

Guidelines on requirements laid down in financial legislation for the fitness and propriety of members of a board of directors and board of management (fit & proper)

1. Introduction

These guidelines replace the Danish FSA guidelines of 5 January 2011 on requirements laid down in financial legislation for the fitness and propriety of members of the board of management and members of the board of directors (fit & proper).

The guidelines are available on the Danish FSA website; www.finstilsynet.dk under "Reporting" and "Guides" - "Fit & Proper". This is a translation of the official Danish guidelines.

2. Scope of the guidelines

These guidelines apply for members of the board of directors and board of management of undertakings covered by:

- Sections 64 and 64a of the Financial Business Act
- Section 100(1), section 313 and section 343(i) of the Financial Business Act
- Section 8 of the Insurance Mediation Act
- Section 23a of the Supervision of Company Pension Funds Act
- Section 57 of the Investment Associations etc. Act
- Section 9¹ of the Securities Trading etc. Act
- Sections 4 and 5 of the Mortgage Companies Act
- Section 18 of the Payment Services and Electronic Money Act

These guidelines also apply to members of the board of directors and board of management of ATP (*Arbejdsmarkedets Tillægspension*), the Labour Market Occupational Diseases Fund, and LD (*Lønmodtagernes Dyrtidsfond*), see in this respect:

- Section 23a of the Arbejdsmarkedets Tillægspension Act
- Section 62 of the Industrial Injury Insurance Act
- Section 4a of the Lønmodtagernes Dyrtidsfond Act

¹ The requirements only apply to members of the board of management and members of the board of directors of the companies subject to section 7 of the Securities Trading etc. Act

These guidelines comprise requirements for the fitness and propriety of the relevant members of the board of directors and the board of management. These guidelines are for the persons who make up the management of a financial undertaking, either as members of the board of management notified to the Danish Business Authority or as a member of the board of directors. These guidelines describe the information such persons must submit to the Danish FSA.

With regard to mortgage companies and undertakings covered by the Payment Services and Electronic Money Act, these guidelines may also be applied for persons responsible for mortgage deeds and management, respectively, in payment service activities to the extent that these are covered by regulations corresponding to the rules laid down in the Financial Business Act. Similarly, these guidelines may be used for general agents, see section 35 of the Financial Business Act, for the staffing in investment management companies, see section 100 of the Financial Business Act, and for investment advisors, see section 343 of the Financial Business Act.

The designation »member of the board of directors« in these guidelines includes members elected at the general meeting, members elected by the board of representatives and members of the board of directors elected by employees, as well as all proxies. The same requirements are placed on all this group of persons in assessing fitness and propriety.

In the following, the designation »financial undertakings« is used as a generic term for all undertakings covered by the guidelines. Therefore the designation does not only cover actual financial undertakings as defined in section 5(1), no. 1 of the Financial Business Act.

3. The statutory background

According to a number of EU directives, the Danish FSA must regularly ensure that members of the board of directors and board of management of financial undertakings meet requirements on fitness and propriety. In Denmark, these obligations have been implemented in sections 64 and 64a of the Financial Business Act.

Section 64 has following wording:

»64.-(1) A member of the board of directors or board of management of a financial undertaking shall, at all times, have sufficient knowledge, professional competences and

experience to be able to carry out the duties and responsibilities of his position in the relevant undertaking.

(2) A member of the board of directors or board of management of a financial undertaking shall, at all times, have a sufficiently good reputation and demonstrate propriety, integrity and independence adequate to be able to effectively assess and dispute decisions made by the day-to-day management.

(3) A member of the board of directors or the board of management shall meet the following requirements:

- 1) Shall not, at present or in the future, be held criminally liable for violation of the Criminal Code, financial legislation, or other relevant legislation, if such violation entails a risk that the person in question may fail to carry out his duties and responsibilities adequately.
- 2) Shall not have filed for financial reconstruction, bankruptcy or debt restructuring, or be subject to financial reconstruction, bankruptcy proceedings or debt restructuring.
- 3) Shall not, because of his financial situation or via a company which the person in question owns, participates in the operation of, or has a significant influence on, have caused or cause losses or risks of losses for the financial undertaking.
- 4) Shall not have behaved or behave such that there is reason to assume that the person in question will not perform his duties or responsibilities adequately.

