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Executive Order on procedures etc. when applying for authorisation for or notification of certain foreign direct investments or special financial agreements in Denmark

Pursuant to section 2 (6), section 8 (5), section 10 (3), section 12 (6), section 29 (3), section 34 (2) and section 35 (2) of Act no. 842 of 10 May 2021 on screening of certain foreign direct investments, etc. in Denmark (the Investment Screening Act) stipulates:

Chapter 1 *Scope*

Section 1. The Executive Order applies to foreign direct investments and special financial agreements made or entered into by foreign nationals pursuant to section 2 (1) 1st paragraph of the Investment Screening Act.

Subsection (2). The Executive Order also applies to foreign direct investments and special financial agreements made or entered into by companies pursuant to section 2 (2) of the Investment Screening Act, or by entities covered by section 2 (3) in the Executive Order on the delimitation of the scope of application of the Act on the screening of certain foreign direct investments, etc. in Denmark (the Executive Order on Applications).

Section 2. The Executive Order applies to foreign direct investments in and special financial agreements with companies domiciled in Denmark pursuant to section 3 (1) of the Investment Screening Act.

Subsection (2). The Executive Order applies to the establishment of new companies in Denmark, which are covered by section 3 (2) of the Investment Screening Act, and with the exceptions stated in section 5 (1) of the Executive Order on Applications.

Subsection (3). The Executive Order also applies to foreign direct investments in and special financial agreements entered into with Danish entities covered by section 3 (3) of the Executive Order on Applications.

Chapter 2

Digital application, notification and prescreening via virk.dk and language requirements

Section 3. Applications or notifications pursuant to Chapters 4-6 and requests for prescreening pursuant to Chapter 3 as well as commitments regarding terms and conditions pursuant to section 13 (2) must be submitted on forms prepared by the Danish Business Authority and submitted digitally to the Danish Business Authority

via the self-service solution at www.virk.dk. Applications, etc. must be signed with an electronic signature.

Subsection (2). If an application etc. according to subsection (1) cannot be signed with an electronic signature because the applicant or notifier, etc. is a person without a Danish CPR number, or is a foreign company or other entity domiciled abroad, applications etc. must be submitted via www.virk.dk. with documentation of the identity of the applicant or notifier attached.

Subsection (3). A lawyer or other representative may submit an application, etc. pursuant to subsection (1) on behalf of one or more foreign investors. In such instances, an application, etc. must be accompanied by documentation that the agent is authorised to do so, but not if the authorised party is a qualified lawyer or an approved auditor.

Section 4. Applications for authorisations, notifications, request for prescreening, etc., submitted to the Danish Business Authority must be written in Danish or English. The Danish Business Authority can require that documents be submitted in a certified translation into Danish or English.

Chapter 3 *Prescreening*

Section 5. Requests for prescreening of a foreign direct investment or special financial agreement pursuant to section 6 (1) of the Executive Order on Applications must contain the following information:

- 1) The reasons for the request according to subsection (1), including a description of the technology or infrastructure to which the investment or agreement relates and any special circumstances that the Danish Business Authority is asked to consider in the assessment.
- 2) The purpose of the investment (e.g. active ownership, passive investment) or the agreement.
- 3) The approximate value of the investment or agreement.
- 4) The date on which the foreign direct investment is planned to be completed or the special financial agreement is envisaged.
- 5) Contact information, including any CVR number and company registration number for the company or entity domiciled in Denmark.

- 6) The industry code of the company or entity domiciled in Denmark (NACE code).
- 7) Contact information for the foreign investor.
- 8) Whether the foreign investor is a natural or legal person. If the request concerns a foreign direct investment: what function the foreign investor has in the investment (e.g. direct investor, holding company, global ultimate owner).

Subsection (2). When requesting prescreening of a foreign direct investment or special financial agreement pursuant to section 6 (2) of the Executive Order on Applications the application must contain the following information in addition to the information in subsection (2), nos. 1-4, as well as 7 and 8:

- 1) The expected capital injection within the first three financial years from foundation.
- 2) The company's expected industry code (NACE code).

