

Translation: Only the Danish version has legal validity.

*Consolidated act no. 886 of 8 August 2011
issued by the Ministry of Economic and Business Affairs*

Consolidated act on a ship finance institute¹⁾

Hereby the act on a ship finance institute (*lov om et skibsfinansieringsinstitut*) is promulgated, cf. consolidated act no. 1376 of 10 December 2007, as amended by section 12 of act no. 516 of 12 June 2009, section 3 of act no. 579 of 1 June 2010, section 32 of act no. 718 of 25 June 2010, section 17 of act no. 724 of 25 June 2010 and section 27 of act no. 1556 of 21 December 2010.

Section 1. The Minister of Economic and Business Affairs shall be authorised to approve the establishment of a ship finance institute following negotiations with the Minister of Finance.

Subsection 2. The name of the institute shall be approved by the Minister of Economic and Business Affairs.

Section 1a. The purpose of the institute is to carry out ship financing activities. Such activities shall mean the financing and herewith associated financial services in connection with

- 1) the newbuilding and reconstruction of ships as well as
- 2) the purchase, sale and refinancing of ships.

Subsection 2. The institute may carry out its ship financing activities wholly or partly through subsidiary companies.

Subsection 3. The institute may grant loans only against security.

Subsection 4. The institute may provide guarantees in accordance with the purpose of the institute's activities.

Section 2. (Repealed).

Section 2a. The institute may issue ship bonds.

Section 2b. The institute may issue bonds other than ship bonds and covered bonds.

Section 2c. The Minister of Economic and Business Affairs may permit the institute to issue covered bonds.

Subsection 2. If the institute is permitted to issue covered bonds, the permit may be withdrawn if

- 1) the institute is guilty of gross or repeated contraventions of sections 2d, 2i and 2j or provisions concerning covered bonds laid down pursuant to section 5 or
- 2) the issue of covered bonds has not been initiated at the latest 12 months after the institute was granted such permission pursuant to subsection 1.

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

Section 2d. The institute may finance loans against security in the types of assets listed in section 152c (1) (ii)-(vii) of the act on financial activities (*lov om finansiel virksomhed*) when issuing covered bonds. Section 152c (3) of the act on financial activities (*lov om finansiel virksomhed*) shall also apply.

Subsection 2. The value of the assets covering the covered bonds issued shall at any time correspond at least to the value of the covered bonds issued, and the security of each individual loan shall at any time be within the lending limit hereof.

Section 2e. The issue of ship bonds may take place in separate capital centres. The issue of covered bonds shall take place in separate capital centres. The issue of ship bonds and covered bonds may not take place in the same capital centre.

Subsection 2. Holders of the bonds may make their claims only against the capital centre concerned, cf. however section 3c (5).

Section 2f. The borrower shall be personally liable for the loan to the capital centre, respectively the institute as such. Furthermore, the capital centre, respectively the institute as such may enforce the security.

Subsection 2. The capital centres and borrowers shall not be liable for any obligations otherwise assumed by the institute.

Section 2g. The revenue of a capital centre consists of interest and similar revenue on mortgages, fees, revenue concerning financial instruments and similar revenue as well as return on the assets and off-balance sheet items of capital centres.

Subsection 2. The expenditure of a capital centre consists of interest and similar expenditure on bonds issued, expenditure for administration, etc., expenditure concerning financial instruments, expenditure related to the raising of and return on hybrid core capital and subordinate loan capital, losses and provisions for probable losses on the assets and off-balance sheet items of the capital centre as well as the share of the institute's tax.

Section 2h. The means of the capital centre shall be kept separate from the other means of the institute.

Subsection 2. Means shall be transferred to a capital centre from the institute as such if it is necessary to meet the solvency requirement of the capital centre unless such a transfer means that the institute as such will no longer be able to meet the solvency requirement.

Subsection 3. The institute may transfer means from a capital centre to the institute as such if the capital centre is or becomes larger than required.