(4) In the assessment of whether a member of the board of directors or board of management meets the requirements laid down in subsections (2) and (3), nos. 1, 3 and 4, emphasis shall be on maintaining confidence in the financial sector.

(5) Members of the board of directors or board of management of a financial undertaking shall notify the Danish FSA on the circumstances mentioned in subsections (1) and (3) in connection with their appointment to the management of the financial undertaking, and if the circumstances mentioned in subsections (2) and (3) subsequently change.

(6) Subsections (1) and (2), subsection (3), nos. 1, 2, and 4; and subsections (4) and (5) shall apply correspondingly to members of the board of directors and members of the board of management of a financial holding company or an insurance holding company.

(7) Subsections (1)-(5) shall apply correspondingly for general agents, cf. section 35.«

The wording of the provisions relating to fitness and propriety in the Insurance Mediation Act, the Supervision of Company Pension Funds Act, the Investment Associations etc. Act and the Securities Trading etc. Act deviate in some points from the wording of section 64 of the Financial Business Act. See the Danish FSA website under »Rules & Practice«.

In addition to the requirements on fitness and propriety, section 64a of the Financial Business Act stipulates that members of the board of management and the board of directors in financial undertakings must set aside sufficient time to carry out their duties and responsibilities. Section 64a is worded as follows:

»64a. A member of the board of directors or board of management of a financial undertaking shall set aside sufficient time to carry out his duties and responsibilities as a member of the board of management or board of directors in the undertaking in question. A member of the board of management or the board of directors shall regularly assess whether he has committed sufficient time to carry out his duties and responsibilities. The assessment shall take into account the size, organisation and complexity of the undertaking.«

With regard to systemically important financial institutions (SIFIs) and globally systemically important financial institutions in Denmark (G-SIFIs), as designated according to section 308 and section 310, respectively, of the Financial Business Act, special rules apply regarding the time to be set aside by members of the board of management and the board of directors in section 313 of the Financial Business Act, with the following wording:

»313.-(1) A member of the board of directors of a systemically important financial institution (SIFI) and of a globally systemically important financial institution (G-SIFI) may, including the position in the relevant bank, mortgage-credit institution, investment firm I or financial holding company covered by EU Regulation no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, solely occupy one of the following combinations of positions in a board of management and board of directors, cf. however, subsections (2)-(8):

- 1) One position as a member of the board of management combined with two positions as a member of the board of directors.
- 2) Four positions as a member of the board of directors.

(2) Subsection (1) shall not apply to members of the board of directors of systemically important financial institutions (SIFIs) and of globally systemically important financial institutions (G-SIFIs) if the member has been appointed to the board of directors of the relevant systemically important financial institution (SIFI) or globally systemically important financial institution (G-SIFI) by the Danish state or by a company owned by the Danish state.

(3) The following management positions shall not be included in the calculation of the number of positions in a board of management and board of directors pursuant to subsection (1):

- 1) Positions in a board of management and board of directors in undertakings and organisations which do not pursue general commercial objectives.
- 2) Positions in a board of management and board of directors in undertakings covered by section 80(5) and corresponding sector companies.
- 3) Positions in a board of directors in undertakings, where the member is appointed to the board of directors by the Danish state or by a company owned by the Danish state, or where the undertaking is owned by the Danish state.

(4) The following positions in a board of management and the board of directors shall be considered a single position in the calculation of the number of positions in a board of management and board of directors pursuant to subsection (1):

- 1) Positions in a board of management and board of directors in undertakings which are group companies.
- 2) Positions in a board of management and board of directors in undertakings in which the systemically important financial institution (SIFI) or globally systemically important financial institution (G-SIFI) holds an ownership interest, cf. section 5(3).

(5) The Danish FSA may authorise a member of the board of directors to occupy one more position in a board of directors than mentioned in subsection (1), if this is deemed appropriate taking into account the other management positions of the member of the board of directors and the work associated with these.

(6) The Danish FSA may, in exceptional circumstances, where a position in a board of management or board of directors requires a very moderate workload, authorise that the relevant position not be included in the calculation of the number of positions in a board of management and board of directors pursuant to subsection (1).

