

# Act on Financial Stability

WE MARGRETHE THE SECOND, by the grace of God, Queen of Denmark, make it known that:  
The Folketing has adopted and We have with Our consent affirmed the following Act:

## Part 1

### *Scope of the act, etc.*

**1.-(1)** A guarantee scheme is set up, which provides, in accordance with the agreement of 5 October 2008 between the Kingdom of Denmark and the Private Contingency Association, that the Kingdom of Denmark shall unconditionally guarantee the claims of unsecured creditors against banks to the extent that such claims are not otherwise covered.

**(2)** For the purpose of this act, unsecured creditors shall mean depositors and creditors whose claims are not covered by sections 132 and 136 of the Danish Financial Business Act. Creditors whose claims are based on covered bonds, cf section 16 a of the Danish Financial Business Act (SDO creditors) are not covered by the guarantee scheme set up by this act.

**2.-(1)** The guarantee scheme comprises banks which, on or before 13 October 2008, have applied for membership of the Private Contingency Association for the Winding up of Distressed Banks, Savings Banks and Cooperative Banks (the Private Contingency Association), and which have not subsequently been excluded from the guarantee scheme pursuant to section 13(3) or (5) or section 14 below.

**(2)** The banks referred to in (1) hereof may agree with the Private Contingency Association that their branches in other countries operating a scheme corresponding to the guarantee scheme pursuant to this act shall be comprised by the guarantee scheme.

**(3)** Danish branches of foreign banks authorised to carry on banking activities in another country within the European Union, or in a country with which the Community has made an agreement in the financial area, may agree with the Private Contingency Association to join the guarantee scheme with respect to claims which are of a type comprised by the Danish guarantee fund for depositors and investors and which relate to Danish branches.

**(4)** Banks and branches in Denmark of foreign banks authorised to carry on the activities referred to in section 7 of the Danish Financial Business Act in another country within the European Union, or in a country with which the Community has made an agreement in the financial area, which commence banking activities after 13 October 2008 and which wish to be comprised by the guarantee scheme, shall at the time when activities are commenced apply to the Private Contingency Association for membership and apply to the FSA for approval of the bank or branch being comprised by the guarantee scheme. Branches of foreign banks shall, at the time of commencing activities in Denmark, apply for membership of the Private Contingency Association and apply to the FSA for approval of the branch being comprised by the guarantee scheme. However, branches of foreign banks are only comprised by the guarantee scheme with respect to claims which are of a type comprised by the Danish guarantee fund for depositors and investors and which relate to Danish branches.

**(5)** Banks and branches in Denmark of foreign banks, cf (1)-(4) hereof, which have joined the guarantee scheme, may not withdraw from the scheme.

## Part 2

### *The Winding-Up Company*

**3.-(1)** The Minister for Economic and Business Affairs shall establish a public limited company (the Winding-Up Company), the capital of which is contributed by the Kingdom of Denmark. The Kingdom of Denmark is the sole owner of the company.

**(2)** On formation, the share capital amounts to DKK 500,000. The company may raise loans to cover its funding requirements.

**4.-(1)** The task of the Winding-Up Company is to ensure that the claims of unsecured creditors of the banks and branches which are referred to in section 2(1) and (2) above and which have made an agreement with the Private Contingency Association are covered. The Winding-up Company shall also cover the claims of unsecured creditors against the banks referred to in section 2(4).

**(2)** With respect to the branches referred to in section 2(3) and (4) above, which are comprised by the guarantee scheme, the Winding-Up Company provides cover for depositors' claims which are of the type comprised by the Danish guarantee fund for depositors and investors and which relate to Danish branches to the extent such depositors do not obtain cover for their claims through another scheme.

**5.** The Danish Financial Business Act, the Danish Financial Statements Act and the Danish Public Companies Act, including the rules on state-owned public limited companies, apply to the Winding-Up Company with the deviations following from this act.

**6.-(1)** The Winding-Up Company shall be managed by a board of directors consisting of seven members to be elected by the shareholders in general meeting.

**(2)** The members of the board of directors and their alternates are elected for terms of three years with an option for extension for one additional term. If a member of the board of directors resigns before expiry of his term of office, his alternate may be appointed for a term of less than three years.

**7.-(1)** If a bank comprised by the guarantee scheme fails to meet the capital adequacy requirements of the Danish Financial Business Act, and if the FSA has determined a deadline in pursuance of section 225(1) of the Danish Financial Business Act, such bank shall declare to the Winding-Up Company that it wishes to transfer its activities to a buyer designated by the Winding-Up Company if the capital has not been restored before the expiry of the deadline determined by the FSA.

**(2)** If the bank's capital has not been restored before the expiry of the deadline referred to in (1) hereof, the bank and the Winding-Up Company shall not later than on the date of expiry of the FSA deadline sign a conditional agreement providing that the bank shall transfer its assets and liabilities to a buyer designated by the Winding-Up Company, cf section 246(2) of the Danish Financial Business Act. The share capital and other subordinated capital, cf sections 132 and 136 of the Danish Financial Business Act, shall not be transferred.