Subsection 4. Financial instruments may be included as assets or liabilities in a capital centre only if used to cover risks between assets concerning the capital centre, on the one hand, and the ship bonds or covered bonds issued, on the other hand, and where it is decided in the financial instrument that the institute's reconstruction consideration, bankruptcy or lacking compliance of the obligation to make supplementary security under section 2i (1) is not considered breach of contract.

Section 2i. If the value of the assets mentioned in section 2d (2) no longer corresponds at least to the value of the covered bonds issued or is not within the lending limit hereof, the institute shall immediately make supplementary security for fulfilment of the claim and inform the Danish Financial Supervisory Authority hereof. Supplementary security shall be made in the form of the types of assets listed in section 152c (1) (ii)-(vii) of the act on

financial activities (*lov om finansiel virksomhed*). Section 152c (3) of the act on financial activities (*lov om finansiel virksomhed*) shall also apply.

Subsection 2. If the institute does not make supplementary security pursuant to subsection 1, the first sentence, all bonds issued in the capital centre concerned shall lose the designation covered bonds. Bonds losing the designation covered bonds may be designated ship bonds if, at the time of the offer of a loan, they meet the legislative requirements for ship bonds.

Subsection 3. The Danish Financial Supervisory Authority may grant exemptions from subsection 2, the second sentence, irrespective of whether the bonds meet the legislative requirements for ship bonds. Capital centres changing to the designation ship bonds pursuant to the first sentence shall be kept separate from the other means of the institute. Already made supplementary security, cf. subsection 1, the first sentence, shall belong to the capital centre reclassified pursuant to subsection 2.

Subsection 4. If the bonds subsequently meet the requirements for covered bonds again, the Danish Financial Supervisory Authority may permit the bonds to be designated covered bonds again.

Subsection 5. Security provided pursuant to subsection 1 may not be cancelled pursuant to section 70 or section 72 of the bankruptcy act (*konkursloven*). However, cancellation may take place pursuant to the provisions mentioned if the security did not specifically occur to be ordinary.

Section 2j. The institute may raise loans to meet requirements for supplementary security, cf. section 2i (1).

Subsection 2. It shall be evident from the loan agreement to what capital centre the capital borrowed pursuant to subsection 1 is to be ascribed.

Subsection 3. Capital borrowed pursuant to subsection 1 shall be placed in the types of assets mentioned in section 152c (1), (ii)-(vii) of the act on financial activities (*lov om finansiel virksomhed*). The assets shall, from the time when the loan is raised, be placed in a separate account, in a separate deposit or in some other way be marked as stemming from the loan concerned. When the assets are used as supplementary security, they shall form part of the capital centre concerned.

Section 3. The borrower's notes issued to the institute by the borrowers shall serve as security for the institute's obligations. The borrower's notes shall have been issued on such conditions that the payments in accordance with them will on average yield the necessary coverage of the institute's current commitments.

Section 3a. If the institute is declared bankrupt, the means of the capital centre calculated after deductions of expenditure for the handling and the like of the bankrupt estate, including expenditure for the trustee, staff, etc., shall be used to pay claims from holders of ship bonds and covered bonds in the capital centre concerned and claims for the interest accrued on the claims mentioned from the making of the winding-up order. Subsequently, claimants shall be covered pursuant to section 2j (1). Then, surplus means shall be included in the assets of the bankruptcy, cf. section 32 of the bankruptcy act (*konkursloven*).

Subsection 2. If the institute is declared bankrupt, the means calculated after deductions of expenditure for the handling and the like of the bankrupt estate, including expenditure for the trustee, staff, etc. in the institute as such, shall be used to pay claims from holders of debentures and ship bonds not issued through a capital centre and claims for the interest accrued on the claims mentioned from the making of the winding-up order. Means spent

pursuant to the first sentence may, however, not amount to more than the assets corresponding to the debentures or ship bonds, including the mortgage deeds, deposits and securities belonging to the institute and an amount corresponding to 8 per cent of the risk-weighted value of the assets corresponding to the debentures and ship bonds that the institute may have issued outside capital centres. Subsequently, surplus means shall be included in the assets of the bankruptcy, cf. section 32 of the bankruptcy act (*konkursloven*).