(7) A member of the board of directors of an undertaking which is designated as a systemically important financial institution (SIFI) pursuant to subsection 308(1), or a globally systemically important financial institution in Denmark (G-SIFI) pursuant to section 310(1), who, at the time of the designation occupies more positions in a board of management or board of directors than permitted pursuant to subsection (1), may continue to occupy such positions in a board of management or board of directors until the expiry of the election period for the board position entailing that the member of the board of directors is covered by subsection (1).

(8) Proxies for the board of directors of an undertaking which has been designated or is designated as a systemically important financial institution (SIFI) pursuant to section 308(1), or a globally systemically important financial institution (G-SIFI) pursuant to section 310(1), and who, at the time when the person in question joins the board of directors, occupy more positions in a board of management or board of directors than permitted pursuant to subsection (1), may continue to occupy such positions in a board of management or board of directors until the expiry of the election period for the relevant board position in the systemically important financial institution (SIFI) or the globally systemically important financial institution (G-SIFI).«

3.1 Sanctions

Pursuant to section 351(1) of the Financial Business Act, the Danish FSA may order that a financial undertaking remove a member of the board of management of a financial undertaking within a time limit specified by the Danish FSA, if the person in question fails to meet the conditions following from section 64(2) or 3) or section 64a of the Financial Business Act. The decision to order a financial undertaking to remove a member of board of management must be taken by the Financial Business Council which, pursuant to section 345(2), no. 1 of the Financial Business Act makes decisions regarding supervisory matters of principle.

If the financial undertaking does not remove the member of the board of management before expiry of the time limit, the Danish FSA may withdraw the licence of the undertaking pursuant to section 224(1), no. 2 of the Financial Business Act, see section 351(8).

Pursuant to section 351(2) of the Financial Business Act, the Danish FSA may order a member of the board of directors of a financial undertaking to resign from his position within a time

limit specified by the Danish FSA, if the person in question fails to meet the conditions following from section 64(2) or (3), or section 64a of the Financial Business Act. The decision to order a member of the board of directors of a financial undertaking to remove a member of the board of management must be taken by the Financial Business Council which, pursuant to section 345(2), no. 1 of the Financial Business Act makes decisions regarding supervisory matters of principle.

If the member of the board of directors fails to resign from his position before expiry of the time limit, the Danish FSA may withdraw the licence of the undertaking pursuant to section 224(1), no. 2 of the Financial Business Act, see section 351(8).

Pursuant to section 351(3) of the Financial Business Act, the Danish FSA may order a member of the board of directors of a systemically important financial institution (SIFI) or a globally systemically important financial institution (G-SIFI) to resign from his position within a time limit specified by the Danish FSA, if the person in question fails to meet the conditions following from section 313(1) of the Financial Business Act. The decision to order a member of the board of directors of a SIFI or G-SIFI to remove a member of the board of management must be taken by the Financial Business Council which, pursuant to section 345(2), no. 1, of the Financial Business Act makes decisions regarding supervisory matters of principle.

If the member of the board of directors fails to resign from his position before expiry of the time limit, the Danish FSA may withdraw the license of the undertaking pursuant to section 224(1), no. 2 of the Financial Business Act, see section 351(8).

The Danish FSA may refuse authorisation to establish a financial undertaking, if a member of the board of directors or board of management of the financial undertaking fails to meet the requirements of section 64, or if a member of the board of directors or board of management of a SIFI or G-SIFI fails to meet the requirements of section 313, cf. section 14(1), no. 2 of the Financial Business Act. Decisions in this respect are made by the Financial Business Council.

After 1 July 2014, decisions on ordering undertakings to remove a member of the board of management, on ordering a member of the board of directors to resign from his position and on refusing authorisation to establish a financial undertaking, shall be made by the Executive Board of the Danish FSA, which shall replace the Financial Business Council and, pursuant to

section 345(7), no. 4 of the Financial Business Act, shall make decisions regarding supervisory matters of principle and in cases with significant consequences.