Chapter 4

Application for authorisation for or notification of foreign direct investment

Section 6. Applications for authorisation to make a foreign direct investment in accordance with the Investment Screening Act section 5 (1) or (4), or notification of a foreign direct investment pursuant to section 10 (1) of the Act must contain the information that follows from subsections (2)-(5).

Subsection (2). Information pursuant to subsection (1) on the intended foreign direct investment must include the following:

- 1) The purpose of the investment (e.g. active ownership, passive investment).
- 2) The approximate value of the investment.
- 3) How the investment is intended to be financed, including any sources of financing.
- 4) If the investment entails direct or indirect control of or significant influence in the Danish company or entity through direct or indirect possession of or control over shares or voting rights: information on the number of investments stated in percentages and which class they belong to (if relevant), the size of the shareholding, the nominal value and the voting rights attached respectively.
- 5) If the investment entails similar control by other means, including the purchase of assets and long-term loans: what powers does the foreign investor have under a possible ownership agreement, e.g. to appoint management members or to participate in certain decisions, which assets the foreign investor acquires and the purpose thereof, as well as for a loan agreement: the size of the loan, its duration and the agreed terms of the loan.
- 6) The date on which the foreign direct investment is planned to be completed, or in the case of notification of an already completed investment: the date on which the investment was completed.
- 7) Information on whether the investment must be reported in accordance with the EU Merger Regulation and / or the Danish functional control in accordance with the Competition Act.

- 8) Information on whether the investment has or may have an impact on a project or programme of interest to the EU, cf. Annex to Regulation (EU) No 2019/452 of 19 March 2019 with subsequent amendments, if known by the foreign investor.

Subsection (3). Information pursuant to subsection (1) on the Danish company or entity in which the investment is planned to be made shall include the following:

- 1) Contact information, including any CVR number and company registration number for the company or entity domiciled in Denmark.
- 2) If the Danish company or entity is part of a group: a description and diagram of the group structure.
- 3) If applying for authorisation: indication of a particularly sensitive sector or activity pursuant to section 6 (1) of the Investment Screening Act.
- 4) A description of the market for the Danish company's or entity's business activities (e.g. competitors, market share).
- 5) The company's or entity's industry code (NACE code).
- 6) EU Member States where the company or its subsidiaries, etc. have significant business activities.

Subsection (4). Information pursuant to subsection (1) on the foreign investor must include the following:

- 1) Contact information for the foreign investor
 - a) If the investor is a legal person without a CVR number, the company register in which the legal person is registered and the registration number must be stated, as well as information on tax identification number in the home country. Official proof, which must not be more than 3 months old, for the legal person to be legally present in the home country must be attached.
 - b) If the investor is a natural person: citizenship information and passport information.
- 2) What function the foreign investor has in the investment (e.g. direct investor, holding company, global ultimate owner).
- 3) If the foreign investor is a legal person: The ownership relationship with the foreign investor, including the beneficial owners and the rights of the beneficial owners, as well as a description and diagram of the entire ownership chain and any group before and after implementation of the investment.
- 4) If the foreign investor is a legal entity other than a company: the legal or contractual basis for the legal entity in question, as well as ownership and governance, including whether the foreign investor is directly or indirectly controlled by a foreign government, foreign government agencies or foreign armed forces, including through ownership or significant funding.

A description of business activities, including products, services and business transactions, as well as a description of the market for the foreign investor's business activities (e.g. competitors, market share). For other legal persons, cf. no. 4, a description of main activities in the last 5 years.

- 5) EU Member States where the company or its subsidiaries, etc. have significant business activities.

Subsection (5). A copy of any agreement, including a conditional agreement or declaration of intent to enter into an agreement on the investment, must be attached to the application or notification pursuant to subsection (1).

Subsection (6). When notifying a foreign direct investment pursuant to the Investment Screening Act, section 10 (1), subsection 1, which factors in particular have provided the grounds for the investment being notified in addition to the information in subsections (2)-(5).

