

Executive Order on Good Business Practice for Financial Undertakings, investment associations etc.¹⁾

Executive Order no. 769 of 27 June 2011

The following shall be laid down pursuant to section 43(2) and section 373(4) of the Financial Business Act, cf. Consolidating Act no. 342 of 8 April 2011 and section 221(3) of Act no. 456 of 18 May 2011 on investment associations etc:

Part 1

Scope

- 1.-(1)** This Executive Order shall apply to Danish and foreign financial undertakings that carry out activities in Denmark, including through establishing branches or cross-border services.
- (2)** This Executive Order shall apply to private customer relationships and commercial customer relationships provided these are not significantly different from a private customer relationship. Section 4(4), sections 5 and 19 and Annex 1 shall, however, only apply to private customer relationships.
- (3)** Section 3, section 4(1)-(3) and sections 7-9 shall, however, apply to all commercial customer relationships.
- (4)** Section 6(3) and (4) and section 10(2) shall apply to commercial customer relationships at banks, unless otherwise agreed individually.
- (5)** This Executive Order shall not apply to securities trading cf. section 2(1) of the Executive Order on Investor Protection in connection with Securities Trading.
- (6)** For insurance companies, sections 2-5, section 6(1)-(4), sections 7, 11 and 12, and part 8 and 9 shall apply. Section 6(3) and (4) shall not apply to life-assurance and pension-insurance contracts nor to any personal insurance contracts written in this connection. Section 28(1) shall not apply to insurance and pension schemes established as part of an employment relationship, an organisation relationship or relationships of a similar nature.
- (7)** To the extent that the insurance company does not know the individual insured parties' identity, or to the extent that there is otherwise an authorised party in the insurance scheme, the information required pursuant to section 6(1), sections 12, 24, 25 and 31 may be submitted to the natural or legal person authorised to receive this material.

¹⁾ This Executive Order contains provisions implementing parts of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC, (Official Journal 3 L 228, page 1) (Third Non-Life Insurance Directive) and parts of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-customer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, (Official Journal 2005 no. L 149, pages 22-39) (Unfair Commercial Practices Directive).

(8) For compulsory pension schemes in banks established as part of employment relationships, sections 2 and 3, section 6(1)-(4), sections 7, 11, 12 and section 28(2) shall apply.

(9) Section 25 shall only apply to branches in Denmark and services in Denmark provided by non-life insurance companies which have been granted a license in another country within the European Union or a country with which the Community has entered into an agreement for the financial area.

(10) Parts 2, 3, 7, 9, and 10 shall also apply for investment associations, special-purpose associations, hedge associations and foreign investment undertakings which are legal persons and which market their units in Denmark, cf. part 4 of the Investment Associations etc. Act

2. When a financial undertaking enters into agreements with other financial undertakings on sale and advice in connection with the products of said undertaking, the said financial undertaking shall ensure that there is a clear division of responsibilities between the undertaking and the other party to the contract, and that the other party to the contract complies with the regulations of this Executive Order.

Part 2

General provisions regarding good business practice

3. A financial undertaking shall act honestly and loyally towards its customers.

4.-(1) A financial undertaking may not use misleading or incorrect statements or omit important information, if this is likely to materially distort the economic behaviour of customers on the market.

(2) Marketing which, in content, form or approach is misleading, aggressive or exposes customers to improper influence, and which is likely to materially distort their economic behaviour is not permitted.

(3) It shall be possible to document the correctness of statements of actual conditions.

(4) The practices listed in Annex 1 shall be regarded as unfair in private customer relationships in all circumstances and are not permitted.

5.-(1) In an invitation to make a purchase directed towards private customers a financial undertaking shall give the following information, unless this is already clear from the context:

- 1) The main characteristics of the product.
- 2) The name and address of the financial undertaking.
- 3) Matters relating to payment and performance of the contract to the extent that these matters deviate from the normal practice of the sector.
- 4) The procedures of the financial undertaking with regard to complaints to the extent that these matters deviate from the normal practice of the sector.
- 5) Right to annul the agreement, if the customer has such a right.
- 6) The price including taxes.

