

17 June 2016

No. 735.

Executive Order on the Independence of Approved Auditors and Audit Firms¹⁾

In pursuance of Section 24 (4) and Section 54 (2) of Act no. 468 of 17 June 2008 on Approved Auditors and Audit Firms (the Auditor Act), as amended by Act no. 631 of 8 June 2016, the following is hereby laid down:

S. 1. An auditor must not perform engagements as referred to in Section 1 (2) of the Auditor Act if there are any threats that may raise doubts in a well-informed third party about the auditor's independence.

(2) If there are any threats to independence, cf. Section 24 (3) of the Auditor Act, the auditor shall apply the necessary safeguards to mitigate them. If the auditor's independence continues to be at risk despite the safeguards applied, the auditor shall desist from performing the engagement.

Threats to Independence

S. 2. Threats such as those referred to in Section 1 (1) shall always be regarded as existing, cf. Section 24 (2) of the Auditor Act, when:

- 1) The auditor or other persons in the audit firm linked to the engagement or supervising its performance are or have, within the past two years, been employed in a management position at the undertaking that the engagement concerns, and have, as part of this employment, exercised influence on matters that the engagement concerns.
- 2) The audit firm, auditor or other persons in the audit firm linked to the engagement or supervising its performance, have any form of direct or material indirect financial interest in, or are involved, directly or materially indirectly, in other forms of transactions concerning a financial instrument guaranteed or in some other manner supported by the undertaking that the engagement concerns.
- 3) The audit firm, auditor or other persons in the audit firm who are linked to the engagement or supervising its performance have a material direct financial interest in an undertaking linked to the undertaking that the engagement concerns.

- 4) The audit firm, auditor or other persons in the audit firm who are linked to the engagement or supervising its performance solicit or accept pecuniary and non-pecuniary gifts or favours from the audited entity or any entity related to an audited entity unless the value thereof is trivial.
- 5) The audit firm, auditor or other persons in the audit firm who are linked to the engagement or supervising its performance have any other business relationship with the undertaking that the engagement concerns, which entails a joint commercial or financial interest, unless the business relationship is wholly exercised within the normal activities of both parties and on standard commercial terms and is not of sufficient scope to be able to represent a threat to independence. Regardless of the nature of the terms, cross-auditing is never permitted.
- 6) The auditor or other persons in the audit firm who are linked to an engagement, cf. Section 1 (1), or supervising its performance, are connected through close family relationships to persons who
 - a) have material direct or indirect financial interest in, or take part to a significant degree in other forms of transactions concerning a financial instrument guaranteed or in some other manner supported by the undertaking that the engagement concerns,
 - b) have a senior position with the undertaking requesting the engagement or that the engagement concerns,
 - c) have direct influence on compiling the matters that the engagement concerns,
 - d) receive pecuniary and non-pecuniary gifts or favours from the audited entity or any entity related to an audited entity unless the value thereof is trivial, or
 - e) have commercial links to the undertaking that the engagement concerns, unless such links are within the normal course of business and do not represent a significant threat to the auditor's independence.
- 7) The undertaking that the engagement concerns
 - a) has a direct or a material indirect financial interest in the audit firm to which the auditor belongs, or
 - b) has the right to appoint members of the audit firm's board of directors or of the board of directors of the audit firm's parent company.

(2) Threats referred to in (1) are always so significant that

1) The Executive Order contains provisions that implement parts of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, Official Journal of the European Union 2006 no. L 157, page 87, as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, Official Journal of the European Union 2014 no. L 158, page 196.

no safeguards can reduce the threat to an acceptable level, and the auditor shall always desist from performing the engagement, however, cf. Sections 3 and 4.

(3) Close family connections as referred to in (1), no. 6, exist in relation to

- 1) spouses, cohabitants and dependent children,
- 2) other family members who have shared a home with the person concerned within the past year, and
- 3) legal entities in which a person covered by 1) or 2) has management responsibility, or who is directly or indirectly controlled by such a person, or which has been set up to the benefit of such a person, or whose financial interests are generally convergent with such a person's interests.

Special Circumstances

S. 3. If there is a threat as stated in Section 2 (1), no. 6, and the auditor has not realised and should not have realised this threat, Section 1 (1) shall only apply from the time at which the auditor becomes aware of the threat

(2) If the threat concerns the auditor personally, the auditor shall desist from performing the engagement.

(3) If the threat concerns another person in the audit firm linked to the engagement or supervising its performance, that person shall be immediately removed from the audit team, or, if not part of the team, excluded from taking part in decisions concerning the engagement. In such a situation, the auditor shall exercise particular care when reviewing that person's relevant working papers.

S. 4. If a threat exists as referred to in Section 2 (1), nos. 2 or 3, the financial interest shall be disposed of or the transaction concluded as quickly as possible and not later than one month after the auditor has become aware of the matter. If such action is not taken, the auditor shall desist from performing the engagement.