Subsection 3. If the institute is declared bankrupt, counterparties on the financial instruments concluded for covering the risks in a capital centre, cf. section 2h (4), shall, in terms of bankruptcy law, be equal to holders of bonds in the capital centre concerned, cf. subsection 1, the first sentence, and section 3c (5)-(7). Counterparties on financial instruments concluded for uncovering the risks between loans and debentures or ship bonds not issued through a capital centre shall, in terms of bankruptcy law, be equal to holders of debentures or ship bonds if it is stipulated in the agreement on the financial instrument that the reconstruction consideration or bankruptcy of the institute is not considered breach of contract, cf. subsection 2 and section 3c (5)-(7).

Section 3b. Holders of debentures, ship bonds or covered bonds or lenders under section 2j (1) may not claim that a winding-up order against the institute is a reason for premature redemption of payment obligations. A winding-up order against the institute shall not exempt the institute's borrowers from the right to repay loans wholly or partly in accordance with the repayment terms applicable to the loan.

Subsection 2. If the institute does not meet its obligation under section 2i (1), holders of covered bonds or lenders under section 2j (1) may not claim that this is a reason for premature redemption of payment obligations.

Section 3c. The bankrupt estate may not pay an instalment for fulfilment of claims from holders of debentures, ship bonds or covered bonds at a date prior to that at which the institute was entitled to release itself by paying the instalment.

Subsection 2. The bankrupt estate cannot terminate loan agreements secured through mortgages on ships to a wider extent than what the institute was entitled to.

Subsection 3. The bankrupt estate cannot change contributions and the like.

Subsection 4. Sett-offs from a claimant as mentioned in section 42 of the bankruptcy act (*konkursloven*) cannot be considered to fulfil a claim owing to the institute.

Subsection 5. The assets in the bankruptcy shall be used to pay claims in accordance with the regulations of chapter 10 of the bankruptcy act (*konkursloven*). Residual claims from holders of debentures, ship bonds and covered bonds as well as claims on the interest accrued on the claims mentioned from the making of the winding-up order shall, however, be paid in equal proportions according to the claims mentioned in section 96 of the bankruptcy act (*konkursloven*), but before the claims mentioned in section 97 of the bankruptcy act (*konkursloven*).

Subsection 6. In connection with the reconstruction administration, the institute shall, to the widest extent possible, continue to meet its payment obligations according to claims by holders of debentures, ship bonds and covered bonds and claims from claimants according to agreements on financial instruments concluded by the institute to uncover the risks between assets and bonds issued at the time of payment unless the reconstructor determines otherwise. With the consent of the reconstructor, the institute may conclude agreements on financial instruments, raise loans for the payments mentioned in the first sentence and provide security for such loans in assets except for claims secured through mortgages on ships.

Subsection 7. In case of bankruptcy, the trustee shall, to the widest extent possible, continue or resume payment of the institute's obligations in the form of interest and instalments to holders of debentures, ship bonds and covered bonds and claims from claimants according to agreements on financial instruments concluded by the institute to uncover the risks between assets and bonds issued. To the extent that sufficient means are not available, interest shall be paid prior to lots or other payment of instalments. The trustee may conclude agreements on financial instruments, raise loans for payment of holders of debentures, ship bonds and covered bonds and claims from claimants according to agreements on financial instruments concluded by the institute to uncover the risks between assets and bonds issued and provide security for such loans in assets except for claims secured through mortgages on ships.

Subsection 8. It is not possible to transfer means from one capital centre to another or to the institute as such after the initiation of the reconstruction administration or the making of a winding-up order.

Section 3d. Holders of bonds that have lost the designation covered bonds, cf. section 2i (2) and counterparties on the financial instruments shall maintain the position, in terms of bankruptcy law, assigned to holders of covered bonds and financial counterparties, cf. section 3a. The same shall apply to the coverage of debt that the institute has incurred for use when providing supplementary security, cf. section 2j.

Subsection 2. The provisions of sections 3b, 3c and 3e shall also apply to bonds that have lost the designation covered bonds and financial instruments related hereto.