(2) If the nature of the product means that the price cannot reasonably be calculated in advance, the method by which the price is calculated shall be stated.

(3) An invitation to purchase shall mean a commercial communication in which the characteristics and price of the product are stated in a manner which is appropriate in relation to the commercial medium of communication applied and by which the customer is enabled to make a purchase.

6.-(1) A financial undertaking shall enter into or confirm all material agreements with its customers on paper or in another durable medium. An agreement shall contain a description of the important rights and obligations of the parties as well as the financial services covered by the agreement. If individual advice is provided in connection with establishment of the agreement, important conditions for the advice shall be included in the agreement or in an Annex to the agreement either on paper or in another durable medium.

(2) The terms of the agreement may appear as references to separate documents, including the normal terms of business of the financial undertaking.

(3) Terms on changes in continuing customer relationships regarding interest, charges or other payments shall contain a statement of the conditions which can give rise to a change and may not give the financial undertaking arbitrary access to make changes.

(4) In continuing customer relationships, changes regarding interest, charges or other payments to the detriment of the customer may not be made without notice, unless the change is due to external conditions over which the financial undertaking has no control.

(5) If a financial undertaking terminates an agreement with a customer, such termination shall be on objective grounds and stated on paper or in another durable medium.

Part 3

Advice

7.-(1) Advice shall mean recommendations, guidance, including information on the risk associated with a transaction, and information on the immediate consequences of the customer's options.

(2) A financial undertaking shall provide advice, if the customer so requests, cf. however sections 2 and 14. Furthermore, the undertaking shall provide advice at its own initiative, cf. however subsection (4), where circumstances indicate that this is required. Alternatively, the financial undertaking may refer the customer to seek advice elsewhere.

(3) Advice shall take into consideration the interests of the customer and provide the customer with a good basis for making decisions. Advice shall be relevant, correct, and complete. The financial undertaking shall provide information on the risks relevant to the customer.

(4) A financial undertaking may offer products with standardised information with little or no associated individual advice. In this event the financial undertaking shall draw special attention to these limitations. This provision shall not apply to loans secured in real property.

8.-(1) Before a financial undertaking provides advice, the undertaking shall request the customer to provide information on his financial situation, his experience with the relevant financial services, his objective for having the service provided, and his risk profile.

(2) The scope and nature of the information obtained may be adapted to the knowledge possessed by the customer and the information the financial undertaking has already received.

(3) The financial undertaking may base a decision on information from the customer unless such information is manifestly incorrect.

9.-(1) Advice shall be based on relevant information obtained in pursuance of section 8 and any other knowledge possessed by the financial undertaking about the circumstances of the customer.

(2) A financial undertaking shall request the customer to update the information obtained in pursuance of section 8 to the extent necessary to be able to provide the customer with advice in continuing customer relationships.

10.-(1) A financial undertaking shall provide sufficient information on its own products and services, including differences in prices and terms of alternative products that can meet the customer's requirements.

(2) If there are general differences between customers in determination of interest rates, fees, or other remuneration to the financial undertaking for a given product, said financial undertaking shall inform the customer of this fact before entering into an agreement to supply the service. At the request of the customer, information shall be provided on the customer's conditions that may determine the position of the customer within a given price differentiation.

(3) A financial undertaking shall, on the basis of its general knowledge of the market, inform the customer about relevant types of product on the market. Information shall not, however, contain information about competing products or specific prices.

11.-(1) In the event that a financial undertaking or its employee/advisor, when providing advice, has a special interest in the result of the advice beyond normal earnings of the undertaking, said undertaking shall, before giving advice, inform the customer of the nature and scope of such special interest.

(2) If the financial undertaking receives commission or other remuneration as a result of providing products or services, the customer shall be made aware of this fact. The same shall apply if the attending employee/advisor receives commission or other remuneration and there is a direct link between the specific sale of services or products and the remuneration of the attending employee/advisor.

12.-(1) As part of its advice a financial undertaking shall include consequences of the taxation regulations that are relevant for the customer in relation to the products and services covered by the advice, or it shall refer the customer to seek other advice elsewhere regarding this.