Members of the board of directors and board of management, who disagree with the Danish FSA's decisions on fitness and propriety, may bring the decision before the Company Appeals Board pursuant to section 372(1) of the Financial Business Act. The Company Appeals Board may decide that such an appeal should act as stay of proceedings. In connection with submission of an appeal to the Company Appeals Board, a fee of currently DKK 4,000.00 (approx. EUR 537) must be paid. If this fee is not paid, the appeal will be dismissed.

Members of the board of directors and board of management will also be able to demand that the Danish FSA bring a matter before the courts. Such a request must be submitted to the Danish FSA within four weeks from the date on which the order was issued to the relevant person. The request does not change the order, but the court may decide that the member of the board of directors/board of management can continue his duties while the case is being heard. The Danish FSA must bring the case before the courts within four weeks of receiving a request.

3.2 Holding companies (separation/disposal)

According to section 179 of the Financial Business Act there are also consequences for a parent undertaking which has ownership interests in a financial undertaking, if a member of the board of directors of the parent undertaking fails to meet the requirements of section 64(3), nos. 1, 2 and 4 of the Financial Business Act.

Section 179(1), no. 2 of the Financial Business Act states that:

»The Danish FSA may order a parent undertaking which has ownership interests in financial undertakings to separate such financial undertakings and finance institutions in a subgroup under a financial holding company where

- 2) a member of the board of directors or the board of management of the parent undertaking falls within the scope of section 64(2), nos. 1, 2 and 4«

With regard to financial holding companies, section 180(1), no. 2 of the Financial Business Act states that:

»The Danish FSA may order a financial holding company to dispose of ownership interests in a financial undertaking where

2) a member of the board of directors or the board of management of the holding company does not have sufficient experience to carry out the business or position, or falls within the scope of section 64(3), nos. 1, 2 and 4«

4. When must the information be submitted?

Members of the board of management or board of directors must notify the relevant information to the Danish FSA on appointment to the business or position. With regard to the members of the board of directors, this shall take place at the election for member of the board of directors at the annual general meeting or similar. Persons responsible for trading mortgage deeds, persons responsible for management of payment service activities, general agents, staffing in investment management companies and investment advisors must notify the information on appointment to the position.

4.1. Establishment

When establishing a financial undertaking, members of the board of directors and board of management who have been notified to the Danish Business Authority must complete the form for fitness and propriety assessment of members of the board of management and board of directors available at the Danish FSA website, or submit corresponding information to the Danish FSA. This means that proxies for members of the board of directors elected by the board or by employees also have to complete a form. Similarly, members of the board of management and board of directors of financial holding companies must complete this form, if the financial undertaking is owned by a holding company. If these are the same, the person in question need only complete one form.

The assessment by the Danish FSA of the fitness and propriety of a member of the board of directors or a member of board of management will be carried out at the same time as the Authority's other processing of the undertaking's license/authorisation.

When the Danish FSA has received the information stated, the Danish FSA makes a decision on the fitness and propriety of the member of the board of directors or board of management. The person in question is directly notified of the decision. At the same time, the board of directors and board of management of the relevant financial undertaking, or the financial

undertaking's holding company to which the member of the board of directors/board of management is associated, will be informed.

4.2 Established financial undertakings

When appointed to a position in an already established financial undertaking, members of the board of management and members of the board of directors must complete the information form for members of the board of management/board of directors. Similarly, members of the board of management and members of the board of directors, who are appointed to the management of financial holding companies must complete this form. If these are the same, the person in question need only complete one form.

A financial undertaking can inform the Danish FSA in advance of an impending appointment of a member of the board of management or a member of the board of directors. The financial undertaking can obtain an advance assessment from the Danish FSA of whether the member of the board of management or member of the board of directors meets the requirements for fitness and propriety.

If it is necessary for the financial undertaking to constitute a temporary member of the board of management, for example in the event of a death, the constituted member of the board of management must complete an information form and submit it to the Danish FSA.

Members of the board of management and board of directors must at all times meet the requirements for fitness and propriety and therefore they have a duty to inform the Danish FSA if conditions arise which may be significant for the assessment of this.

