

## Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act<sup>1</sup>

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Act no. 1261 of 15 November 2010

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This is an Act to consolidate the Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act, cf. Consolidating Act no. 898 of 4 September 2008 as amended by section 8 of Act no. 392 of 25 May 2009 and section 2 of Act no. 579 of 1 June 2010.

The amendments consequential upon section 31 of Act no. 718 of 25 June 2010 amending the Bankruptcy Act and various other Acts (Reorganisation, etc.) have not been included in this Consolidating Act as the date for entry into force of these amendments shall be laid down by the Minister for Justice, cf. section 55 of Act no. 718 of 25 June 2010.

### Part 1

#### *Scope*

**1.-(1)** This Act shall apply to mortgage-credit bonds, covered mortgage-credit bonds, covered bonds and other securities issued by mortgage-credit institutions and to mortgage-credit loans provided on the basis thereof. Furthermore, the Act shall apply to the issue of mortgage-credit bonds in Denmark by foreign credit institutions and to mortgage-credit loans provided on the basis thereof.

**(2)** For activities of foreign credit institutions, cf. subsection (1), 2nd clause hereof, only sections 2-19 and sections 34-43 below shall apply. For foreign credit institutions in a group with Danish mortgage-credit institutions, sections 20 and 21 below shall, however, also apply.

### Part 2

#### *Mortgage-credit loans*

##### *Security for mortgage-credit loans*

**2.-(1)** Mortgage-credit loans shall be granted against registered mortgages in real property according to the rules in this part of this Act. Loans without mortgage in real property may be granted to public authorities or with a primary guarantee from a public authority, as mentioned in section 152c(1), nos. 3-5 of the Financial Business Act.

**(2)** Mortgage-credit loans shall not be granted against collateral in the form of owner's mortgages or letters of indemnity. However, where chattels are also mortgaged as collateral for mortgage-credit loans, letters of indemnity may be used for the chattel mortgage.

**(3)** Loans granted against registered mortgage on real property, cf. subsection (1), 1st clause, where the mortgage deed has been filed for registration, shall be treated as mortgage credit loans if the necessary collateral has been provided for the final registration of the mortgage deed and the institution provides the final registered mortgage deed without undue delay. This shall only apply for loans which have been granted on the basis of covered mortgage-credit bonds.

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<sup>1)</sup> This Act contains provisions implementing parts of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Official Journal 2006 no. L 177, p. 1).

### *Terms and repayment profiles*

**3.-(1)** The maximum term of the loan shall be 30 years, cf., however, subsection (2). When stipulating the term and repayment profile of the loan, the expected decrease in the value of the mortgage and the lending limits applying to the mortgage shall be taken into consideration, cf. section 5 below.

**(2)** The maximum term shall be 35 years for loans for non-profit rental housing, youth housing, and private housing co-operatives where loans are granted on the basis of a pledge of public subsidies or support under the Danish Non-Profit Rental Housing and Subsidised Private Cooperative Housing, etc., Act.

**4.-(1)** Loans granted to year-round owner-occupied housing and recreational dwellings shall not be granted, notwithstanding the collateral provided, so that the loan is amortised slower than for a 30-year loan repaid in instalments of a fixed percentage share of the principal over the term of the loan (annuity loan), cf. however subsection (2) hereof.

**(2)** The requirement in subsection (1) hereof, may, within the term of the loan, be derogated from for a period of up to 10 years, observing section 3(1), 2nd clause above.

### *Lending limits etc.*

**5.-(1)** Within a lending limit of 80 percent of the value of the property, loans may be granted for the following categories of property:

- 1) Owner-occupied all-year residences,
- 2) Private co-operative housing,
- 3) Private residential property for letting, including facilities for persons who require extra care (fripvejboliger).
- 4) Non-profit rental housing,
- 5) Youth housing,
- 6) Housing for the elderly etc., and
- 7) Properties for social, cultural, and educational purposes.

**(2)** Within a lending limit of 70 percent of the value of the property, loans may be granted for agricultural holdings and forestry property, market gardens etc.

**(3)** Within a lending limit of 60 percent of the value of the property, loans may be granted for the following categories of property:

- 1) Recreational dwellings,
- 2) Office properties and retailing properties,
- 3) Industrial properties and craftsman's properties,
- 4) Collective energy-supply plants.

**(4)** Within a lending limit of 40 percent of the value of the property, loans may be granted for other properties, including unbuilt-on plots.

**6.** (Repealed)

**7.-(1)** Notwithstanding section 5 above, loans exceeding the lending limit may be granted to repay mortgage-credit loans in own credit institutions as well as to repay prior debts. Loans pursuant to the 1st clause hereof shall be authorised with cash proceeds corresponding to no more than the repayment amount plus costs in relation with the repayment and granting of the loans.

**(2)** Loans may only be granted in accordance with subsection (1) hereof, provided the mortgage collateral is not hereby substantially reduced.

**(3)** Subsection (1) hereof shall apply correspondingly to repayment of mortgage-credit loans in other credit institutions provided the valuation used for authorisation of the original loan is based on approved acquisition prices according to the Danish Non-Profit Rental Housing and Subsidised Private Cooperative Housing, etc., Act, the Danish Act on residential housing, or the Danish Act on dwellings for elderly people and disabled people.

**(4)** For loans granted to repay loans in certain social (non-profit) housing estates, see the Danish Act on the refinancing etc. of certain social (non-profit) housing estates, outstanding payable instalments plus accumulated interest may be included in the basis for authorisation of the loan.

*Disbursement against guarantee etc.*

**8.-(1)** If the requirements for disbursement of the loan are otherwise met, loans may be granted even though the mortgage deed is encumbered with endorsements barring registration as requested, provided there is security that these endorsements will be withdrawn.

**(2)** If the requirements for disbursement of the loan are otherwise met, loans may be granted without a registered mortgage deed, provided there is security that a registered mortgage will be provided.

**(3)** If the requirements for disbursement of the loan are otherwise met, loans may be granted even though the mortgagor does not have registered title to the property, provided there is security that the mortgagor will ultimately receive title to the property.

**(4)** If the requirements for disbursement of the loan are otherwise met, loans may be granted without the document mentioned in section 11(3) below, provided there is security that said document will be provided.