(2) In the event that a financial undertaking provides advice on conditions that may have a significant financial effect on the customer's possibility to receive public subsidies or other financial advantages, and the financial undertaking becomes aware of this, such information shall be included in advice or the customer shall be referred to seek advice elsewhere.

13. A financial undertaking shall inform a customer of the security measures that should be observed for a given product or service, including the security requirements placed on the customer and the liability of the customer in the event of misuse by a third party.

Part 4

Special regulations regarding advice on loans secured in real property

14.-(1) Before a bank or mortgage-credit institution enters into an agreement on a loan secured in real property, the bank or institution shall inform the customer about the relevant

types of product on the market and about the advantages and disadvantages of these, cf. section 10(3).

(2) For loans offered by the bank or mortgage credit institution or offered for other banks or institutions, and which can meet the requirements of the customer, advice pursuant to section 7(3) shall include the following:

- 1) The most important characteristics of the loans supplied or offered by the bank or institution, including the estimated advantages and disadvantages in relation to the customer.
- 2) The annual costs in per cent (APR) of the relevant loans at the date of the advice.
- 3) Cancellation and repayment terms, including whether repayment may be by cash payment or by purchasing and submitting bonds.
- 4) Possibilities and costs for converting the loan or for early repayment.
- 5) The normal price terms of the institution or bank for its customers and for the relevant loans.

(3) For mortgage-credit loans, or loans financed by issuing covered bonds or covered mortgage-credit bonds, advice shall include information about any relationship between the loan and the bond issue as well as about the option for a hedge agreement.

15.-(1) No later than on the establishment of a loan agreement secured in real property, the customer shall confirm in writing, or in another durable medium, receipt of the information included in the advice, cf. section 14(2). The bank or institution shall confirm the information correspondingly. The standard form in Annex 2 shall be used for this purpose. A copy of this shall be delivered to the customer.

(2) If the agreement is established using a remote communication technology which makes it impossible to provide the information in the way mentioned in subsection (1) before establishment of the agreement, the obligation shall be met immediately after establishment of the agreement.

16. On receipt of an application for a mortgage-credit loan or loans financed by issuing covered bonds or covered mortgage-credit bonds, the bank or institution shall state the expected period before a possible loan offer will be issued, if the loan application is not expected to be processed within 14 days.

17. The bank or institution shall issue or confirm a repayment offer for a mortgage-credit loan or loans financed by issuing covered bonds or covered mortgage-credit bonds on paper or in another durable medium. The repayment offer shall contain a calculation of the amount of the repayment including all costs, information about terms and method of repayment, including calculation methods for differential interest as well as any time limits for cancellation or termination.

18. When issuing a loan conversion offer for a mortgage-credit loan or loans financed by issuing covered bonds or covered mortgage-credit bonds, to the extent possible the bank or institution shall state all costs. If the loan offer does not take account of all costs, the bank or institution shall make the customer explicitly aware of this.

Part 5

Special regulations regarding banks

19. A bank may not refuse to open an ordinary current account without an individual objective reason. On request the reason shall be provided on paper or in another durable medium.

20.-(1) A bank may not attach a progressive beneficial program to ownership of shares in the bank or deposits of guarantee capital.

(2) If ownership of shares or deposits of guarantee capital is rendered a requirement for obtaining advantages as a customer, the bank may, as a maximum, require a shareholding with a share price of DKK 30,000 or a deposit of guarantee capital of DKK 30,000 at the date when the customer becomes part of the beneficial program.

Part 6

Special regulations regarding use of guarantors and information obligations for banks and mortgage-credit institutions

21.-(1) A bank or mortgage-credit institution may not cooperate in granting loans against guarantees where the guarantee obligation is out of proportion to the financial situation of the guarantor.

(2) Prior to entering into a guarantee obligation, the bank or institution shall ensure that the guarantor has been informed of the contents and consequences of the guarantee obligation.

(3) Once a year, the guarantor shall receive information from the bank or institution on the size of the loan commitment covered by the guarantee obligation.

22. No later than one year after a compulsory sale of a property, a bank or mortgage-credit institution with an unsecured mortgage on the compulsory sale shall inform the customer in writing of the extent to which the bank or institution will make its claim against the customer valid and forward a statement of the size of the claim, and if this is not possible, a preliminary statement of the size of the claim.