Section 3e. Yields from loans that the institute has raised to meet the requirement for supplementary security, cf. section 2j (1), which are not included in a capital centre shall, in case of the institute's bankruptcy, serve as coverage of holders of covered bonds and counterparties on the financial instruments in the capital centre to which the loan is raised to provide supplementary security. Any surplus means shall be paid to the lender.

Section 4. The Danish Financial Supervisory Authority shall monitor compliance with this act and regulations issued pursuant to the act.

Subsection 2. The provisions of chapters 21 and 23 of the act on financial activities (*lov om finansiel virksomhed*) shall also apply to the institute.

Subsection 3. The institute shall pay a fee to the Danish Financial Supervisory Authority. The fee shall be determined pursuant to chapter 22 of the act on financial activities (*lov om finansiel virksomhed*).

Section 4a. (Repealed).

Section 5. More detailed regulations on the implementation of the provisions of this act may be laid down by the Minister of Economic and Business Affairs.

Subsection 2. The Minister of Economic and Business Affairs may lay down more detailed regulations on what provisions of the act on financial activities (*lov om finansiel virksomhed*) and the act on mortgage loans and mortgage bonds, etc. (*lov om realkreditlån og realkreditobligationer m.v.*) as well as regulations laid down pursuant to these acts shall, with the necessary adjustments, apply to the institute.

Subsection 3. The Minister of Economic and Business Affairs shall lay down more detailed regulations on the use of digital communication, including electronic signature, when

exchanging information under this act between citizens and companies, on the one hand, and the public administration, on the other hand, as well as on the storage of information.

Subsection 4. The Danish Financial Supervisory Authority shall lay down more detailed regulations on:

- 1) the conditions on which the bonds may acquire and keep the designation covered bonds;
- 2) the terms and lending limits of loans financed through the issuance of covered bonds;
- 3) the valuation of the assets lying as security for the issuance of covered bonds;
- 4) the valuation of the covered bonds issued and the current statement of the assets' value in relation to the covered bonds;
- 5) the conditions on which mortgage loans may be granted for the newbuilding or reconstruction of ships, cf. section 152c (1) (ii) of the act on financial activities (*lov om finansiel virksomhed*);
- 6) the limitation of risks in connection with the issuance of bonds, including interest risks, currency risks and option risks; and
- 7) the reporting of supplementary security for covered bonds.

Sections 5a-5d. (Repealed).

Section 6. (Repealed).

Section 7. The supreme managing body of the Danish Ship Finance Fund may decide that the fund be dissolved without liquidation by transferring the assets and obligations of the fund as an entirety to a limited company owned or established by the fund, which shall meet the provisions of this act and holds a permit from the Danish Financial Supervisory Authority. In connection with the transfer, shares shall be issued in the limited company which shall be transferred to a fund established at the conversion that is considered commercial. The total value of the shares transferred and an undistributable securities reserve established in the limited company shall correspond to the value of the contributed net capital with deductions of any amounts pursuant to subsection 2.

Subsection 2. The supreme managing body of the Danish Ship Finance Fund may, in connection with the conversion, decide to pay means from the net capital of the fund to the State. The amount paid to the State shall be used in accordance with the dissolution purposes of the Danish Ship Finance Fund.

Subsection 3. The supreme managing body of the Danish Ship Finance Fund may, in connection with the conversion, decide that the premium by share issue under section 8 (3) shall be paid to the Danmarks Nationalbank.

Subsection 4. Decisions pursuant to subsections 1-3 shall be made with the majority required for dissolving the Danish Ship Finance Fund and may be made only with the approval of the Minister of Economic and Business Affairs.

Subsection 5. Shareholders of the limited company mentioned in subsection 1 shall draw up a shareholders' agreement to be approved by the Minister of Economic and Business Affairs.

Section 8. In case of conversion under section 7 (1), sections 236-251 of the companies act (*selskabsloven*) shall also apply with the necessary adjustments.

Subsection 2. Section 242, the second sentence, of the act on public limited companies and private limited companies (*lov om aktie- og anpartsselskaber*) shall not apply in connection with conversions covered by subsection 1.