**(5)** Loans may be granted for home building and rebuilding and extension etc. on the basis of the expected value of the property (prefinancing loans), provided there is security that the loan will be repaid in part or in full, if at the end of the time limit for completion of the building the loan could not have been granted at the amount agreed.

**(6)** To the extent that a loan is granted on the basis of covered mortgage-credit bonds and covered bonds, disbursement of the loan may be made before final registration, cf. subsections (1)-(5), if collateral is lodged in accordance with section 152c(1), nos. 3-7 of the Financial Business Act. If collateral is lodged in the form of a guarantee from a bank, the guarantee will be covered by the 15 percent limit following from section 152c(1), nos. 6 and 7 of the Financial Business Act, unless the guarantee is lodged pursuant to section 152c(1), no. 1, 1st clause of the Financial Business Act or section 2(3) of this Act. However, the guarantee shall not be included in the 15 percent limit if it is lodged pursuant to subsections 3-4 or 5.

**(7)** The Danish FSA may lay down regulations regarding the granting of loans etc. in pursuance of subsections (1)-(6).

**(8)** The Danish FSA may grant exemption from the requirement in subsection 6, 3rd clause that guarantees lodged pursuant to subsection (3) be included in the 15 percent limit.

**9.-(1)** With regard to the collateral basis of the liabilities of the mortgage-credit institution the following mortgages may be replaced by corresponding claims on the Danish Treasury: mortgages for loans in non-profit rental housing and private living facilities for persons who

require extra care financed by mortgage-credit loans with state grants which are refinanced pursuant to the Danish Restructuring of Loans, etc. on Non-profit Rental Housing Act, as well as mortgages which are taken over by the Agency for Governmental Management pursuant to the Countering of Freezing of Unconvertible Mortgage-credit Loans, etc. Act. Such a claim on the Danish Treasury may be repaid early in total or in part by submission from the Danish Treasury to the mortgage-credit institution of mortgage-credit bonds corresponding to the relevant mortgage-credit loan.

**(2)** Holders of rights over bonds where the collateral basis falls within the scope of and is amended by subsection (1) hereof may not submit claims for redemption of said bonds and shall not submit any other claims against the mortgage-credit institution in this respect.

*Valuation of properties and mortgage-credit loan authorisation*

**10.-(1)** The mortgage-credit institution shall set an estimated value on the real property to be used for the loan authorisation.

**(2)** Said value shall fall within the amount that an experienced buyer with knowledge about price conditions and market conditions for the relevant type of real property would be deemed to be willing to pay for said property (market value). Conditions which occasion a particularly high price shall not be taken into consideration during valuation.

**(3)** The mortgage-credit institution shall in its valuation take into account any risk of changes in market conditions or structural conditions.

**(4)** Mortgage-credit institutions may in the following incidents derogate from subsections (2) and (3) above:

- 1) The reacquisition price, net of the condition of the property, may serve as the basis for a valuation of properties for social, cultural, and educational purposes, provided it is considered reasonable when taking into account the property's operating results, alternative uses, and market conditions in general. The reacquisition price shall not, however, serve as basis for the valuation of properties that are operated according to commercial principles.
- 2) The reacquisition price, net of the condition of the property, may serve as the basis for a valuation of industrial properties and craftsman's properties, and collective energy-supply plants, if considered reasonable when taking into account the mortgagor's creditworthiness and the cash-generating ability of the operation. This presupposes that the owner of the property or a company connected with the owner are using more than half the property.

**11.-(1)** Loans may be granted against real property owned by the mortgagor. All title holders shall be registered as mortgagors on the mortgage deed, cf., however, subsections (2) and (3) hereof.

**(2)** The provision in subsection (1), 2nd clause hereof may be derogated from, provided the loan is granted in accordance with special legislation within agriculture.

**(3)** Loans may be granted on the basis of an undivided share in real property, provided registered documentation of a registered exclusive right of use appurtenant to said undivided share exists. All title holders of the undivided share shall be registered as debtors on the mortgage deed.

**(4)** In addition to land and buildings, fixtures and fittings, cf. section 38 of the Danish Land Registration Act, as well as fixtures and fittings as specified in section 37(1) of the Danish Land Registration Act, which fall within the scope of a registered mortgage deed on the property, may be included in the basis for valuation of the property.

**(5)** The basis for valuation of the property may, notwithstanding subsection (4) hereof, include fixtures and fittings which do not fall within the scope of a registered mortgage on the property, cf. sections 37 and 38 of the Danish Land Registration Act, provided this is solely due to the fact that said fixtures and fittings are owned by a person or persons other than the owner of the property and provided a mortgage is established against said fixtures and fittings as collateral for the loan pursuant to section 47 or section 47b(2) of the Danish Land Registration Act.

**(6)** Index-linked loans for properties other than collective energy-supply plants may only be granted on the basis of the value of the land and buildings, and fixtures and fittings, cf. section 38 of the Danish Land Registration Act.

**12.-(1)** The Danish FSA shall lay down more detailed regulations on the valuation of properties.

**(2)** The Danish FSA may stipulate limitations on the right to include fixtures and fitting as mentioned in section 11(4) above.

**(3)** Danish FSA may stipulate rules concerning the right to derogate from section 10(2) and (3) above in cases where properties owned by a public authority are mortgaged and where loans are granted against full public guarantee.

**13.-(1)** Loans shall be authorised in such a manner that the cash proceeds are within the lending limits specified for the relevant property category in sections 5-7 above.

**(2)** The Danish FSA shall lay down rules on loan authorisation.

**14.-(1)** The Danish FSA shall lay down rules regarding which properties shall be classified within the individual property categories as well as rules regarding repayment of loans where a property is transferred to another property category.

**(2)** Where a property comprises more than one property category, valuation and loan authorisation shall be carried out separately for each property category, cf. however subsection (3) below.

**(3)** However, where a property category comprises at least 80 percent of the total gross floor area of the property, the entire property may be mortgaged in accordance with the rules pertaining to the relevant property category.

