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Executive Order No. 958 of 26 June 2023 (Current)

Executive Order on procedures for applications for authorisation of foreign direct investments and special financial agreements and notification of foreign direct investments and special financial agreements, etc.

Ministry: The Ministry of Industry, Business and Financial Affairs

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Executive Order on procedures for applications for authorisation of foreign direct investments and special financial agreements and notification of foreign direct investments and special financial agreements, etc.

In pursuance of section 5 (6), section 10 (3), section 14 c (6), section 29 (3), section 33 (2) and section 35 (2) of Act no. 842 of 10 May 2021 on the screening of certain foreign direct investments etc. in Denmark (the Investment Screening Act), as amended by Act no. 736 of 13 June 2023, the following is laid down:

Chapter 1

Scope of application

Foreign direct investment and special financial agreements

Section 1. The Executive Order shall apply to foreign direct investments and special financial agreements made or entered into by the following:

- 1) Foreign nationals pursuant to section 2 (1), no. 1, of the Investment Screening Act.
- 2) Companies pursuant to section 2 (2) of the Investment Screening Act.
- 3) Entities covered by section 2 (3) of 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 scope of application).

Section 2. The Executive Order shall apply to foreign direct investments in and special financial agreements with the following:

- 1) Companies domiciled in Denmark, cf. section 3 (1) of the Investment Screening Act.
- 2) Danish entities covered by section 3 (3) of the Executive Order on scope of application.

Subsection 2. The Executive Order shall also apply 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 scope of application.

Contracts pertaining to the establishment, co-ownership and operation of the energy island in the North Sea

Section 3. With the exception of chapters 4 and 5, the Executive Order shall apply to contracts pertaining to the establishment, co-ownership and operation of an energy island located in the exclusive economic zone in the North Sea, cf. Section 3 a of the Investment Screening Act.

Chapter 2

Digital application and notification via virk.dk

Section 4. Applications or notifications pursuant to chapter 3 must be submitted using forms prepared by the Danish Business Authority and submitted digitally to the Danish Business Authority via the self-service solution at www.virk.dk, cf. however subsection (4). Applications and notifications must be signed with an electronic signature.

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

Subsection 3. A lawyer or other authorised representative may submit an application or notification pursuant to subsection (1) on behalf of one or more foreign investors. In such instances, the application or notification must be accompanied by documentation that the authorised person is authorised to do so, except where the authorised person is a qualified lawyer or a certified public accountant.

Subsection 4. If an application or notification cannot be submitted digitally to the Danish Business Authority via the self-service solution at virk.dk in accordance with subsection (1), the application or notification must be submitted in accordance with the Danish Business Authority's instructions.

Chapter 3

Requirements for applications and notifications

Phase 1 screening

Section 5. Applications for authorisation pursuant to sections 5, 7, 9 a or 9 b of the Investment Screening Act and notifications for authorisation pursuant to sections 10 or 11 of the Investment Screening Act must contain the information required under subsections (2)-(6) and section 6 or 7 of this Executive Order.

Subsection 2. Information pursuant to subsection (1) about the project applied for or notified shall include, inter alia, the following:

- 1) The purpose of the investment or agreement and a summary.
- 2) The approximate value of the investment or agreement.
- 3) The date on which the investment is to be completed or the date of entry into force of the agreement.

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

- 1) Contact information, including any CVR number and any website address for the target company.
- 2) Ownership of the target company, including any subsidiaries, and a diagram of the overall chain of ownership of the target company prior to the completion of the investment or the entry into force of the agreement.
- 3) If applying for authorisation pursuant to sections 5 and 7 of the Investment Screening Act: Information on the particularly sensitive sector or activity pursuant to section 6 (1) of the Investment Screening Act that is relevant to the target company.
- 4) A description of the target company's business activities, including market share and significant competitors.