Part 7

Special regulations regarding investment management companies

23.-(1) Upon request by a customer, an investment management company shall provide supplementary information regarding the current status as regards the matters covered by section 5, no. 3 and nos. 5-7 of the Executive Order on Information in Prospectuses of Investment Associations, Special-Purpose Associations, Restricted Associations and Hedge Associations.

(2) Upon request by a customer, the investment management company shall also provide information about the most recent developments in risks and returns for the most important categories of instruments.

Part 8

Special regulations regarding insurance companies

Before insurance is written

24.-(1) No later than in connection with establishing a non-life insurance contract, an insurance company shall inform the customer about,

- 1) important information in the relevant insurance contract, including important elements in the scope of cover of the selected type of insurance, and about the customer's options,
- 2) the risk of double insurance,
- 3) the legislation which shall apply to the contract, if it has been agreed that legislation other than Danish legislation shall apply, and
- 4) the right to complain about the insurance company.

(2) If the contract is entered into by telephone or in some other way by which the customer cannot immediately receive the information covered by subsection (1), the customer shall receive such information on paper or in another durable medium immediately following entry into the contract.

25. When a non-life insurance contract is entered into with a branch or service provider of a foreign non-life insurance company, cf. section 1(9), and the insurance contract covers risks under class 10, motor vehicle liability, except for carrier's liability, the contract or separate documents linked to the contract shall contain information about the name and address of the claims representative appointed by the company.

26. In the event that an insurance company does not immediately accept a request for insurance, the customer shall be informed of his legal rights in the period up to the time the company issues notification that, and at what terms, the insurance may be accepted.

27.-(1) An insurance company shall, when writing insurance, request the customer to provide the information necessary to write the insurance contract.

(2) Before health information is provided when writing personal insurance, an insurance company shall supply guidelines to the customer on provision of health information.

(3) If health information is provided on the telephone or in some other way whereby the customer cannot immediately receive the guidelines, the guidelines shall be forwarded to the customer on paper or in another durable medium.

28.-(1) When a customer changes insurance company, the recipient insurance company shall inform the customer of all significant limitations in the cover in relation to the previous insurance as well as, on request, advise the customer about specific cover.

(2) Before transferring personal insurance the recipient insurance company shall ensure that the customer has been informed about the terms under which the insurance can be taken over by the recipient insurance company.

The insurance contract

29. The customer's options under the insurance chosen shall appear on the policy/statement of cover for non-life insurance. Where, in connection with taking out insurance, the customer makes a choice and such choice has significance for the premium and/or cover, the choice shall appear clearly.

30. When writing non-life insurance, the insurance company shall, on paper or in another durable medium, provide information on any significant limitations in relation to the cover the customer could reasonably expect under the relevant insurance.

Insurance term

31. An insurance company shall inform the customer about the non-life insurance the customer has with the company each year. In such information, the company shall make any

need for changes clear. Alternatively the customer may choose to have electronic access to such information.

32.-(1) If a claim is notified on paper or in another durable medium, the insurance company shall, if insurance cover is refused in whole or in part, notify such refusal on paper or in another durable medium unless it is clear from the circumstances that refusal may be notified in some other way.

(2) If a claim is notified in some other way, the claimant may request the refusal on paper or in another durable medium. The customer shall be informed of this right.

Part 9

Supervision and penalties

Supervision

33. The Danish FSA may, cf. section 348(2) of the Financial Business Act, order correction of circumstances in conflict with the provisions laid down in this Executive Order and Annexes 1 and 2.

(2) Before the Danish FSA makes a decision in matters on good business practice, the Danish FSA shall obtain an account from the undertaking.

Penalties

34.-(1) Any person failing to comply with an order issued pursuant to section 33(1) shall be liable to a fine. Violations of the provisions of section 4 and section 5(1) and (2) as well as section 20 shall be liable to a fine unless more severe penalty is incurred under other legislation.

(2) Companies, etc. (legal persons) may incur criminal liability according to the regulations in chapter 5 of the Criminal Code.