**15.-(1)** (Repealed)

#### *Mortgage-credit loans outside Denmark*

**16.** The Danish FSA may allow variations in the operation of the provisions of this Act with regard to lending on the Faeroe Islands and Greenland to the extent that such variations are necessitated by the specific conditions prevailing in the said parts of the realm.

**17.-(1)** For loans provided outside Denmark, the Faeroe Islands, and Greenland, section 4 shall not apply.

**(2)** The Danish FSA may allow exemptions from the provisions of section 2(2), 1st clause above in connection with loans provided outside Denmark, the Faeroe Islands and Greenland. The Danish FSA may in special cases grant exemptions from the provisions on maximum terms of loans in section 3 above.

**(3)** The Danish FSA may stipulate lower lending limits than are mentioned in section 5 above in connection with a mortgage-credit institution's lending activities outside Denmark, the Faeroe Islands and Greenland.

**(4)** Mortgage-credit institutions may provide loans outside Denmark, the Faeroe Islands, and Greenland exceeding the lending limits where a public authority, a credit institution, or an insurance company assumes primary liability. If the guarantee has been assumed by a credit institution or an insurance company, the loan may, however, only be granted on the basis of the issue of securities other than mortgage-credit bonds.

### **Part 3**

#### *Issue of mortgage-credit bonds*

##### *Exclusive rights*

**18.-(1)** Mortgage-credit institutions authorised to conduct mortgage-credit business in Denmark shall hold exclusive rights to issue mortgage-credit bonds in Denmark.

**(2)** Notwithstanding subsection (1) hereof, a foreign credit institution may issue mortgage-credit bonds in Denmark, if the institution is authorised under the Danish Financial Business Act to conduct credit-institution activities in Denmark and is in compliance with the following conditions:

- 1) The majority of the activities carried out by the institution shall be lending against mortgages against real property on the basis of the issue of bonds or other securities. If the mortgage-credit institution is in the same group as a Danish mortgage-credit institution, the institution's activities shall comply with the rules in the Danish Financial Business Act applying to Danish mortgage-credit institutions' activities.
- 2) Lending and bond issue carried out by the institution shall be regulated by a balance principle. If the mortgage-credit institution is in the same group as a Danish mortgage-credit institution, the institution shall moreover comply with the provisions laid down in sections 20 and 21 below.
- 3) Mortgage-credit bonds issued by the institution in Denmark shall, under the legislation of the home country of said institution, confer upon the holder the same legal rights as those laid down for holders of mortgage-credit bonds under section 27 below.

##### *Issue of bonds and the balance principle*

**19.-(1)** Mortgage-credit bonds issued before 1 July 2007 shall be negotiable mass debt instruments admitted to trading on regulated markets in countries within European Union or countries with which the Community has entered into an agreement for the financial area, or corresponding markets in other countries.

**20.-(1)** Funds raised by the issue of mortgage-credit bonds or covered mortgage-credit bonds or other securities may solely be used for lending against mortgages on real property or for lending to public authorities or against primary guarantee from a public authority, cf., however, subsections (2) and (3). Supplementary collateral for covered mortgage-credit bonds may, however, be provided in accordance with section 33d(1).

**(2)** The Danish FSA may lay down rules that funds may, to a limited extent, be used for purposes other than lending against mortgages on real property.

**(3)** The Danish FSA may in group circumstances permit the issue of mortgage-credit bonds and other securities in a mortgage-credit institution for the purpose of financing mortgage loans in another mortgage-credit institution.

**21.-(1)** The Danish FSA shall lay down more detailed regulations on limitation of risks in connection with issuing mortgage-credit bonds, covered mortgage-credit bonds, covered bonds and other securities, including interest-rate risks, currency risks and options risks.

#### **Part 4**

##### *Liability, charges, etc.*

**22.-(1)** Granting of mortgage-credit loans and the issue of mortgage-credit bonds and other securities for the purpose of financing hereof may be carried out in series. Mortgage-credit bonds and other securities may not be issued as part of the same series.

**(2)** The conditions for a series may stipulate that the holders of mortgage-credit bonds or other securities may only submit their claims against that/those series which is/are jointly and severally liable with said series, cf. section 24(4) below.

**23.-(1)** Mortgagors shall be liable for the loan personally and with the mortgaged property towards the series or the mortgage-credit institution in general.

**(2)** Mortgagors shall not be liable for any other liabilities which the mortgage-credit institution in general may have incurred.

**24.-(1)** The conditions for a series may stipulate that mortgagors shall, in addition to the loan, be jointly and severally liable for an amount corresponding to a specific part of the principal of the mortgage deed less a proportionate share of the funds within the serial reserve fund. Mortgagors shall not incur personal liability for said amount.

**(2)** A series or groups of series with a serial reserve fund may obtain hybrid core capital and subordinate loan capital. The joint and several liability pursuant to subsection (1) hereof shall not be applied against mortgagors to cover claims from contributors of hybrid core capital and subordinate loan capital. The 1st clause hereof shall not apply to series with repayment obligations opened before 1 January 1973.

**(3)** A series or groups of series with a serial reserve fund shall not be liable for any other liabilities which the mortgage-credit institution in general may have incurred.

**(4)** The conditions of a series may stipulate that said series shall be liable for the liabilities of other series. Such conditions shall only be stipulated if said other series include corresponding provisions. Series which are mutually liable under the first clause hereof may only consist of mortgage-credit bonds, cf. the section 22(1), 2nd clause above.

**25.-(1)** For series where mortgagors incur joint and several liability, or where a stipulation has been made pursuant to section 22(2) above, the mortgage-credit institution shall establish a serial reserve fund. For other series or groups of series the mortgage-credit institution may choose to establish a serial reserve fund.

**(2)** The articles of association or the conditions for lending may stipulate that the mortgagors shall, upon complete repayment of the loan, be entitled to receive disbursement of a share of the serial reserve fund.

**(3)** The sources of income of the series shall consist of interest, etc., on mortgage deeds, deposits, capital contributions, administrative charges, and similar sources of income as well as returns on the assets and off-balance-sheet items of the series. The costs of the series shall be interest, etc., on bonds and other securities, disbursements of serial-reserve fund shares, administration costs and similar, losses and provisions for costs in relation to raising and paying interest on hybrid core capital and subordinate loan capital, for likely losses on the

assets of the series and items which have not been entered into the balance sheet, as well as its share of the taxes of the mortgage-credit institution.