**(3)** If the bank and the Winding-Up Company fail to agree on the transfer amount, such amount shall be determined by the bank's external auditors. The bank's shareholders or cooperative members or members of the board of representatives shall, in accordance with section 246(4) of the Danish Financial Business Act, have access to the conditional agreement and any valuation by the bank's auditors.

**(4)** The transfer agreement shall become final when it has been presented to the bank's shareholders in general meeting or the board of representatives pursuant to the procedure outlined in section 246 of the Danish Financial Business Act and when the Minister for Economic and Business Affairs has approved the agreement in accordance with section 204(1) of the Danish Financial Business Act.

**(5)** If the bank or the Winding-Up Company fails to agree on the transfer amount determined in accordance with (3) hereof, both the Winding-Up Company and the bank may subsequently request

that the transfer amount be determined jointly by two expert valuers appointed by the Institute of State Authorised Public Accountants. The decision of the expert valuers shall be available not later than 12 weeks after their appointment. The FSA may decide to extend the 12-week deadline. The Winding-Up Company and the bank may bring the decision of the expert valuers before the courts not later than two weeks after receipt of the decision.

(6) The costs of the auditors' valuation in accordance with (3) hereof shall be paid by the bank. The fees to the expert valuers in accordance with (5) hereof shall be paid by the buyer designated by the Winding-Up Company.

For use in the expert valuers' valuation in accordance with (5) hereof, the FSA may pass on information about the bank which would otherwise be comprised by the FSA's duty of confidentiality pursuant to section 354 of the Danish Financial Business Act, if such information is required to perform the valuation.

(7) The Winding-Up Company shall safeguard the continuing operations of the bank from the date of the conditional agreement signed in accordance with (2) hereof and until the agreement has become final, cf (4) hereof.

**8.-(1)** Instead of signing an agreement with a distressed bank pursuant to section 7 above, the Winding-Up Company may elect to subscribe capital in a bank which takes over assets and liabilities from the distressed bank or otherwise contribute to winding up the relevant bank in accordance with the objects of the Winding-Up Company.

(2) If a bank is declared bankrupt, the bankrupt bank and the Winding-Up Company shall enter into an agreement to sell the assets and liabilities to a buyer designated by the Winding-Up Company. Section 7(2), second sentence, shall apply *mutatis mutandis*. The agreement shall become effective immediately to the effect that the designated buyer will take over only such claims against the bank which are not covered by the guarantee fund for depositors and investors, to the effect that the unsecured creditors referred to in section 1 above are safeguarded against losses. The transfer amount shall be determined jointly by two expert valuers appointed by the Institute of State Authorised Public Accountants. Section 7(5), second to fourth sentences, shall apply *mutatis mutandis*.

### Part 3

#### *Agreement with the Private Contingency Association*

**9.-(1)** Pursuant to the agreement of 5 October 2008 between the Kingdom of Denmark and the Private Contingency Association, the Private Contingency Association shall guarantee the payment of DKK 10 billion to cover any losses in the Winding-Up Company.

(2) The Private Contingency Association shall pay an annual guarantee commission to the Winding-Up Company in the amount of DKK 7.5 billion. Such guarantee commission shall be payable in monthly instalments and may at the request of the individual bank be paid in shares, guarantee certificates or cooperative share certificates issued by the bank.

(3) If the estimated losses, including interest on capital contributed to the Winding-Up Company, exceed the guaranteed amount set out in (1) hereof and the guarantee commission paid under (2) hereof, the Private Contingency Association shall cover any additional losses in the Winding-Up Company of up to DKK 10 billion.

(4) At the date of termination of the guarantee scheme, the auditors appointed by the Winding-Up Company shall prepare financial statements to be used in the assessment under (3) hereof. The financial statements shall be prepared according to the following principles:

1) Profits/losses shall be calculated as equity at the end of the period less capital contributions in

subsidiaries plus a market return.

2) The guarantee commission paid in pursuance of (2) hereof shall not be recognised in the financial statements.

(5) If such financial statements show a loss, the Private Contingency Association shall pay such part of the guaranteed amount referred to in (1) hereof as is necessary to cover such loss. If such amount is not sufficient to cover the loss, any remaining part thereof shall be covered by the guarantee commission paid in pursuance of (2) hereof. If a loss remains, the Private Contingency Association shall pay an amount of up to DKK 10 billion in the form of additional guarantee commission, cf (3) hereof.

**10.** The total liabilities of the Private Contingency Association towards the Winding-Up Company under section 9 above shall not exceed DKK 35 billion.

**11.** The Winding-Up Company shall guarantee that all unsecured creditors of the banks and branches comprised by the scheme are fully covered until expiry of the scheme. Any losses in the Winding-Up Company exceeding the liabilities of the Private Contingency Association as set out in section 9 above shall be covered by the Kingdom of Denmark. Any profits in the Winding-Up Company at the date of termination of the guarantee scheme shall accrue to the Kingdom of Denmark.

