

A new bill for a law on consumer loan companies

In this update, we take a closer look at the draft bill that has been sent to a hearing. The bill will among other things entail that companies offering consumer loans will have to apply for an authorisation from the Danish Financial Supervisory Authority and will be subject to a number of consumer protection regulations.

Just recently the Danish Financial Supervisory Authority sent a bill for a law on consumer loan companies into hearing. The bill was proposed on Wednesday 6 February 2019.

The general intention of the law is to impose strengthened supervision on consumer loan companies without authorisation as financial institution or supplier of property credit. The bill is also backed by a requirement for providers of consumer loans to carry out a real credit worthiness rating of the consumer applying for a loan.

Furthermore, it is the intention of the bill to prevent the debt trap that the consumers supposedly face when providers of consumer loans do not carry out a credit rating for the consumer. According to the Danish Financial Supervisory Authority this can potentially lead to a debt beyond the consumer's ability to repay.

Mandatory authorisation

In the draft bill, the providers are imposed with a requirement for an authorisation from the Danish Financial Supervisory Authority as consumer loan business[1]. The authorisation is among other things conditioned on the company's board of directors' or the management's fulfilment of the requirements on fitness and integrity ("fit&proper"). Furthermore, compulsory procedures for compliance with regulations concerning trustworthy business practice, credit worthiness rating and identification of target groups will be imposed on consumer loan companies, as mentioned immediately below.

A requirement for an authorisation to run consumer loan business is meant to ensure that only companies with an adequate expertise to provide consumer loans on a safe basis can obtain an authorisation. In principal, the requirement for obtaining an authorisation corresponds to the requirements for financial companies in the general financial business act.

Requirement for credit worthiness rating

Apart from the requirement for an authorisation, consumer loan companies are required to carry out a credit worthiness rating. The purpose of the rating is to ensure that each consumer is only approved a loan that the consumer is able to repay. The difference between a credit worthiness rating and a credit rating is that the purpose of a credit worthiness rating shall ensure that each consumer does not enter into a liability, which the consumer cannot pay. A credit rating is a rating of the creditor's risk of loss. The draft bill does not seem to provide a guidance (yet) on how to actually execute and document the rating.

Taking into account the expected wish to ensure a proportionality between, on one hand, the resources that the creditor uses to ensure a reliable credit worthiness rating and, on the other hand, the size of the loan, the rating will likely be based on the debtor's deliverance of information for the purpose of the rating rather than the creditor's own possibility to examine and research the debtor's conditions.

Requirement for good business practice

Consumer loan companies will also be met with a requirement of complying with good business practice corresponding to requirements for the rest of the financial area. Accordingly, the requirement is that consumer loan companies must be operated in compliance with good and trustworthy business practice in this area.

Requirement for identification of the target group

Consumer loan companies are obliged to identify the target group for their lending products. In the bill, the Danish Financial Supervisory Authority states that it will depend on a specific assessment whether a product is appropriate for the target group. The Danish Financial Supervisory Authority has given an example of an inappropriate product regardless of the target group. This involves for instance cases where a consumer has the impression that repayment will be settled automatically, but in reality, the conditions in the agreement determine that the consumer himself has to ensure settlement of the agreed payments during the loan period. This unclear construction of the contractual terms entails a significant risk that the consumer will breach conditions of the loan.

A requirement for reports

Consumer loan companies will be obliged to report information on the company's credit agreements to the Danish Financial Supervisory Authority. The intention of the information is to help the Danish Financial Supervisory Authority prioritise its inspection of companies where the reports indicate an increased risk that the company's operation is not compliant with legislation.

The process of the bill

The bill will come into force on 1 July 2019.

In case the bill is passed, consumer loan companies providing consumer credits [2] will have to apply for authorisation at the latest on 1 January 2020. However, these companies can continue to operate without an authorisation until the Danish Financial Supervisory Authority has come to a conclusion in the matter.

In case your company is at the risk of being imposed by the requirements for an authorisation, NJORD can assist determining if your company will be subject to the regulations of the law. If so, we can assist preparing the application and provide advice on how best to comply with the new requirements expected to come into force during 2019.

[1]Which will include companies offering consumer loans for products and services from other companies and companies offering loans to be paid in cash to the consumer.

[2]According to the law on preventive provisions against money laundering and financing of terrorism.