**26.-(1)** The funds of the serial reserve fund shall remain separate from the other funds of the mortgage-credit institution.

**(2)** Funds shall be transferred to a series or groups of series with a serial reserve fund from the mortgage-credit institution in general, if this is necessary in order to meet the solvency requirement of the series or group of series, unless such a transferral means that the mortgage-credit institution will no longer be able to meet its own solvency requirement.

**(3)** The mortgage-credit institution may stipulate provisions in the articles of association or the terms of the loan that funds shall be transferred from a series or groups of series with a serial reserve fund to the mortgage-credit institution in general, if the serial reserve fund is or becomes larger than required.

**(4)** Financial instruments may only be included as assets or liabilities in a series or groups of series with a serial reserve fund, if they are used to hedge risks between assets on the one hand and the issued mortgage-credit bonds, covered mortgage-credit bonds and covered bonds on the other hand, if the agreement on the financial instrument stipulates that suspension of payments, bankruptcy or non-compliance with the obligation to provide supplementary collateral pursuant to section 33d(1) by the mortgage-credit institution does not constitute grounds for breach.

**(5)** The Danish FSA shall lay down more detailed rules regarding series.

**27.-(1)** If a mortgage-credit institution is declared bankrupt, the funds of the series, less costs for the processing of the insolvent estate, including costs for the liquidator, staff, etc., shall be used to satisfy claims from holders of mortgage-credit bonds, covered mortgage-credit bonds, covered bonds and other securities of the relevant series or groups of series with a serial reserve fund, as well as claims for interest accrued on said claims from the time of the declaration of bankruptcy. The claims specified in section 25(2) above shall be satisfied subsequently. After this, debt raised by the mortgage-credit institution to provide supplementary collateral, cf. section 33e, shall be covered. Any surplus funds shall be included in the assets available for distribution, cf. section 32 of the Danish Bankruptcy Act.

**(2)** If a mortgage-credit institution is declared bankrupt, the funds of the institution, less costs for the processing of the insolvent estate etc., including costs for liquidator, staff, etc., shall be used to satisfy claims from holders of mortgage-credit bonds and other securities, which are not issued in series with a serial reserve fund as well as claims for interest accrued from the time of the declaration of bankruptcy. However, funds which are disbursed pursuant to the first clause of this subsection shall constitute no more than mortgages corresponding to the mortgage-credit bonds and other securities, plus an amount corresponding to eight percent of the risk-weighted value of said mortgages. Any remaining funds shall be included in the assets available for distribution, cf. section 32 of the Danish Bankruptcy Act.

**(3)** If a mortgage-credit institution is declared bankrupt, counterparties to the financial instruments concluded to hedge risks in a series or group of series of mortgage-credit bonds, covered mortgage-credit bonds or covered bonds, cf. section 26(4), shall be equated, in terms of bankruptcy, with holders of mortgage-credit bonds, covered mortgage-credit bonds or covered bonds in the relevant series or group of series, cf. subsection (1), 1st clause, and sections 31 and 32.

**27a.** Holders of bonds which have lost the designation covered mortgage-credit bonds or covered bonds, cf. section 33d(2), and counterparties to the financial instruments shall retain the bankruptcy law ranking afforded holders of covered mortgage-credit bonds, covered bonds

and financial counterparties. This also applies to coverage of debt raised by the mortgage-credit institution to provide supplementary collateral, cf. section 33e.

**(2)** The rules in sections 27b and 28-33 shall apply correspondingly to bonds which have lost the designation covered mortgage-credit bonds or covered bonds as well as financial instruments linked hereto.

**27b.-(1)** Proceeds from loans taken out by mortgage-credit institutions for use in respect of the requirement to provide supplementary collateral, cf. section 33d(1), which are not included in a series or groups of series, shall, in the event of bankruptcy of the mortgage-credit institution, serve to cover the holders of the covered bonds or covered mortgage-credit bonds and counterparties to the financial instruments in the series or group of series for which the loan was taken in order to provide supplementary collateral. Any surplus funds shall be paid to the lender.

**28.-(1)** The issue of a bankruptcy order against a mortgage-credit institution may not be submitted as cause for premature repayment of payment liabilities by holders of mortgage-credit bonds, covered mortgage-credit bonds, covered bonds and other securities or by the lenders pursuant to section 33e(1), and it shall not deprive the mortgage-credit institution's mortgagors of the right to repay mortgage-credit loans or loans granted on the basis of issuing covered mortgage-credit bonds or covered bonds in part or in full in accordance with the terms of repayment pertaining to the relevant loans.

**(2)** If a mortgage-credit institution does not fulfil the obligation to provide supplementary collateral pursuant to section 33d(1), this may not be used by the holders of covered mortgage-credit bonds or covered bonds or by the lenders pursuant to section 33e(1) as a reason for premature payment of payment liabilities.

**29.-(1)** The estate in bankruptcy may not disburse payments to satisfy claims submitted by holders of mortgage-credit bonds, covered mortgage-credit bonds, covered bonds and other securities at an earlier time than the time when the mortgage-credit institution was entitled to make payment.

**(2)** The estate in bankruptcy may not terminate loan agreements which are secured by registered mortgages in real property to a greater extent than the mortgage-credit institution was entitled to terminate such agreements.

**(3)** The estate in bankruptcy may only change contributions and similar, if the change is based on changes in market conditions and a need for further funds for management of the estate has also been ascertained. Changes shall be notified in writing no later than three months before they are to take effect.

**30.** Set-off from a claimant as specified in section 42 of the Danish Bankruptcy Act may not be carried out to satisfy a claim payable to the mortgage-credit institution.

**31.** The assets available for distribution shall be used to satisfy claims pursuant to the rules in Part 10 of the Danish Bankruptcy Act. However, claims submitted by holders of mortgage-credit bonds, covered mortgage-credit bonds, covered bonds, refinancing bonds and other securities, as well as claims submitted for interest accrued on said claims from the time of the pronouncement of bankruptcy, shall be satisfied *pari passu* after fulfilling the requirements specified in section 96 of the Bankruptcy Act, but before the claims specified in section 97 of the Bankruptcy Act.