**12.** Subject to agreement with the Winding-Up Company, the Private Contingency Association may defray expenses or make investments with a view to safeguarding the unsecured creditors referred to in section 1 above against losses. In the event of such defrayal of expenses or investments as set out in the first sentence hereof, the guarantees referred to in section 9(1) and (3) above shall be reduced.

#### Part 4

##### *Orders and exclusion from the guarantee scheme*

**13.** Subject to discussions with the Private Contingency Association, the Minister for Economic and Business Affairs may lay down detailed rules specifying the scope of the exposure to be assumed by banks comprised by the guarantee scheme.

(2) In the event that the FSA ascertains that a bank fails to comply with the rules laid down pursuant to (1) hereof, the FSA shall request that such bank prepare a statement to be submitted to the FSA within eight days. If the FSA assesses that the bank's overall risk profile entails an increased risk of loss on the part of the Winding-Up Company relative to the time when the bank joined the scheme, the FSA shall decide whether or not the bank must reduce its overall exposure within a specified period of time.

(3) If the bank fails to reduce its overall exposure as stipulated in the decision referred to in (2) hereof, the bank shall be excluded from the scheme upon expiry of a period of notice of eight days. In the event that a bank is excluded from the guarantee scheme, the scheme still covers the claims of unsecured creditors as made up at the date of exclusion.

(4) For use in its assessment pursuant to (2) hereof, the FSA may order the bank to submit management and audit reports to document the bank's overall exposure.

(5) If a bank comprised by the guarantee scheme fails to comply with the terms and conditions following from the agreement of 5 October 2008 between the Kingdom of Denmark and the Private Contingency Association, the FSA may exclude the bank from the scheme giving eight days' notice. In the event that a bank is excluded from the guarantee scheme, the scheme still covers the

claims of unsecured creditors as made up at the date of exclusion. However, regardless of the terms and conditions of the agreement of 5 October 2008 between the Kingdom of Denmark and the Private Contingency Association, dividend payments may be made within foreign groups. Foreign parent companies may distribute dividends, always provided that such distribution is not subject to the payment of dividends from the Danish subsidiary.

(6) Instead of excluding a bank from the scheme under (3) or (5) hereof, the FSA may issue a warning to or dismiss members of the board of directors of the bank in question or order the bank to dismiss a member of its management board.

(7) Decisions made pursuant to (2), (3), (5) or (6) hereof shall be published by the FSA.

**14.** In very special cases, the FSA may exclude a bank from the guarantee scheme giving eight days' notice regardless of whether the bank complies with the rules for exposure provided in section 13(1) above. Such decision shall be published by the FSA. In the event that a bank is excluded from the guarantee scheme, the scheme still covers the claims of unsecured creditors as made up at the date of exclusion.

**15.** Banks which are part of a group may within the framework of their ordinary business freely organise their business with respect to capital and liquidity as well as exposure.

(2) When the FSA makes a decision in respect of banks which are part of a group within the European Union, or countries with which the Community has made agreements in the financial area, the FSA shall make such decision in consultation with the authority responsible for the supervision of the parent company.

**16.** The party addressed by a decision may bring decisions made by the FSA pursuant to sections 13 and 14 above before the Commercial Complaints Board within 24 hours of the decision having been communicated to such party.

## Part 5

### *Commencement provisions, etc.*

**17.-(1)** This act shall come into force on 11 October 2008 at 00.00.

(2) The act may be affirmed immediately upon being passed.

(3) The act is effective as from 5 October 2008.

(4) The guarantee scheme terminates on 30 September 2010. If, on or before 30 September 2010, the FSA has determined a deadline by which a bank must meet the capital adequacy requirements pursuant to section 225(1) of the Danish Financial Business Act, and if the bank's capital has not been restored before the expiry of such deadline, the Winding-Up Company shall be under an obligation to carry out the procedure referred to in section 7 above in order to safeguard the unsecured creditors referred to in section 1 above against losses. If a bank becomes subject to bankruptcy proceedings, the unsecured creditors of such bank will be comprised by the guarantee scheme if a bankruptcy order is made on or before 30 September 2010.

**18.** The Danish Act on Taxation of Public Limited Companies, etc. (the Danish Corporation Tax Act), cf consolidation act no. 1037 of 24 August 2007, as most recently amended by section 2 of act no. 530 of 17 June 2008, is amended as follows:

*I.* In section 3(1) the following is inserted as *item 20*:

»(20) The Winding-Up Company referred to in the Act on Financial Stability.«

**19.** The Danish Securities Trading Act, cf. consolidation act no. 848 of 19 August 2008, is amended as follows:

**1.** The following new section is inserted after section 39 a:

»**39 b.** The FSA may lay down rules on the prohibition of short selling of shares.«