4.3 Change of duties or position

Assessment of whether a member of the board of directors or board of management is fit and proper must be carried out for each individual position or duties occupied by the person in question. Therefore it is possible that the same person can be approved for one board position in an undertaking, but not for another. This is because the requirements for the knowledge, professional competences and experience of the individual member of the board of management or board of directors, as well as the time considered necessary to be able to carry out the duties and responsibilities, are stricter for large and complex undertakings. Similarly, the requirements are generally higher for members of the board of management

than for members of the board of directors. If a member of the board of directors or board of management is appointed to a position in another financial undertaking, the person in question must submit an updated form for members of the board of directors and board of management to the Danish FSA, which will subsequently conduct a new assessment of the person for the new position. The Danish FSA receives notification from the Danish Business Authority about changes in the board of directors or board of management of financial undertakings.² However, this does not exempt the relevant persons from themselves informing the Danish FSA about changes and requesting a reassessment.

5. What information?

Members of the board of directors and management of financial undertakings, financial holding companies and insurance holding companies must submit the following information:

- previous and current positions in boards of directors and boards of management within the past 10 years, both within and outside the financial sector, as well as other duties within the financial sector. 'Other duties within the financial sector' means for example, membership of specialist committees, boards of appeal, educational institutions etc.
- previous and current employment, including self-employment within the past 10 years,
- members of board of management (executive managers) and members of the board of directors of company pension funds can, in some cases, omit information about previous and current board positions as well as previous and current employment. See point 6 of these Guidelines,
- whether the member of the board of directors or board of management is/has been subject to financial reconstruction or bankruptcy, or has/has ever requested debt restructuring or been involved in negotiations concerning compulsory composition,
- whether undertakings in which the member of the board of directors or board of management is currently or has ever been part of the management, are or have been subject to financial reconstruction or bankruptcy proceedings or are or have such undertakings been in negotiations concerning compulsory composition.
- whether there are close links, see section 5(1), no. 17 of the Financial Business Act, between the member of the board of directors or board of management and the undertaking for which information forms have been submitted, or between the member of

² See section 10 of the Danish Companies Act, cf. Consolidating Act no. 322 of 11 June 2011, which stipulates that, for changes in the board of directors and board of management, undertakings shall notify changes to the Danish Business Authority.

the board of directors or board of management and other undertakings or persons that have close links with the undertaking. Members of the board of directors and management (executive managers) of company pension funds and of insurance-broker and reinsurance-broker undertakings are exempt from the duty to inform about close links.

Information regarding previous and current positions, positions in a board of directors and duties and responsibilities in and outside the financial sector is taken into consideration in the assessment by the Danish FSA of the knowledge, professional competencies and experience of the person in question, as well as in the assessment of whether the person in question is able to set aside the time necessary to be able to carry out the position in a board of management or board of directors. The additional information is taken into consideration in the assessment by the Danish FSA of the reputation, propriety and integrity of the person in question, as well as with regard to the person in question meeting the requirements in section 64(3) of the Financial Business Act. For example if a member of the board of directors or board of management has previously taken active part in the management of one or more undertakings which have gone bankrupt, there may be aspects which influence the assessment of the Danish FSA.

5.1 Assessment of the knowledge, professional competencies and experience of the member of the board of management or board of directors

In the assessment of whether the person has sufficient knowledge, professional competencies and experience to occupy a specific position, the Danish FSA assesses whether the person in question has relevant training and education, relevant former employment within the financial sector and/or managerial experience. The requirements for the individual member of the board of management or board of directors are proportional to the size and complexity of the undertaking. Furthermore, higher demands are set for members of the board of management than for members of the board of directors. There are no requirements that a member of the board of directors have experience from the financial sector or particular insight into matters of financial undertakings, as other relevant experience may be sufficient. The competencies of other members of the board of directors are not included in the assessment of the fitness and propriety of a member of the board of directors, as an individual assessment determines whether the person meets the requirements for fitness and propriety. Particularly, in relation to members of the board of directors of multi-employer occupational pension funds, consideration will be made to the effect that seats in the board of directors of such funds are

reserved for the social partners who are behind the collective agreements which make up the foundation for the pension schemes in the pension fund.