Subsection 4. Information pursuant to subsection (1) about the foreign investor shall include, inter alia, the following:

- 1) Contact information for the foreign investor, including CVR number and website address. If the foreign 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 any tax identification number in their home country. Official evidence, which must be no more than three months old, that the legal person legally exists in their home country must be attached. If the foreign investor is a natural person, nationality and passport details must be stated.
- 2) The ownership of the direct investor, including a description and diagram of the entire chain of ownership, indicating the ownership interests and voting rights of each owner in the chain of ownership after the expected completion of the investment or entry into force of the agreement.
- 3) Information on whether the foreign investor or owners in its chain of ownership are directly or indirectly controlled by a foreign government, foreign government agencies or foreign armed forces, including through ownership or substantial financing.

Subsection 5. In the case of notifications pursuant to section 10 or 11 of the Investment Screening Act, in addition to the information in subsections (2)-(4), the circumstances that have particularly justified the notification must be stated, including how the notified matter is assessed to pose a threat to national security or public order.

Subsection 6. Subsection 3, nos. 2 and 4, shall not apply to the establishment of new companies (greenfield investments) pursuant to section 5 (5) of the Investment Screening Act.

Section 6. Applications pursuant to sections 5, 9 a and 9 b of the Investment Screening Act or notifications pursuant to section 10 of the Investment Screening Act must, in addition to the information stated in Section 5 of the Executive Order, include the following:

- 1) Information on the number of shares acquired as a result of the investment, expressed as a percentage and, where applicable, the class to which they belong, the size of the shareholding, nominal value and voting rights attached respectively.
- 2) If the investment entails similar control by other means, cf. section 11 of the Executive Order: Information about the rights that are obtained through the investment.
- 3) EU Member States where the target company or its subsidiaries, etc. have significant business activities.
- 4) Information about any EU funding the target company has received.
- 5) 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, as amended, if known by the applicant or notifying party.

Section 7. Applications pursuant to section 7 of the Investment Screening Act or notifications pursuant to section 11 of the Investment Screening Act of a special financial agreement must, in addition to the information set out in Section 5, include the following:

- 1) Type of agreement (joint venture, supplier agreement, operating or service agreement), cf. sections 12-14 of the Executive Order on scope of application.
- 2) The duration of the agreement, including any information on irrevocability.
- 3) Whether the agreement has been entered into subject to authorisation.

Phase 2 screening

Section 8. If the Danish Business Authority initiates a phase 2 screening of an application or notification pursuant to section 14 b (3) of the Investment Screening Act, the Danish Business Authority may, inter alia, request the following information:

- 1) Copy of relevant contract documents, such as letters of intent or conditional agreements.
- 2) EU notification form according to the Danish Business Authority's form if the investment must be notified in accordance with Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 on a framework for screening foreign direct investments into the Union, as amended.

Chapter 4

Pre-screening

Section 9. Requests for pre-screening of a foreign direct investment or special financial agreement pursuant to section 6 (1) of the Executive Order on scope of application must contain, inter alia, the following information:

- 1) The reasons for the request, 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 or 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 intended to be concluded.
- 5) Contact information, including any CVR 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: The function of the foreign investor in the investment (for example, direct investor, holding company, global ultimate owner).

Subsection 2. When requesting pre-screening of a foreign direct investment or special financial agreement pursuant to section 6 (2) of the Executive Order on scope of application, the request must, in addition to the information in subsection (1), contain the following information:

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

Chapter 5

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 holding pursuant to section 5 (2) and section 10 (1) of the Investment Screening Act, ownership interests or voting rights that directly or indirectly belong to the foreign investor and ownership interests or voting rights over which the foreign investor has influence through a closely related person shall be included.

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

Subsection 3. Related persons are defined as related parties in accordance with the definition in International Accounting Standard IAS 24 as amended.

Subsection 4. A parent company, together with one or more subsidiaries, forms a group, as defined in International Financial Reporting Standard IFRS 10 as amended. Changes in the holding or size of or control over ownership interests or voting rights or equivalent control by other means pursuant to section 4 (4) of the Investment Screening Act which take place within a group pursuant to the first clause shall not be covered by section 5 (1) of the Investment Screening Act if those changes do not result in an increase in the foreign investor's ownership interests or voting rights in the Danish company that exceeds the limits in section 5 (4) of the Investment Screening Act or an equivalent increase in the foreign investor's control over the Danish company by other means.

