procedures

6.-(1) The financial undertaking shall prepare written procedures for intra-group transactions. As a minimum, such procedures shall specify the following:

- 1) the undertakings or persons with which the financial undertaking is related as specified in section 2,
- 2) the terms and conditions for transactions, cf. section 4, including information on the calculation of the price of each type of transaction,
- 3) the method used in the allocation of costs, and
- 4) other matters of significance.

(2) The procedures shall ensure that

- 1) all transactions are carried out on the basis of written agreements,
- 2) all transactions can subsequently be traced and documented,
- 3) an audit of the transactions and the documentation for such transactions can be carried out, and
- 4) compliance with the guidelines can be verified.

Penalties

7.-(1) Any person violating the provisions laid down in sections 3-6 shall be liable to a fine.

(2) Companies etc. (legal persons) may be subject to criminal liability in pursuance of the regulations in Chapter 5 of the Criminal Code.

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Entry into force

8.-(1) This Executive Order shall enter into force on 1 October 2004.

(2) Executive Order no. 792 of 10 July 2004 on Intra-Group Transactions shall be repealed at the same time.

The Danish Financial Supervisory Authority, 1 September 2004

Henrik Bjerre-Nielsen

/Jørgen Kragh

Official notes

<http://147.29.40.90/DELFIN/HTML/B2004/0079205.htm> - [FN101# FN101](#) This Executive Order contains provisions that implement parts of European Parliament and Council Directive 2002/87/EC of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC, 93/22/EEC, 98/78/EC and 2000/12/EC, (Financial Conglomerates Directive), (Official Journal 2003 L 35, p. 1).

Links to EEC and EC directives, cf. note 1

[Directive 1973/239/EEC](#) Celex no. 31973L0239
[Directive 1979/267/EEC](#) Celex no. 31979L0267
[Directive 1992/49/EEC](#) Celex no. 31992L0049
[Directive 1992/96/EEC](#) Celex no. 31992L0096
[Directive 1993/6/EEC](#) Celex no. 31993L0006
[Directive 1993/22/EEC](#) Celex no. 31993L0022
[Directive 1998/78/EC](#) Celex no. 31998L0078
[Directive 2000/12/EC](#) Celex no. 32000L0012
[Directive 2002/87/EC](#) Celex no. 32002L0087