Chapter 5

Application for authorisation for new companies

Section 7. Applications for authorisation for a foreign direct investment when establishing a company in accordance with section 5 (1) and (5) of the Investment Screening Act not covered by the exception in section 5 (1) of the Executive Order on Applications must contain information that appears from section 6 (2), nos. 1-4, 6

according to the provision's subsections (2) and (3).

Subsection (2). Information pursuant to subsection (1) on the Danish company that is planned to be established must include the following:

- 1) Contact information for the Danish company.
- 2) A description of the company's business plan, including planned products, services and business transactions, as well as a description of the market for the company's or entity's business activities (e.g. competitors).
- 3) Statement of particularly sensitive sector or activity pursuant to section 6 (1) of the Investment Screening Act within which the company is expected to operate.
- 4) The company's expected industry code (NACE code).
- 5) Expected number of employees within the first financial year. *Subsection (3).* Subsections (1) and (2) shall apply correspondingly to foreign direct investments which exceed the amount limit in section 5 (1) of the Executive Order on Application in the first three financial years after the establishment of a company.

Chapter 6

Application for authorisation or notification of special financial agreements

Section 8. Applications for authorisation for or notification of a special financial agreement, including a conditional agreement or declaration of intent to enter into an agreement, pursuant to section 7 (1) or section 11 of the Investment Screening Act must contain information about the Danish company or entity pursuant to section 6 (3) and on the foreign investor pursuant to section 6 (4) and include the following information:

- 1) type of agreement (joint venture, supplier agreement, operating or service agreement).
- 2) Duration of the agreement.
- 3) Whether the agreement has been entered into subject to authorisation.
- 4) The approximate value of the agreement.
- 5) Any provisions on irrevocability.

- 6) Any provisions on the rights and powers of the foreign investor.

Subsection (2). A copy of the agreement must be attached to the application or notification.

Subsection (3). When notifying special financial agreements, in addition to the information in subsections (1) and (2), whether the special financial agreement in question has already been finally concluded must be stated and, if so, when and what circumstances have in particular justified notification of the special financial agreement.

Chapter 7

Additional information

Section 9. Pursuant to section 8 (2), 1st paragraph and section 12 (3), 1st paragraph of the Investment Screening Act, the Danish Business Authority may, in addition to the information pursuant to section 6 (2)-(4) and sections 7 and 8 require all information from the foreign investor necessary to assess whether the intended foreign direct investment or special financial agreement may pose a threat to national security or public order.

Subsection (2). Pursuant to section 8 (2), 2nd paragraph and section 12, (3), 2nd paragraph, of the Investment Screening Act, the Danish Business Authority may obtain information from the Danish company or entity with a view to e.g. verifying information from the foreign investor or obtaining information about the Danish company or entity, including management structure and business areas.

Chapter 8

Calculation of ownership interests or voting rights and equivalent control by other means when applying for or notifying foreign direct investment

Section 10. When calculating a qualified share in accordance with section 5 (2) and section 10 (1), of the Investment Screening Act, ownership interests that directly or indirectly belong to the foreign investor are included, and ownership interests over which the foreign investor has an influence through a closely related person.

Subsection (2). The percentage share of the direct and indirect shares and voting rights of investors and any closely related persons pursuant to subsection (1) must be calculated on the basis of the percentage share of shares and voting rights for each company in the ownership chain.

Subsection (3). Related persons are defined as related parties in accordance with the definition in the international accounting standard IFRS 10 with subsequent amendments.

Subsection (4). A parent company together with one or more subsidiaries forms a group, cf. the definition in the international accounting standard IFRS 10 with subsequent amendments. Changes in possession or size of or control over shareholdings or voting rights or equivalent control by other means in accordance with section 4, no. 4 of the Investment Screening Act which take place within a group pursuant to the first paragraph are not covered by section 5 (1) of the Investment Screening Act. 1, if those changes do not result in an increase in the foreign investor's shareholding or voting rights in the Danish company that exceeds the limits in section 5 (4) of the Investment Screening Act, or a corresponding increase by the foreign investor by other means over the Danish company.