**32.-(1)** In cases of suspension of payments the mortgage-credit institution shall, as far as possible, continue to fulfil its financial obligations in accordance with claims from holders of mortgage-credit bonds, covered mortgage-credit bonds, covered bonds and other securities on

the due date for payment, unless the appointed supervisory authority decrees otherwise. With the consent of the appointed supervisory authority, mortgage-credit institutions may enter into agreements on financial instruments, raise loans to finance the payments mentioned in the 1st clause and provide collateral for such loans in assets except for mortgages belonging to the series or group of series with a serial reserve fund for which the payment takes place. To cover repayment of bonds which mature, the appointed supervisory authority may also issue refinancing bonds in the series concerned.

**(2)** In cases of bankruptcy, the liquidator shall continue or resume as far as possible the fulfilment of the mortgage-credit institution's obligations in the form of payments of interest and instalments for holders of mortgage-credit bonds, covered mortgage-credit bonds, covered bonds and other securities. To the extent funds are inadequate, interest shall be paid before drawing is carried out. The liquidator may enter into agreements on financial instruments, raise loans to finance the payments mentioned in the 1st clause and provide collateral for such loans in assets except for mortgages belonging to the series or group of series with a serial reserve fund for which the payment takes place. To cover repayment of bonds which mature, the liquidator may also issue refinancing bonds to replace bonds in the series concerned which mature.

**(3)** Refinancing bonds shall have equivalent collateral as the mortgage-credit bonds, covered bonds, covered mortgage-credit bonds or any refinancing bonds which the refinancing bonds replace, cf. sections 27, 27a and 27b.

**(4)** The appointed supervisory authority or the liquidator may not issue refinancing bonds if, after the issue, sufficient funds are not expected to finance claims from creditors mentioned in section 27(1), 1st clause, as well as claims from counterparties to financial instruments, cf. section 27(3), in the series or the groups with the serial reserve fund.

**(5)** If the appointed supervisory authority or the liquidator raises loans, except for refinancing bonds for use in meeting payment obligations with regard to claims from holders of mortgage-credit bonds, covered mortgage-credit bonds and covered bonds or refinancing bonds issued in a series or groups of series with a serial reserve fund, the appointed supervisory authority or liquidator may, as basis for raising the loans, notwithstanding subsections (1) and (2), provide collateral in the first-coming mortgage-payment from the mortgagors on the mortgages.

**32a.** Funds shall not be transferred between series with a serial reserve fund and the mortgage-credit institution in general subsequent to application for suspension of payments or declaration of bankruptcy.

**33.-(1)** The liquidator or mortgage-credit institution may, with the consent of the appointed supervisory authority, enter into an agreement on total transfer of a series or groups of series with a serial reserve fund to another mortgage-credit institution, which has been granted a license in a country within the European Union or a country with which the Community has entered into an agreement for the financial area and which is licensed to issue mortgage-credit bonds, covered bonds or covered mortgage-credit bonds.

**(2)** Transfer of a series or groups of series with a serial reserve fund shall be authorised by the Minister for Economic and Business Affairs. An application for transfer shall be accompanied by the basis for agreement between the mortgage-credit institution which is in suspension of payments or under bankruptcy proceedings and the company wishing to acquire a series or the series with a serial reserve fund. In addition to the basis for agreement itself, the Minister for Economic and Business Affairs shall make an assessment of the company which is to take over a series or groups of series with a serial reserve fund, including particularly, whether the company complies with financial regulations.

**(3)** Unless the Minister for Economic and Business Affairs, on the existing basis, finds that a transfer should not be authorised, the Danish FSA shall make public in the Danish Official Gazette and in national daily newspapers a report regarding the planned transfer. The report shall include an appeal to the affected holders of bonds to notify the Danish FSA in writing if they have any objections to the transfer within a time limit stipulated by the Danish FSA which is no shorter than one month.

**(4)** After expiry of the time limit mentioned in subsection (3), the Minister for Economic and Business Affairs shall, under consideration of the objections made, decide whether the series or groups of series with a serial reserve fund may be transferred in accordance with the proposal.

**(5)** The transfer may not be submitted as cause for premature payment of payment liabilities by holders of bonds which have been issued by the ceding mortgage-credit institution. The transfer shall not deprive the mortgagors transferred of the right to full or partial repayment of mortgage-credit loans in accordance with the special redemption terms applicable for the loan.

#### **Part 4a**

##### *Covered mortgage-credit bonds and covered bonds*

**33a.-(1)** Mortgage-credit institutions may finance loans, cf. section 2(1) and (3) by issuing covered mortgage-credit bonds if the institution is authorised under section 16a(1) of the Financial Business Act.

**(2)** Granting loans financed by covered mortgage-credit bonds shall take place in separate series with a serial reserve fund.

**(3)** The value of assets covering covered mortgage-credit bonds issued, shall, at all times, correspond to no less than the value of the covered mortgage-credit bonds issued, and the mortgage collateral for the individual loan shall, at all times, comply with the lending limit for this.

**33b.-(1)** Mortgage-credit institutions may finance loans against the asset types mentioned in section 152c(1), nos. 1 and 3-7 of the Financial Business Act by issuing covered bonds if the institution is licensed under section 16a(1) of the Financial Business Act. Section 152c(3) of the Financial Business Act shall apply correspondingly.

**(2)** Granting loans financed by covered bonds shall take place in separate series with a serial reserve fund.

**(3)** The value of assets covering covered bonds issued, shall, at all times, correspond to no less than the value of the covered bonds issued, and the mortgage collateral for the individual loan shall, at all times, comply with the lending limit for this.

**33c.-(1)** For loans financed by covered mortgage-credit bonds or covered bonds, the terms, repayment profiles and lending limits which are laid down in sections 3-5, shall apply cf., however, subsections (2)-(4) hereof.

**(2)** The lending limit for the properties mentioned in section 5(1), no. 7 shall not apply to loans secured by registered mortgage in real property on the basis of the issue of covered bonds or covered mortgage-credit bonds. The lending limit for these properties shall be 60 percent of the value of the property. The lending limit of 60 percent may be raised to 70 percent, if supplementary collateral is provided of no less than 10 percent for the part of the loan which exceeds 60 percent of the value of the property.

