

# Danish Law Gazette A

2013

Published on 23 March 2013

20 March 2013

No. 307.

## Executive Order on the Duty of Financial Companies etc. to Publish the Danish FSA's Assessment of the Company etc.

Pursuant to sections 347 a and 373(4) of the Financial Business Act (see Consolidation Act No. 705 of 25 June 2012), sections 200 and 221(3) of the Investment Associations etc. Act (see Consolidation Act No. 935 of 17 September 2012), sections 34 d and 37(3) of the Act on Measures to Prevent Money Laundering and Financing of Terrorism (see Consolidation Act No. 353 of 20 April 2012 as amended by Act No. 1287 of 19 December 2012), sections 94 a and 107(6) of the Payment Services and Electronic Money Act (see Consolidation Act No. 365 of 26 April 2011 as amended by Act No. 1287 of 19 December 2012) and sections 84 h and 93(4) of the Securities Trading etc. Act (see Consolidation Act No. 219 of 20 February 2013), the following is laid down:

### *Scope*

#### 1. The Executive Order applies to:

- (1) Banks, mortgage-credit institutions, investment firms, investment management companies and insurance companies subject to supervision under the Financial Business Act.
- (2) Investment associations, SICAVs (*société d'investissement à capital variable*), securities funds (*verdipapirfonde*), special-purpose associations, hedge associations and approved restricted associations subject to supervision under the Investment Associations etc. Act.
- (3) The following companies subject to supervision under the Act on Measures to Prevent Money Laundering and Financing of Terrorism:
  - (a) Banks, mortgage credit institutions, investment firms, investment management companies, life-assurance companies, multi-employer occupational pension funds and savings undertakings.
  - (b) Payment service providers which are legal persons and issuers of electronic money which are legal persons.
  - (c) Insurance brokers when they arrange life assurance and other investment-related

insurance.

- (d) Investment associations, special-purpose associations, collective investment schemes, restricted associations, professional associations and hedge associations.
  - (e) Branches and agents of foreign companies in Denmark, which carry on business under paras (a)-(d) and are legal persons.
  - (f) Other companies, including branches and agents of foreign companies which perform the activities referred to in Annex 1 of the Act on Measures to Prevent Money Laundering and Financing of Terrorism, which are legal persons.
- (4) Banks and e-money institutions subject to supervision under the Payment Services and Electronic Money Act.
  - (5) Operators of a regulated market, clearing centres and securities centres subject to supervision under the Securities Trading etc. Act.

### *Publication*

2.-(1) After each inspection of one of the companies referred to in section 1 (hereinafter called the "company etc."), the Danish Financial Supervisory Authority (FSA) prepares a statement, and the company etc. must publish the statement. The statement describes the FSA's assessment of the company etc., including any key orders, reprimands and risk information which the company etc. has received from the FSA.

(2). In addition to the cases set forth in subsection (1) hereof, the company etc. is also required to publish a statement prepared by the FSA which contains the orders, reprimands and risk information which the FSA deems to be important for the customers, depositors, and other creditors of the companies referred to in section 1, nos. (1), (3) and (4) or the financial markets in which the shares of the company or the securities issued by the company are traded, or which are important for the investors or creditors of the

associations etc. referred to in section 1, no. (2), or which are important to the proper functioning of the markets with regard to the companies referred to in section 1, no. (5).

(3). This Executive Order will not apply to supervisory reactions notified to the companies referred to in section 1, nos. (1), (2), (4) and (5) which are published pursuant to section 354 a(1) of the Financial Business Act, section 211(1) of the Investment Associations etc. Act, section 84 c(1) of the Securities Trading etc. Act, and section 93(1) of the Payment Services and Electronic Money Act.

(4). A statement pursuant to subsections (1) or (2) may not contain confidential information about customer relationships or information covered by provisions of the Act on Public Access to Documents in Public Files on the exclusion of personal information and operational or business information.

3.–(1) Publication pursuant to section 2(1)-(2) is not required if the FSA deems that publication would be disproportionately detrimental to the company etc. or if investigative considerations argue against publication.

(2). If publication has not taken place pursuant to subsection (1) hereof, publication must take place when the considerations preventing publication no longer apply. However, this applies only for a period of up to two years after the decision to postpone publication.

#### *Form requirements for publication*

4.–(1) When the company etc. has received a statement from the FSA (see section 2(1)-(2)), the company etc. must publish the statement not later than three weekdays after the company etc. has received the statement. The company etc. must publish the statement on its website in a place where it naturally belongs. When the company etc. has published the statement, it is required to notify the FSA thereof, which is subsequently also required to publish the statement on its website.

(2). Concurrently with publication pursuant to subsection (1), first sentence, hereof the company etc. must insert a link that visibly gives direct access to the statement on the homepage of the website of the company etc. The link and any related text must clearly state that this is a statement made by the FSA. Removal of the link and any related text from the homepage and of the information from the website of the company etc. is subject to the same principles as those applied by the company etc. in respect of other announcements. However, the link and the information may not be removed until they have been posted on the website for

three months and not until after the next annual general meeting or board of representatives meeting.

(3). If the company etc. does not have a website, the company etc. must publish the statement in a daily newspaper with a national or wide circulation in Denmark or in any other way in which the company etc. can prove that the statement will reach the group of persons in Denmark referred to in section 2(2) of this Act.

(4). Notwithstanding subsection (1), third sentence, hereof, the FSA may publish the statement on its website before the company etc. does so in the event that the company etc. is experiencing purely technical or practical problems with publication or in the event that the failure to publish the statement is without just cause.

(5). If the company etc. comments on the FSA's statement pursuant to section 2(1)-(2), such comments must be made as an extension of the statement, and the comments must be clearly separated from the statement.

(6). The rules on publication pursuant to stock exchange regulations take precedence over this Executive Order.

(7). If publication has not taken place pursuant to subsection (6) hereof, publication must take place when the stock exchange regulations preventing publication no longer apply. However, this applies only for a period of up to two years after the decision to postpone publication.

#### *Penalty provision*

5.–(1) Any failure to comply with the requirements for publication pursuant to section 2(1), first sentence, and (2) and the provisions thereon of section 4(1)-(3) and (5) is punishable by a fine.

(2). Corporate entities, etc. (legal persons) may incur criminal liability pursuant to the provisions of part 5 of the Danish Criminal Code. The first sentence hereof only applies to companies referred to in section 1, nos (1) and (3)-(5).

#### *Commencement*

6.–(1) This Executive Order comes into force on 1 April 2013.

(2). Executive Order No. 1240 of 16 December 2011 on the Duty of Financial Companies, Investment Associations etc. to Publish the Danish FSA's Assessment of the Company, Association etc. is repealed.

*The Ministry of Business and Growth, Denmark, 20 March 2013*

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