5.2 Assessment of the reputation of the member of the board of management or board of directors

A member of the board of directors or board of management is considered to have a good reputation unless otherwise documented, and if there is no reason to doubt the good reputation of the person in question. The Danish FSA applies all relevant information in its assessment of whether the member of the board of directors or board of management has a good reputation. The member is considered not to have a good reputation if the personal or business conduct of the person in question gives rise to reasonable doubt about the abilities of the person in question to ensure sound and secure management of the financial undertaking. This assessment is made on the basis of e.g. all criminal and administrative violations, withdrawal of previous authorisations, licences or similar, previous dismissals and the background for these. In its assessment of the member's reputation, the Danish FSA takes into account the severity of the violation, the time passed since the violation and the person's conduct in the meantime, including whether there has been repeated violations. Particularly in relation to members of the board of management, it may be difficult to maintain confidence in the person in question if an undertaking managed by the person in question has received repeated orders regarding failure to comply with financial legislation.

5.3 Duty of confidentiality of the Danish FSA

The information that members of the board of directors and board of management are required to provide pursuant to section 64(5) of the Financial Business Act is subject to the Danish FSA's duty of confidentiality pursuant to section 354(1) of the Financial Business Act. Pursuant to this provision, by virtue of sections 152-152e of the Danish Criminal Code, employees of the Danish FSA are obliged to keep secret any confidential information they receive in the course of their supervisory duties.

6. Information forms

All persons appointed as a member of the board of directors or board of management of a financial undertaking, a financial holding company or an insurance holding company must,

when joining the board, provide the Danish FSA with the information necessary for the Danish FSA to make its assessment pursuant to section 64(1)-(3) of the Financial Business Act.

If a member of the board of directors or board of management has been assessed fit and proper to occupy a specific position, for example as a lawyer, the Danish FSA is still entitled to require that the person in question complete and submit an information form with a judicial record attached. Status such as a lawyer therefore does not exempt a person from being subject to the Danish FSA's own assessment.

The information forms for members of the board of directors and members of the board of management can be used for board members to submit information to the Danish FSA.

The information form is available on the Danish FSA website on governance at <http://www.finanstilsynet.dk/da/Temaer/Governance/Krav-til-bestyrelsesmedlemmer.aspx> (In Danish)

However, there is no actual requirement that this information form be used, and the information required can be submitted to the Danish FSA on some other document or in some other way.

Members of the management of financial holding companies and insurance undertakings must complete the form for authorisation for acquisition of, or increase in, a qualifying interest - assessment of members of the board of management and board of directors in the acquirer on joining management. These are also available on the Danish FSA website on governance at <http://www.finanstilsynet.dk/da/Temaer/Governance/Krav-til-ejere-af-en-finansiel-virksomhed.aspx>. (In Danish)

The information forms can be submitted to the Danish FSA by the financial undertaking on behalf of the member of the board of directors or board of management. The member of the board of directors or board of management must personally sign the form or the other document they have chosen, and the member of the board of directors or board of management is responsible for ensuring that all the information stated is correct.

The information form must enclose a judicial record. The judicial record can be ordered by the member of the board of directors or board of management by applying to the police in person

or electronically. A judicial record cannot be replaced by some other form of documentation and must have been issued no more than 6 months before submission of the information form.

In cases where a member of the board of management or board of directors is resident outside Denmark, suitable documentation must be submitted instead of a judicial record.

For members of the board of directors or board of management of a financial holding company, Arbejdsmarkedets Tillægspension (the labour market supplementary pension scheme), the Labour Market Occupational Diseases Fund or LD (Lønmodtagernes Dyrtidsfond), the same obligation to submit information on relevant conditions to the Danish FSA applies as for members of the board of directors and board of management of traditional financial undertakings.

For members of the board of directors and management (executive managers) of a company pension fund, there are special matters regarding completion of the form. Such persons must complete all the sections on the form except the section on close links. If the pension fund can document that it has employed an advisor with proper qualifications and experience, see section 23a(2) of the Supervision of Company Pension Funds Act, the members of the board of directors and members of the board of management (executive managers) may also leave out the section on experience.

In accordance with section 9c of the Supervision of Company Pension Funds Act, the Danish FSA has stipulated that members of the board of directors may omit to complete the sections on the information form regarding experience and close links. 'Members' is defined as persons whose occupation entitles them or will entitle them to receive pension benefits under the pension scheme.