**(3)** Sections 3 and 4 shall not apply to loans financed by covered mortgage-credit bonds or covered bonds against collateral in properties covered by section 5(1), if the lending limit does not exceed 75 percent.

**(4)** For loans financed by covered mortgage-credit bonds or covered bonds for commercial properties covered by section 5(3), nos. 2-4, the lending limit of 60 percent may be raised to 70 percent, if supplementary collateral is provided of no less than 10 percent for the part of the loan which exceeds 60 percent of the value of the property. For loans financed by covered mortgage-credit bonds or covered bonds for properties covered by section 5(2), the lending limit of 70 percent may only be used if supplementary collateral is provided of no less than 10 percent for the part of the loan which exceeds 60 percent of the value of the property.

**(5)** Fixtures and fittings covered by section 38 of the Land Registration Act may be included in the valuation of the real property.

**(6)** Devices installed in a commercial property for use in the operation of the property may be included in the valuation. For agricultural properties, the livestock belonging to the property may also be included in the valuation to the extent that the livestock are part of the continuous production. For loans in agricultural properties, the value of the livestock which is part of the continuous production may be included at no more than 30 percent of the value of the land and buildings.

**(7)** Loans against mortgages in real property granted on the basis of issuance of covered mortgage-credit bonds or covered bonds shall be secured on separate mortgage deeds and may not be granted with collateralisation in the form of owner's mortgages and letters of indemnity, cf. however, subsections (7) and (9). The mortgage deed shall state that it may be used as collateral for a loan financed by the issuance of covered mortgage-credit bonds or covered bonds.

**(8)** Mortgages in real property, which were registered in the Land Register before 1 July 2007 may be used as collateral for loans financed by the issuance of covered mortgage-credit bonds or covered bonds. Notwithstanding the 1st clause, owner's mortgages and letters of indemnity may, however, not be used as collateral for loans financed by issuance of covered mortgage-credit bonds.

**(9)** For loans financed by issuance of covered bonds, the requirement in section 11(1), 1st clause, that the mortgagor shall own the real property, and the requirement in section 23(1), that the mortgagor shall be personally liable for the loan, may be derogated from.

**(10)** The Danish FSA may grant exemptions from subsection (6) for loans which are granted for real property located outside Denmark, the Faeroe Islands and Greenland.

**33d.-(1)** If the value of the assets mentioned in section 33a(3) and section 33b(3) no longer corresponds to no less than the value of the covered mortgage-credit bonds or covered bonds issued, or does not comply with the lending limits applicable on the date on which the loan was granted, the mortgage-credit institution shall immediately provide supplementary collateral to fulfil the requirement and notify the Danish FSA of this. Supplementary collateral shall be provided in the form of the asset types listed in section 152c(1), nos. 1 and 3-7 of the Financial Business Act. Section 152c(3) of the Financial Business Act shall apply correspondingly. For loans issued in Denmark, the obligation to provide supplementary collateral, as well as the costs of this, may not be imposed on mortgagors whose falling property prices have prompted the requirement for supplementary collateralisation.

**(2)** If the mortgage-credit institution does not provide supplementary collateral pursuant to subsection (1), 1st clause, all bonds issued in the relevant series with the serial reserve fund shall lose the designation covered mortgage-credit bonds or covered bonds. Bonds with the designation covered mortgage-credit bonds or covered bonds may be considered mortgage-

credit bonds if, at the time of the loan offer, they meet the statutory requirements for mortgage-credit bonds.

**(3)** The Danish FSA may grant exemption from subsection (2), 2nd clause, notwithstanding that the bonds do not comply with the statutory requirements for mortgage-credit bonds. Series with serial reserve funds which have been reclassified to the designation mortgage-credit bonds pursuant to the 1st clause shall be kept separately from other funds in the mortgage-credit institution. Supplementary collateral already provided, cf. subsection (1), 1st clause shall belong to the series with the serial reserve fund which has been reclassified under subsection (2).

**(4)** If the bonds subsequently again fulfil the requirements for covered mortgage-credit bonds or covered bonds, the Danish FSA may allow the bonds to again be designated covered mortgage-credit bonds or covered bonds.

**(5)** Collateral provided pursuant to subsection (1) may not be invalidated pursuant to sections 70 or 72 of the Bankruptcy Act. Invalidation may, however, take place if the collateralisation did not specifically appear as ordinary.

**33e.-(1)** Mortgage-credit institutions which have been granted a license to issue covered bonds or covered mortgage-credit bonds may raise loans to be used in order to fulfil the requirement to provide supplementary collateral.

**(2)** The loan agreement shall state to which series or group of series with serial reserve fund the loan funds raised under subsection (1) are attributable.

**(3)** Loan funds raised pursuant to subsection (1) shall be placed in the types of asset mentioned in section 152c(1), nos. 1 and 3-7 of the Financial Business Act. From the time the loan is raised, assets shall be placed in a separate account, in a separate custody account or be marked in some other way that they stem from the relevant loan. If the assets are used as supplementary collateral, they shall be part of the relevant series or group of series with a serial reserve fund.

**33f.** The Danish FSA shall lay down more detailed regulations on

- 1) valuation of the covered mortgage-credit bonds or covered bonds and the regular calculation of the value of the assets in relation to the covered mortgage-credit bonds or covered bonds.
- 2) valuation of the assets used as collateral for issuing covered mortgage-credit bonds or covered bonds, and
- 3) notification of supplementary collateral for covered mortgage-credit bonds or covered bonds.

## Part 5

### *Supervision*

**34.-(1)** The Danish FSA shall supervise compliance with the provisions of this Act and with rules laid down pursuant to this Act.

**(2)** The Danish Financial Business Council shall take part in the supervision of the mortgage credit institutions within the competence area of the Council as stipulated in the Danish Financial Business Act.

**(3)** The Danish FSA may order that matters which are contrary to the provisions laid down in this Act and rules issued pursuant to this Act shall be rectified. If a mortgage-credit loan is provided contrary to the provisions of this Act or rules issued pursuant to this Act, the Danish FSA may make requirements on the mortgage-credit institution as well as the mortgagor to reduce the mortgage-credit loan, so that the provisions mentioned above are complied with.