Section 11. In the event of corresponding control by other means pursuant to section 4, no. 4, cf section 5 (1) of the Investment Screening Act, and section 10 (1) is defined as a foreign investor gaining control of or significant influence over a Danish company or other entity covered by section 3 (3) of the Executive Order on Applications

Section 3 (3), by either:

- 1) the right of ownership or voting rights by virtue of agreements with other investors or group-affiliated companies corresponding to at least a share of the shareholding or voting rights as stated in section 5 (2) and section 10 (1) of the Investment Screening Act,
- 2) power to make or approve decisions on significant management or financial matters or significant development or operational matters in the Danish company or entity covered by section 3 (3) of the Executive Order on Applications, or business-critical areas in the company or entity pursuant to an article of association or agreement, including long-term and irrevocable loan agreements,
- 3) right to appoint or remove members of the Board of Directors, the Executive Board or management bodies with equivalent competence in the Danish company or entity covered by section 3 (3) of the Executive Order on Applications,
- 4) acquisition of all or a significant part of the assets in the Danish company or entity covered by section 3 (3) of the Executive Order on Applications, or
- 5) control over all or a significant part of the assets in the Danish company or entity covered by section 3 (3) of the Executive Order on Applications due to long and irrevocable lease agreements.

Subsection (2). The existence and effect of potential voting rights, including warrants and call options on shares that can currently be exercised or converted, must be taken into account when assessing whether a foreign investor obtains similar control by other means.

Subsection (3). Establishment of a mortgage or other security in a shareholding, voting rights in or assets belonging to a Danish company or entity covered by section 3 (3) of the Executive Order on Applications as security for a loan or other obligations, does not constitute a foreign direct investment covered by section 4, no. 4 of the Investment Screening Act. The same applies to the acquisition of a shareholding in, voting rights in or assets belonging to a Danish company or entity covered by section 3 (3) which has been provided as collateral or other security for a loan or other obligations, if the acquisition takes place as part of a creditor pursuit with a view to realisation.

Chapter 9

Auditor's statements on information submitted by application or notification, by annual statement on compliance with conditions and in connection with checking compliance with the law

Section 12. If the Danish Business Authority requires supplementary information regarding a foreign direct investment or special financial agreement, it may, pursuant to section 8 (2) and section 12 (3) of the Investment Screening Act require that such information be accompanied by a statement of the accuracy of the information from an auditor approved in accordance with the Auditors Act. If the foreign investor is a company, such a statement may include information on ownership, including shareholding and voting rights, information on matters that are included in the assessment of similar control by other means pursuant to section 11, as well as accounting and financial information concerning the foreign investor and the investment.

Subsection (2). The declaration pursuant to subsection (1) must be submitted in accordance with section 1 (2) of the Auditors Act, with high security. In the statement, the auditor must confirm that he is independent of the foreign investor, cf. section 24 of the Auditors Act.

Subsection (3). Subsections 1 and 2 shall apply correspondingly to the auditor's declaration pursuant to section 16 (3), 3rd paragraph and section 17 (2) of the Investment Screening Act on the annual statement of compliance with agreed or stipulated terms, and on the auditor's statement pursuant to the Investment Screening Act, section 29 (2).

Chapter 10

Negotiations on commitment on terms

Section 13. If the Danish Business Authority assesses that an application or notification of a foreign direct investment or special financial agreement may constitute a threat to national security or public order, which can be remedied by further conditions on e.g. limitation of investor ownership, limitation of investor participation in the management of the company, or conditions aimed at limiting the investor's opportunity to gain insight into the company in certain areas, the Danish Business Authority may propose that the foreign investor accept such terms.

Subsection (2). Commitment on terms pursuant to subsection (1) must be submitted in accordance with the Danish Business Authority's template for commitments to comply with special conditions for a foreign direct investment or special financial agreement.

Chapter 11
Entry into force

Section 14. The Executive Order enters into force on 1 July 2021.

Danish Business Authority, 24 June 2021

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/Signe Flege