6.1 Declaration from another EU/EEA country

If a member of the board of directors or board of management has already been declared fit and proper in another EU/EEA country, and the person in question submits documentation for this as a statement/declaration from the relevant supervisory authority, initially the Danish FSA will use the submitted documentation. If necessary, the Danish FSA will contact the supervisory authority in the relevant EU/EEA country for more details about the submitted documentation or the fitness and propriety of the board member.

If a member of the board of directors or board of management has been declared fit and proper in a country outside the EU/EEA, following a specific assessment the Danish FSA may use the declaration. However the Danish FSA is still entitled to request that the person in question submit information about matters stated in an attached judicial record.

7. Special regulations on the fitness and propriety of mayors

Please note that on 17 June 1981, the Parliamentary Commissioner for Civil and Military Administration in Denmark stated that the position of mayor was incompatible with the position of chairman or member of the board of directors of a bank in which a (not significant) amount of municipal funds was held. There can be a risk that uniting these positions will exclude a mayor from exercising his ordinary supervisory obligations and decision-making authority with regard to financial arrangements and it will mean incapacity in case processing by the municipal council and the finance committee of these arrangements (and in similar matters) to such a degree as to arouse considerable concern. In the opinion of the Commissioner the concern surrounding uniting the two positions is so serious that it must give rise to some doubt as to whether it will be possible to alleviate them through more detailed guidelines for administration, control etc. (Parliamentary Commissioner for Civil and Military Administration in Denmark report for 1981, page 98 and thereafter, especially page 115).

In a statement on 27 March 1990, the Ministry of Internal Affairs and Health also declared that the position of mayor should be considered as incompatible with the position of chairman of the board of directors of a bank in which the municipality has a significant exposure in both type and size. The Ministry was referring to the fact that the bank in the specific matter was the main bank of the municipality and that only insignificant amounts were deposited with other banks. In the opinion of the Ministry, uniting the position of mayor and chairman of the board of directors in this situation, on the basis of a general assessment, would raise doubts as to whether depositing cash funds and other bank business was managed purely out of consideration of the interests of the municipality.

In a report of 7 April 2003 (case no.: 2000-2844-409) the Parliamentary Commissioner for Civil and Military Administration in Denmark stated that, as a point of departure, there must generally be the same concern if a municipal director is a member of the board of directors of a bank which the municipality uses as its main bank, as there would be if a mayor were a

member, and in this context it was immaterial whether the municipal director was an ordinary member or vice chairman (or chairman).

On the other hand the Commissioner deemed that the concern that a municipal director occupied the two positions at the same time could be better alleviated through detailed guidelines for administration, control etc. than was the case for the mayor.

8. Other duties

Pursuant to section 64(5) of the Financial Business Act, members of the board of directors and board of management of financial undertakings and financial holding companies are obliged to submit regularly to the Danish FSA information on the conditions mentioned in section 64(2) and (3). A member of the board of directors or board of management must therefore provide the Danish FSA with information on whether the person in question has been held criminally liable for violation of the Criminal Code, including violation of the provisions on crimes for personal enrichment, or the financial legislation, including violation of part 10 of the Securities Trading etc. Act on abuse of inside information and price manipulation. Members of the board of directors and board of management are also obliged to submit to the Danish FSA information on violation of corresponding foreign regulations. The duty to provide information takes effect immediately if a charge is made against the person in question.

The duty to provide information is in accordance with the regulations in financial legislation that members of the board of directors and management must not have been held liable for violation of the Criminal Code or financial legislation. Section 64(3), no. 1 of the Financial Business Act contains a condition that the violation entails a risk that the duties or position will not be carried out adequately.

According to section 64(5), see section 64(3), no. 2 of the Financial Business Act, members of the board of directors and members of the board of management of financial undertakings are obliged to notify the Danish FSA if the person in question has filed for suspension of payments, is administered in bankruptcy, has filed for debt restructuring, or negotiations have been initiated with regard to compulsory composition.

Danish FSA, 15 May 2014

Stig Nielsen

/ Nikoline Voetmann