**(4)** The Danish FSA may in special cases utilise third-party assistance.

**35.** The Danish FSA may obtain information on real property from other public authorities for the supervision of compliance with this Act.

**36.** The Danish FSA may lay down rules regarding reporting by mortgage-credit institutions of:

- 1) outstanding amounts, losses and write-downs on lending and properties taken over,
- 2) large exposures measured against the institution's balance-sheet and large write-downs measured against the sum of the institution's capital base (reporting to 0.1 percent), and
- 3) mortgage loan offers.

**36a.** The Minister for Economic and Business Affairs shall lay down more detailed regulations on the use of digital communication, including electronic signatures, when exchanging information in accordance with this Act between citizens and undertakings on the one hand and the public administration on the other hand, as well as storage of information.

**37.-(1)** Only mortgage-credit institutions against which a decision has been made by the Danish FSA shall be considered a party in relation to the Danish FSA, cf. however subsection (2) hereof.

**(2)** A member of the board of directors, an auditor, a managing director or other senior employees of a mortgage-credit institution shall be considered as parties if a decision by the Danish FSA pursuant to this Act and its rules is directed against the relevant party.

## **Part 6**

### *Appeals*

**38.-(1)** Decisions made by the Danish FSA under this Act or rules issued pursuant to this Act may be brought before the Danish Company Appeals Board by the person against whom said decision is directed no later than four weeks after the person concerned has been notified about the decision.

**(2)** Orders issued by the Danish FSA on payment of loans granted contrary to the provisions of this Act or rules issued pursuant to this Act may be brought before the courts no later than four weeks after notification of such a decision was given to the person concerned. Decisions which have been brought before the Danish Company Appeals Board may be brought before the courts no later than four weeks after the Danish Company Appeals Board has notified the person concerned of the decision made by the Appeals Board.

## **Part 7**

### *Penalties*

**39.-(1)** Any person violating section 2(1), sections 3-8, sections 10 and 11, section 13(1), section 14(2) and (3), section 17(3) and (4), sections 18-20, section 22(1), 2nd clause, section 25(1), 1st clause, and section 26(1) and (2) of this Act shall be liable to fines or imprisonment of no more than four months unless more severe punishment is incurred under other legislation.

**(2)** Any person violating section 2(2), 1st clause, section 26(4), section 33a(2), section 33b(2) and section 33c(1), (2) and (6) shall be subject to a fine. Violation of the duty to notify in section 33d(1), 1st clause shall be subject to the same penalty.

**(3)** In regulations issued pursuant to this Act, fines may be stipulated for any violation of the provisions of said regulations.

**(4)** Limited companies etc. (legal persons) may be subject to criminal liability according to the rules in Part 5 of the Criminal Code.

**(5)** The period of limitation for non-compliance with the provisions in this Act or regulations issued pursuant to this Act shall be five years.

**40.-(1)** If the board of directors or the board of management of a mortgage-credit institution fail to comply within the proper time with the duties and obligations imposed on them under this Act or under rules issued pursuant to this Act towards the Danish FSA, the Danish FSA may as a coercive measure impose daily or weekly fines on the persons concerned.

**(2)** The Danish FSA may as a coercive measure impose daily or weekly fines on the board of management or board of directors of a mortgage-credit institution, if said boards fail to comply with requirements issued by the Danish FSA to reduce loans granted contrary to the provisions of this Act or rules laid down pursuant to this Act.

## **Part 8**

### *Entry into force and transitional provisions*

**41.-(1)** This Act shall enter into force on 1 January 2004. Section 4, however, shall enter into force on 1 October 2003.

**(2)** Section 25 of the Danish Mortgage Credit Act shall be repealed on 1 October 2003, cf. Consolidating Act no. 57 of 20 January 2003. On 1 January 2004 the following sections or subsections shall be repealed: section 1(4) and (5), section 3, section 24, sections 26-28, 40-45, 47-49, 52, 54-59, 97, section 100(4), section 102(2), section 103, section 103a, and section 105 of the Danish Mortgage Credit Act.

**(3)** The provisions of the Danish Mortgage-Credit Institutions Act, see Consolidating Act no. 571 of 15 August 1989, and the Danish Index-linked Mortgage-Credit Loans Act, cf. Consolidating Act no. 572 of 15 August 1989, shall continue to apply to loans granted pursuant to these Acts. Section 1(5), and section 4(10), 2nd clause, and (12), 2nd clause above, shall continue to apply correspondingly to the preferential position for loans granted pursuant to the provisions of the Danish Index-linked Mortgage-Credit Loans Act.

**(4)** Provisions in the Danish Mortgage Credit Act concerning loan terms and preferential positions which have now been repealed shall continue to apply to loans granted pursuant to these provisions. The regulation of loans in section 23(3) of the Danish Mortgage Credit Act, as drafted in section 6, no. 1 in Act no. 414 of 26 June 1998 on the amendment of the Danish Securities Trading etc. Act, and certain other Acts. (the distribution of tasks/competencies between the Danish Securities Council and the Danish FSA, netting, currency spot transactions for investment purposes, amended investment regulation for children's savings accounts, and home savings accounts, bankruptcy procedures etc.) shall, however, also apply to loans granted before the entry into force of said Act.

**(5)** The rules previously applying in section 21, sections 23-24, section 28, and sections 30-32 of the Danish Mortgage Credit Act, cf. Consolidating Act no. 708 of 8 September 1997, as amended by section 6 of Act no. 414 of 26 June 1998 and by section 2 of Act no. 491 of 1 July 1998, shall continue to apply to housing, to which a pledge of public subsidies or support has been notified no later than 1 January 1999 under the Danish Non-Profit Rental Housing and Subsidised Private Cooperative Housing, etc., Act, previous housing Acts, or the previous Danish Act on dwellings for elderly people and disabled people, provided the loans are granted on the basis of the notified pledge of subsidies.