Section 11. Equivalent control by other means pursuant to section 4, no. 4, of the Investment Screening Act, cf. section 5 (1) and section 10 (1) of the Act, 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 scope of application by either:

- 1) the right to dispose of ownership interests or voting rights by virtue of agreements with other investors or affiliated group companies corresponding to at least a proportion of the ownership interests or voting rights as stated in section 5 (2) and section 10 (1) of the Investment Screening Act,
- 2) the 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 scope of application, or in business-critical areas in the company or entity pursuant to an article of association or agreement, including long-term and irrevocable loan agreements,
- 3) the right, pursuant to an article of association, 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 scope of application,
- 4) the acquisition of all or a significant part of the assets of the Danish company or entity covered by section 3 (3) of the Executive Order on scope of application, or
- 5) control over all or a significant part of the assets of the Danish company or entity covered by section 3 (3) of the Executive Order on scope of application by virtue of long-term and irrevocable

lease agreements.

Subsection 2. The existence and effect of potential voting rights, including subscription rights and call options for shares that are currently exercisable or convertible, must be taken into account when assessing whether a foreign investor obtains equivalent control by other means.

Subsection 3. Establishment of a mortgage or other security in ownership interests in, voting rights in or assets belonging to a Danish company or entity covered by section 3 (3) of the Executive Order on scope of application as security for a loan or other obligations shall not constitute a foreign direct investment covered by section 4, no. 4, of the Investment Screening Act. The same shall apply to the acquisition of ownership interests in, voting rights in or assets belonging to a Danish company or entity covered by section 3 (3) of the Executive Order on the scope of application which have been pledged as collateral or other security for a loan or other obligations where the acquisition takes place as part of debt recovery proceedings with a view to liquidation.

Chapter 6

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

Section 12. If the Danish Business Authority requires additional information regarding a foreign direct investment or special financial agreement, it may, pursuant to section 14 c (5) of the Investment Screening Act, require that such information be accompanied by a declaration on the accuracy of the information from an auditor approved under the Danish Act on Approved Auditors and Audit Firms. If the foreign investor is a company, such a declaration may include information on ownership, including shares and voting rights, information on matters included in the assessment of equivalent control by other means pursuant to section 11 as well as accounting and financial information pertaining to the foreign investor and the investment or agreement.

Subsection 2. The declaration pursuant to subsection (1) must be submitted in accordance with section 1 (2) of the Danish Act on Approved Auditors and Audit Firms with a high level of security. In the declaration, the auditor must confirm that they are independent of the foreign investor, cf. section 24 of the Danish Act on Approved Auditors and Audit Firms.

Subsection 3. Subsections (1) and (2) shall apply mutatis mutandis to the auditor's declaration pursuant to section 16 (3), third clause, and section 17 (2) of the Investment Screening Act on the annual statement of compliance with agreed or stipulated terms, and to the auditor's declaration pursuant to section 29 (2) of the Investment Screening Act on the accuracy of information provided to the Danish Business Authority in connection with subsequent control.

Chapter 7

Entry into force

Section 13. The Executive Order shall enter into force on 1 July 2023.

Subsection 2. Executive Order No. 1454 of 24 June 2021 on procedures etc. when applying for authorisation for or notification of certain foreign direct investments or special financial agreements in Denmark is repealed.

Subsection 3. For applications and notifications pursuant to the Investment Screening Act which the Danish Business Authority has received prior to the entry into force of the Executive Order, Executive Order No. 1454 of 24 June 2021 on procedures, etc. for applications for authorisation or notification of certain foreign direct investments or special financial agreements in Denmark shall apply.

Ministry of Industry, Business and Financial Affairs, 26 June 2023

Morten Bødskov

/Torsten A. Andersen