(2) If the threat concerns another person in the audit firm linked to the engagement or supervising its performance, the financial interest shall be disposed of as quickly as possible and not later than one month after the auditor has become aware of the matter. Until the financial interest is disposed of, the person concerned shall be removed from the audit team, or, if not part of the team, excluded from taking part in decisions concerning the engagement. If such action is not taken, the auditor shall desist from performing the engagement.

(3) If the threat concerns a person as referred to in (2), but where the auditor has not realised or should not have realised that there was such a threat, the financial interest shall be disposed of as quickly as possible and not later than one month after the auditor has become aware of the matter. Until the financial interest is disposed of, the person concerned shall be removed from the audit team, or, if not part of the team, excluded from taking part in decisions concerning the engagement. In such a situation, the auditor shall exercise particular care when reviewing that person's relevant working papers. If the conditions in the first and second sentences are not met, the auditor shall desist from performing the engagement.

S. 5. Threats as referred to in Section 1 (1) shall, moreover, always be regarded as existing if an assurance reporting engagement other than auditing concerns a public-interest entity, and the auditor or other persons in the audit firm

- 1) in addition to the requirements that follow from generally accepted auditing practices, have participated in bookkeeping or similar registrations that form the basis of the matters that the engagement concerns, or have participated in the preparation of the document that the engagement concerns, or
- 2) have prepared lists of candidates, within the past two years, for use in recruitment of employees for key financial and administrative management positions in the undertaking, or have similarly participated in the recruitment procedure.

(2) Threats referred to in (1) are always so significant that no safeguards can reduce the threat to an acceptable level, and the auditor shall always desist from performing the engagement.

Other Threats to Independence

S. 6. In addition to the cases mentioned in Section 2, threats that are mentioned in Section 1 (1) may exist if

- 1) the auditor or other persons in the audit firm linked to the engagement or supervising its performance perform, or have within the past two years performed, other engagements of such a nature for the undertaking that the report concerns that, by giving a report on the main matter, the auditor would be commenting on his/her own work or that of the other persons referred to,
- 2) the auditor or other persons in the audit firm linked to the engagement or supervising its performance are or have, within the past two years, acted externally as a representative in connection with legal disputes for the undertaking or client that the engagement concerns,
- 3) the auditor or other persons in the audit firm linked to the engagement or supervising its performance are, through family relationships other than those referred to in Section 2 (3), connected to persons who
 - a) have material direct or indirect financial interest in, or take part to a significant degree in other forms of transactions concerning a financial instrument guaranteed or in some other manner supported by the undertaking that the engagement concerns,

- b) have a senior position with the undertaking requesting the engagement or that the engagement concerns,
 - c) have direct influence on preparation of the matters that the engagement concerns,
 - d) receive pecuniary and non-pecuniary gifts or favours from the audited entity or any entity related to an audited entity unless the value thereof is trivial, or
 - e) have commercial links to the entity the engagement concerns, unless such links are within the normal course of business and do not represent a significant threat to the auditor's independence, or
- 4) persons other than those referred to in Section 2 (1), no. 6, cf. (3), who, directly or indirectly, are linked to the audit firm from which the report is provided, have, or within the past two years have had, links to the undertaking whose circumstances are the subject of the report which are of such a nature that the auditor would have been prevented from providing a report if the auditor had personally had a corresponding connection.

(2) If any threats as referred to in (1) exist, the auditor or audit firm shall apply necessary safeguards to mitigate them. If the threat is of such a nature in relation to the safeguards applied that the auditor's or the audit firm's independence has or will be compromised, the auditor shall desist from performing the engagement.

Networks

S. 7. The situations referred to in Sections 2-6 also cover persons in the audit firm's network who may exercise influence on performance of the engagement.

- (2) A "network" is defined as a large structure
- 1) which is aimed at cooperation and to which an auditor or an audit firm belongs, and
 - 2) which is clearly aimed at profit- or cost-sharing or shares common ownership, control or management, common quality-control policies and procedures, a common business strategy, the use of a common brand-name or a significant part of professional resources.

Penal Provision

S. 8. Any violation of the provisions in Sections 2-5 shall be punishable by a fine. Deliberate or grossly negligent violation of the provisions in Section 6 shall be punishable by a fine.

(2) Companies, etc. (legal entities) may incur criminal liability in pursuance of the rules in Part 5 of the Danish Penal Code.

Commencement

S. 9. The Executive Order shall enter into force on 18 June 2016.

(2) Executive Order no. 663 of 26 June 2008 on the independence of Approved Auditors and Audit Firms is repealed. The first sentence notwithstanding, Section 5 of the Executive Order shall apply when giving auditor's reports on financial statements for public-interest entities if the financial year started before 17 June 2016. The second sentence shall similarly apply to audits of regions, municipalities and municipal cooperatives, cf. Section 60 of the Act on Municipal Governance, with the exception of small municipal cooperatives.

Danish Business Authority, 17 June 2016

VICTOR KJÆR

/ Peter Kroglund Jensen