**(6)** The rules previously applying in section 39(1)-(6) of the Danish Mortgage Credit Act, cf. Consolidating Act no. 708 of 8 September 1997, as amended by section 6 of Act no 414 of 26 June 1998 and by section 2 of Act no. 491 of 1 July 1998, shall continue to apply, and the previously applying rules in section 21, sections 23 and 24, cf. Consolidating Act no. 708 of 8 September 1997, as amended by section 6 of Act no 414 of 26 June 1998 and by section 2 of Act no. 491 of 1 July 1998, shall continue to apply as regards to the loan purposes dealt with in section 39(1)-(6) of this Act to which a pledge of subsidies or support has been notified by the local council no later than 1 January 2002.

**(7)** Section 4a of the Danish Financial Institute for Agriculture etc. Act, cf. Consolidating Act no. 699 of 5 November 1987, as amended by Act no. 373 of 6 July 1988 and by Act no. 850 of 20 December 1989, shall continue to apply to loans granted by the Danish Agricultural Mortgage Bank in connection with refinancing of mortgage-credit loans etc. in agricultural properties.

**(8)** Sections 20a-20d of the Danish Mortgage-Credit Institutions Act, cf. Consolidating Act no. 571 of 15 August 1989, shall continue to apply.

**(9)** Executive Orders issued in pursuance of the provisions mentioned in subsection (2) hereof shall remain in force. However, Executive Order no. 646 of 27 August 1998 on bankruptcy proceedings etc. for mortgage-credit institutions shall be repealed.

**42.-(1)** The outstanding amount due to the Danish Treasury after redemption of a state guarantee granted under section 28c of the Danish Mortgage-Credit Institution Act, cf. Consolidating Act no. 571 of 15 August 1989, may be collected, with added interest and costs, by means of statutory debt collection.

**(2)** The Agency for Governmental Management may collect the amounts specified in subsection (1) hereof by withholding wages, etc., from the person concerned in accordance with the rules stipulated for the collection of personal taxes in the Danish Taxation at Source Act.

**(3)** The Minister for Food, Agriculture and Fisheries may stipulate more detailed rules on procedures regarding withholding of wages.

**(4)** The Agency for Governmental Management may procure from taxation authorities and other public authorities such information on the person concerned as is necessary to carry out withholding of the amounts specified in subsection (1) hereof, including information on income and property.

**(5)** Appeals against decisions made by the Agency for Governmental Management under subsections (1)-(4) hereof may be submitted to the Minister for Finance.

**43.-(1)** This Act shall not extend to the Faeroe Islands.

Act no. 90 of 31 January 2007 contains the following entry into force provisions:

**100.**

**(1)** This Act shall enter into force on 1 February 2007.

**(2)** (Omitted)

**110.**

This Act shall not extend to the Faeroe Islands and Greenland.

Act no. 577 of 6 June 2007 contains the following entry into force provisions:

**12.**

**(1)** This Act shall enter into force on 1 July 2007, cf. however, subsections (2)-(4).

**(2)-(4)** (Omitted)

**14.**

**(1)** Notwithstanding section 19 of the Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act as worded in section 2, no. 7 of this Act, mortgage-credit bonds issued before 1 July 2007 shall be admitted for public listing on a stock exchange until 1 November 2007.

**(2)** Section 20(1), and section 26(4) of the Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act as worded in section 2, nos. 8 and 10 of this Act shall apply to mortgage-credit bonds issued in series or groups of series with a serial reserve fund which opened on 1 July 2007 and thereafter.

**(3)** For loans subject to section 33c(2) of the Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act as worded in section 2, no. 18 of this Act, the lending limit shall be 70 percent, if the loan was offered before 1 July 2009.

**18.**

**(1)** (Omitted)

**(2)** Section 2 of this Act shall not extend to the Faeroe Islands.

**(3)-(4)** (Omitted)

Act no. 219 of 5 April 2008 contains the following entry into force provisions:

**5.**

**(1)** This Act shall enter into force on 7 April 2008.

**6.**

**(1)** (Omitted)

**(2)** Section 3 of this Act shall not extend to the Faeroe Islands.

**(3)** (Omitted)

Act no. 515 of 17 June 2008 contains the following entry into force provisions:

**10.**

(1) This Act shall enter into force on 1 July 2008, cf. however subsection (2).

(2) Section 2, nos. 3 and 4 and section 6 shall enter into force on the day following notification in the Danish Law Gazette.

**11.**

(1) (Omitted)

(2) Section 6 of this Act shall not extend to the Faeroe Islands.

(3) (Omitted)

(4) (Omitted)

Act no. 517 of 17 June 2008, as amended by section 14 of Act no. 392 of 25 May 2009, contains the following entry into force provisions:

**13.**

(1) This Act shall enter into force on 1 July 2008, cf. however subsections (2)-(5).

(2) (Omitted)

(3) (Omitted)

(4) (Omitted)

(5) (Omitted)

**14.**

(1) This Act shall not extend to the Faeroe Islands and Greenland, cf. however, subsections (2) and (3).

(2) (Omitted)

(3) (Omitted)

(4) (Omitted)

Act no. 392 of 25 May 2009 contains the following entry into force provisions:

**15.**

(1) This Act shall enter into force on 1 July 2009, cf. however, subsections (2)-(7).

(2) (Omitted)

(3) (Omitted)

(4) (Omitted)

(5) (Omitted)

(6) (Omitted)

**(7)** (Omitted)

**16.**

**(1)** Sections 1-7 and 9-13 of this Act shall not extend to the Faeroe Islands and Greenland, cf. however subsections (3) and (4).

**(2)** Section 8 shall not extend to the Faeroe Islands.

**(3)** (Omitted)

**(4)** (Omitted)

Act no. 579 of 1 June 2010 contains the following entry into force provisions:

**21.**

**(1)** This Act shall enter into force on 1 July 2010, cf. however, subsections (2)-(6).

**(2)** (Omitted)

**(3)** (Omitted)

**(4)** (Omitted)

**(5)** (Omitted)

**(6)** (Omitted)

**(7)** (Omitted)

**22.**

**(1)** Sections 1-12 and 14-20 of this Act shall not extend to the Faeroe Islands and Greenland, cf. however subsections (2) and (3).

**(2)** Sections 1-9, 12 and 14-20 may be brought fully or partially into force for Greenland with any variations necessitated by the specific conditions prevailing in Greenland.

**(3)** (Omitted)