Subsection 3. The guarantors of the Danish Ship Finance Fund shall be offered to subscribe for shares in the limited company at a market-based price. The merging project mentioned in section 237 (1) and (3) of the companies act (*selskabsloven*) shall contain information about and provisions on the rights conferred on the guarantors.

Subsection 4. The intermediate balance sheet mentioned in section 239 (1) of the companies act (*selskabsloven*) shall be drawn up according to the accounting regulations applicable to the Danish Ship Finance Fund with the necessary adjustments.

Subsection 5. Documents which, according to the companies act (*selskabsloven*), shall be submitted to the Danish Commerce and Companies Agency shall also be sent to the Danish Financial Supervisory Authority.

Section 9. The undistributable securities reserve may be used only to cover deficits that cannot be covered by amounts that may be used as dividend in the limited company.

Subsection 2. To the undistributable securities reserve 10 per cent of the annual surplus shall be added that is not used to cover deficits from previous years unless the Danish Ship Finance Fund's dissolution purposes are considered in a similar way. However, the deposit cannot exceed the interest on the securities reserve corresponding to the interest determined by the Danish Financial Supervisory Authority pursuant to section 213 (2) of the act on financial activities (*lov om finansiel virksomhed*) with deduction of a proportionate share of the annual corporate tax. Irrespective hereof, the undistributable securities reserve shall insofar as possible be re-established through advance transfer of the annual surplus if the undistributable securities reserve in previous years has wholly or partly been used to cover deficits. Thus, dividend cannot be paid or distributed through capital reduction until the undistributable securities reserve has acquired at least the same nominal size as that of the securities reserve before it was used wholly or partly to cover deficits.

Section 10. Any subsequent transfer of the assets and obligations of the limited company may be made to one or more limited companies holding a permit from the Danish Financial Supervisory Authority after having been presented to the Minister of Economic and Business Affairs. The Minister of Economic and Business Affairs may oppose any subsequent transfer of the assets and obligations of the limited company if the transfer means that the undistributable securities reserve will not continue to be deposited for the dissolution purposes of the Danish Ship Finance Fund. In case of such a transfer, the surviving limited company(ies) shall take over the undistributable securities reserve on the same conditions as those applicable until the transfer. In this case, this act shall apply to this or these limited company(ies).

Section 11. A limited company, cf. section 7 (1) or section 10, may seize to carry out ship financing activities only if it is not economically sound to operate such business. The Danish Financial Supervisory Authority shall approve that it is not economically sound to carry out ship financing activities.

Subsection 2. In case of discontinuation of ship financing activities, cf. subsection 1, the undistributable securities reserve shall be used in accordance with the dissolution purposes of the Danish Ship Finance Fund.

Section 12. In case of dissolution or bankruptcy of a limited company, cf. section 7 (1) or section 10, the undistributable securities reserve shall be used in accordance with the dissolution purposes of the Danish Ship Finance Fund.

Subsection 2. Payment of dividend to the shareholders may not take place until the obligations under subsection 1 are met.

Section 13. The purpose of the commercial fund, cf. section 7 (1), the second sentence, shall correspond to the dissolution purposes of the Danish Ship Finance Fund.

Subsection 2. In case of the dissolution of the fund, the liquidation surplus shall be distributed in accordance with the dissolution purposes of the Danish Ship Finance Fund.

Subsection 3. The fund shall be managed by a board of directors of at least five members, one of whom shall be appointed by the Minister of Economic and Business Affairs. The other members shall be appointed by the maritime industries.

Subsection 4. The Danish Commerce and Companies Agency is the fund's supervisory authority.

Section 14. Contraventions of section 1 (2), section 2 d (1), section 2 e (1), the second and third sentences, section 2 h (1), (2) and (4), and section 3, the second sentence, shall be liable to punishment by fine unless stricter penalty is due pursuant to other legislation. Contraventions of the reporting obligation mentioned in section 2i (1), the first sentence, shall be punished in the same way.

Subsection 2. In regulations laid down pursuant to the act, punishment by fine or imprisonment for a period of up to four months may be determined unless stricter punishment is due pursuant to other legislation for contraventions of provisions stipulated in the regulation.