Part 10

Entry into force

35.-(1) This Executive Order shall enter into force on 1 July 2011.

(2) At the same time, Executive Order no. 965 of 30 September 2009 on Good Business Practice for Financial Undertakings and Executive Order no. 1252 of 24 October 2007 on Good Business Practice for Investment Associations, Special-Purpose Associations and Hedge Associations as well as Foreign Investment Undertakings shall be repealed.

Ministry of Economic and Business Affairs, 27 June 2011

Brian Mikkelsen

/ Hans Høj

Practices which are in all circumstances considered unfair in private customer relationships

Misleading marketing

1. The financial undertaking claims to be a signatory to a code of conduct when it is not.
2. The financial undertaking displays a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. The financial undertaking claims that a code of conduct has an endorsement from a public or other body which it does not have.
4. The financial undertaking claims that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or makes such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive customers of sufficient opportunity or time to make an informed choice.
6. Stating or otherwise creating the impression that a product can legally be sold when it cannot.
7. Presenting rights given to customers in law as a distinctive feature of the trader's offer.
8. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the customer into believing that the product is made by that same manufacturer when it is not.
9. Establishing, operating or promoting a pyramid promotional scheme where a customer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other customers into the scheme rather than from the sale or consumption of products, unless the relationship is subject to section 5 of the Public Collections and Pyramid Games Act (*lov om offentlige indsamlinger og pyramidespil*).
10. Claiming that the financial undertaking is about to cease trading or move premises when it is not.
11. Claiming that products are able to facilitate winning in games of chance.
12. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the customer to acquire the product at conditions less favourable than normal market conditions.
13. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
14. Describing a product as "gratis", "free", "without charge" or similar if the customer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
15. Including in marketing material an invoice or similar document seeking payment which gives the customer the impression that he has already ordered the marketed product when he has not.
16. A representative of the financial undertaking falsely claims or creates the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or he falsely represents himself as a customer.

Aggressive marketing

17. Creating the impression that the customer cannot leave the premises until a contract is formed.
18. Conducting personal visits, which are not subject to the ban in section 6 of the Customer Agreement Act (*Forbrugeraftaleloven*), to the customer's home ignoring the customer's request that the representative of the financial undertaking leave or not to return except in

circumstances and to the extent justified under legislation, to enforce a contractual obligation.

19. Making persistent and unwanted solicitations by telephone, which are not subject to the ban in section 6 of the Customer Agreement Act (*Forbrugeraftaleloven*), or by fax, e-mail or other remote media except in circumstances and to the extent justified under legislation to enforce a contractual obligation.
20. The financial undertaking requires a customer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a customer from exercising his contractual rights.
21. Creating the false impression that the customer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:
 - there is no prize or other equivalent benefit, or
 - taking any action in relation to claiming the prize or other equivalent benefit is subject to the customer paying money or incurring a cost.

Documentation for advice on loans secured in real property

I/we _____ (customer(s) name and civil registration no.) have received advice from _____ (name of bank or mortgage-credit institution) in connection with taking out a loan secured in real property.

For use in this advice, at the request of _____ (name of bank or mortgage-credit institution), I/we have stated the following:

- My/our previous experience in taking out loans: _____
- My/our financial situation: _____
- My/our risk willingness: _____
- My/our expectations regarding the real term of the loan: _____

In this connection the bank/institution has told me/us the following:

- The main characteristics of the loan chosen: _____
- The terms of taking out the loan (fixed-rate agreement, etc.): _____
- Cancellation terms for the loan chosen: _____
- Repayment terms for the loan chosen: _____
- Can the loan be converted? Yes No
- Costs of converting or repaying the loan: _____
- Reason for choice of the loan, given my/our financial situation: _____
- Other advice: _____

In connection with the advice I/we have been aware that _____ (alternative loan) may be an alternative loan to the loan I/we have agreed to.

_____ (the loan taken out) has _____ annual costs as a percentage (APR)
_____ (the alternative loan) has _____ annual costs as a percentage (APR)

Date Signature of customer(s)

(Name of bank or mortgage-credit institution) confirms the advice described above)

Date Signature of bank or mortgage-credit institution