Subsection 3. Liability to punishment may be imposed on a ship finance institute pursuant to the provisions of chapter 5 of the penal code.

Subsection 4. The time limit of liability to punishment shall be five years.

Act no. 143 of 17 May 1961 contains the following entry into force provision.

Section 6. This act shall enter into force on 15 May 1961.²

Act no. 1005 of 23 December 1998 contains the following entry into force provisions.

² The provision is repealed by section 1 of act no. 387 of 30 May 2005.

Section 2

This act shall enter into force on 1 January 1999.

Act no. 392 of 30 May 2000 contains the following entry into force provisions.

Section 6

Subsection 1. This act shall enter into force on 1 June 2000.

Subsections 2-4. (Left out).

Section 7

This act shall not apply to the Faroe Islands and Greenland, but (left out).

Act no. 233 of 29 April 2002 contains the following entry into force provisions.

Section 9

Subsection 1. This act shall enter into force on 1 July 2002.

Subsections 2-3. (Left out).

Section 10

Subsection 1. This act shall not apply (left out) to the Faroe Islands and Greenland.
(Left out).

Subsections 2-3. (Left out).

Act no. 428 of 6 June 2002 contains the following entry into force provisions.

Section 19

Subsection 1. This act shall enter into force on 1 July 2002, cf. however subsections 2 and 3.

Subsections 2-4. (Left out).

Section 21

Subsection 1. Except for (left out), this act shall not apply to Greenland and the Faroe Islands, but may be put in force by royal decree for these parts of the country with the deviations necessitated by the special Greenland and Faroese conditions, cf. however subsection 2.

Subsection 2. (Left out).

Act no. 453 of 10 June 2003 contains the following entry into force provisions.

Section 375

This act shall enter into force on 1 January 2004, cf. however subsections 2 and 3. *Subsections 2-5.* (Left out).

Act no. 387 of 30 May 2005 contains the following entry into force provisions.

Section 6

The date of the entry into force of the act shall be determined by the Minister of Economic and Business Affairs. In this connection, the minister may determine that the act shall enter into force on different dates.³

Section 7

This act shall not apply to Greenland and the Faroe Islands, but sections 1, (left out) and 6 may be put in force by royal decree for these parts of the country with the deviations necessitated by the special Greenland and Faroese conditions.

Section 12

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

Subsection 1. This act shall enter into force on 1 July 2007, cf. however subsections 2-4.

Subsection 2. (Left out).

Subsection 3. Section 3 (ii) shall enter into force on 1 January 2008.⁴

Section 15

Subsection 1. The issuance of ship bonds pursuant to section 2a of the act on a ship finance institute (*lov om et skibsfinansieringsinstitut*) as worded in section 3 (iii) of this act may not take place until from 1 January 2008.

Subsection 2. Irrespective of section 3a (3), the second sentence, of the act on a ship finance institute (*lov om et skibsfinansieringsinstitut*) as worded in section 3 (iv) of this act, counterparties shall, in terms of bankruptcy law, be equal on financial instruments concluded to cover risks between loans and debentures with the holders of debentures if the agreement on the financial instrument is concluded before 1 July 2007.

3 Order no. 391 of 30 May 2005 on the entry into force of act no. 387 of 30 May 2005 stipulates that the act shall enter into force on 1 June 2005. Section 4 of the act has effect from the conversion of the Danish Ship Finance Fund (the date of merger). Section 5 of the act has effect from the day following the dissolution of the Danish Ship Finance Fund.

4 The entry into force concerns the repeal of section 2 of the act.

Section 18

Subsection 1. Sections 1 and 3-11 of the act shall not apply to the Faroe Islands and Greenland, cf. however subsections 3 and 4.

Subsection 2. (Left out).

Subsection 3. Sections 1, 3, 4 and 8 may by royal decree be put in force wholly or partly for the Faroe Islands and Greenland with the adjustments necessitated by the special Faroese or Greenland conditions.

Subsection 4. (Left out).

Minister of Economic and Business Affairs, 8 August 2011

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